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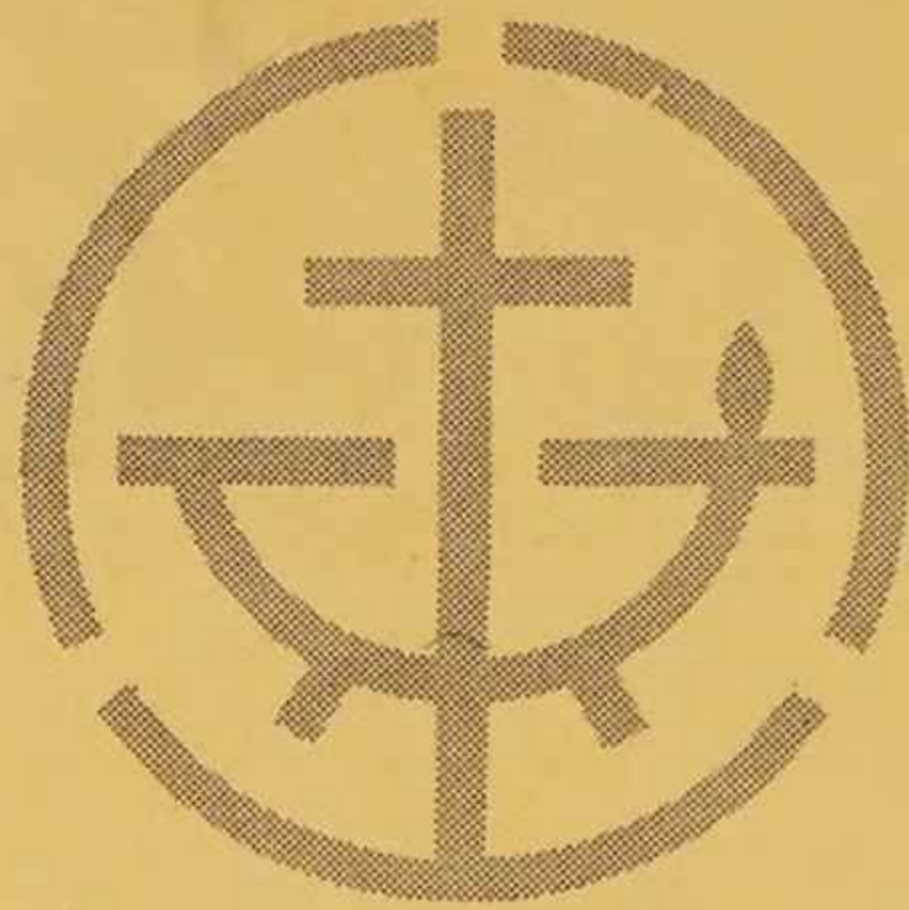


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Technical Report of The Commission on Obscenity and Pornography

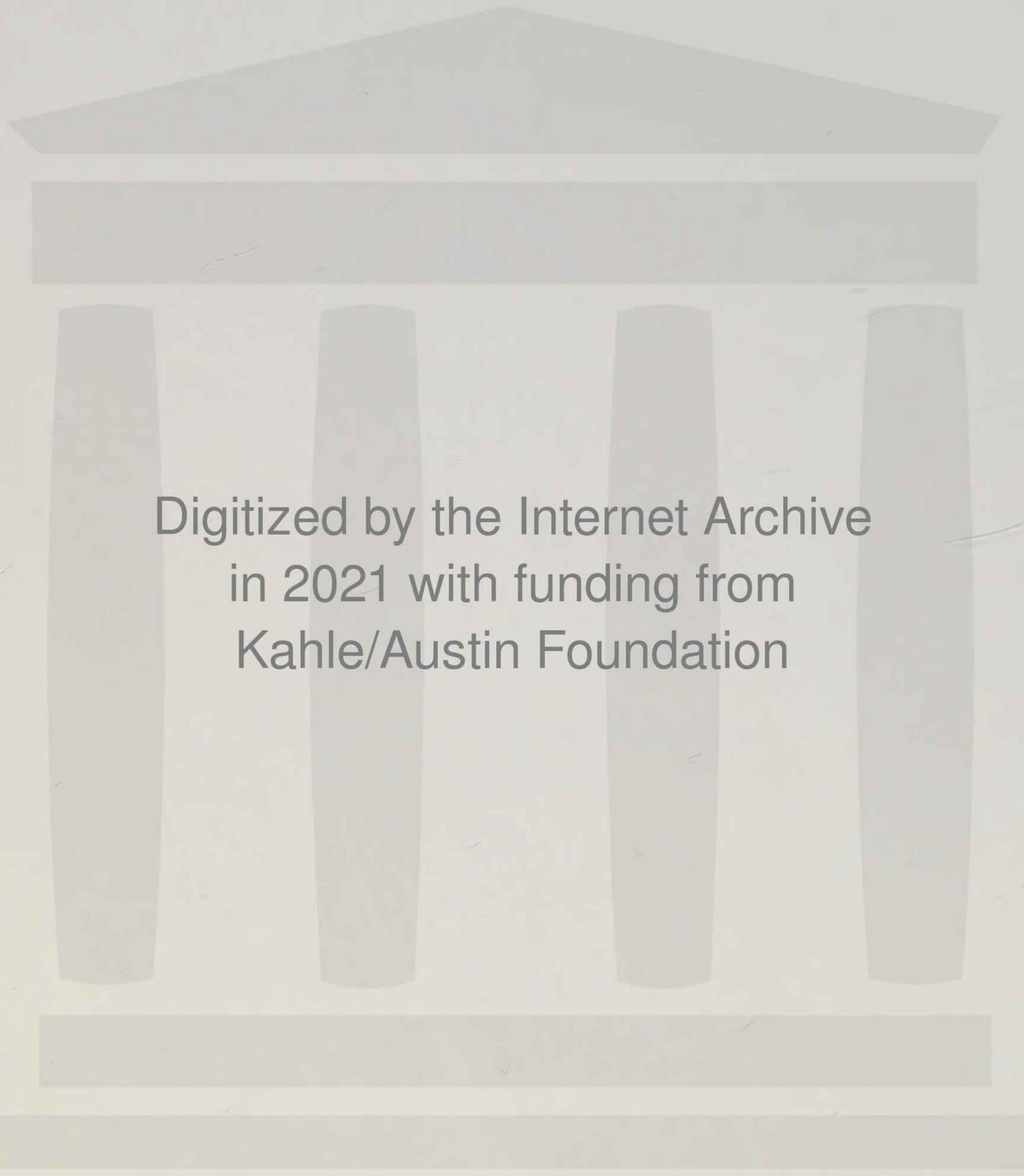
Volume III

THE MARKETPLACE:
THE INDUSTRY



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Technical Report of The Commission on Obscenity and Pornography , v. 3

Volume III

THE MARKETPLACE: THE INDUSTRY

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Foreword

The members of the Commission on Obscenity and Pornography take special satisfaction in making available these Technical Reports of research undertaken at the Commission's request and under the direction of its staff.

These reports are an important part of the Commission's response to the directive from Congress to study and report on (a) constitutional and definitional problems relating to obscenity controls, (b) traffic in and distribution of obscene and pornographic materials, and (c) effects of such materials, particularly on youth, and their relationship to crime and other antisocial conduct.

Most of the Technical Reports are original work because, outside of the legal field, very little research on the questions assigned to the Commission had been undertaken by anyone prior to the funding of the Commission in the summer of 1968. At appropriate points in these volumes, reference is made to reports of earlier research, as well as to research projects undertaken independently of the Commission during the two years of its effective life. Primarily, however, the Commission found it necessary to rely on the original research reported here.

Although attention will initially focus on the findings and recommendations of the Commission and its four panels, the research reflected in these Technical Reports will have greater long-range importance. The findings by the Commission and its panels are necessarily limited and hurried distillations, and its recommendations are inevitably tempered by the give and take of seeking to reach a group judgment on a highly controversial subject. The research reported here, however, was subject to no such limitations and is being made available primarily for two purposes:

(1) We expect and invite critical examination and appraisal of these reports, for we have only begun the task of interpreting the wealth of information they contain.

(2) We hope that the Commission-sponsored research will stimulate and point the way to further scientific inquiry in this difficult and baffling field. There are still many unanswered questions, and these will require further research with more refined techniques and instruments.

For the Commission, I wish to express deep appreciation to all the individuals and teams whose research is reported here. We are most grateful both for their willingness to pioneer in this unexplored and controversial field and for their shouldering of the burden on such short notice and with such restrictive time schedules.

I also wish to express for the Commission our admiration and thanks to Dr. W. Cody Wilson, our executive director, and his excellent staff. Only through their valiant and effective efforts in planning and implementing this vast array of highly diverse research projects, all focusing on specific tasks assigned to the Commission, was it possible for us to bring our work to a timely completion.

WILLIAM B. LOCKHART
Chairman

General Preface

Many of the papers in these volumes share two characteristics: a focus on empirical description and a lack of refinement in presentation. Each of these characteristics is a product of both circumstance and deliberate policy.

The emphasis on empirical description reflects in part the nature of existing knowledge at the beginning of the Commission's work. Few empirical observations had been reported in the literature, and these were not sufficient to provide even a tentative description of the phenomena of concern to the Commission, nor to form the basis for research at a higher level of conceptualization.

The emphasis on empirical description also reflects the nature of the task assigned to the Commission. The policy questions posed by the Congress required primarily empirical description for guidance.

The overall research strategy and the specific research projects were guided, however, by ideas and concepts from more theoretically developed areas of the behavioral sciences such as socialization, personality, and social structure. Hopefully, the data compiled for purposes of empirical description of the phenomena of obscenity and pornography will be relevant to theoretical issues in these other areas.

Some of the empirical descriptions may appear to many social scientists as demonstrations of the obvious. This is often the case *after* an empirical description has been provided. Yet, it is never certain that "obvious" concepts and relations are valid until they have been tested empirically. As it turned out, there were a few surprises to a few people.

The policy implications of the findings of this research program may very well stir controversy and debate. Because of their crucial importance for policy discussion and decision, the Commission has presented these basic empirical observations with a minimum of complex statistical manipulation and conceptual analysis. The lack of refinement in presentation of several of the research reports is due in part to the Commission's desire to keep very close to the raw data.

Most of the researchers had less than nine months in which to establish a research team, arrange a research setting, develop measuring instruments, secure subjects, collect the data, reduce the data, and write a report. In several instances we are presenting, literally, the first draft of a report.

The Commission staff has refrained from all but very minor editing of these reports. The observations and interpretations are entirely the authors'. To insure that ideological standards were not imposed on the results of the reports, the Commission and its staff have also foregone the prerogative of imposing generally

accepted standards of scientific reporting. To the same end we have also published all of the research that has been undertaken for us.

Nevertheless, most of the reports in these volumes quite satisfactorily reflect current standards, not only for conducting research but also for reporting on its results.

We trust that many of the authors will soon present to the behavioral science community reports based on these data but directed to more theoretical and conceptual issues and reflecting a higher degree of refinement of both data and presentation than has been possible here.

This series of volumes of Technical Reports is a joint effort of the Congress, the Commission, the Commission staff, the research teams headed by the authors of the several papers, and the many people who participated in the studies: Congress posed the general problems, authorized the Commission to contract with competent agencies to conduct research, and provided the necessary funds. The Commission specified the kinds of information that it required and worked closely with the staff in designing an appropriate research program. The Commission staff specified the details of the research program and, under the direction and guidance of the Commission, implemented it—partly by undertaking research directly, but more often by contracting with outside agencies to conduct research. The authors of the papers accepted responsibility for developing concrete research arrangements, collecting and analyzing data, and writing reports, all under tremendous time pressure. Several thousand people cooperated in collecting the data and devoted uncounted hours of time providing the information in these volumes.

On behalf of the Commission, its staff, the authors of the papers, and the people who read these volumes and make use of the contents, I express deep appreciation to the Members of Congress who initiated and made possible the gathering of this information, and to the people who participated in the various studies and contributed the basic information.

W. CODY WILSON
*Executive Director
and Director of Research*

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Introduction to Volume III

Volume III is the second nonbehavioral science volume. It is composed of a single report. The author is a lawyer, but the report is not a legal analysis. Rather it is an attempt to describe the operation of the several industries that publish and distribute sexually oriented materials, and to estimate the volume of business in these materials.

The descriptions of the several different industries are based on personal observation, interviews with many of the major operators in the industries, and interviews with knowledgeable people outside the industries. The estimates of volume of business are based on interviews with people in the industries, examination of the records of individual enterprises, industry statistics, governmental statistics and records, questionnaire data, and analyses which compare and combine information from various sources.

Mr. Sampson has done a tremendous job of developing sources of information and in stimulating both industry and government agencies to collate data that were available but unused to produce useful descriptive statistics. Thus, much of the information that he uses did not exist prior to his study.

Another important feature of Mr. Sampson's work is the way in which he makes independent estimates based on separate data from independent sources in order to provide some indication of the reliability of these estimates.

The resulting report is unique not only in its comprehensiveness but also in its differentiation and its degree of documentation.

W. CODY WILSON
*Executive Director and
Director of Research*

Commercial Traffic in Sexually Oriented Materials

In the United States (1969-1970)

JOHN J. SAMPSON

*Commission on Obscenity
and Pornography*

FOREWORD

In Public Law 90-100, Congress assigned the Commission on Obscenity and Pornography, *inter alia*, "to ascertain the methods employed in the distribution of obscene and pornographic materials and to explore the nature and volume of traffic in such materials."

The Commission appointed a Traffic and Distribution Panel to concentrate on the study of this subject and to report its findings to the full Commission. Because public concern applies to a broad range of materials, the Panel determined to limit its investigations to the media causing the greatest concern. These were specified as books, periodicals, and certain additional materials such as sexual devices, 8-mm. films, and photo sets sold in retail outlets, by individuals, or through the mail; and motion picture films, whether exhibited publicly or privately. The Panel did not include live performances such as burlesque shows, night club acts, or stage plays in its investigations, nor did it measure erotic stimuli in broadcast or telecast media or in newspapers, except for the small segment represented by the "sensational" or the "underground" press.

To fulfill its duty the Panel engaged the author to conduct such investigations as it deemed necessary and to oversee additional studies deemed appropriate. This technical report is the result of approximately 16 months of study on the subject by the author. It provides the background data and methodology supporting the bulk of the report of the Traffic and Distribution Panel to the full Commission.

The report is divided into four parts. Each part deals with a separate category of sexually oriented, commercially distributed material: motion pictures, books and magazines, mail order sales, and under-the-counter materials. The nature of

these materials, the methods by which they are distributed, exhibited and sold, and, where possible, the volume of traffic in units and dollars, are described in detail.

A comprehensive estimate of the so-called "smut" industry is not made in this report. Erotic stimuli are found in an exceedingly wide range of materials grouped in submarkets. An estimate which combines these segments of industries into an overall market estimate of the traffic in "obscenity" would necessarily ignore very real distinctions in the sexual content of materials and in the marketing methods. Any single, overall estimate of the market for sexually oriented materials would be relatively meaningless because of the very diverse materials which comprise the market.

Popular estimates of the traffic and distribution of "obscenity and pornography," such as articles appearing in newspapers, periodicals, and other media have estimated the nationwide traffic in "smut" to be between \$500 million and \$2.5 billion per year. These estimates never provide the slightest indication as to exactly what is included. Lacking specific definitions, such estimates are valueless; moreover, these estimates have been based on pure speculation rather than on an investigation of the facts. As far as can be discovered, this technical report represents the first comprehensive analysis of the traffic and distribution of sexually oriented materials in the United States based on a systematic investigation.

In the opinion of the author, popular estimates of the "smut" business, especially those at the higher end of the range (\$2 to \$2.5 billion), are gross exaggerations. The patent error of such estimates is dramatically illustrated by the fact that, according to the U.S. Department of Commerce, yearly retail receipts from all motion pictures and all popular general-interest books and magazines (excluding textbooks and technical, scientific, or professional books and journals) do not greatly exceed \$2.5 billion. It is obvious that, irrespective of the definition applied to "obscenity," sales of materials so defined do not remotely approach the level of mass market media sales.

Part I

Motion Pictures

Until the past year or two, motion pictures distributed in the United States fell rather neatly into three categories: general release, art, and exploitation films. Although recent innovations in the market have altered these traditional classifications and blurred distinctions which formerly existed, the vast majority of the motion pictures of 1969-1970 can still be so categorized.

General release films, whether produced domestically or in a foreign country, are the heart of the motion picture business. They are primarily the product of large companies whose names are household words, such as Paramount, M-G-M, Twentieth Century Fox, Warner Brothers, Walt Disney, and so on; they are familiar to every moviegoer, feature well-known actors and account for the bulk of exhibitions.¹ A successful general release film has a potential for exhibition in more than 12,000 of the estimated 13,750 theaters in the United States.² Although no single film is ever exhibited in that many theaters, 90% or more of all the theaters are willing to exhibit such films, and in fact "hit" movies are exhibited in 5,000 or more theaters.

Art films are comprised of an undefined amorphous group, the exact characteristics of which are almost impossible to define specifically. In general, the majority are foreign language films with subtitles which for aesthetic, intellectual, artistic, or other reasons appeal to a limited audience. American-made films in this category are generally low-budget films designed to appeal to the "art film audience." The films have varying degrees of acceptability to the majority of motion picture exhibitors because of either their "foreignness" or their off-beat, unique, or controversial themes and content. Usually "successful" art films are exhibited in 500 to 800 theaters.

Exploitation films, also known in the industry as "skin flicks," are low-budget sex-oriented movies which are not acceptable to the majority of exhibitors. These usually have a limited exhibition potential of about 500 theaters.

Until about 1969, each type was distributed in its own particular circuit and ordinarily stayed there. On rare occasions an exceptional "art" film, for example, *Two Women* and *La Dolce Vita*, broke into general release; but for the most part interchange between markets was limited.

As of 1970 the potential market for films not easily classified is extremely flexible and subject to overnight change, although the vast majority of films can still be placed in one of the traditional categories. The breakdown of the traditional classifications has been caused by the high degree of sexual content in certain widely distributed, highly successful films. This change in the market has

1. Richard S. Randall, "Classification by the Motion Picture Industry," Technical Reports of the Commission on Obscenity and Pornography (Washington, D.C.: U.S. Government Printing Office, 1971). Randall's survey of advertised exhibitions in 20 large metropolitan areas and 20 smaller cities disclosed that between January 24 and August 8, 1969, general release motion pictures accounted for 92.5% of all advertised exhibitions in the cities surveyed.

2. Department of Commerce, Business and Defense Services Administration, *U.S. Industrial Outlook, 1970* (Washington, D.C.: U.S. Government Printing Office, 1970), p. 437.

been noted by the industry. It has been reported that Jack Valenti, president of the Motion Picture Association of America (MPAA), recently "launched a personal campaign to rouse public support for his effort to keep sex films out of respectable movie theaters and keep them in the theaters that have traditionally exhibited them through the years."³ This statement reflects a change in exhibition policy by many theater owners and notes an expanded market for sexually oriented films. However, the radical changes in marketing sexually oriented films can be understood only after the traditional marketing patterns of well-defined types of films (general release, art, and exploitation) are analyzed.

GENERAL RELEASE FILMS

The motion picture industry—An overview

1920-1950: A CENTRALIZED INDUSTRY

During the first half of the 20th century, America's favorite form of entertainment and recreation was provided by motion pictures. During the 1930's and 1940's tens of millions of Americans attended motion picture theaters on a regular basis, reaching an estimated high of 80 million weekly in 1946.⁴ Motion picture attendance during this era included the full spectrum of the American population: people of all ages, races, and economic circumstances regularly attended the movies as family entertainment.

After somewhat chaotic beginnings the industry had consolidated its position by the 1930's. Fewer than 10 companies dominated the motion picture industry and in effect *were* the industry. Known as the "major studios" or simply as "the majors," these companies controlled, directly and indirectly, virtually every popular motion picture released, which in turn meant control of almost all theaters as well.⁵

Part of the oligarchic control of the industry by the "majors" was the result of a system of self-regulation. As a result of growing public criticism of film content and the fear of extensive government censorship in the 1920's, the major studios formed the Motion Picture Producers and Distributors Association (MPPDA), now known as the Motion Picture Association of America (MPAA). At least in part, the MPPDA was designed to relieve the pressure from public criticism of the alleged excessive sexual content of films. Although public outcry was quieted for a time, by 1934 renewed criticism had exerted sufficient pressure to cause the formation of a regulatory code applied by an industry-created organization known as the Production Code Administration (PCA). Although the industry code was not limited to the sexual content of movies, the alleged immorality in movies was the catalyst which created the self-censoring procedure.

3. *Independent Film Journal*, Feb. 4, 1970, p. 4.

4. Michael Conant, *Anti-Trust in the Motion Picture Industry* (Berkeley: University of California Press, 1960), p. 4.

5. Monopoly in the motion picture industry has been the subject of considerable study: probably the most comprehensive work on the subject is Conant, *op. cit.*; see also his excellent bibliography, *op. cit.*, pp. 221-226.

The PCA and its seal of approval became, in effect, the private government of the industry.⁶ Member producers of the MPPDA were obligated to submit all scripts and finished films to the PCA for approval. Nonmember producers were encouraged to use the PCA censorship service and almost always did so. At least until 1948, 95% of all domestically produced films were made in cooperation with the PCA, and a number of foreign producers also availed themselves of the services.⁷

The force of the code seal as a sanction rested upon the nature of the industry. Until 1948 the MPPDA and the PCA were dominated by the five largest companies in the industry. These "major studios" owned or controlled 70% of the first-run theaters in major cities, which in turn accounted for 45% of nationwide film rentals.⁸ Films without code approval were not shown in these theaters. Moreover, the vast majority of theaters not directly or indirectly controlled by the majors were willing to exhibit only films which had proved their earning power in first runs. Thus, all but the most inexpensively produced movies required code approval to be profitable. In this way, "independents" (non-members of MPPDA) were subject to the PCA regulatory procedures to the same degree as the large studios.

1948-1970: CHANGES IN THE OLD ORDER

During the last 22 years a series of events have greatly altered the economic structure of the industry, and during the same time there has been a radical change in the sexual content of films. Primary factors which contributed to the present state of the industry are as follows:

1. An antitrust decision, *U.S. v. Paramount Pictures*,⁹ forced the major companies to divest themselves of their control of theaters and separated production from exhibition. This decision partially dislocated the power of the major companies to dominate the industry. The possibility arose for a producer to defy the PCA successfully, although it was not until 1953 that this happened. The landmark film, an "innocuous comedy" entitled *The Moon is Blue*, was denied a code seal because it dealt frivolously with the subject of adultery (although no adultery actually occurred in the movie).¹⁰ Until this film, it had been assumed that open defiance of the code system would be economic suicide because the majority of theaters in the United States would not exhibit a movie which did not have a seal. The assumption was proven wrong; the movie grossed \$6 million on an investment of \$450,000.¹¹

The success of *The Moon is Blue* undermined both the authority of the code and the inhibiting value of the self-regulating scheme. Because success breeds imitation, further challenges to the code system followed. Many producers

6. This operation of self-regulatory systems under the Production Code Administration has been described at length by both commentators and participants. For details of the self-censorship system used until November 1, 1968, reference should be made to Richard S. Randall, *Censorship of the Movies* (Madison: University of Wisconsin Press, 1968), pp. 179-224; Murray Schumach, *The Face on the Cutting Room Floor* (New York: William Morrow & Co., 1964); Jack Vizzard, *See No Evil* (New York: Simon & Schuster, 1970).

7. Conant, op. cit. (footnote 4), p. 41.

8. Ibid.

9. 334 U.S. 131 (1948).

10. Schumach, op. cit. (footnote 6), pp. 68-69.

11. Ibid.

concluded that a substantial segment of the moviegoing audience was indifferent to the code system. In addition, many producers had long believed that the increased publicity for movies attacked on moral grounds attracted a greater audience.

2. Foreign films, known as "art films," began making inroads into American movie audiences.¹² These often treated sex and morals in a manner not permissible under the production code. Many of these films were never submitted for approval because the distributors believed such an effort would be fruitless. The success of art films caused a reevaluation of policy and contributed to the breakdown of the code.

3. American companies began producing a large number of movies abroad (called "runaway productions"), primarily for economic reasons. The influence of Hollywood was thus further diminished.

4. Courts eliminated much of the power of the local censor boards through a series of decisions.¹³ By 1970 only Maryland had a State censorship board. The greatly diminished power of State and local censor boards permitted film makers to produce more sexually explicit motion pictures.¹⁴

5. As is apparently the case in all postwar periods, after World War II the social and sexual mores of the nation underwent significant changes. These changes made it possible for movies to deal in depth with subjects (not confined to sexual topics) which were formerly taboo. The industry claims that its role as a contributor to these changes is a minor one and that films are merely a reflection of society and do not shape opinion.¹⁵ Whatever the truth may be, it is clear that certain films of today which do not cause comment have themes and depict activity which would have caused an outcry of indignation a few years ago.¹⁶ This is not to say, of course, that the most sexually candid films of 1970 are not criticized strongly by some members of the public.

6. The greatest impact on the industry since World War II has been television, which has displaced motion pictures as the prime supplier of family entertainment. Economically, motion pictures are a consumer's medium, and declining attendance means declining revenues. The number of television sets in America increased fourfold during the 1950's, and theater admissions fell by 50%.¹⁷

12. So-called "art films" are discussed later in this report.

13. See, for example, *Freedman v. Maryland*, 380 U.S. 51 (1964); *Burstyn v. Wilson*, 343 U.S. 495 (1952).

14. Movie censorship has been the subject of considerable comment and study by various authors and legal journals, and reference should be made to these secondary sources for a better understanding of historical developments in this area; see, for example, Randall, op. cit. (footnote 6) and Ira H. Carmen, *Movies, Censorship and the Law* (Ann Arbor: University of Michigan Press, 1960); see also the report of the Legal Panel of the Commission on Obscenity and Pornography.

15. Statement by Jack Valenti, president, Motion Picture Association of America, to Commission on Obscenity and Pornography, May 12, 1970, transcript p. 3.

16. The thematic content of films such as *Never on Sunday*, *Room at the Top*, *The Outrage*, and *The Virgin Spring* stirred considerable controversy when originally released in the 1950's or early 1960's; Schumach, op. cit. (footnote 6), pp. 40, 165, 261. By 1970 these films had been shown on television without creating any noticeable stir.

The National Catholic Office for Motion Pictures (until 1966 known as the Legion of Decency) rated *The Pawnbroker* "C" ("condemned") in 1965 apparently "because of two brief, dramatically integrated scenes in which a woman's breasts were exposed." Randall, op. cit. (footnote 1), p. 192. During 1969 innumerable films depicting female breast and buttock nudity were rated A-IV (Morally Unobjectionable for Adults, with Reservations) by the NCOMP.

17. Randall, op. cit. (footnote 6), p. 3.

Homes with television sets increased from 12% in 1949 to 86% in 1957.¹⁸ It cannot be doubted that declining attendance at theaters was primarily a direct result of increased television viewing and has been the chief reason for the alteration in the motion picture industry.¹⁹

7. There are some indications that the composition of the moviegoing audience has changed with a definite shift toward a typical audience of young adults.²⁰

Economics of the industry during the 1960's

The Department of Commerce annually reports on major industries including motion pictures. Tables 1 and 2 dramatically describe the relative decline in affluence and influence of the industry.

Tables 1 and 2 disclose that the proportionate share of the recreational dollar spent on movies has steadily declined from 1946 through 1968²¹ but that the industry continues to be a major economic force even though gross receipts have fallen greatly from the level of 1946 (an adjustment for inflation would show a drop of far greater proportions than the absolute dollar decline of 35% between 1946 and 1970). It is apparent that the relative stability of gross receipts during the early 1960's, and the slow but steady growth during the late 1960's, was the result of increased admission prices rather than a growth in attendance.

Table 1

MOTION PICTURES: TRENDS AND PROJECTIONS, 1960-1970

[In millions of dollars except as noted]

	1960	1963	1965	1967	1968	1969*	1970*
Gross box office receipts	951	904	927	989	1,045	1,065	1,100
Total employment (thousands)	189.6	176.5	185.1	194.3	196.8	203.0	----
Earnings of foreign films in the U.S.	50	69	71	n.a.	n.a.	n.a.	n.a.
Earnings of U.S. films abroad	210	220	225	235	235	235	235
Admission price indexes (1957-1959=100)	110.0	125.4	146.4	169.2	185.3	199.0	----

* Estimated by Business and Defense Services Administration (BDSA).

n.a. = Not available.

Source: Department of Commerce, Business and Defense Services Administration, *U.S. Industrial Outlook, 1970* (Washington, D.C.: U.S. Government Printing Office, 1970), p. 438.

18. Conant, op. cit. (footnote 4), p. 13.

19. Schumach, op. cit. (footnote 6), p. 89; Leo Bogart, *The Age of Television* (New York: Frederick Ungar Co., 1956), p. 153.

20. See Table 6 and accompanying text.

21. The highest percentage of U.S. recreational dollars spent on motion pictures was 25.7% in 1943; 1969 *International Motion Picture Almanac* (New York: Quigley Publications, 1969), p. 58A.

Table 2

MOTION PICTURE BOX OFFICE RECEIPTS AS PERCENTAGE OF TOTAL RECREATION SPENDING, 1946, 1951, 1956, 1960-1968

Year	Box Office Receipts (millions)	Percent of Total Recreation Spending
1946	\$1,692	19.81
1951	1,310	11.33
1956	1,394	9.40
1960	951	5.20
1961	921	4.70
1962	903	4.40
1963	904	4.10
1964	913	3.70
1965	927	3.50
1966	964	3.30
1967	989	3.20
1968	1,045	3.10

Sources: *U.S. Industrial Outlook, 1970*, op. cit. (Table 1), p. 439; *International Motion Picture Almanac, 1969* (New York: Quigley Publications, 1969), p. 58A.

Comparing 1960 to 1969 figures, gross receipts were up 12% while the admission price index rose 80%.

PRODUCTION OF FEATURE FILMS

The number of general release motion pictures released by major producers has declined dramatically in the past 25 years. From 1935 to 1945, 5,807 new features were granted the PCA seal of approval, an average of 528 feature films yearly.²² The Department of Commerce reports that between 1962 and 1966 an average of approximately 180 feature films annually received code seals. In 1967 film production started upward: nearly 200 films were produced (the highest since 1958).²³ This increased production has continued—230 feature films were given the code seal of approval in 1968, and 1969 production was at about the same level.²⁴

The nine members of the Motion Picture Association of America (MPAA) remain the most important economic force in the industry. The number of films produced and distributed from May 1969 through April 1970 by MPAA members, together with six other important companies who operate in a similar fashion, are summarized in Table 3.

The films produced and distributed by these 15 companies receive the vast majority of exhibitions and box office receipts.²⁵ In addition, there are literally

22. Letter dated June 24, 1970 to the author from Mike Linden, research director, Motion Picture Association of America.

23. Department of Commerce, Business and Defense Services Administration, *U.S. Industrial Outlook, 1968* (Washington, D.C.: U.S. Government Printing Office, 1968), p. 85.

24. *U.S. Industrial Outlook, 1970*, op. cit. (footnote 2), p. 437. The Department of Commerce estimates are somewhat low according to industry sources. Linden, op. cit. (footnote 22), states that during 1969 approximately 290 general release films were produced.

25. Randall, op. cit. (footnote 1).

Table 3

GENERAL RELEASE FILMS OF IMPORTANT
PRODUCER-DISTRIBUTORS: MAY 1969-APRIL 1970

Distributor	Approximate no. of feature films released May 1969-April 1970 ^a
MPAA MEMBER COMPANIES	
Allied Artists	10
Avco Embassy	8
Columbia	21
Metro-Goldwyn-Mayer	19
Paramount	22
Twentieth Century Fox	20
United Artists	28
Universal	24
Warner Brothers	24
Total	176
LARGE "INDEPENDENTS"	
American International	20
Buena Vista	4
Cinerama	16
Commonwealth ^b	19
Continental	9
National General	15
Total	83

^aListed in *Box Office*, January 1970, Feature Chart, pp. 7-9 (includes films scheduled for release in March and April 1970).

^bCommonwealth feature films are now distributed by American International, Linden, op. cit. (footnote 22).

scores of independent producers of general release films whose importance varies with the quality of their product. Independent producers with a highly marketable film often have them distributed by one of the major producer-distributors.

DECLINING ATTENDANCE

Average weekly attendance at motion picture theaters declined from an estimated high of nearly 80 million in 1946 to less than 38 million in 1957.²⁶ An estimate of weekly or yearly attendance for 1969 was not made by the Department of Commerce. However, movie attendance during 1969 can be roughly

26. Conant, op. cit. (footnote 4), p. 4.

estimated at between 17 and 20 million per week²⁷ from a projection of data supplied by the Department and from the 1967 Census of Business.

THEATERS

During the past 20 years many theaters went out of business, especially in the 1950's. In 1945-1946 there were an estimated 18,000 to 19,000 theaters in the United States.²⁸

The number of movie theaters declined steadily until the last few years. Table 4 summarizes the official Census of Business in 1954, 1958, 1963, and 1967. Not all theaters reported to the Census Bureau as required.

Table 4

MOTION PICTURE THEATERS

(Includes only theaters with payroll)^a

	1954	1958	1963	1967
U.S. THEATERS, TOTAL	17,371	15,076	12,040	11,478
Theaters, except drive-ins	13,760	11,271	8,665	8,094
Drive-in theaters	3,611	3,805	3,375	3,384
RECEIPTS, TOTAL (\$1,000) ^b	\$1,396,311	\$1,158,545	\$1,057,224	\$1,283,000
Theaters, except drive-ins	\$1,170,401	\$ 928,128	\$ 803,458	\$ 969,991
Drive-in theaters	\$ 225,910	\$ 230,417	\$ 253,766	\$ 313,012
PERCENTAGE OF RECEIPTS FROM ADMISSIONS				
Theaters, except drive-ins	80.5%	85.8%	87.4%	n.a.
Drive-in theaters	72.3%	76.6%	77.4%	n.a.

n.a. = not available.

^aSome reporting theaters do not have a payroll and are not included; for example, in 1963 a total of 612 such theaters reported to the census.

^bIncluding concession receipts and taxes.

Sources: U.S. Department of Commerce, *1963 Census of Business, Selected Services: Motion Pictures* (Washington, D.C.: U.S. Government Printing Office, 1965), p. XI; U.S. Department of Commerce, *1967 Census of Business, Selected Services: Motion Pictures* (Washington, D.C.: U.S. Government Printing Office, 1970).

27. This projection is admittedly rather crude and defines only the broad range of admissions to theaters. This estimate is based on the Department of Commerce estimate of box office receipts of \$1.065 billion in 1969, *Industrial Outlook, 1970*, op. cit. (footnote 2), p. 434, and an average admission price of \$1.20. The average admission price is derived from the admission price index of 169.2 for 1967 and 199 for 1969, Table 1, supra, plus the average admission price of \$1.02 for over 8,500 theaters reporting in the 1967 Census of Business, Table 5. The formula used is as follows:

$$\frac{\$1.02}{169.2} = \frac{x}{199} = \$1.20; \$1,065,000,000 \div \$1.20 \div 52 = \text{about } 17,000,000 \text{ admissions per week.}$$

Because the 8,500 theaters which reported admissions and receipts in 1967 were undoubtedly the larger, more expensive theaters, the actual average admission price was undoubtedly less than \$1.02, a fact which has been allowed for by increasing the possible range of total weekly admissions by almost 20%.

Another method for estimating weekly attendance is to project the average admissions of the 8,500 theaters reporting in 1967 (a total of 107,000, see Table 5) to the total estimated theaters in 1969 of 13,750. Such a projection results in a gross overestimation of weekly attendance (28.3 million), because the reporting theaters doubtless had far greater than the average number of admissions.

28. *United States v. Paramount Pictures*, 334 U.S. 131, 167 (1948) states there were an estimated 18,076 theaters in 1945. Industry sources claim 19,000 theaters were in operation in 1946.

The Census Bureau does not present average figures based on its Census of Business, doubtless because a varying number of theaters report the information requested. In the 1967 Census of Business almost 11,500 theaters reported gross receipts of \$1.28 billion (an average of \$108,000 per theater). Table 5 summarizes the 1967 experience of over 8,500 U.S. theaters which reported gross receipts and other data requested by the Census Bureau.

THE AUDIENCE

In 1967 the Motion Picture Association of America (MPAA) commissioned a survey of the American public (16 years of age and older) in order to determine the characteristics of the moviegoing audience, to ascertain what the public feels, likes, and thinks about movies, and to explore the outlook for the future. The conclusions of the survey, undertaken by Daniel Yankelovich, Inc., are set forth in Table 6.

The Yankelovich survey does indicate that attendance at movies is not primarily a family affair; only 21% of those 16 and over attend with their spouse and children. The most typical moviegoer is an older adolescent or young adult. However, it is not readily apparent that there has been a recent radical change in the composition of the moviegoing audience which might explain the alteration of

Table 5

AVERAGE U.S. THEATER: 1963, 1967^a

	Receipts from customers	Admission receipts except taxes	Paid admissions ^b	Average admission price ^c	Theater capacity ^c
1963					
U.S. theaters	\$91,899	\$77,977	90,562	\$0.86	X
Theaters, except drive-ins	97,586	85,182	90,562	0.86	827
Drive-in theaters	77,501	59,738	69,885	0.85	542
1967					
U.S. theaters	125,805	109,675	107,135	1.02	X
Theaters, except drive-ins	135,614	121,615	122,915	0.99	828
Drive-in theaters	102,667	81,514	69,912	1.26	571

^aOnly those theaters which reported all items in the table were averaged. In 1963 approximately 1,300 theaters of a total of over 12,000 which reported to the Census Bureau did not supply information on admission receipts, paid admissions, and theater capacity. In 1967 nearly 3,000 theaters of a total of 11,478 did not do so. The theaters which reported on all items in the table out-performed the theaters which reported some items. For example, in 1963 average total receipts from customers from all 12,040 theaters reporting were \$87,809 (\$4,000 less than shown in the table for the 10,774 theaters reporting all items); and in 1967 average gross receipts for all 11,478 theaters reporting were \$107,859 (nearly \$18,000 less than shown in the table for the 8,246 theaters reporting all items).

^bApproximately 15% of the total paid admissions to drive-in theaters are by carload. Thus, total attendance is somewhat higher than total admissions; if the average carload admission is for three individuals, about 50 million additional persons attended drive-in theaters in 1963 and about 8 million additional persons attended in 1967.

^cCapacity of drive-in theaters measured by number of vehicle stalls.

Sources: 1963 *Census of Business, Selected Services: Motion Pictures*, op. cit. (Table 4), pp. 8-1, -12, -18; 1967 *Census of Business, Selected Services: Motion Pictures*, op. cit. (Table 4).

Table 6

PUBLIC SURVEY OF MOVIEGOERS—1967^a

The portion of the audience composed of young people is increasing, and older persons have tended to go less frequently to the movies in the last 10 years. Young couples with children sometimes find it inconvenient to go out to theaters, although they patronize drive-ins.

More educated individuals have the greatest interest in attending movies; the less educated are less interested. The following chart discloses the movie theater attendance by the American public as of 1967 according to education:

	Higher education	High school education	Less than high school
Go to movies once a month or more often	39%	27%	25%
Go to movies less frequently than once a month	43%	48%	34%
Go to the movies never or almost never	18%	26%	41%

Persons between 16 and 24 account for 48% of adult admission; 74% of the total audience is between 16 and 40 years of age.

60% of the audience usually attends suburban or drive-in theaters.

Movies are a shared experience; 94.2% of the moviegoers (16 and over) attend with someone else. This applies almost equally to all age groups:

30-39	96%
40-49	94%
50-59	91%
60 and over	86%

to people who go less often:

more than once a month	90%
less than once a month	96%

and to those with children in the family: 94%.

An analysis of "who accompanies" the 94% of the public who attend films "with someone else" discloses:

with spouse/no child	39%
with spouse and child	21%
with friends	21%
with date	12%

While more frequent attendance is more characteristic of young people, the composition of the "groups" does not suggest elimination of family attendance at movies.

^aSummarized in the MPAA's *A Year in Review* (June 1968), pp. 11-12. Additional data supplied by Linden, op. cit. (footnote 22).

sexual content in current motion pictures. A survey in 1957 reported that 52% of those attending movies were less than 20 years old and 72% were under 30.²⁹

THE FUTURE OF THE MOVIE INDUSTRY

The cumulative effects of the economic, psychological, and sociological changes in the past 20 years have left their mark on the motion picture industry. Although a relatively small number of companies continue to produce or distribute the motion pictures which receive the overwhelming majority of exhibitions and which elicit the bulk of gross box office receipts, the influence of these companies has steadily waned. The major producer-distributors have, for the most part, curtailed their studio operations. In addition, the system of "movie stars" under contract to major studios is a thing of the past.³⁰ Independent producers and directors, operating free of major studio control, have greater influence in the industry than ever before.

Certainly the influence and economic impact of motion pictures has steadily declined since the advent of television. Predictions in the press are widespread that the motion picture industry, as it has existed for 40 years, is facing economic disaster.³¹ Whether these predictions will be fulfilled seems doubtful, but apparently a financial crisis is at hand.

To some degree the increased sexual content of motion pictures may be a response of the industry to financial pressures. However, the basis for the increased sexual content of films doubtless is attributable primarily to changes in social mores, legal standards, and the personal preferences of a large percentage of moviegoers (the only portion of the public really relevant to the industry). While it would be simplistic to contend that the industry somehow decided that films must present sexual themes and activity not available on television in order to survive, this undoubtedly has been a factor in the increased sexual content of films. In the final analysis, decisions made by motion picture producers are based on economic considerations. Thus if the average sexually oriented movie is more profitable than the typical "family movie," it can be expected that sexually oriented movies will be produced regardless of the attendant controversy.

Sexual content of general release films

The motion picture industry has been embroiled in controversies over sexual themes, content, and activities in films since its beginning.³² Although general release films have never been the most sexually explicit films available, such films have generated the majority of public criticism because of their universality. The limited distribution of more sexually graphic films has always served to limit

29. Conant, op. cit. (footnote 4), p. 5. The two surveys are not strictly comparable because the Yankelovich study included only those 16 years or over.

30. See Lloyd Schearer, "The Decline and Fall of Hollywood," *Parade*, May 10, 1970; "Is There Hope for Poor Old Hollywood?" *Washington Sunday Star*, May 10, 1970, p. C-7.

31. The decline may be accelerating. For example, it has been widely reported in the press that five major companies lost a total of more than \$100 million in 1969. *Time*, Feb. 9, 1970, p. 57; *Forbes*, Nov. 1, 1969, p. 65; *Newsweek*, Feb. 2, 1970, p. 66.

32. Frank Getlein and Harold C. Gardiner, *Movies, Morals, and Art* (New York: Sheed & Ward, 1961), pp. 89-90; Richard S. Randall, op. cit. (footnote 6), p. 11.

public complaint. This pattern continues today, although it seems to be breaking down with the advent of quite explicit films with relatively wide distribution.

Traditionally there have been two forms of regulation of the sexual content of motion pictures. Legal censorship has been used to some degree since the 1890's,³³ and various programs of industry self-regulation have been in existence since the 1920's. No attempt will be made to present a historical resume of the regulation of movies. Numerous books and articles have described and analyzed both legal censorship and the self-regulatory procedures of the industry.³⁴

It is clear that the radical economic changes in the motion picture industry over the past 20 years have been accompanied by concomitant changes in the treatment of sexual themes and activities in general release motion pictures. Any attempt to pinpoint the reasons for the change in the treatment of sex in general release motion pictures would be pure conjecture. Undoubtedly the factors which contributed to the economic changes in the industry noted above³⁵ also had an impact on the treatment of sex in general release films.

It should be noted that changes in content have gone beyond the sexual realm and have resulted in increased candor in films dealing with many subjects previously considered taboo, such as drug addiction, political dissent, racism, and a wide range of antiestablishment themes. The trend toward dramatically increased sexual content in movies has accelerated in the past year or two. Major themes of recent general release films have included perversion, abortion, orgies, wife-swapping, prostitution, promiscuity, homosexuality, nymphomania, lesbianism, and so on. These themes, which sometimes were dealt with very discreetly in motion pictures of another era, are now presented in an explicit manner. At present there are few areas of human sexual behavior which have not been explored. Further, the ritualistic "formula" treatment of earlier times is often ignored. For example, "just retribution" for sexual behavior outside the standards of conventional morality, once standard in general release movies, is no longer a necessity in today's films.

Similarly, graphic sexual activity is often depicted in general release films. Simulated intercourse is relatively common, although the degree of explicitness varies from film to film (a number are quite candid). Other sexual activities such as masturbation, fellatio, and cunnilingus are implied in many films and shown in rather explicit detail in others (stopping short of actually showing the act on the screen).

The increased sexual content of movies not only has been dramatic but also it has occurred in a very short period of time. The rapidity of the change is exemplified by the treatment of the female body on the screen. Although legs, sweaters, and a limited degree of décolletage have been featured in the movies for decades, female navels were not permitted to be shown on the screen until the

33. *People v. Doris*, 14 App. Div. 117, 43 N.Y.S. 571 (1st Dept. 1897).

34. Cameren, op. cit. (footnote 14); Randall, Schumach, and Jack Vizzard, op. cit. (footnote 6); Raymond Durnat, *Eros in the Cinema* (London: Calder and Boyars, 1966); Alexander Walker, *The Celluloid Sacrifice* (New York: Hawthorne Books, Inc., 1966); Getlein & Gardiner, op. cit. (footnote 32); Richard D. MacCann, *Hollywood in Transition* (Boston: Houghton Mifflin Co., 1962).

35. See footnotes 9-20 and accompanying text.

early 1960's.³⁶ In 1967 flashes of female genital exposure appeared in *Blow-Up*, a general release movie. Today, partial female nudity (breasts and buttocks) is very common, and full female nudity is becoming quite common in general release pictures produced and distributed by major studios.³⁷ At least one general release movie has shown both sexes totally nude.³⁸

THE CURRENT RATING SYSTEM

On November 1, 1968, the current "rating" system replaced the industry's self-regulation procedure which had been in effect, with modifications, since 1934. Initially films were classified in four categories designated by the letters "G," "M," "R," and "X" by the Code and Rating Administration (CRA), the successor of the Production Code Administration (PCA). In January 1970 the classification designated "M" was changed to "GP" because of a belief that the general public was confused about the meaning of the "M" rating. At present, according to the industry's official statement, the ratings are as follows:

"G" – All ages admitted. General audience.

"GP" – All ages admitted. Parental guidance suggested.

"R" – Restricted. Under 17 requires accompanying parent or adult guardian.

"X" – No one under 17 admitted. (Age limit may vary in certain areas.)

The ratings represent the opinion of the CRA as follows: Motion pictures rated "G" are acceptable for all audiences without consideration of age; "GP" films require more mature judgment by viewers, and parents should exercise discretion in permitting their children to attend; motion pictures rated "R" should not be presented to persons under 17 unless accompanied by a parent or adult guardian because of their theme, content, or treatment; "X" films are those which, because of their treatment of sex, violence, crime, or profanity, should not be presented to persons under 17. Movies rated "X" do not qualify for a code seal of approval (a carryover from the earlier system). It must be emphasized that the "rating" of a motion picture, at least in theory, does not express an opinion on the content (or legality) of films insofar as adults are concerned. The system only provides an opinion regarding the suitability of rated films for children under 17.

The rating system provides a rough indication of the sexual content of current general release motion pictures. Neither the MPAA nor the CRA have ever published rating standards; however, an in-depth study of the rating system by the Positive Approaches Panel of the Commission included a study of the criteria for the various ratings as of the summer of 1969.³⁹ However, the rating criteria did not remain constant after that study, as later interviews with CRA officials in January 1970 made clear.

36. Schumach, op. cit. (footnote 6), p. 168, reports that the "navel taboo" was broken by *Town Without Pity*, released in 1961, allegedly the first motion picture to show a female navel in a code-approved movie after the advent of the Production Code in 1934. It can be noted that in 1970 female navels are seen on television, billboards, magazines and newspapers in profusion, especially in advertisements.

37. Full female nudity appeared, for instance, in Paramount Pictures' *Tropic of Cancer* ("X"), *Medium Cool* ("X"), M-G-M's *The Magic Garden of Stanley Sweetheart* ("R").

38. United Artists, *What Do You Say to a Naked Lady?*

39. Richard S. Randall, op. cit. (footnote 1).

The primary intent of the CRA is to remain flexible in order to adapt the system to changing times, the changing content of movies, and public criticism of previous ratings. The following is a summary of the interviews of Code and Rating Administration officials in January 1970.

"G"-rated movies. Films rated "G" must be sexually pure. Little beyond conventional embracing and kissing is allowed. The standards for "G"-rated films have certainly not been liberalized, and in fact probably will become stricter in the future. The CRA recognizes that a few "mistakes" may have been made in rating certain films "G" up to January 1970. In the view of the CRA, a rating "mistake" is one which generates an appreciable amount of criticism (either from the public or from critics) because it is too permissive or too strict. Such criticism is almost invariably directed at ratings which are thought to be insufficiently restrictive.

Possible mistakes in the "G" rating involved the films *If It's Tuesday, It Must Be Belgium*, *Popi*, and *Impossible Years*, which contained bedroom scenes. Public response indicated that the "G" rating for these films was unacceptable to many people. The CRA claims to be responsive to letters of protest from the public, and following an incident it applies a more restrictive rating in a similar situation. Not all objections to "G"-rated films involved implicitly sexual scenes; for instance, assignment of that rating to *True Grit* was criticized because of violence and language.

"GP"-rated movies. Motion pictures are rated "GP" with the maturing adolescent in mind. Moderately explicit indication of sex is permitted. Originally no nudity (female breast or buttock or male buttock) was allowed, but as of January 1970 brief "flashes" of partial nudity in a "long shot" did not automatically disqualify a movie from a "GP" rating.

All films with an antisocial theme are rated at least GP. While sex may be discussed, if the discussion becomes "candid," the film is classified "R." Detailed discussions or dramatizations of perversion are not allowed. For example, a "GP" picture may intimate or present the fact of homosexuality, but dramatization of a homosexual relationship is not permissible. Similarly, films involving the fact of premarital sex or adultery without approving such conduct may be rated "GP." Under former Production Code standards, such activities were required either to be denounced or punished by "moral compensation" in order to receive a code seal.

The rating system does not require compensatory moral values. If approval is expressed for such conduct, however, the film will be rated "R" or "X."

A minimum amount of vulgarity is permitted. For example, a word such as "damn" may be used, but no "extreme vulgarity" is allowed.

"R"-rated movies. The "R" rating allows for virtually any theme. As of January 1970 quite a bit of breast and buttock nudity was permitted in this category, but full nudity (exposing genitalia) was not allowed. However, officials of CRA did not believe that they would hold this line, a prediction which was fulfilled later in 1970.

A wide range of sexual behavior is allowed in "R"-rated films. Brief touching and caressing of breasts and simulated intercourse is permissible, but "long"

scenes of such activity are not. The quantity of sexual content also has an effect on the rating. While a few limited scenes of sexual activity or nudity are allowed, an "excessive quantity" results in an "X" rating.

There are almost no language restrictions in "R"-rated films, so long as vulgarity or "four-letter words" are not used "excessively." Any legitimate discussion of sex is permissible if, in the opinion of the CRA, it does not exceed the bounds of good taste.

The CRA has been criticized for rating certain motion pictures as "X" rather than "R," as in the case of *Medium Cool* and *Midnight Cowboy*. However, such complaints come only from within the industry and from critics, not from the public.

'X'-rated movies. The "X" classification serves as a catchall for motion pictures which cannot be rated "G," "GP," or "R." Films rated "X" do not receive the code seal of approval.⁴⁰

The CRA allegedly does not make judgments regarding the sexual content of "X" pictures; if the motion picture is judged too strong for an "R" rating, it is rated "X." Indeed, sexual intercourse may be shown in "X" movies under the system. As of January 1970 genital exposure, graphic simulated intercourse, strong specific indications of oral-genital contact, and films which concentrated almost exclusively on eroticism were relegated to the "X" classification.

The above description of rating criteria as of January 1970 became inaccurate as of August 1970. The restrictive ratings of "R" and "X" have undergone constant revision. For example, the "R"-rated film entitled *The Magic Garden of Stanley Sweetheart* contained sexual content which, according to the CRA officials interviewed in the summer of 1969⁴¹ and January 1970, would have necessarily resulted in an "X" rating.⁴² Included are generous amounts of total female nudity and graphic sexual activity including masturbation, coitus, group sex (two women and a man), and a strong implication of female homosexual oral-genital contact. The "R" rating of *Stanley Sweetheart* is regarded as a "mistake" by some in the industry. However, a later "R" film, *Catch-22*, contains both full female nudity and a graphic scene of fellatio. The flexibility of the CRA ratings and the changing criteria make categorical statements about rating criteria very unreliable, and predictions about the future become impossible.

Finally, the practical differences in admission policy between the "R" and "X" ratings are relatively minor if the admission advice of the CRA is enforced.⁴³ Because those under 17 are supposedly not admitted to "R" films unless accompanied by a parent or guardian, few minors will see such films unless permitted to do so. Indeed, it can be argued that the industry exceeds its

40. Code seals of approval, the system of industry self-regulation used from 1934 to 1968, are theoretically still part of the procedure; "G," "GP," and "R" films are granted seals. The rating system has made the code seal an anachronism.

41. Randall, op. cit. (footnote 1).

42. The director of the film, Leonard Horn, was quoted as saying: "Last year this film would have gotten an "X" practically sight unseen, in fact the studio would have demanded that rating thinking it would be good for business; that isn't true anymore." *Variety*, May 20, 1970, p. 22.

43. *Variety* regularly predicts that the "X" rating will be eliminated in the near future (May 6, 1970, p. 1).

authority when it decides which films a child may see irrespective of the wishes of the parent ("X"-rated films). Perhaps this should be a parental decision and not one for private industry.

FILM PRODUCTION BY CLASSIFICATION

There has been a rather steady decline of "G"-rated pictures and an increase in "GP" and "R"-rated films in the past year. Table 7 compares the percentage of rated films by classifications during the first two 30-week periods under the rating system.

In public testimony to the Commission, Jack Valenti, president of the MPAA, brought the total number of rated films up-to-date as of May 12, 1970:

Since the beginning of November 1, 1968, the Code and Rating Administration has reviewed and rated a total of 655 films, which break down as follows:

<i>Rating</i>	<i>Number</i>	<i>Percentage</i>
G	188	28.7%
GP	259	39.5%
R	171	26.1%
X	37	5.7%
	655	100.0%

It is indicative of the wide support by producers and distributors of the rating system to note how many of the total 655 rated films have been released by the association's member companies or their subsidiaries and how many by nonmembers of the association. Members have distributed 396 films, or approximately 60%, and nonmembers 259 films, or approximately

Table 7

NEW FEATURE RELEASES RATED BY THE CODE AND RATING ADMINISTRATION

November 1, 1968-December 31, 1969, by 30-week periods*

Time	Rating								Total
	G	%	GP	%	R	%	X	%	
Nov. 1 to June 2	89	34.2	96	37.8	58	22.8	13	5.1	254
June 9 to Dec. 29	42	21.9	87	45.3	49	25.5	14	7.3	192
Totals	129	28.9	183	41.0	107	24.0	27	6.1	446

* The Rating Bulletin, listing new ratings, has been published weekly since the rating system was instituted with the exception of November 11, 1968. Ratings for 12 films reedited and rereated after going into release are included.

Source: Richard S. Randall, op. cit. (footnote 1).

40%. The facilities are available to nonmembers on exactly the same basis as to member companies.⁴⁴

The summary of rated films as of May 1970 provided by Mr. Valenti is not strictly in agreement with Table 7, because the table includes only new feature films released after November 1, 1968. Mr. Valenti's figures undoubtedly comprised all rated films, including reissues and prerating system films later submitted for rating.

The trend toward highly sex-oriented motion pictures has been adopted by most of the industry. Almost all major producer-distributors have released "X"-rated films: Allied Artists—*End of the Road*; Avco Embassy—*Monique*; M-G-M—*The Best House in London*; Paramount Pictures—*Medium Cool*, *Adalen 31*, and *Tropic of Cancer*; Twentieth Century Fox—*Beyond the Valley of the Dolls*, *Myra Breckinridge*; United Artists—*Laughter in the Dark*, *Midnight Cowboy*, *What Do You Say to a Naked Lady?*, *Sex of the Angels*; Universal—*The Activist*; and Warner Brothers—*Last of the Mobile Hot Shots*, *The Damned*. The only major studio which has not released an "X"-rated film is Columbia, which has released a number of "R"-rated films.

The same pattern of releasing "R" or "X" films has been followed by almost all of the other important producer-distributors. American International released *de Sade*, rated "X." Cinerama released two or three "R"-rated films, and National General, a number of "R"-rated films. Only one well-known producer-distributor does not cater to the "adult" audience: Buena Vista, which distributes films from the Walt Disney Studio, has released only "G"-rated films since the classification system was put into effect.

ART FILMS

During the 1950's, while theater attendance declined and hundreds of theaters closed each year, "art" films (sometimes called "quality" films) became popular. Throughout the 1950's and continuing through the 1960's this term has been applied to films designed to appeal to intellectual, aesthetic, or artistic tastes and usually refers to foreign-made movies, although some domestic, low-budget films also have been so classified. During the 1950's and early 1960's, art films consistently treated sexual matters in a manner which was not permissible under the Production Code.

The variations in this category are such that art films cannot really be defined but rather must be described by example. One commentator recently listed representative art films as: French—*Hiroshima*, *Mon Amour*, *La Guerre Est Finie*, and *The 400 Blows*; Italian—*L'Avventura*, *8-1/2*, and *The Organizer*; Swedish—films of Ingmar Bergman; Polish—*Knife in the Water*; British—*Saturday Night and Sunday Morning*, *The Servant*, and *A Taste of Honey*; Indian—*Pather Panchali Trilogy*; Czech—*Shop on Main Street*; Japanese—*Woman in the Dunes* and *Rashomon*; American—*David and Lisa*, *One Potato, Two Potato*, *The Cool World*, *The Pawnbroker*.⁴⁵

44. Statement by Jack Valenti, president, Motion Picture Association of America, to Commission on Obscenity and Pornography, May 12, 1970.

45. Randall, op. cit. (footnote 6), pp. 218-19, stated that the "touchstone of the art film . . . is probably . . . a modest budget and a director of originality."

During the 1950's and beginning of the 1960's art films stirred a considerable number of censorship controversies, both formal and informal. Quite a number were charged as obscene and became involved in court battles, including *The Miracle*, *Game of Love*, *The Lovers*, and *Lady Chatterley's Lover*.⁴⁶ Court decisions almost invariably disapproved of the suppression of the films in question.⁴⁷

Art films today

Notwithstanding the censorship controversy that has swirled around art films in the past, such films are almost never subject to formal censorship today. Undoubtedly, if any films mentioned above were to be submitted for rating today, all of them would be routinely passed with a "GP" or an "R" rating. No doubt every remaining board of censors in the country would approve the films without a second thought.

Traditional art films no longer test the limits of sexual candor as once was the case. In 1969-1970 the thematic content and sexual activity portrayed in art films seldom exceeded that found in many general release motion pictures. Today art films are distinguished only by their foreignness or limited audience appeal rather than by themes or sexual content. Typically, movies intended for the art film circuit are sometimes discovered to have substantial box office appeal. In such cases, the films will be exhibited widely.⁴⁸

In 1970 the classification has lost much of its meaning. Audience resistance to foreign-language films—or to domestic films which appeal to intellectual or aesthetic tastes—appears to have declined, and almost any type of film can become relatively popular.⁴⁹

EXPLOITATION FILMS

In current trade parlance, "exploitation films" (also known as "sexploitation," "adults only," or "skin flicks") are low-budget films which concentrate on the erotic.⁵⁰ The most descriptive term is probably "skin flick," because for the past

46. *Burstyn v. Wilson*, 343 U.S. 495 (1952) (*The Miracle*); *Times Film Corp. v. Chicago*, 355 U.S. 35 (1957) (*Game of Love*); *Jacobellis v. Ohio*, 378 U.S. 184 (1964) (*The Lovers*); *Kingsley International Pictures Corp. v. Regents*, 360 U.S. 684 (1959) (*Lady Chatterley's Lover*); *U.S. v. One Carton Positive Motion Picture Film entitled "491,"* 367 F. 2d 889 (2d Cir. 1966).

47. According to Randall, op. cit. (footnote 6), p. 64, the Swedish film entitled *The Virgin Spring* is the only censorship case in which a finding of obscenity has been allowed to stand on final appeal. The motion picture was held obscene by the trial court because of a vivid rape scene. *Janus Films v. Fort Worth*, 354 S.W. 2d 597 (Texas Civ. App. 1962), aff'd per curiam 163 Texas 616, 358 S.W. 2d 589 (1962). In 1969 the film was played on television in San Francisco with the rape scene intact without noticeable stir.

48. Wide distribution of art films is not new. For example several of the "all-time box office champs" were intended as art films, such as *La Dolce Vita* and *A Man and a Woman*. *Variety*, Jan. 7, 1970, pp. 25, 27.

49. As of July 29, 1970, a French-language film, *Z* (also shown in an English version), had box office receipts of over \$5 million in a 20-24 city sample. *Variety*, Aug. 5, 1970, p. 11.

50. The term was originally applied to any low-budget film which was "exploited" (heavily advertised) through the use of advertising gimmicks which stressed certain unusual or unique features. Films which naturally had very limited runs—for instance, those designed for showing on specific days, such as Christmas—and other films designed solely for young children, Herculean epics, horror films, and so on were all known as exploitation films. The secret was to launch an intensive local publicity campaign to maximize box office receipts before people were informed by word-of-mouth that the film was of low quality.

several years virtually all these films have had female nudity in common. Those engaged in producing, distributing, and exhibiting these films prefer the term "adult film."

Perhaps as recently as two years ago distinctions between exploitation and general release movies were rather clearly drawn. Today, however, the traditional distinctions in themes, activity depicted, and the use of nudity are rapidly being eliminated in large part. David Friedman, a well-known producer-distributor of exploitation films, recently explained how in his opinion exploitation films differed from general release films:

The primary essence, of course, . . . is that a sex exploitation film costs an infinitesimal amount of what the standard motion picture costs . . .

As far as content of such films is concerned, primarily the exploitation picture or the "sexploitation" picture is a picture that can tell any story, but, as sex is a part of all of the stories, the sex must be shown, depending upon the explicitness, and it depends upon the producer. But the explicitness of the sex, I will say, probably goes further; in fact, it does go further than it would go in a major motion picture. However, some of the major pictures we have been seeing lately, they have been getting fairly explicit, too. It is a very fine dividing line, as to the degree of explicitness in the sex acts that are shown on the screen, whether it is a sexploitation picture or a major company release. Basically, the sex exploitation pictures deal with unknown actors and actresses. It is a small-budget picture by comparison with any major company picture, and it is a picture designed to a specialized audience, and the audience primarily is made up of men and a few couples that attend at night. It is a picture that basically has no interest to teenagers, with the exception of those theaters that are located close to service installations.^{5 1}

Exploitation motion pictures are ordinarily exhibited in a limited number of theaters most of which specialize in exhibiting such films. Most are domestically produced, although a number of very cheap imports also find their way onto the market.

A brief history^{5 2}

The history of sexual content in general release movies is well known, while the story of exploitation films is unfamiliar to most. Low-budget, sexually oriented motion pictures playing to a limited audience have existed for nearly 50 years. In the early days of the industry both large studios and fly-by-night operators produced such films. The public outcry over "sex in the movies" (mainly involving general release films) led to various self-regulatory procedures discussed

51. Public Hearing, Commission on Obscenity and Pornography, May 4, 1970 (Transcript, pp. 18-19).

52. This historical summary of the exploitation movie trade is particularly indebted to an article by Arthur Knight and Hollis Alpert, "The History of Sex in the Cinema; Part XVI: The Nudies," *Playboy*, June 1967, p. 124. This article provides the most comprehensive coverage of the exploitation segment of the motion picture industry in print. Although volumes have been written on sexual content of movies, very little attention has been given by commentators to the relatively small exploitation segment of the industry. The author interviewed dozens of producers, distributors, and exhibitors of exploitation movies and was able to confirm the accuracy of the article by Knight and Alpert.

in the preceding sections. Thereafter major producers entered a relatively fallow period insofar as explicit depiction of sex was concerned.⁵³ During this period exploitation films were supplied by a number of marginal independent producers.

Early exploitation movies were usually one-reel shorts consisting of groups of totally nude girls used in the burlesque trade or as "midnight shows" in small theaters. Beyond depicting nudity early films were normally not erotic in any ordinary sense of the word. Affection between the sexes was confined to a handshake or perhaps a passionless embrace. Some of the films had rudimentary plots, while others consisted entirely of nude or seminude dance routines. The best of these were of poor quality, even as judged by the standards of the time. However, from the beginning exploitation films were not filmed by amateurs. Traditionally such films have been made on standard 35-mm. film by professionals and have generally been on a technical par with any films made with a comparable budget. Many of the early films, for example, were produced with full crews on Hollywood stages. After the development of "talkies," exploitation films were fully sounded and usually employed a combination of "has been" and "would be" professional actors. Beginning in the early 1930's full-length features replaced one-reel shorts.

Small independent producers (known among themselves as "the 40 thieves") catered to the exploitation market during the 1930's. These producers often sold exhibition rights to established theaters and to "states rights" (independent) distributors. In addition, itinerant showmen often purchased the right to show the films in a certain territory. These traveling showmen rented theaters for a night and moved on before the police or citizenry caught on. For the most part, exploitation films played in shabby, third-rate theaters and often supplemented local burlesque shows.

Although the producers of exploitation films were not bound by the industry's self-imposed Production Code of 1934, exploitation films were relatively circumspect through the thirties and forties. Total nudity was seldom shown, in contrast to the practice of the 1920's, and erotic activity was avoided. The films were often replete with moral condemnation of what were then current social problems. Perhaps the most popular theme was the story of a young woman, eager for excitement, who came to grief in the back room of a roadhouse (a standard symbol of sin) or in the "wicked city." Another favorite technique was to present nudity in the context of a "jungle picture" which featured breast exposure of female Negroes in a pseudoethnological setting. Another technique, beginning at least as early as 1933, was the nudist camp formula. In addition, many very cheap foreign pseudodocumentaries of nonwhite cultures were imported with nude scenes inserted for the exploitation market. While nudity or near nudity was clearly the motivating factor in these films, it was usually introduced as either a story element or with seeming inadvertence. Each of the approaches described above—moral, ethnological, documentary, or nudist camp—had the common element of a "legitimate" rationale, which was provided to justify the presentation of female nudity. The context was essentially nonerotic, however.

53. Of course, the films released by the "majors" were certainly not free from controversy from 1934 until the mid-1960's; see, for example, Randall, Vizzard, and Schumach, *op. cit.* (footnote 6).

Strange as it seems now, during the middle and late 1930's exploitation movies usually played in at least 2,000 theaters. This is four or five times the distribution ordinarily possible for a current exploitation film.⁵⁴

Probably the first exploitation film of lasting influence, *Garden of Eden*, was professionally made in a Florida nudist colony in 1954. After a long court battle in 1957 the New York Court of Appeals ruled that "nudity in itself, and without lewdness or dirtiness, is not obscenity in law or in common sense."⁵⁵ This decision, coupled with others,⁵⁶ opened the way for a breakthrough in exploitation films.

In 1959 a photographer named Russ Meyer spent approximately \$24,000 and four days to produce *The Immoral Mr. Teas* which eventually grossed over \$1 million.⁵⁷ The simple plot told of a man who was unable to see clothing. As a consequence, all women he encountered appeared nude to him and to the audience. Nudity was limited to breast and buttock exposure. Because some courts had already ruled that nudity in itself was not obscene, and because the film was devoid of any sexual conduct, the film encountered surprisingly few legal problems. At first the film was limited to the dingy "grind houses" which normally ran exploitation features, and was excluded altogether from major metropolitan areas such as New York and Chicago which still had strong censor boards. As the fame of the film spread, however, it eventually achieved relatively wide distribution.

Mr. Teas was followed by a rash of copies, and its formula set a pattern which lasted for several years—namely, an abundance of female breast and buttock nudity without sexual conduct, usually referred to in the trade as "nudie-cuties." By the middle of the 1960's the "nudie-cuties" had fairly well exhausted all variations on the theme. In the last few years such films have almost entirely disappeared from the market. Nudist camp films had also become standardized by the mid-1960's; the story was almost invariably about a shy young woman induced to spend a weekend at a nudist colony. In the 1960's nudist films consisted primarily of totally nude young women engaged in a variety of outdoor and indoor activities. Today nudist camp films are generally "second features" at best, and are rather unimportant in the market.

Between 1964 and 1968 exploitation films went in several directions. A number of exploitation theater owners apparently decided that their audiences were composed primarily of voyeurs and began presenting programs of "strip films" with no plots whatsoever. These films depicted nothing more than girls of assorted sizes and ages wiggling out of their clothing, and were usually in color and almost always without sound. Known as "beaver films" or sometimes as "San Francisco girls," they kept faith with the customers by offering a maximum amount of total nudity in a minimum amount of time. Some of these theaters now are classified as "16-mm.," a separate and distinct market which will be discussed later.

54. Knight and Alpert, op. cit. (footnote 52), p. 124.

55. *Excelsior Pictures v. Board of Regents*, 3 N.Y. 2d 237, 144, N.E. 2d 31 (1957); see also *Excelsior Pictures v. Chicago*, 182 F. Supp. 400, 403 (N.D. Ill. 1960).

56. See, for example, *Maryland Board of Censors v. Times Film Corp.* 212 Md. 454, 459, 129 A. 2d, 833, 836 (1957) (*Naked Amazon*).

57. Knight and Alpert, op. cit. (footnote 52), p. 124.

Many, and perhaps most, of the exploitation films produced in the past 5 years mix a combination of sex and violence and are labeled "roughies" in the trade. The trend has been toward action-melodramas, with considerable emphasis on sadistic scenes. Sexual activity is presented in a very graphic manner, and actresses are usually nude. The transitional film was probably *Lorna*, another innovation by the leader in the field, Russ Meyer. The film depicted the sexual trials and tribulations of a Southern backwoods woman. Reportedly, *Lorna* was made for \$37,000 and had grossed close to \$500,000 as of June 1967.⁵⁸ The success of *Lorna* inspired a host of imitators which changed the role of the female in exploitation films from one of passive posturing for the pleasure of voyeurs to that of victim of unrestrained lust.

From films depicting women as victims it was but a short step to films in which women were portrayed as aggressors—insatiable nymphomaniacs, perverse lesbians, or professional prostitutes—and men became the victims. One of the first and most profitable was *The Dirty Girls*, apparently assembled from two European films and tied together by an English narration. Films of this type usually ended unhappily for the "heroine" and were studded with nude sequences and erotic activity.

A series of pseudoscientific movies in the mid-1960's exploited the popular notion that changes in sexual mores and sexual aberrations are increasing. The narration invariably disapproved of the "shocking details" shown on the screen. Other films carried the antifeminist theme to such a degree that they were known in the trade as "kinkies," a slang term to denote deviant, fetishistic, or sadomasochistic themes in which women appeared as willful destroyers.

Finally, in the middle and late 1960's, a group of films which minimized nudity and maximized violence were introduced. These are known as "ghoulies" in the trade. These highly violent films were able to gain much greater circulation than those which dealt solely with a sexual theme. For example, *Blood Feast*, a film barred in England because of its violence, played some 4,000 engagements in the United States—10 times the bookings which normally accrue to an exploitation movie.⁵⁹

Exploitation films, 1969-1970

As of 1970 exploitation movies could be distinguished from general release and art films in broad general terms. These distinctions are only descriptive generalizations which are "usually true" rather than definitive.

THEMES

In 1970 nudist camp films and "nudie-cutie" comedies with burlesque overtones have generally disappeared, although some films of this type were used as second attractions. Exploitation films dealt with provocative subjects such as perversion, abortion, drug addiction, wayward girls, orgies, wife-swapping, vice dens, prostitution, promiscuity, frigidity, nymphomania, and lesbianism. The

58. *Ibid.*, p. 182.

59. *Ibid.*, p. 187.

majority of exploitation films are melodramatic in tone, although some comedies and "happy pictures" are produced. The overwhelming majority of exploitation films are directed to heterosexual males. Male homosexual themes or conduct is usually avoided in the belief that this does not appeal to the market. However, perhaps two dozen or more full-length features were produced specifically for the homosexual market in 1969, and some theaters catered specifically to this trade.

Most of the tried-and-true formulas of movie making have been used. Within the last few years exploitation westerns have become quite popular; there have also been a fair number of movies featuring historical characters such as Cleopatra or Robin Hood. "Period films" have been set in the Civil War, Medieval England, the Turkish Empire, Old New Orleans, and the science fiction future. Most films, however, are set in modern times and use standard plots such as the runaway girl or crime melodrama. The thematic element common to all exploitation movies is a concentration on sexual problems or behavior.

The themes attributed to exploitation films are not unique to those movies and have found expression in recent general release motion pictures as well, such as perversion, in *The Damned*; drugs, in *Easy Rider*; orgies, in *Fellini Satyricon*; wife-swapping, in *Bob and Carol and Ted and Alice*; rape, in *Last Summer*; prostitution, in *Midnight Cowboy*; nymphomania, in *Justine*; promiscuity, in *Joanna*; lesbianism, in *The Killing of Sister George*.

NUDITY

Nudity in exploitation films has undergone a progressive change in the last year or two. For the most part, nudity was limited to female breasts and buttocks throughout the late 1950's and the early and middle 1960's. Today full frontal nudity of females is common. Breasts and buttocks are focused upon, but generally female genitalia are not the focus of the camera. Male genitals are usually not shown in exploitation films. The latter self-imposed restriction does not apply to all homosexually oriented films, although many of these also avoid such exposure. The most recent homosexual films depict male genitals, however.

Nudity does not serve to distinguish exploitation films today. Breast nudity is commonplace in general release films, and female genital exposure is increasingly common as in *Catch-22* and *The Magic Garden of Stanley Sweetheart*. Male genitalia are sometimes shown in general release films, as in *What Do You Say to a Naked Lady?* although this is traditionally avoided in exploitation films.

SEXUAL ACTIVITY

Sexual activity in exploitation films leaves something, but not much, to the imagination of the viewer. All forms of explicit heterosexual conduct including coitus, fellatio, and cunnilingus are depicted in relatively graphic terms at rather frequent intervals during the running time of the film. Actual sex acts are not shown but are strongly implied or simulated. The focus of the camera is not on the genitals, although the sound track and the apposition of the bodies leaves no doubt as to the activity being portrayed. In such scenes women are usually totally nude. Males almost always retain some clothing, either trousers or underwear briefs. This technique is apparently designed to inform law enforcement officials that the sexual activity on the screen is only simulated. In lesbian scenes, which

now appear to be a standard requirement for all exploitation films, there is no restriction on multiple full nudity.

Exploitation films are generally released in two versions: "hot" and "cool." The "cool" versions are edited so that the most explicit sexual scenes are abbreviated. The reasons for making two versions of a film were recently outlined by exploitation producer-distributor David Friedman:

The milder form was able to play in a great number of theaters that would not play it in the stronger form. In other words, a lot of drive-in theaters and a lot of theaters that do not normally play adults-only pictures as a matter of continuing policy, that is on a 52-week basis, were willing to play this picture because they thought it was the caliber and a well-enough-made picture that they could play it, provided some of the sex scenes were eliminated from it. It is purely a matter of business . . .

If the customer is important enough, we are delighted to make it cooler, certainly. But that is a self-censorship In order to get a new account who is . . . important enough worth making up an additional print or cutting an existing print, of course, we are going to do it.⁶⁰

The various forms of sexual activity depicted in exploitation films also appear—either by clear implication or in explicit terms—in numerous general release films of today. Thus the fact that simulated coitus, fellatio, or cunnilingus is shown does not in itself serve to distinguish exploitation films.

LANGUAGE

The language employed in exploitation movies has always been quite candid, and this appears to have increased recently. Formerly forbidden four-letter vulgarisms are now used. However, the use of graphic language does not distinguish exploitation movies from other types.

PLACE OF ORIGIN

Most exploitation films which achieve relatively wide circulation today (500 bookings) are produced in the United States. However, low-budget foreign-made exploitation films are still a factor in the market. In the exploitation market imported films are invariably shown in English either with English dubbed in the dialogue or a voice overlay narrating the story. Subtitles are not used in this market.⁶¹

TRAILERS

The exploitation market seems to place greater reliance on trailers (previews) than does the general release market. Some newspapers are reluctant to carry explicit advertising of exploitation films, and such films are almost never reviewed. Thus, the success of an exploitation film is very dependent on word-of-

60. Public Hearing, Commission on Obscenity and Pornography, May 4, 1970 (Transcript, pp. 12-13).

61. This statement may seem wrong because some recent films with a high degree of sexual orientation are in a foreign language with subtitles, for example, *Without a Stitch, I Am Curious (Yellow)*. These are not distributed as exploitation films but belong to a distinct class of "hybrid" films discussed infra.

mouth advertising.⁶² This can be assisted by building an interest in a coming attraction among regular customers. It is not unusual for very long trailers to be shown, 6 to 9 minutes in length in either "hot" or "cool" versions; often four to six trailers are presented together with a feature film. Some customers have reported that they enjoyed the trailers more than the feature.⁶³

Distinctions between exploitation and general release films

No single element of theme or content serves to distinguish exploitation films from sexually oriented general release films. Rather, distinctions are found outside a recital of themes, activities depicted, nudity, and language. The basic distinction is found in emphasis and focus. For example, the nudity shown in general release films is likely to be relatively brief; the actual running time during which nude actors or actresses are on the screen is almost always a small percentage of the whole. Exploitation films take a relatively "long look" at nudity, often several minutes at a time at fairly frequent intervals. For example, a content analysis of typical films might reveal that less than 1% of the running time of certain general release films depicts nudity on the screen, while exploitation films have nudity on the screen for at least 10% or 15% or more of the total running time.

Elusive concepts such as artistic merit, good taste, and dramatic values may also serve to distinguish the two types. Such differences as do exist are primarily differences of degree, which can only be measured or described by contrasting specific films. Judgments about such distinctions are probably best left to students or critics of the media.

One view of the distinctions between general release, art, and exploitation films was given by David Isacson, former first vice president of the Adult Film Association:

In essence, the general release films of an older era, which dealt with interpersonal relationships, might depict a male and female entering a room in which a bed might be seen. Upon entering such room, the door would close, and the scene be ended. In a subsequent era, the same couple would be shown entering the same room, and the camera would follow the parties discreetly beginning to remove their outer clothes, but the scene would be interrupted by head shots, and the camera might show one of the parties getting into bed with night clothes on. The scene would end with the distinct expectation that the other party would shortly climb into bed.

In a subsequent era, the same scene would show both parties in bed though discreetly clothed in night dress. The scene would close with the distinct impression that the clothing would shortly be removed.

By subsequent easy progressions, that same scene appearing in hundreds of general release films continued with more explicit depiction of true activities among normal parties until the camera would continue to run through complete disrobement, life-like fondling, to an act of simulated intercourse.

62. Charles Winick, "A Study of Consumers of Explicitly Sexual Materials: Some Functions Served by Adult Movies." Technical Reports of the Commission on Obscenity and Pornography (Washington, D.C.: U.S. Government Printing Office, 1971).

63. Ibid.

During the entire period of evolution, the so-called art film market was one step ahead of the general release market in the explicit depiction of interpersonal relationships. The exploitation market was perhaps one step ahead of the art market and two steps ahead of general release. As explicit depiction progressed through each of the stages, the relationship between the three markets remained constant until the general release market achieved total explicit depiction, and all three markets were then on par. The sole distinction now lay in production values such as settings, quality of photography, perhaps better story line, and wider distribution. At present, the general release films are leading in these distinguishing factors, perhaps a step ahead of art film and several steps ahead of exploitation film. It is becoming apparent that the existing gap is being narrowed with respect to production quality.⁶⁴

A primary distinction between exploitation films and other films of 1970 is the cost of production and the manner in which the films are marketed, a distinction which can be described objectively.

Producers-distributors

During 1969-1970 between 50 and 100 or more individuals and companies produced exploitation films with budgets ranging from \$3,000-\$5,000 up to \$100,000. However, most of today's important exploitation films are produced by a limited number of producers who comprise a small part of the motion picture industry. Many of these also distribute films produced by smaller companies, or purchase such films outright. A few important companies in the market limit their operations to distributing. As of the spring of 1970 the most important producer-distributors or distributors in the exploitation industry were:^{64a}

Apostolof Film Production, Inc., Box Office International Films, Canyon Film Distributors, Clover Films, Donald A. Davis, Inc., Entertainment Ventures, Inc., Eve Productions, Institute for Adult Education, MiTam Productions, Olympic International Films, and Walnut International Productions, all located in the Los Angeles area;

Ajay Films, American Films, All Film Enterprises, Audubon, Brenner, Boss Distributors, Cambist Films, Inc., Cannon Releasing Corp., Chancellor Films, Inc., Chellee, Cinex, Cinemation, Distribpix, Inc., Globe Pictures, Inc., Goldstone, Haven International Pictures, Hemisphere, Imperial, J.E.R. Pictures, Kaleidoscope, Sam Lake Enterprise, Inc., Marvin Films, Mishkin, Pro-1, Schoenfeld Film Distributing Corp., Sherpix, Times Film Corp., Tri-Men Film Distributors, and VIP, all located in New York City;

Crescent Films and Astro-Jemco of Dallas; I.R.M.I. Films of Northern California; and Screen Arts of Miami.

Several of the companies listed above also produce or distribute films not aimed at the exploitation market and may consider themselves as catering to a market other than the exploitation market. For example, Audubon, Kaleidoscope, and

64. Letter dated June 15, 1970, to the author.

64a. The list is not definitive, but all of the important producer-distributors are included.

VIP have broken away at least partly from the limitations of exploitation film exhibition and have gone into a market which is considerably broader. This fact indicates that these companies should be categorized separately. However, the characteristics of many of the films distributed by these companies are similar to typical "skin" films. The difficulty in categorizing films of today carries over in an attempt to classify producer-distributors.

All of the producer-distributors listed above are very small when compared to the majors. Most films distributed by them are ordinarily confined to a small percentage of the total theaters in the United States—usually less than 5% of the total. The host of small producers who grind out very inexpensive motion pictures (at a cost of \$5,000 or \$10,000) are a minor factor in the market because such films usually receive very limited distribution. For example, one producer stated that he had made a full-length motion picture for about \$2,000. It took over three years to recover the original investment, and as of December 1969 the profit was less than \$50.

Number of films produced

During 1969 between 100 and 200 full-length films were produced for the exploitation market. The best estimate of the number of productions is probably between 135 and 150 full-length feature films, the majority of which were photographed in color.

The difficulty in estimating the exact production of exploitation films for any one year is created by the very low-budget films which often pass unnoticed by the industry. Further difficulty is caused by the fact that exploitation films sometimes remain in distribution for years rather than for a few months. Motion pictures produced 2 or 3 years ago are still being played on a "first-run" basis in some theaters. In addition, many films return again and again as second features. For example, one distributor stated that he had accumulated 90 films since 1965. Approximately 70 of these were still in active distribution as of January 1970.

Production costs

Two distinct cost figures are used by the trade, often without differentiation: "negative cost" includes all the expenses connected with the original filming; "release cost" is the total spent to release the film, including promotional expenses and, most important, the cost of prints. Black-and-white prints of a full-length feature which averages 75 to 90 minutes cost approximately \$250 to \$300; prints for a color feature cost between \$550 and \$700.⁶⁵ Most producers print between 15 and 25 copies of feature films. Thus, if the film is in color, release cost may be 50% more than negative cost; that is, a "high budget" film costing \$40,000 to produce may cost \$60,000 to release.

Typically films are produced for between \$15,000 and \$25,000, and a fair number are produced in the \$40,000-plus class. A few producers (perhaps a half dozen or so) spend more: two or three color features in 1969-1970 were claimed to have had release costs of more than \$100,000. Costs of this magnitude are

65. Color prints (35-mm.) cost approximately 7¢ per foot. Film passes through a projector at 90 feet per minute, so a print of a 90-minute feature costs 90 x 90 x \$.07, or approximately \$570.

considered to be exceptional in the market. The most expensive exploitation films cost far less than the lowest-budget general release films.⁶⁶

In the 1960's for several years most films grossed nearly the same amount of money, regardless of their budget. Virtually all producers feel that audiences have become more discriminating in the last year or two. As a result the dominant producers in the industry have substantially increased their budgets for film production. One well-known east coast producer stated he released seven films (mostly in black and white) during 1969 with \$25,000 negative cost per film. However, all his 1970 films are in color and are budgeted for \$50,000 or more.

Organized labor has traditionally ignored "skin flicks." However, an apparent increase in the market for exploitation films, coupled with declining employment by major film producers,⁶⁷ has recently generated an interest among labor unions in such employment. To date, however, labor costs of the exploitation films are far lower than for general release films. Exploitation producers ordinarily use a production crew of four or five. The producer is often the director and sometimes even the cameraman. Many exploitation producers fear that the advent of union interest—with possible employment of a full crew of union technicians—will price such films out of the market.

Returns to the producers

Producer-distributors agree that the maximum return for almost all exploitation films is between \$150,000 and \$200,000. This return can only be achieved if the film receives the maximum possible exposure, that is, an average film rental of \$400 per week for 400 to 500 bookings. A more typical return is between \$70,000 and \$100,000, which is enough to show a substantial profit for most films. Costs of exploitation films are controlled by the expected return.

The nature of the exploitation market is exemplified by the 1969 "annual report" of a company which claims to be "America's oldest and largest exploitation film production-distribution-exhibition complex." The company is Entertainment Ventures, Inc., (EVI) of Los Angeles, California, which reported for the year September 1, 1968 to August 31, 1969:⁶⁸

1. A total of 16 feature films released during the fiscal year grossed almost \$550,000 in rental fees;
2. From the production, distribution and sales of all films, the company grossed over \$800,000;
3. One of its 1969 films, *Starlet*, was the first motion picture designed primarily for the exploitation market with a negative cost in excess of \$75,000;

66. Production costs of *Easy Rider*, famous for its low budget, were at least four times as high as the most expensive exploitation film ever made. The average general release film of today is probably 25 times more expensive than the average "skin flick."

67. An Associated Press story reported that 42.8% (over 13,000 of a total of 30,500) behind-the-camera workers, represented by an amalgam of unions in the AFL Hollywood Film Council, were unemployed as of May 10, 1970. The president of the Film Council is quoted as saying the number of unemployed film workers is the highest in Hollywood history (*Washington Post*, May 10, 1970, p. C-7).

68. *Annual Report, 1969, Entertainment Ventures, Inc.* The company is rivaled in size and importance by fewer than five other companies. The annual report was made primarily as a promotional device, a context which makes it highly unlikely that the figures were minimized.

4. To date EVI's most successful film, *The Notorious Daughter of Fanny Hill*, released in 1966, has grossed \$325,000 in rental fees from 900 U.S. "play-dates"⁶⁹ [an average film rental of \$361];

5. The average EVI production has 550 "playdates" in the United States.

Substantial profits can be made if costs are kept under control and over-ambitious projects are not undertaken. It is apparent that the operations of exploitation producer-distributors are on a completely different scale than those of a major film studio. For example, the total rental fees of 16 EVI films during the year were considerably less than the production costs of an average general release film.

Producer-distributors who expend relatively substantial amounts of money (\$50,000 to \$100,000) hope to obtain distribution in a wider market. For example, *Vixen*, originally an exploitation film, reportedly had a negative cost of less than \$75,000.⁷⁰ Due to skillful promotion the film achieved a wide exhibition and had between 1,000 and 1,500 bookings as of January 1970, many of which extended for several weeks. In some major markets the film received citywide exhibition. For example, during the second week in December 1969 the film was exhibited in over 60 theaters in and around the New York City area. As last reported the film had grossed over \$2 million in a survey of 20 to 24 cities.⁷¹ Although the film encountered some legal difficulties and incurred substantial promotional costs, profits were undoubtedly great. This explains why a few producer-distributors are willing to spend a relatively large amount of money—as much as \$100,000—to make exploitation films. A producer has a chance to "strike it rich" only if his film is more expensively produced and has better technical quality than the average.

The industry organization

Early in 1969 the exploitation industry formed a trade association, the Adult Film Association of America (AFAA), to speak for the industry and to promote its products. The association is composed of producers, distributors, and exhibitors of exploitation films. A code of procedure has been proposed by one influential member, but no consensus has yet formed behind the idea.⁷²

Exploitation theaters

OWNERSHIP

Exploitation theaters tend to be held by operators who own a chain of two or more theaters, although the majority of theaters are probably operated as sole

69. A "playdate" or "booking" is the continuous exhibition of a film at a particular theater, which may last from one day to several weeks or months. Most exploitation films are "booked" for a single week or less.

70. The producer has been quoted as budgeting the film for \$66,000 in "King of the Nudie Movies," *True*, March 1969, p. 47. After the film achieved relatively wide distribution, promotional costs and added print costs undoubtedly increased the release cost greatly.

71. *Variety*, June 17, 1970, p. 9.

72. At last report, the idea of a code was rejected by the AFAA Board. *AFAA Newsletter*, May 15, 1970.

proprietorships. A few of the larger producer-distributors own some theaters outright and have interests in others, a practice forbidden to the majors.⁷³

LOCATION AND SIZE

Most exploitation theaters are relatively old, shabby, and run-down. As the moviegoing public increasingly patronizes outlying theaters in suburban areas,⁷⁴ many downtown theaters have become nearly deserted. By specializing in sexually oriented motion pictures not available elsewhere, many of these theaters have been able to continue in business. Because customers are primarily male,⁷⁵ many owners feel that surroundings which attract couples are not required.

There has been a trend away from shabbiness in the last two years. Several new theaters have been built to exhibit exploitation films, primarily in the western States; others have been extensively remodeled. There is also a movement to establish such theaters in suburban areas. Drive-in theaters, of course, are almost always located in suburban or rural areas.

Exploitation theaters tend to be somewhat smaller than average.⁷⁶ There are a few relatively large theaters with over 1,000 seats, but most have only 400 to 600 seats and quite a few are even smaller.

OPERATING HOURS

The average indoor exploitation theater is open 14 hours per day—considerably longer than most general release theaters.⁷⁷ Most indoor exploitation theaters are located downtown in areas of constant pedestrian traffic, which attracts impulse viewers. Attendance is often poorer during evenings and on weekends than during normal working hours.

ADMISSION PRICES

Admission prices vary considerably; along 42nd Street in New York City admission prices are as low as 89¢, while in some cities as much as \$5 is charged. A few theaters have reduced admission charges for women and servicemen. Industry spokesmen estimate that the average admission price nationwide in 1969 was at least \$2. Exploitation theaters undoubtedly average higher admission prices than do those theaters exhibiting general release films.⁷⁸

RESTRICTED ENTRY

As far as can be discovered, all exploitation theaters have established an age minimum for entry which seems to be strictly enforced.⁷⁹ If the minimum set in the locality for "X"-rated general release films is thought to be too low by the

73. *U.S. v. Paramount Pictures*, 334 U.S. 131 (1948), see footnote 9 and accompanying text.

74. See Table 6.

75. Winick, op. cit. (footnote 62); Morris Massey, "A Marketing Analysis of Sex-Oriented Materials in Denver, Colorado," Technical Reports of the Commission on Obscenity and Pornography (Washington, D.C.: U.S. Government Printing Office, 1971).

76. Compare Table 5 with Tables 15 and 16.

77. Exploitation theaters are sometimes known as "grind houses," possibly as much for the long hours as for the films.

78. Compare Table 5 with Tables 15 and 16.

79. Winick, op. cit. (footnote 62).

theater owner (e.g., 17 and over) it often is raised. Generally the minimum entry age is 18, although quite a number require a minimum age of 21, the trend being toward the latter requirement. All exhibitors interviewed claimed that they lost nothing by setting a high minimum age because customers almost invariably are males in their late twenties to fifties, and that young people typically are not customers except in theaters near a college. This belief has been confirmed by surveys made under contract for the Commission.⁸⁰

CODE OF CONDUCT

The exhibitor members of the Adult Film Association of America (AFAA) have subscribed to a code of conduct for the operation of their theaters. How scrupulously the code is observed has not been determined and is presented below without comment:⁸¹

Recognizing that Motion Pictures are a vital and established medium of communication in the United States of America and that persons privileged to engage in this form of expression have certain well defined responsibilities to the general public,

We acknowledged these responsibilities and do hereby pledge:

1. That films of Adult Subject Matter will be exhibited to Adult Audiences and that persons not of adult age will not be admitted.

2. That the definition of an "Adult" is that designation set by the constituted authorities of this community, but in no event any person under the age of 18 years.

3. That we will exhibit only films that are in conformity with the Free Speech Provisions of the Constitution of the United States of America.

4. That we will respect the privacy of the General Public in our Advertising and Public Displays.

NUMBER AND DEMOGRAPHIC DISTRIBUTION

Spokesmen for the exploitation industry estimated that approximately 600 theaters regularly exhibited exploitation films each week in 1969. This figure represents 4.4% of all the theaters in the United States.⁸² Of these, approximately 510 theaters exhibit exploitation films on a full-time basis, 52 weeks a year. In addition, an uncounted number of theaters exhibit exploitation features on a very irregular basis. It is known that at least 1,500 theaters have played one or more exploitation features in the past two years. Irregular exhibition allegedly is employed to boost sagging attendance during off-season lulls.

In order to determine accurately the total number of exploitation theaters, the author obtained copies of customer mailing lists from two large distributors of exploitation films, one located in New York City and the other in Los Angeles.

80. See Winick, *op. cit.* (footnote 62); Massey, *op. cit.* (footnote 75).

81. All self-regulatory schemes are necessarily self-serving.

82. *U.S. Industrial Outlook, 1970*, *op. cit.* (footnote 2), p. 437.

An analysis disclosed that 252 theaters appeared on both mailing lists (57 drive-ins and 195 conventional theaters) and 524 theaters were on one of the two lists (410 indoor theaters and 114 drive-ins). In addition, one of the largest producer-distributors in the industry furnished a list of 395 theaters which reportedly have a full-time exploitation exhibition policy (328 indoor theaters and 67 drive-ins). Tables 8 and 9 below summarize the demographic data derived from the three lists. Theaters were classified as full-time exploitation if they appeared on the list purporting to identify all such theaters *or* if they appeared on both of the distributors' customer lists. All theaters which appeared on only one of the distributors' lists were classified as part-time exploitation theaters. A total of 880 full- and part-time exploitation theaters appeared on one or more lists (651 indoor theaters and 229 drive-ins).

Table 8

LOCATION OF FULL-TIME AND PART-TIME EXPLOITATION THEATERS BY STATE^a

State	No. of exploitation theaters (1970)			Total—All theaters ^b (1967)	% of Theaters in state with exploitation policy ^b
	Full-time	Part-time	Total		
Texas	82	36	118	798	14.8%
California	47	33	80	1,020	7.8%
North Carolina	28	42	70	328	21.3%
New York	36	33	69	893	7.7%
Florida	33	20	53	385	13.8%
Georgia	27	13	40	295	13.6%
Michigan	30	8	38	386	9.8%
Ohio	17	20	37	513	7.2%
Illinois	23	10	33	470	7.0%
Pennsylvania	17	10	27	625	4.3%
South Carolina	9	16	25	139	18.0%
Massachusetts	14	10	24	279	8.6%
Tennessee	17	5	22	216	10.2%
Alabama	11	8	19	181	10.5%
Oklahoma	9	8	17	264	6.4%
Missouri	10	7	17	334	5.1%
Virginia	10	6	16	280	5.7%
All Others ^c	104	71	175	4,072	4.3%
Total	524	356	880	11,478	7.7%

^aThe data summarized in this table have been gathered from several sources and are not strictly comparable because they relate to different time periods. The total number of theaters in each State is derived from the State reports of the *1967 Census of Business* (Washington, D.C.: U.S. Government Printing Office, 1970). The exploitation theaters are from three lists furnished by the exploitation industry as of January 1970. Thus the table is descriptive only of the demographic distribution of exploitation theaters in relation to all theaters in each State.

^bNot all the theaters believed to be operating in 1967 reported to the Census Bureau. Thus the total number of theaters is understated and the percentage of those with an exploitation policy is probably overstated.

^cIn all other States there were fewer than 15 exploitation theaters listed.

Table 9

LOCATION OF FULL-TIME AND PART-TIME EXPLOITATION THEATERS
BY REGION AND POPULATION DENSITY^a

Region ^b	No. of exploitation theaters			Population ^c	Ratio: exploitation theaters to population
	Full-time	Part-time	Total		
North East	89	73	162	47,712,000	1:295,000
North Central	106	54	160	54,668,000	1:342,000
South	244	178	422	60,755,000	1:144,000
West	85	51	136	32,523,000	1:239,000
United States	524	356	880	195,658,000	1:222,000

Population centers ^d	No. of exploitation theaters			Population ^c	Ratio: theaters to population
	Full-time	Part-time	Total		
Under 100,000	138	145	283	65,644,000	1:232,000
100,000 to 500,000	114	55	169	31,027,000	1:184,000
Over 500,000	272	156	428	98,987,000	1:231,000
United States	524	356	880	195,658,000	1:222,000

^aSee footnote a, Table 8.

^bThese regions are standard groupings developed by the Bureau of the Census.

^c1966 *Estimated Population*, Bureau of the Census.

^dIbid. The classifications are based on "standard metropolitan areas," developed by the Bureau of the Census, and nonmetropolitan areas. The "under 100,000" classification includes 18 standard metropolitan areas and all nonmetropolitan areas; the "100,000 to 500,000" includes 137 standard metropolitan areas; the "over 500,000" class includes 66 standard metropolitan areas.

Changes in exhibition policy, such as alternating between exploitation and general release films, are more commonly employed by drive-in theaters: 50% of the drive-ins listed have such a policy, while less than 40% of the indoor theaters do this.

Forty-five States were represented in at least one of the lists; exceptions were Montana, North Dakota, South Dakota, Wyoming, and Wisconsin. Regionally, exploitation theaters are disproportionately distributed in the South and under-represented in the North Central and Northeast regions. On first analysis, the distribution of exploitation theaters by population center indicates that the greatest coverage for exploitation exhibitions occurs in the metropolitan areas of 100,000 to 500,000. This conclusion is somewhat misleading, however. The 66 metropolitan areas with a population larger than 500,000 have an average of 6.5 theaters, while the 137 metropolitan areas with a population between 100,000 and 500,000 have an average of 1.2 theaters. The majority of these theaters are located in larger cities.

Some theater owners exhibiting exploitation films claim that their policy stems from the belief that the area in which the theater is located will not support general release motion pictures. Many other theater owners explain that their switch to an exploitation policy is based upon the profitability of such films. In either event, the prospects for a profitable survival have been quite good for exploitation theaters. Instead of retaining 50% of the box office receipts as is usually the case for general release movies, most exploitation theater owners are able to keep at least 75% of the weekly box office gross.

A majority of exploitation films are rented on a flat-rate basis, varying from \$100 to \$750 per week. Low flat-rate film rentals often enable the theater owner to make substantial profits on a relatively small weekly gross. In addition, the widespread flat-rate system enables some theater owners to reduce film rental to 10% of box office gross. For example, one important exhibitor informed the Commission staff that two of his theaters in a major Midwest metropolitan area paid the highest flat-rate film rental fees in that city, which were \$500 per film on average weekly grosses of \$4,500 to \$6,000 per theater. The exhibitor stated that his four competitors in the city paid flat rates of \$400 per week on grosses which he claimed averaged about \$4,000 weekly.

Flat rates are generally negotiated between the distributor and exhibitor, based on knowledge of past average weekly grosses and conditioned by the relative power of the parties. If the previous box office average has been \$3,000 per week, the distributor will seek to establish a flat rate of \$750 so that a return of 25% can be realized.

Exhibitors naturally seek to reduce film rentals to a minimum. At present the exhibitors seem to have the upper hand in such negotiations. First, there are more exploitation features on the market than can be exhibited (a "buyer's" market).⁸³ Second, many exhibitors are convinced that the quality of the film shown has little effect on the box office, and thus they seek the cheapest product available. As a result film rental fees, whether at a flat rate or on a percentage basis, are likely to be kept on the low side of 25% of weekly admission receipts.

The U.S. Department of Commerce has estimated the total box office receipts for all U.S. theaters in 1969 at \$1,065 million for approximately 13,750 theaters.⁸⁴ Using these estimates the average theater in the United States grosses approximately \$77,500 yearly, or \$1,500 per week. If the average film rental fee is approximately 50% of box office receipts, the average theater owner grosses \$750 each week after rental fees. An exploitation theater which has an average weekly gross and pays no more than 25% of the box office receipts in film rental (approximately \$375) has receipts of at least \$1,125 after paying film rental fees.

There are quite a number of exploitation theaters in large metropolitan areas which claim a box office average of at least \$5,000. Quite a few owners claim weekly box office grosses of between \$5,000 and \$10,000, and many state that their record weekly grosses exceeded \$20,000. Other owners with relatively small

83. This is in marked contrast to the endemic complaints of general release exhibitors about the lack of product to exhibit. See, for example, *Independent Film Journal*, April 1, 1970, p. 5.

84. *U.S. Industrial Outlook, 1970*, op. cit. (footnote 2), p. 437.

theaters and poor locations make more conservative claims of grosses at \$1,000 to \$1,500 per week.

Economic analysis of exploitation theaters

BUREAU OF THE CENSUS ANALYSIS, 1967

The 1967 Census of Business gathered data on the motion picture industry.⁸⁵ A list of 513 full-time "skin houses" (as of 1970) was furnished to the Census Bureau. A summary of the business data supplied by 256 of those theaters reporting in 1967 is reported in Tables 10 through 14. It is likely that some of the full-time theaters surveyed were not featuring exploitation films in 1967. Unfortunately there is no feasible way to determine if these particular theaters changed policy and "went exploitation" after 1967. For the most part theaters presently showing exploitation films were probably doing so in 1967. However, the data are only indicative of the industry as of 1967 and cannot be taken as a definitive statement.

The Census Bureau did not compute the average for the data it received in the 1967 Census of Business. One of the difficulties in computing an average is that a varying number of theaters reported answers for each question asked by the Census. For example, reports of 256 full-time exploitation theaters were discovered, but only 200 of these reported receipts from admissions. Because it is the purpose of this report to provide only a general picture of the market, such distinctions can be disregarded. Table 15 summarizes the Census Bureau data for the average exploitation theater during 1967.

Comparing the reports by the average exploitation theater in 1967 (Table 15) with the average of all reporting theaters in that year (Table 5) reveals that average gross receipts of the two were very close; exploitation theaters had a slight advantage of \$132,000 to \$126,000. The percentage of gross receipts from admissions was higher in exploitation theaters (smaller concession sales). The number of paid admissions to conventional theaters was 33% higher, while the average admission price of exploitation theaters was over 42% higher than for all reporting theaters. The reporting exploitation theaters were considerably smaller than average.

EXPLOITATION INDUSTRY SURVEY

In May 1970 the Adult Film Association of America mailed a questionnaire to its members patterned after the 1967 Census of Business requesting its members to report 1969 data. The response to this survey was very fragmentary and cannot be assumed to be representative of the entire industry for 1969. Results of the AFAA survey are presented in Table 16.

About one-half of the reporting theaters had been in operation for over 20 years, and all had been in operation for at least three years. All the reporting theaters exhibited multiple features more than 75% of the time.

85. Response to the Census of Business is required by law under 13 U.S.C., Sections 131 and 224. The Bureau of the Census is forbidden by law to release individual data supplied in response to its inquiries. However, it is permitted to make separate tabulations of segments of an industry, as long as individual data are not disclosed.

Table 10

REPORTED RECEIPTS OF 256 FULL-TIME EXPLOITATION THEATERS:^a BY
REGION AND CITY SIZE

(Data shown only for theaters reporting payroll)

	C.O.P. listing of theaters matched to census records	
	Establish- ments (number)	Receipts (\$1,000)
United States, Total	256	32,742
Theaters, except drive-in	210	27,378
Drive-in theaters	46	5,364
United States by Regions: ^b		
Northeast	45	8,769
Theaters, except drive-in	40	8,022
Drive-in theaters	5	747
North Central	63	6,944
Theaters, except drive-in	61	6,590
Drive-in theaters	2	354
South	99	9,704
Theaters, except drive-in	65	6,115
Drive-in theaters	34	3,589
West	49	7,325
Theaters, except drive-in	44	6,651
Drive-in theaters	5	674
United States by City Size: ^c		
Under 100,000	63	4,260
Theaters, except drive-in	38	2,372
Drive-in theaters	25	1,888
100,000 to 500,000	49	5,689
Theaters, except drive-in	39	3,824
Drive-in theaters	10	1,865
Over 500,000	144	22,793
Theaters, except drive-in	133	21,182
Drive-in theaters	11	1,611

Source: Bureau of the Census, 1967 Census of Business.

^aA list of 513 full-time exploitation theaters (as of January 1970) was received from industry sources and supplied to the Census Bureau for analysis. Census of Business reports for 1967 were discovered for only 50% of the theaters listed, probably because many of those reports were filed under a corporate name unrelated to the name of the theater. No data was available regarding the exhibition policy of the theaters in 1967.

^bStandard regional classifications developed by the Census Bureau.

^c1966 Estimated Census.

Table 11

REPORTED RECEIPTS FROM ADMISSIONS, NUMBER OF ADMISSIONS, AND CAPACITY
OF 200 FULL-TIME EXPLOITATION THEATERS^a

(Data shown only for theaters reporting payroll)

	Receipts				Paid admissions		Capacity	
	Theaters Reporting Receipts from Admissions, Number of Admissions, and Capacity				Drive-in		Theater	Drive-in
	Estab- lish- ments (number)	Total (\$1,000)	Admissions including taxes (\$1,000)	Individual admissions in con- ventional theaters (1,000)	Car admis- sions where charge per person was made (1,000)	Car admis- sions where charge for carload was made (1,000)	Number of seats	Number of cars
United States, Total	200	26,392	23,079	13,285	2,424	226	99,745	18,788
Theaters, except drive-in Drive-in theaters	159 41	22,205 4,187	19,886 3,193	13,285 —	— 2,424	— 226	99,745 —	— 18,788

Source: Bureau of the Census, 1967 Census of Business.

^aIn the reports on 256 full-time exploitation theaters filed with the Census Bureau in 1967 (see Table 10, footnote a), 200 theaters reported admis-
sion receipts, admissions, and capacity.

Table 12

REPORTED RECEIPTS OF 256 FULL-TIME EXPLOITATION
THEATERS^a

(Data shown only for theaters reporting payroll)

Kind of business and Receipts	C.O.P. list of theaters matched to census records	
	Establishments (number)	Receipts (\$1,000)
Motion picture theaters, total	<u>256</u>	<u>32,742</u>
With annual receipts of:		
\$300,000 or more	15	7,892
\$100,000 to \$299,000	107	17,468
\$50,000 to \$99,000	78	5,846
\$20,000 to \$49,000	41	1,382
\$10,000 to \$19,000	8	118
Less than \$10,000	7	36
Theaters (except drive-in) with annual receipts of:	<u>210</u>	<u>27,378</u>
\$300,000 or more	13	6,728
\$100,000 to \$299,000	90	14,965
\$50,000 to \$99,000	59	4,383
\$20,000 to \$49,000	36	1,184
\$10,000 to \$19,000	6	89
Less than \$10,000	6	29
Drive-in theaters with annual receipts of:	<u>46</u>	<u>5,364</u>
\$300,000 or more	2	1,164
\$100,000 to \$299,000	17	2,503
\$50,000 to \$99,000	19	1,463
\$20,000 to \$49,000	5	198
\$10,000 to \$19,000	2	29
Less than \$10,000	1	7

Source: Bureau of the Census, 1967 Census of Business.

^aSee Table 10, footnote a.

“HYBRID” AND NEW GENRE FILMS

As early as 1966-1967 a new category of highly sex-oriented motion pictures began to emerge. Certain pioneering films and their imitators have, in effect, smashed the neat classifications which heretofore could be used as yardsticks for analyzing sexual content of films. Insofar as the pattern of distribution is concerned, certain films with a high degree of sexual orientation now occupy a middle ground between exploitation films and sexually oriented general release films. These are an amalgam of exploitation, art, and general release films.

For lack of a better term, this report labels these as “hybrid” films, because no industry term has been created to denote this phenomenon. It is difficult to

Table 13

REPORTED EXHIBITION POLICY OF 193 FULL-TIME EXPLOITATION THEATERS:^a
BY MULTIPLE FEATURES AND NUMBER OF FEATURE FILMS LEASED

(Data shown only for theaters reporting payroll)
Theaters Reporting Multiple Features and Films Leased

	Establish- ments (number)	Receipts (\$1,000)	Theaters showing multiple features			Films leased (number)
			More than 75% of the time (number)	50% to 75% of the time (number)	Less than 50% of the time (number)	
Establishments	193	24,770	119	21	53	20,350
Theaters, except drive-ins	154	20,652	96	12	46	14,612
Drive-in theaters	39	4,118	23	9	7	5,738

Source: Bureau of the Census, 1967 Census of Business.

^aIn the reports of 256 full-time exploitation theaters filed with the Census Bureau in 1967 (see Table 10, footnote a), 193 reported on exhibition policy.

define films falling into this category by differentiating them from other films according to theme, nudity shown, or sexual activity depicted. Rather, the chief characteristic of hybrid films is that they are acceptable to far more exhibitors than are exploitation movies but are not as acceptable as general release films. Specifically, a popular exploitation film ordinarily can expect 500 to 600 bookings, the vast majority of which are for one week. A popular general release film may receive 5,000 or more bookings, many of which last for several weeks. As of August 1970 a popular hybrid film might receive 1,000 to 2,000 bookings, many for several weeks.

The only way to define hybrid and new genre films is by example. It should be noted that many of the hybrid films in this middle market are regarded by the industry as "stronger" in sexual content than the average exploitation movie.

The films labeled as "new genre" are more explicit than any movies heretofore shown in public theaters. These films approach the level of sexual explicitness formerly found only in "stag films" shown covertly on a private or semiprivate basis.

The one factor common to all hybrid or new genre films is that they are not distributed or exhibited in a traditional manner. Some "art" theaters and many "skin houses" and general release theaters exhibit these films. Art and general release theaters seem to choose only those films which they believe are of a relatively high quality. Exhibitors who normally show art or general release films are willing to book such films because of their box office appeal. The distributors of these films prefer to play in "better" theaters; therefore exploitation theaters often cannot obtain exhibition rights unless other theaters are unwilling to exhibit certain films.

Table 14

REPORTED TIME IN OPERATION OF 196 FULL-TIME EXPLOITATION THEATERS^a

(Data shown only for theaters reporting payroll)

	Establishments (number)	Receipts (\$1,000)
Motion picture theaters, Total	196	25,474
Reporting period started as theater:		
Before 1942	97	13,467
1942-1948	27	3,818
1949-1954	27	2,406
1955-1958	13	1,468
1959-1963	12	2,095
1963-1967	20	2,220
Theaters (except drive-in) reporting period started as theater:	157	21,390
Before 1942	97	13,467
1942-1948	22	3,147
1949-1954	6	684
1955-1958	6	625
1959-1963	9	1,703
1963-1967	17	1,764
Drive-in theaters reporting period started as theater:	39	4,084
Before 1942	—	—
1942-1948	5	671
1949-1954	21	1,722
1955-1958	7	843
1959-1963	3	392
1963-1967	3	456

Source: Bureau of the Census, 1967 Census of Business.

^aIn 256 reports filed by full-time exploitation theaters with the Census Bureau in 1967 (see Table 10, footnote a), 196 reported on the period of operation.*Hybrid films*

One type of sexually oriented "hybrid" film is apparently a combination of general release and exploitation movies. Included in this category are those originally produced for and distributed in the exploitation market but which, for one reason or another, are able to gain far greater acceptance by exhibitors than is typical for exploitation films. Two films of this type are *Vixen* and *Cherry, Harry and Raquel*. Both of these were produced and directed by Russ Meyer, the leading exponent and pioneer in the exploitation market. While they have greater technical competence than most, they do not differ from standard exploitation

Table 15

AVERAGE EXPLOITATION THEATER: 1967^a

	Receipts from customers	Admission receipts including taxes	Average ^b admissions	Average admission price	Theater capacity
All theaters	\$131,960	\$115,395	79,675	\$1.45	X
Theaters, except drive-ins	\$139,654	\$125,069	83,528	\$1.49	627
Drive-in theaters	\$102,121	\$77,878	64,634	\$1.20	458

^aDerived from Table 11 for 200 theaters reporting all data (159 indoor and 41 drive-in theaters). Average gross receipts for all 256 reporting theaters (56 of which did not supply all data) were slightly lower, at \$128,000.

^b226,000 admissions to drive-in theaters were by the carload. Thus total attendance was somewhat higher than admissions; if each carload contained an average of three persons, 450,000 additional persons attended exploitation films in 1967 at the reporting theaters.

Table 16

AFAA SURVEY—SIX COMPANIES REPORTING ON 20 EXPLOITATION THEATERS

Establishments (number)	Receipts from admissions (including taxes) ^a		Paid admissions ^b		Theater capacity ^c
	Total	Average	Total	Average	Average
20	\$3,497,000	\$174,500	1,469,000	73,450	467

^aReceipts from admissions for the 20 reporting theaters ranged between \$59,000 and \$388,000.

^bPaid admissions ranged between 21,000 and 195,000. Admission prices ranged between \$1.50 and \$3.00, with one theater reporting a 12-week run with a \$5.00 admission price. The average admission price was approximately \$2.30.

^cSeat capacity in 18 conventional theaters ranged between 200 and 900 seats. Two drive-ins reported a capacity of 450 automobiles each.

films in any significant manner. Through artful promotion, however, the distribution of these films was extended far beyond the limits of their normal market. *Vixen*, for example, was exhibited in between 1,200 and 1,500 different theaters, sometimes for several weeks.⁸⁶ Hybrid films of this type also are produced by major companies but on much higher budgets, such as Twentieth Century Fox's *Beyond the Valley of the Dolls*, directed by the producer of *Vixen*, and Avco Embassy's *Monique*.

A few films seem to be a marriage of exploitation and art films, appealing to a limited audience and combining elements of those two types. Kaleidoscope's *Coming Apart* is an example.

86. See footnotes 70 and 71 and accompanying text.

By far the most important of the hybrid films combine elements of all three recognized categories, and most are produced specifically for this middle market. These films resemble exploitation films in the high degree of explicit sexual activity depicted. Indeed, many go well beyond the sexual content of the typical exploitation film in depicting more explicit simulated sexual foreplay, coitus, or oral-genital contact, full nudity of both sexes, and so on. These films also resemble art films in that many are low budget foreign films exhibited in the original language with subtitles or with English dubbed in. Finally, these hybrid films are exhibited widely in respectable theaters for extended periods of time, a characteristic formerly limited to general release films.

Some are produced or distributed by independent distributors such as Audubon Films, probably the company most responsible for expanding the market, with productions such as *The Libertine*, *Camille 2000*, *Black on White* (retitled *Shameful*), *Carmen Baby*, *I, A Woman*, and *The Laughing Woman*. Other noteworthy films of this type are U-M Film Distributors' *All the Loving Couples*, Chevron's *I, A Woman, Part II*, Cinemation's *Fanny Hill* and *Female Animal*, Haven International's *Fuego*, and Sherpix's *Lonesome Cowboys* and *Meat Rack*.

The two most talked-about films in the past year in the hybrid category were low-budget foreign language films, namely, Grove Press' *I Am Curious (Yellow)* and VIP's *Without a Stitch*. Both contain explicit depictions of coitus and other sexual acts. Both achieved outstanding success at the box office considering their low cost of production and somewhat restricted acceptability to exhibitors. It has been reported that *I Am Curious (Yellow)* had returned \$6,600,000 in film rentals by the end of 1969.⁸⁷ The distributor of the film stated that the film is expected to gross between \$8 and \$10 million in rental fees before the termination of its run. *Without a Stitch* appears to be headed for comparable success.⁸⁸

The major studios and other large, important producer-distributors have not ignored this market. An increasing number of hybrid films are distributed by these companies, such as Paramount's *Tropic of Cancer*, Avco Embassy's *Monique*, Twentieth Century Fox's *Myra Breckinridge*, Universal's *Can Hieronymus Merkin . . . ?*

New genre films

In addition to the above an entirely new genre of sexually oriented motion pictures has been exhibited in 1969 and 1970, to date almost exclusively in major metropolitan areas. These films graphically depict actual sexual intercourse, an activity previously unknown to public theaters and confined to private or semi-private exhibitions at "smokers" or "stag nights."

Some of these purport to be cinematic marriage manuals designed for sex education of adults. The first was *Man and Wife*, which demonstrated copulatory techniques on the screen "for married couples." The success of this film led to the

87. *Variety*, Jan. 7, 1970, p. 25. *Variety* subsequently reported that the gross of *I Am Curious (Yellow)* reached \$8,564,000 on its 24-city chart. *Variety*, April 22, 1970, p. 3. This will place *Curious* in the top 100 of the "all-time box champs."

88. In a list of 50 top grossing films in 20 to 24 markets which report box office to *Variety*, the May 20, 1970 issue reports that *Without a Stitch* had grossed \$1,536,000 as of the week ending May 13, for 21 weeks on the chart. *Variety* estimates that one-third of the total gross for most films is represented in its survey.

release of a number of similar films, such as *Black is Beautiful (Africanus Sexualis)*, *The Marriage Manual*, *Art of Marriage*.

Others purport to document sexual mores in Denmark and throughout the world, for instance, *Wide-Open Copenhagen 1970*, *Pornography in Denmark*, and *Sexual Freedom in Denmark*. These films are certainly the most sexually explicit films ever publicly shown on theater screens and have some of the characteristics of stag films: male genitals are shown erect, and there are close-ups of intercourse including penetration, fondling of genitals, oral-genital contact. The films follow a documentary format and detail a wide range of sexual matters including the pornography in Denmark, the attitude of Danes and tourists toward it, its immediate social effects, conception and birth, and so on. Almost all of the taboos heretofore rigorously observed in the public market are ignored.

BOX OFFICE RECEIPTS

General release, hybrid, and new genre films

An analysis of reported box office receipts in trade journals for the period since the rating system has been in effect is reprinted as the Appendix of this report. There were no dramatic differences in reported grosses among "G," "GP," and "R" rated films, although as a group "G" films tended to have consistently higher grosses. This, of course, does not mean that more "G" films are likely to be released because such films are the most profitable; the cost of production would have to be taken into account before such a prediction would be warranted. Unfortunately, profitability figures are not available by film classification. However, it is clear that "G" films (which contain relatively little in the way of sexual content) do not "die" at the box office as has often been claimed in some quarters of the industry.

Data regarding the success of films rated "X" by the CRA is mixed. Some "X" films do very well at the box office, and most have initial success during the early weeks of exhibition.

Total box office receipts are not available for either individual films or for classes of films. However, it is possible to make reasonable estimates of receipts from data supplied by the trade journals (primarily *Variety*). Each year *Variety* reports on the movies which allegedly returned the greatest film rental fees to their distributors.⁸⁹ For 1969, of the top 20 films returning \$5 million or more in fees, eight were rated "G," four were rated "GP," three were rated "R," one was rated "X," one was not rated, and the other three were released before the rating system went into effect.

There were 90 films on the top rental fee list for 1969, each of which reportedly returned more than \$1 million to the distributor. Of the reported total of \$338.5 million in film rental fees, 25 "G" movies returned \$119 million, 28 "GP" films returned \$92 million, 18 "R"-rated films accounted for \$57 million, three

89. *Variety*, Jan. 7, 1970, p. 9.

"X" films returned \$14 million,⁹⁰ and 16 unrated films returned \$56 million. Of the latter, four were clearly sex-oriented hybrid films which returned over \$11 million in fees.⁹¹

It should be noted that a number of movies on this list were reported in the trade press to have lost money for their producers. None of these were "R," "X," or hybrid unrated films, some of which are alleged to have been exceptionally profitable.⁹²

Final figures for 1970 are not available, of course, but weekly trade journal reports of the 50 top box office films in 20 to 24 cities in *Variety* for the first 6 months of 1970 indicate that many "R," "X," and unrated sexually oriented films are doing very well at the box office.⁹³ Table 17 summarizes an analysis of the box office experience of those films which appeared in the "Top 50" list at least once during that period.

Table 18 projects the data supplied by Table 17 to the expected total U.S. box office receipts for all of 1970. Such a projection undoubtedly distorts the importance of "R," "X," and "sexually oriented unrated" films to some degree. The *Variety* survey is limited to 20-24 large cities and thus represents film exhibitions in metropolitan areas only. This provides a disproportionate allocation of the nationwide market for sexually oriented films, because theaters in many smaller cities and towns will not exhibit such films. Thus the actual nationwide percentage accounted for by "G" and "GP" films is probably significantly greater than the projection, and a 100% projection for "R," "X," and "unrated sexually oriented" (hybrid or new genre) films cannot be sustained. However, the projection is useful in that it marks the maximum possible traffic in sexually oriented films. The actual nationwide total receipts for sex-oriented films probably will be as much as 25% lower than the 100% projection shown. Table 18 cannot be interpreted as definitive of the 1970 box office experience for motion pictures as it represents only a very rough approximation of the market.

Exploitation films

The total yearly nationwide gross box office receipts of exploitation films have been the subject of some conjecture. The range of estimates made by experts varied from \$25-\$30 million per year to \$100 million per year. The lower estimates usually came from experts most familiar with general release and art films, while higher estimates were made by spokesmen from the exploitation industry.

Knowledgeable producers, distributors, and exhibitors in the exploitation industry formed a general consensus that approximately 600 theaters exhibit

90. Ibid. The three "X"-rated films on the list were *Midnight Cowboy* (\$11 million), *Can Hieronymus Merkin Forget Mercy Humppe and Find True Happiness?* (\$2.1 million), and *Medium Cool* (\$1 million). In the judgment of the author, it is likely that both *Midnight Cowboy* (the 1969 academy award winner) and *Medium Cool* would have been rated "R" if they had been released in mid-1970.

91. Ibid. The four hybrid films were *I Am Curious (Yellow)* (\$6.6 million); *Inga* (\$1.8 million); *Helga* (\$1.8 million); and *Fanny Hill* (\$1.2 million). The 12 remaining unrated films were, for the most part, released by major companies prior to the adoption of the current rating system.

92. Ibid.

93. *Variety*, Jan. 14, 1970 through July 8, 1970, "Top 50 Box Office Films"; see also the Appendix.

Table 17

FILMS APPEARING IN *VARIETY'S* WEEKLY LIST OF 50 TOP BOX OFFICE FILMS^a

Number of films	Rating	% of films	1970 gross receipts (\$ million) ^b	% of gross receipts
44	G	19.8%	\$ 44.4	25.9%
69	GP	30.9%	57.3	33.5%
46	R	20.6%	44.9	26.2%
15	X	6.8%	12.4	7.2%
19	Nonsex unrated ^c	8.9%	2.8	1.6%
29	Sexually oriented unrated ^d	13.0%	9.4	5.6%
222		100.0%	\$171.2	100.0%

^a *Variety* supplies the following information about its "Top 50" chart:

The chart . . . is a computerized boxoffice compilation of the Top 50 pictures currently playing in the 20-24 markets comprising the regular boxoffice reports of *Variety*. Ranking is based on the total reported gross for the week covered and includes Firstrun, Showcase, and Roadshow situations.

. . . The total dollar gross of the film to date in the markets reported by *Variety* occupies the last column on the chart.

. . . Analysis of the first year's input reveals that the theater sample includes 650 to 800 per week, depending on the number of showcase situations reported. This represents about 5% of the total U.S. theater population. . . .

. . . [T]he grosses on the chart represent approximately one-third of the dollar total for U.S. motion picture exhibition according to Dept. of Commerce figures.

The chart doesn't claim to be definitive in regard to the gross of each film. It is, however, a good barometer of films in current exhibition and their relative position in regard to each other. The fact that most of the films play through most of the markets results in a statistical standardization of any errors in the reports and doesn't change the essential relationship of a film to its competitors.

^b Many of the films listed in the "Top 50" during the first 6 months of 1970 were originally released in 1969. Only 1970 gross receipts were included.

^c Judgments on nonsexually oriented unrated films were made by the author. Such judgments were made on the basis of whether the film in question fit the description of a hybrid or new genre film. For the most part, such judgments were relatively easy to make, but in a few instances the issue was not clear-cut. The films classified as nonsex unrated are listed below; those films over which some question could be raised are shown with the 1970 reported box office receipts from the top 50 chart: *Gone With the Wind*; *Johnny Cash*; *If He Hollers, Let Him Go* (\$30,000); *Wild in the Streets*; *War and Peace*; *Sympathy for the Devil*; *It's Tough To Be a Bird*; *Putney Swope* (\$1,385,000); *Dr. Zhivago*; *Alaskan Safari*; *Barefoot in the Park*; *Trail Hunters*; *Commit a Murder*; *Ten Commandments*; *Love Me Please*; *Lion In Winter*.

^d See footnote c above. The films classified as "sexually oriented unrated" (hybrid or new genre) are listed below by box office range of receipts: over \$1.7 million, *Without a Stitch*; \$750,000 to \$925,000, *Vixen*, *I Am Curious (Yellow)*, *The Minx*; \$500,000 to \$650,000, *Pornography in Denmark (Censorship in Denmark)*, *Man and Wife*,* *Female Animal*; \$300,000 to \$400,000, *Sexual Freedom in Denmark*, *Pornography: Copenhagen, 1970 (Wide Open Copenhagen)*; \$200,000 to \$300,000, *Laughing Woman*, *Fuego*, *I Am Curious (Blue)*, *de Sade**; \$100,000 to \$200,000, *Curious Blue/Curious Yellow* (double feature), *Artful Penetration*, *Africanus Sexualis*, *Gutter Trash*, *Bora Bora*, *Coming Apart*, *Turn on to Love*, *Fanny Hill*,* *Love and Animals*, *Sidehackers*; under \$100,000, *Psycho Lover*, *Freedom to Love*, *Marital Fulfillment*, *Meat Rack*, *I, A Woman, Part II*,* *Marriage Manual*, *Libertine*,* *Art of Marriage*, *Camille 2000*.* (Those films marked with an asterisk had considerable gross receipts in 1969.)

Table 18

PROJECTED BOX OFFICE RECEIPTS, 1970:
BY FILM CLASSIFICATION^a

Rating	% of receipts	1970 projected receipts ^b (in millions of dollars)
G	28.9%	\$289
GP	33.5%	335
R	26.2%	262
X	7.2%	72
Nonsex unrated	1.6%	16
Sex-oriented unrated	5.6%	56
Art films ^c	—	30-40
Exploitation films ^d	—	60-70
	100.0%	\$1,100.0

^a Based on *Variety*, Top 50 Box Office Films. (See Table 17.)

^b *U.S. Industrial Outlook, 1970*, op. cit. (footnote 2), p. 437.

^c "Art films" play between 500 and 600 theaters in an established "art circuit." Few if any of these films reach the "Top 50," but the total box office receipts can be estimated at \$30-\$40 million, or 3% to 4% of the total, simply on the basis of the number of theaters exhibiting such films.

^d See next section of this report.

exploitation films each week and perhaps another 800 theaters play exploitation films on rare occasions. Estimates of weekly box office gross for the average exploitation theater varied from \$1,500 to \$2,500 per week, and a consensus of opinion developed around a figure of \$2,000. If the estimated 600 theaters playing exploitation films each week average the estimated \$2,000 weekly box office gross, total weekly gross is approximately \$1,200,000, and yearly box office gross can be estimated at approximately \$62,400,000.⁹⁴

Another way to estimate the total box office receipts for exploitation films would be to compare the number of exploitation theaters against the total number of theaters in the country and to apportion the estimated nationwide gross box office receipts to those theaters. The U.S. Department of Commerce estimated total box office receipts of \$1.065 billion from 13,750 theaters operating in the United States in 1969. If the spokesmen representing the exploitation film industry are correct in their estimate that there are an average of 600 theaters exhibiting exploitation features each week, exploitation theaters comprise 4.36% of the total number of exhibitors in the country. If exploitation theaters had average box office receipts, the share of total receipts for exploitation exhibitions was approximately \$46.4 million. In light of these data supplied by the 1967 Census of Business (see below) it is highly unlikely that gross receipts for exploitation films were this low.

The findings of the Census of Business 1967 can be projected to 1969. The Bureau of the Census reported that the average gross receipts of 256 full-time

94. Estimates given varied considerably: e.g., 400 to 800 theaters with an average weekly gross of \$1,500 to \$2,500. Thus, a range of from \$31,200,000 to \$104,000,000 yearly gross receipts was made by various individuals interviewed.

exploitation theaters was \$128,000 per year and that admission receipts of 200 of these theaters totaled \$115,000.⁹⁵ The 256 full-time exploitation theaters had gross receipts of \$32.7 million, and 200 reporting theaters had \$23 million in box office admissions in 1967. If these theaters were truly representative of the exploitation market, and if they maintained their position during the year 1969, total box office receipts of exploitation exhibition in 1969 could be projected at \$74.8 million (based on the average receipts of the 256 reporting theaters). It is likely, however, that those theaters which reported to the Census Bureau had higher average box office receipts than the average exploitation theater.

In summary, it can be estimated that the total box office receipts during 1969 for exhibition of exploitation films fell within a range of \$60 to \$70 million, the latter figure probably being somewhat more accurate. Industry sources claim that there has been a decrease in the exploitation market in 1970, primarily due to increased competition from sexually oriented general release films and from hybrid and new genre films. It has been reliably reported that box office receipts are down by 10% to 20% for most exploitation films as a result of this competition.

16-MILLIMETER FILMS

Within the past two or three years an additional type of sexually oriented films, known in the trade as "16-mm. films," has opened a rapidly expanding market which exhibits the most explicit films ordinarily shown in the locality. The term stems from the fact that almost all of the films are made and shown in 16-mm.⁹⁶

The product exhibited in 16-mm. theaters consists of highly sex-oriented movies aimed at the male heterosexual market, although a few cater to a male homosexual clientele. In general, 16-mm. films and theaters cannot be considered in the motion picture industry in any traditional sense but constitute a separate industry almost entirely local in nature. The characteristics of the 16-mm. film industry differ substantially from any of the motion pictures discussed above. Therefore, for convenience these films are discussed in this part.

As of August 1970 most 16-mm. theaters in the nation exhibit color films which consist of young females displaying their genitals. The films are usually silent and are accompanied by whatever phonograph records the management has on hand.

This pattern of exhibition is breaking down, however, as operators seek to "improve" their product and offer more varied programs; such improvements usually mean an increased sexual content and improved technical competence, especially the addition of sound. A few exhibitors now present full-sound, color movies which they claim to be an art form.

95. See Table 15.

96. Sixteen millimeter has heretofore merely referred to a film gauge. Almost all films exhibited in theaters are on 35-mm. film, while most home movies are 8-mm. This can lead to some confusion for the layman, but in the industry "16-mm. films" refer to highly sex-oriented films shown in particular theaters of the type described in this section.

Sixteen-mm. cameras can be very expensive (as high as \$8,000 to \$10,000), but the equipment is usually considerably less expensive than 35-mm. cameras. The primary advantage of 16-mm. equipment, however, is that the cameras weigh less than 40 lbs. and can be carried easily by one man. On the other hand, 35-mm. equipment is very bulky. This factor is quite important because most of the sex-oriented films shown in 16-mm. houses are made on location, such as in apartments, lofts, the open countryside, and so on.

The sexual content of 16-mm. film has been the most sexually explicit available in most localities during the past few years. Initially the films were of totally nude females with the pubic area exposed. These soon gave way to the depiction of totally nude females maneuvering to enable the camera to focus upon their genitalia. In a continuing attempt to lead in sexual explicitness in films, solitary female masturbation was depicted next, followed by mutual female masturbation, and then implied mutual cunnilingus.

The final stage of sexual explicitness began in 1969 and is now well under way in some 16-mm. theaters in several cities. These theaters currently are exhibiting films which graphically depict sexual intercourse; penetration is plainly visible, and oral-genital contact is shown in detail. In other words, in some cities 16-mm. theaters are exhibiting films which heretofore have been known as "stag films." These films differ from the sexually graphic new genre films described in the preceding section because little, if any, attention is given to providing a context for depicting such activity other than for erotic stimulation. At this time such films account for most of the 16-mm. business in some cities, although most 16-mm. theaters do not exhibit films with the described degree of sexual explicitness.

16-Millimeter Theaters

A majority of the 16-mm. theaters are run-down storefront buildings with level floors, as opposed to the sloped floors of most theaters, generally located in decaying downtown areas. The theaters are ordinarily cheaply furnished and give the overall impression of a "low budget operation." A few, however, were built as theaters and have been reopened. Most are quite small with as few as 50 seats or less, and the majority probably contain between 100 and 200 seats. Substantial renovation is often required to raise theaters to building code standards, which are sometimes rigorously enforced by the city. One operator stated he spent \$50,000 on an old theater to meet code requirements, and another stated that he expended \$65,000 to convert a store into a theater. However, entry into the business has usually been easy and inexpensive. A few thousand dollars is all that is required to rent an abandoned store and to buy a few dozen chairs and a 16-mm. projector and camera. As the audience becomes more demanding of sound and color films with some plot, "shoe-string" exhibitors will probably not be able to compete with larger, more sophisticated operations. Although some 16-mm. exhibitors have recovered a very large percentage of profit based on investment in the past year, as such films have become common in certain cities, those who attempted to "make a killing" found that their audience had deserted them.⁹⁷ Sixteen-millimeter theaters are currently opening at such a rapid rate that it is almost impossible to make an estimate of the nationwide total. Estimates have ranged as high as 600, although 200 is probably more accurate. The phenomenon is so new that even in particular cities an accurate count was not possible. While a few major metropolitan cities—primarily New York, Los Angeles, and San Francisco—have had a number of 16-mm theaters in operation

97. At least four or five 16-mm. theaters in San Francisco have recently closed because they did not supply the product desired by customers.

for a year or two, in the majority of cities such theaters have only recently opened, as, for instance, in Dallas, Honolulu, Houston, San Diego, Seattle, and Detroit.

As of June 1970 there were perhaps three dozen such theaters in New York, approximately 14 in San Francisco (the avant-garde of the business), four or five in San Diego, four or five in Seattle, six or seven in Detroit, perhaps as many as 100 in Los Angeles (although estimates range as high as 200 for Los Angeles), and a few others scattered around the country.

The operation of a 16-mm. theater can be quite profitable for a sole proprietor or a group of individuals. Part of the profitability stems from the fact that admission prices are higher than for other theaters: admission is seldom less than \$3 and usually is \$4 or \$5. The theaters are usually open daily for 12 to 14 hours.

At least two theaters in San Francisco gross between \$8,000 and \$10,000 per week with 200 to 300 customers per day, seven days per week. The owner of one of these stated that his box office receipts were \$420,000 in 1969 and that he paid taxes on a \$50,000 profit. The exhibitor said that his weekly average increased to \$9,000 per week in 1970. He allowed the author to review his books, which disclosed the following box office receipts for a single film program which he exhibited for 6 weeks in the spring of 1970:

1st week	\$13,000
2nd week	\$10,000
3rd week	\$ 8,000
4th week	\$ 7,000
5th week	\$ 6,000
6th week	\$ 5,600

The exhibitor stated that a 6-week run for a 1½-hour program appeared to be slightly too long. He had decided to begin a new program the following week.

Table 19 is a copy of a statement of income furnished to the Commission staff by another 16-mm. theater owner. This income report shows that during January-February 1970 admissions totaled \$75,754 (an annual rate of approximately \$450,000). During this period the corporation had a net profit of \$5,380. Included in expenses were salaries to the officers of the corporation. The chief officer estimated that the profit before salaries was approximately 15% of gross sales during 1969.

Most 16-mm. theaters are thought to do considerably less box office business than the \$8,000 to \$10,000 income per week described above. An average gross of box office receipts totaling \$3,000 to \$4,000 per week is probably the maximum for most 16-mm. theaters, and doubtless many of them gross considerably less.

The income statement presented in Table 19 reveals that the profits of the most successful 16-mm. theaters are not exceptionally high. However, "leaders" in the industry such as these owners incur greater expenses because of their desire to lead. Such theater operators make their own films at considerable expense. For example, Table 20 is the proposed budget for 90 minutes of 16-mm. film, which probably will be shown for only one week.

Table 19

INCOME STATEMENT—16-mm. THEATER—JAN.—FEB., 1970

Doe & Doe
Public Accountant and Auditor
San Francisco, California

"X" 16-mm Theater, Inc.

Date: February 28, 1970

This statement has been prepared from records as available to us without verification or audit, and accordingly we do not express an opinion on this report.

<i>Statement of operations</i>	<i>Year to date</i>
Income:	
Admissions	\$75,754.55
Miscellaneous Income	<u>82.59</u>
Total income	\$75,837.14
Cost of sales:	
Film	\$24,014.00
Sound	<u> </u>
Projection Room	687.65
Miscellaneous Costs	<u> </u>
Total cost of sales	<u>\$24,701.65</u>
Gross profit	\$51,135.49
Expenses:	
Rent	\$ 7,408.09
Payroll—Administration	14,000.00
Payroll—General	3,595.55
Payroll—Projection room	4,914.04
Operating expenses	1,883.94
Office expense	157.17
Auto/truck expense	320.86
Promotion	30.00
Advertising—Media	4,540.85
Insurance	511.31
Legal and accounting fees	4,560.20
Taxes and licenses	195.80
Payroll tax expense	1,932.36
Maintenance and repair	926.06
Depreciation	<u> </u>
Telephone and utilities	749.99
Miscellaneous expense	<u>29.32</u>
Total expense	<u>\$45,755.54</u>
Net profit or loss	<u>\$ 5,379.95</u>

The national scene

At present, 16-mm. theaters are local operations. Recognizable film titles moving from city to city are virtually unknown. Because such films tend to be virtually interchangeable, owner-operators of the theaters either make their own films or buy them from local photographers or others located in other cities.

Table 20

PROPOSED BUDGET (FOR 16-mm. FILMS)

90 Minute Format—3,200 feet per week

Original	4,200 ft. @ \$.07	\$294.00
Original proc.	4,200 ft. @ .06	252.00
Work print	3,200 ft. @ .095	160.00
Release	3,200 ft. @ .15	480.00
Mag film	3,200 ft. @ .017	54.30
Mag tape—6,000 ft.	600 ft. @ 1.19	11.19
Records		15.00
Sales tax		69.66
Payroll		750.00
Payroll tax		62.25
Models—petty cash		
Miscellaneous purchases		501.60
Total		\$2,650.00

Because quite a number of 16-mm. exhibitors buy films produced elsewhere, there is some distribution of films beyond the place of origin. However, as of June 1970 sales of this sort were usually conducted on a personal level. A nationwide distribution system has not yet been established, and such sales that do occur are usually outright purchases of prints rather than film rentals.⁹⁸

Supposedly three film distributors have recently entered the field to facilitate nationwide distribution of 16-mm. films. However, their impact has not yet been felt. It is probable that some national distribution of 16-mm. films will be accomplished by the end of 1970.

The 16-mm. motion picture business is in its infancy and has not yet been consolidated. Thus far, 16-mm. films have had only a minimal economic impact on the national traffic and distribution of sexually oriented materials. However, this market is rapidly expanding, and the importance of these theaters is increasing. By the time this report is published, it is possible that 16-mm. theaters will have assumed a more important role in the overall traffic of sexually oriented films.

APPENDIX

Gross receipts for MPAA-rated and unrated films

by Richard S. Randall

The study described below and summarized in Tables 1 through 9 attempts to analyze box office or gross income for motion pictures according to their MPAA rating and also for those unrated films released after the rating system went into effect on November 1, 1968. It should be pointed out at the outset that

98. The popular gimmick of advertising 16-mm. films "direct from San Francisco" implies national distribution. However, San Francisco's 16-mm. film makers indicated that the vast majority of such claims were spurious (as of June 1970). They believed that most of such films so advertised were actually made elsewhere.

completely accurate data on the amount of paying patronage for particular motion pictures is almost impossible to obtain unless one is privy to the accounts of the film proprietors or to their tax returns. Perhaps nowhere is the characteristic guardedness of the American film industry more evident than in the matter of the income of particular films. A major reason for this is that the income or "gross" a film has initially often determines much of the amount it will have for the remainder of its commercial life. The result is like that of a bandwagon effect or, in more frenetic cases, a stampede. A film like *Bullit* or *Easy Rider* with large grosses in its first engagements will not only be sought after by more exhibitors and film buyers, but the bidders will also pay higher rentals for it. Conversely, a film like *The Birthday Party* or *A Walk With Love and Death* which has done very badly in its early engagements will quickly disappear from sight, good critical reviews usually notwithstanding. Because of this self-fulfilling element, there is a proprietorial interest and tendency to exaggerate the gross, particularly in key, early engagements. This cautionary point must be kept in mind in focusing on the absolute amounts reported for particular films.

There are three major industry sources of published information on grosses of current features, and all three have been used in this study. The published lists of information are *Variety's* "50 Top Grossing Films," *Boxoffice's* "Barometer," and *Motion Picture Herald's* "Film Buyer's Rating." All three lists appeared weekly during the period covered by this study, November 1, 1968, through June 1, 1970. In addition to these lists, *Variety* also publishes an annual list of "Big Rental Films" of the year, which includes all films having reported American and Canadian grosses of \$1 million or more during the year.

Each of the three publications uses a different measure, and each measure is based on somewhat different sources. *Variety* reports dollar figures from early runs, usually first runs. The publication's sample is made up of 920 theaters in 24 cities, including the 10 largest film marketing areas in the country. Although this sample represents only about 7% of all theaters in the country, *Variety* estimates that it covers 30% of the entire annual exhibition revenue in the country. In contrast, the publication's annual list of "Big Rental Films" includes *all* reported grosses for those films.

Boxoffice reports an index of the gross for the opening week of a run in any of 20 large and average sized cities in the country in which the film has played. The gross for a film is expressed as a percentage of what is regarded as "normal" business by the theater manager reporting. With 100 taken as "normal," the figures purportedly show the percentage or gross above and below that mark. The total score for a film is the average of the percentages reported from each city.

In *Motion Picture Herald*, grosses are rated "excellent," "above average," "average," "below average," and "poor," rather than being given numerical representation. The ratings are made by film buyers for theater circuits or chains and for independent exhibitors. The single rating published for a film is the median of all ratings received from the film buyers for that film. In a given week, 1,500 to 2,000 "playdates" are represented in the rating of 75 to 80 current features.

In using the *Boxoffice* and *Motion Picture Herald* measures in this study, a tabulation was made for each MPAA-rated film and for each unrated film that appeared on each publication's list after the MPAA rating system went into

effect. The tabulation covered films released during the first 19 months of the rating system, that is, films which appeared on a list from the first published issue of November 1968 through the first issue of June 1970. (The term "unrated," as used in this report, refers only to unrated films released after the rating system began.) The measure of the gross tabulated for each film was the one the film had the last week that it appeared on a list. For films still on a list in the cutoff issue of June 1970, the measure of the gross tabulated was the one appearing in the cutoff issue.

A different procedure was used in the case of *Variety's* weekly listing of the "50 Top Grossing Films," since the publication compiles an annual summary of grosses of all films that played in the 920 sample theaters. The advantage of this annual list is that it not only includes all films that played in the sample theaters during the year, regardless of whether they were ever counted among the weekly "Top 50," but that it also includes all reported grosses for these films, rather than only those reported the last time the film appeared in the weekly "Top 50." However, this information (summarized in Table 1) is available only through December 31, 1969, since *Variety* does not keep a running weekly tally for all films playing in its sample theaters, but only for the "Top 50." Therefore, reported grosses for the months of 1970 covered in this study were determined through a procedure similar to the one described above for *Boxoffice* and *Motion Picture Herald*. Grosses were compiled for the first 6 months of 1970 on the basis of the amount reported for each film the last time it appeared among the "Top 50" minus whatever grosses, if any, had been reported for it before January 1, 1970. These findings are summarized in Table 8.

Two points need to be kept in mind in examining the numerical data. The first one (mentioned earlier) is that there may be an exaggeration in the absolute figures—the dollar totals in *Variety* and the percentages of the "normal" gross in *Boxoffice*—for particular films. The point is illustrated in Table 3, which sets out medians for *Boxoffice* percentages in each city for each rating category and for unrated films. Of the 100 medians in the table, only one is below 100, the index of "normal" gross, and only four others are at 100. The second point that should be kept in mind is that distribution within any of the groupings used in Tables 1, 2, 3, 7, and 8 is highly and positively skewed as a result of some extraordinary grosses reported for the most successful films. For example, nearly 58% of the total gross reported for 22 "X"-rated films in 1968 and 1969 in *Variety's* sample 920 theaters was accounted for by a single film, *Midnight Cowboy*. As a result of the positive skewing in all groupings, the arithmetic mean or average is not as desirable a measure of central tendency as the median. Therefore, medians have been employed in addition to averages in Tables 1, 2, 8, and 9 and exclusively so in Table 3, which deals with the breakdown of *Boxoffice's* percentages by city.

With these points in mind, several general observations are possible from the data in the tables. First, the differences in reported grosses among the three major rating groupings—"G," "GP," and "R"—are relatively small. However, as a group "G" films tend to have consistently higher grosses than either "GP" or "R" films, and "R" films tend to have consistently higher grosses than "GP" films. This rank order is found almost without exception among the various measures used in this study. This, of course, does not mean that "G" films are the most profitable for their producers, since costs of production must be taken into account before that

calculation can be made. But the data indicate that "G" films do not "die" at the box office as often claimed in some quarters in the industry.

The data on "X" films is mixed. With the exception of *Midnight Cowboy*, they tended to fare poorly in 1968 and 1969 in comparison to other films in *Variety's* sample 920 theaters. The median gross of 22 films in this survey was only one-seventh as large as that for all rated films (Table 1). However, 15 "X" films listed among *Variety's* weekly "Top 50" in the first 6 months of 1970 had a median higher than that of any of the other three rating categories or that for unrated films (see Table 8). The *Boxoffice* data, extending to June 1970 and covering 14 "X" films, also reveals higher average and higher median grosses for "X" films than for those of other rating categories or unrated films (see Table 2). There are two likely explanations for this apparent inconsistency in the measures of "X" film grosses. One is simply that *Variety's* 920 sample theaters, representing about 30% of the commercial market, include many run-of-the-mill "X" films, while the publication's list of "Top 50" and *Boxoffice's* "Barometer" survey tend to include only the more popular, better promoted, and therefore higher grossing "X" films. Also, in the case of *Boxoffice* only the gross of the first week of a first run is reported. Should a film do well because of a novelty effect, any possible "wearing off" of this effect would not be caught by the publication's survey. A second explanation is that the fortunes of "X" films have improved in 1970 over those in 1969. Of the 14 "X" films reported by *Boxoffice* in the first 19 months of the rating system, seven were in the first 5 months of 1970. These latter films include some high grossing ones like *The Damned* and *What Do You Say to a Naked Lady?* released too late in 1969 to have recorded a very high gross in *Variety's* 920 sample theaters for that year. If "X" films have fared better in 1970 than in 1969, it may be due in no small part to the extraordinary success of *Midnight Cowboy* in early and mid-1969. Its impressive grosses and wide critical acclaim (which lent a measure of respectability to the "X" classification generally) very likely had the effect of opening doors for many other "X" films.

Findings for unrated films released after the rating system began are also mixed. In both *Boxoffice* (Tables 2 and 3) and *Motion Picture Herald* (Table 4), unrated films as a group had higher grosses than did those of any of the rating categories. However, in *Variety's* weekly "Top 50" during the first 6 months of 1970 (Table 8) and *Variety's* "Big Rental Films of 1969" (Table 9), unrated films had lower average and lower median grosses than did any of the categories of rated films. A good check here would have been *Variety's* sample 920 theaters for 1969 (Table 1). However, the writer did not attempt to make such a tabulation for unrated films because of the difficulty in compiling a complete list of unrated films released since the rating system went into effect. Of approximately 680 unrated films that played in *Variety's* sample 920 theaters in 1968 and 1969, there is no sure practical way of calculating either which ones or how many were released after the rating system began.

The figures for unrated films must be interpreted with special caution as to generalizing about a classification, because only a small fraction of all unrated releases are included in any of the four measures mentioned above. It is known, for example, that about 21% of the films released since the rating system began

are unrated.¹ Yet only 7% of the films covered by *Boxoffice* and only 4% of those covered by *Motion Picture Herald* were unrated. This means that the vast majority of unrated releases are not included in either of these two measures. Had they been, unrated films as a class would undoubtedly have fared much more poorly by both of these measures. On the other hand, it seems clear from both the *Boxoffice* and the *Motion Picture Herald* figures that the top-grossing unrated films more than hold their own with top-grossing rated films of any category.

Approximately two-thirds of the unrated films in the various measures in this study are what might be termed "sex-oriented." As a group these tend to have somewhat higher grosses than do nonsex-oriented unrated films. However, this observation is made with considerable caution, because in all the measures of grosses analyzed in this study, unrated films are relatively few in number; and because, as already mentioned, the various measures reach only a small fraction of all unrated releases. With this caveat in mind, it can be said from the evidence that is at hand that sex-oriented films tend to dominate the unrated class. For example, taking *Variety's* weekly "Top 50" (Table 8), which includes 44 unrated films, the most of any of the various measures of grosses analyzed, 29 or 65.9% have been judged to be sex-oriented by the Commission on Obscenity and Pornography.² They accounted for 78.8% of the grosses for the 44 unrated films. Their average gross was \$317,655 compared with only \$163,333 for nonsex-oriented films, while their median gross of \$166,000 was more than twice the \$72,000 for nonsex-oriented films.

As a final observation, the *Boxoffice* breakdown by city (Table 3) is probably not suitable for comparing one city with another, since reports from some cities seem to be marked by a greater degree of exaggeration than those from other cities. However, the city data is useful in comparing one grouping of films against another within a city. In making such comparisons, two of the general findings above—the relative strength of "G" films and the relative strength of leading "X" and leading unrated films—are borne out. If only the four MPAA rating categories are taken, "G" has the highest median in five cities, "X" in 14, and both "X" and "R" in one. In no city does "GP" or "R" alone have the highest median. If the fifth category—that of unrated films—is included in the analysis, "X" films are first in 10 cities, unrated films are first in six, "X" and unrated films are tied in one, and "G" films are first in three. If the five categories are ranked for each city, with a value of one given to the category with the highest median, two for the next highest, and so on, the average rank order would be as follows: "X," "unrated," "G," "R," and "GP." Again, any analysis of the cities is subject to the same limitations noted earlier in working with *Boxoffice* figures, namely, that they measure only the first week's gross in a city and do not cover many run-of-the-mill films.

1. Richard S. Randall, "Classification by the Motion Picture Industry," Technical Reports of the Commission on Obscenity and Pornography (Washington, D.C.: U.S. Government Printing Office, 1971).

2. They are: *Africanus Sexualis*, *Art of Marriage*, *Artful Penetration*, *Bora Bora*, *Camille 2000*, *Coming Apart*, *de Sade*, *Fanny Hill*, *Female Animal*, *Freedom to Love*, *Fuego*, *Gutter Trash*, *I Am Curious (Blue)*, *I Am Curious (Yellow)*, *I, A Woman, Part II*, *Laughing Woman*, *The Libertine*, *Man and Wife*, *Marriage Manual*, *Marital Fulfillment*, *Meat Rack*, *Minx*, *Pornography in Copenhagen, 1970*, *Pornography in Denmark*, *Sexual Freedom in Denmark*, *Vixen*, and *Without a Stitch*.

Table 1

Grosses for MPAA-rated films in Key Runs, 1968 and 1969, reported in *Variety*, analyzed by rating category^a

Rating	Films		Gross (\$1,000)			
	No.	%	Total ^b	%	Average	Median
G	96	29.9	95,854	38.4	998.479	364.387
GP (M)	127	39.6	81,730	32.7	643.543	291.298
R	76	23.7	59,342	23.8	780.815	223.623
X	22	6.9	12,763	5.1	580.136	37.767
Total	321	100.1 ^c	249,689	100.0	777.847	253.897

^a Compilations do not include grosses for seven films rated in 1969 or in 1970 after already having been released in 1969, since much or all of their gross came during a period in which they were unrated. These films, the dates of their rating, their rating, and their reported gross in 1969 are as follows: *2001—A Space Odyssey*, June 2, 1969 ("G"), \$4,058,400; *Charly*, October 20, 1969 ("GP"), \$3,993,528; *Belle de Jour*, April 21, 1969 ("R"), \$618,843; *It Won't Rub Off, Baby*, October 6, 1969 ("GP"), \$22,300; *Benjamin*, February 24, 1969 ("X"), \$6,886; *Caressed*, March 16, 1970 ("R"), \$5,250; *With Six You Get Eggroll*, February 16, 1970 ("G"), \$1,450.

^b In the compilations, grosses for individual films were rounded off to the nearest thousand dollars.

^c The percentage total does not equal 100 because of rounding.

Table 2

Boxoffice "Barometer" index of motion picture grosses, November 4 1968 to June 8, 1970, by MPAA rating and for unrated features released after November 1, 1968^a

Rating	No. of films	Avg. no. of cities reporting ^b	Index percentages		
			Range	Average	Median
G	69	11.9	75-465	192.4	164
GP (M)	106	12.1	80-381	169.2	148
R	69	11.9	86-454	193.6	155
X	14	12.1	118-451	219.6	198.5
Total	258	12.0	75-465	184.6	159.5
Unrated	20	10.7	86-392	206.5	211.5
Total	278	11.9	75-465	186.2	162

^a The *Boxoffice* "Barometer" index for each film is its percentage of what is regarded as "normal" business or "100" at the theater by the theater manager reporting. Estimates are based only on the opening week of an engagement.

^b Twenty cities are included in the *Boxoffice* "Barometer" survey. They are: Baltimore, Boston, Buffalo, Chicago, Cincinnati, Cleveland, Denver, Detroit, Hartford, Kansas City, Los Angeles, Memphis, Minneapolis, New Haven, New Orleans, New York, Omaha, Portland (Ore.), San Francisco, and Seattle.

Table 3

Median percentages of *Boxoffice* "Barometer" index of motion picture grosses, November 4, 1968 to June 8, 1970, in 20 cities by MPAA rating and for unrated features released after November 1, 1968^a

City	MPAA Rated									
	G		GP (M)		R		X		Unrated	
Baltimore	200	(41)	185	(68)	190	(39)	170	(10)	195	(14)
Boston	125	(56)	150	(93)	170	(61)	225	(13)	200	(17)
Buffalo	130	(31)	125	(55)	115	(37)	125	(12)	150	(11)
Chicago	190	(20)	200	(44)	225	(28)	230	(7)	250	(7)
Cincinnati	245	(46)	175	(65)	190	(42)	255	(9)	200	(9)
Cleveland	175	(29)	150	(37)	145	(26)	145	(6)	195	(11)
Denver	150	(59)	140	(82)	150	(46)	185	(7)	250	(13)
Detroit	115	(42)	105	(61)	95	(38)	100	(5)	100	(9)
Hartford	120	(55)	125	(88)	120	(58)	165	(13)	140	(8)
Kansas City	220	(59)	200	(91)	205	(57)	275	(12)	185	(17)
Los Angeles	280	(47)	200	(77)	250	(52)	355	(11)	150	(14)
Memphis	195	(45)	110	(67)	105	(43)	155	(9)	185	(14)
Minneapolis	175	(31)	150	(64)	195	(36)	220	(10)	205	(11)
New Haven	110	(55)	120	(86)	125	(62)	145	(11)	125	(17)
New Orleans	300	(18)	295	(21)	260	(10)	365	(3)	400	(3)
New York	230	(42)	230	(71)	290	(55)	290	(12)	400	(16)
Omaha	110	(35)	100	(49)	115	(30)	125	(2)	100	(3)
Portland, Ore.	180	(35)	165	(50)	225	(23)	350	(4)	185	(9)
San Francisco	185	(41)	160	(65)	175	(50)	200	(7)	200	(14)
Seattle	100	(33)	100	(50)	120	(28)	180	(7)	150	(6)

^a The *Boxoffice* "Barometer" index for each film is its percentage of what is regarded as "normal" business or "100" at the theater by the theater manager reporting. Estimates are based only on the opening week of an engagement.

Numbers in parentheses indicate the number of films in the category for which "Barometer" percentages were reported in the city.

Table 4

Film buyers rating of motion picture grosses, November 6, 1968 through June 3, 1970, reported in *Motion Picture Herald*, analyzed by MPAA rating and for unrated features released after November 1, 1968

MPAA Rating	Excellent		Above average		Average		Below average		Poor		Total	Gross index ^a
	No.	%	No.	%	No.	%	No.	%	No.	%		
	Film		Buyers		Rating							
G	5	7.9	10	15.9	24	38.1	19	30.2	5	7.9	63	1.86
GP (M)	5	5.6	15	16.9	28	31.5	27	30.3	14	15.7	89	1.66
R	5	10.4	8	16.7	14	29.2	17	35.4	4	8.3	48	1.85
X	1	11.1	1	11.1	4	44.4	1	11.1	2	22.2	9	1.78
Total	16		34		70		64		25		209	1.74
Restrictiveness index ^b	2.13		2.00		1.97		2.00		2.12		2.01	
Unrated films	1	11.1	2	20.0	7	77.7	0		0		10	2.44
Total	17		36		77		64		25		219	1.80

^a The gross index is an average based on a value of zero for each film rated "poor," a value of one for each rated "below average," two for each rated "average," three for each rated "above average," and four for each rated "excellent."

^b The restrictiveness index is an average based on a value of one for each "G" film, two for each "GP" ("M"), three for each "R," and four for each "X."

Table 5

Top grossing MPAA-rated and unrated films in Key Runs,
reported in *Variety*, 1968 and 1969

Film	Gross
G ^a	
Funny Girl ^b	\$11,096,561
Oliver!	10,269,146
The Love Bug	5,515,662
True Grit	4,899,170
Chitty, Chitty, Bang, Bang	4,087,456
Krakatoa East of Java	3,552,108
Sweet Charity	3,538,617
Ice Station Zebra	2,902,104
Shoes of the Fisherman	2,736,374
If It's Tuesday, It Must Be Belgium	2,519,324
GP (M) ^c	
Bullit	\$7,758,728
Butch Cassidy and the Sundance Kid	5,056,592
Winning ^d	3,108,248
Where Eagles Dare	3,079,885
The April Fools	2,921,836
On Her Majesty's Secret Service	2,696,061
Paint Your Wagon	2,663,535
The Night They Raided Minsky's	2,121,093
MacKenna's Gold	2,056,379
What Ever Happened to Aunt Alice?	1,945,156
R	
Goodbye, Columbus	\$8,216,164
Easy Rider	6,812,878
Alice's Restaurant	3,701,847
Candy	3,640,327
The Wild Bunch	3,151,760
Last Summer	2,846,211
Three in the Attic	2,237,216
If...	2,190,894
Lady in Cement	1,888,402
100 Rifles	1,655,728
X	
Midnight Cowboy	\$7,346,975
Can Hieronymus Merkin Ever Forget Mercy Humppe and Find True Happiness?	1,348,613
Medium Cool	1,266,660
All the Loving Couples	729,119
Greetings	631,234
Sweden—Heaven and Hell	458,161
Best House in London	364,655
Miracle of Love	238,779
Birds in Peru	93,067
The Sisters	50,338

Table 5 Cont'd

	Unrated ^e
I am Curious (Yellow)	\$7,903,057
The Killing of Sister George	3,252,774
Fanny Hill	2,016,402
Vixen	1,891,097
Faces	1,777,649
War and Peace ^f	1,765,292
Slaves	1,606,595
Putney Swope	1,468,971
de Sade	1,421,770
The Libertine	1,034,030

^aThe category does not include *2001—A Space Odyssey* in release as an unrated film through June 2, 1969. It had a 1969 reported gross of \$4,058,400.

^b*Funny Girl* was rated January 27, 1969, after already being in release. Its gross in the table, therefore, does not include any income reported for 1968.

^cThe category does not include *Charly*, rated October 20, 1969, after already being in release. The 1969 reported *Variety* gross for *Charly* was \$3,993,528.

^dDuring its early release, March 24 through May 26, 1969, *Winning* circulated with a "G" rating.

^eThe category includes only films released after the rating system began, November 1, 1968.

^f*War and Peace* had a very limited distribution in 1968 before the rating system began.

Table 6

Top grossing MPAA-rated and unrated films reported in *Boxoffice*
"Barometer," November 4, 1968 through June 8, 1970^a

Film	Barometer index	Number of cities reporting
G		
Airport	465	10
Hello, Dolly	423	15
The Love Bug	394	15
Funny Girl ^b	375	20
Oliver!	349	19
A Boy Named Charlie Brown	330	6
Sweet Charity	285	17
Krakatoa East of Java	274	17
Goodbye, Mr. Chips	272	18
Battle of Britain	268	17
GP (M)		
Paint Your Wagon	381	19
Bullit	370	16
Patton	368	16
Butch Cassidy and the Sundance Kid	340	19

Table 6 Cont'd

Z	339	15
The Reivers	336	17
On Her Majesty's Secret Service	322	18
Cactus Flower	318	18
They Shoot Horses, Don't They?	299	17
The April Fools	278	17
R		
Easy Rider	454	17
Fellini Satyricon	434	5
Bob & Carol & Ted & Alice	426	17
M*A*S*H	425	16
Woodstock	405	14
The Boys in the Band	400	5
Goodbye, Columbus	344	19
Alice's Restaurant	338	18
If . . .	288	18
The Adventurers	287	16
X		
Midnight Cowboy	451	18
The Damned	300	16
What Do You Say to a Naked Lady?	271	17
All the Loving Couples	236	14
Monique	220	8
Cherry, Harry, and Raquel	200	6
Can Hieronymus Merkin Ever Forget Mercy Humppe and Find True Happiness?	197	15
Sweden—Heaven and Hell	190	10
Miracle of Love	189	6
The Best House in London	165	13
Unrated ^c		
Without a Stitch	392	7
The Minx	280	11
War and Peace ^d	265	16
Putney Swope	253	12
The Killing of Sister George	252	18
Vixen	241	13
Two	233	11
Slaves	228	15
Coming Apart	225	7
de Sade	222	18

^aThe *Boxoffice* "Barometer" index for each film is its percentage of what is regarded as "normal" business or "100" at the theater by the theater manager reporting. Estimates are based only on the opening week of an engagement.

^b*Funny Girl* was rated January 27, 1969, after already being in release.

^cThe category includes only films released after the rating system began, November 1, 1968.

^d*War and Peace* had a very limited distribution in 1968 before the rating system began.

Table 7

MPAA-rated and unrated films reported to have had "excellent" grosses by consensus of film buyers, reported in *Motion Picture Herald*, November 6, 1968 through June 3, 1970

- G
- Airport
 - The Longest Day^a
 - The Love Bug
 - 101 Dalmations^a
 - Swiss Family Robinson^a
- GP (M)
- Bullit
 - Butch Cassidy and the Sundance Kid
 - Cactus Flower
 - They Shoot Horses, Don't They?
- Z
- R
- The Adventurers
 - Bob & Carol & Ted & Alice
 - The Boys in the Band
 - Easy Rider
 - M*A*S*H
- X
- Midnight Cowboy
- Unrated^b
- Putney Swope

^aReissues, rated upon reissue.

^bThe category includes only films released after the rating system began, November 1, 1968.

Table 8

1970 grosses for films listed in *Variety's* weekly reports of "50 Top Grossing Films," January 1, through July 1, 1970

Rating	Films		Gross			
	No.	%	Total ^a	%	Average	Median
G	44	20.2	\$44,406,000	26.0	\$1,009,227	\$318,500
GP	69	31.7	57,341,000	33.6	831,029	286,000
R	46	21.1	44,915,000	26.3	976,413	292,500
X	15	6.9	12,370,000	7.2	824,667	351,000
Unrated ^b	44	20.2	11,692,000	6.8	265,727	117,500
Total	218	100.3 ^c	\$170,724,000	99.9 ^c	\$783,138	\$269,000

^aIn the compilations, grosses for individual films were rounded off to the nearest thousand dollars.

^bThe category includes only films released after the rating system began, November 1, 1968.

^cThe percentage total does not equal 100 because of rounding.

Table 9

Grosses for films listed in *Variety's* "Big Rental Films of 1969"

Rating	Films		Gross			
	No.	%	Total ^a	%	Average	Median
G	26	32.9	\$122,150,000	41.2	\$4,696,538	\$3,000,000
GP (M)	28	35.4	92,079,000	31.0	3,288,536	2,050,000
R	18	22.8	56,835,000	19.2	3,157,500	2,250,000
X	3	3.8	14,100,000	4.8	4,700,000	2,100,000
Unrated ^b	4	5.1	11,395,000	3.8	2,848,750	1,797,500
Total	79	100.0	\$296,559,000	100.0	\$3,753,911	\$2,200,000

^aIn the compilations, grosses for individual films were rounded off to the nearest thousand dollars.

^bThe category includes only films released after the rating system began, November 1, 1968.

Part II

Books and

Magazines

The distribution and sale of sex-oriented publications in the United States can be roughly divided into two categories: (a) "mass market" books and magazines distributed to a general audience, and (b) self-labeled "adults only" printed matter which comprise a limited submarket. In terms of economic impact, the "mass market" is far more important.

THE MASS MARKET

The book and periodical publishing industry in the United States is the largest and most diversified in the world. Every year hundreds of separate publishing companies, some very large and many quite small, produce tens of thousands of new titles and reissues of hard-cover books, paperbound books, and periodicals. The majority of all publications are directed to special interests, but thousands are published for mass market consumption.

As of 1970 publications sold on the mass market are not normally the subject of obscenity prosecutions¹ because ordinarily they cannot be considered obscene under current legal standards. However, this does not preclude a discussion of such publications, because (a) a substantial percentage of the American population believes certain mass market publications are obscene, irrespective of contrary court decisions;² (b) some members of Congress similarly disagree with the current judicial interpretations of obscenity laws;³ and (c) many mass market

1. This, of course, has not always been true. Many mass market publishers have been involved in obscenity litigation in the past; for instance, *Larkin v. G. P. Putnam's Son's*, 14 N.Y.2d 349 (1964) (*Fanny Hill*); *Commonwealth v. Dell Publications, Inc.*, 427 Pa. 189 (1967) (*Candy*); *People v. Bantam Books, Inc.*, 172 N.Y.2d 515 (1958) (*Ten North Frederick*); *People v. Pocket Books, Inc.*, 239 N.Y.2d 631 (1963) (*The Carpetbaggers*). Since World War II, prosecutions of mass market materials have almost always been unsuccessful.

2. Adults interviewed in a Commission-sponsored national survey characterized a wide range of books and magazines as "pornographic." One or two of every 10 adults reported seeing something they considered pornographic in *Esquire*, *Life*, *Look*, and *Playboy*. The only magazine mentioned fairly frequently by men was *Playboy*. The books most frequently considered pornographic by women were *Valley of the Dolls* and *Portnoy's Complaint*; men mentioned only *Portnoy's Complaint* frequently.

Many other books and magazines were considered pornographic by one or more people; some of which were nationally distributed books and magazines such as *Reader's Digest* and *The Carpetbaggers*. Publications of the "adults only" variety were mentioned infrequently in the survey because mass market materials are seen by the majority of the population; a relatively small minority of people come into contact with "adult" publications. Herbert Abelson et al., *Public Attitudes Toward and Experience with Erotic Materials*, Technical Reports of the Commission on Obscenity and Pornography (Washington, D.C.: U.S. Government Printing Office, 1971).

Zurcher, in interviewing a group of citizens in two conservative towns (one located in the Southwest and the other in the Midwest) found that more than seven out of 10 considered *Playboy* to be obscene. Louis Zurcher and Robert G. Cushing, *Some Individual Characteristics of Participants in Ad Hoc Anti-Pornography Organizations*, *ibid.*

3. For example, Representative Gerald Ford, Minority Leader of the House of Representatives, recently stated that the magazine *Evergreen* was "pornographic," *Congressional Record* (House), April 15, 1970, p. 3116. This is an indication of the concern about the sexual content of mass market periodicals. The disparity of opinion on this subject is pointed up by several very favorable critical reviews of the magazine which labeled it as "one of the most important literary periodicals," as in *Newsweek*, Nov. 18, 1968, p. 125; *Library Journal*, Nov. 15, 1968, p. 4271.

publications are definitely sexually oriented, irrespective of their legal status under the current interpretations of obscenity laws.

Book publishing

Approximately 30,000 new titles or new editions were published each year from 1967 through 1969. Of these, less than 10% were classified as fiction, the category which usually evokes the most criticism for sexual content.⁴

The last official Census of Business in 1967 disclosed receipts by publishers of \$2.1 billion. In 1970 the Department of Commerce estimates that publishers' receipts will reach \$2.5 billion.⁵ Table 1 summarizes the trends and projections for the book publishing industry from 1960 through 1970, according to the Department of Commerce.⁶

Of this rather impressive total receipts by publishers, almost 80% are of no conceivable interest with regard to possible "obscenity." The vast majority of publishers' receipts are from special interest books such as religion, law, medicine, science, technical, juvenile, and textbooks. The latest industry estimate of total receipts was \$2.57 billion for 1968.⁷ Of this total, only "adult trade" books (\$197 million hardbound and \$38 million paperbound), book clubs (\$204 million), and wholesaled (mass market) paperbound (\$150 million) could conceivably be of interest to the Commission. After deducting foreign sales, total publishers' receipts for all books which might possibly fall within the scope of an investigation into sexually oriented materials are no more than \$550 million.⁸

Informed industry sources estimate that publishers recover an average of 55% of the retail sale price of books; book club sales are at retail.⁹ Thus, it can be estimated that retail sales of any conceivable interest to the Commission totaled approximately \$833 million. Of course, only a fraction of the books included in this total could be thought to be obscene by anyone.

There are 80,000 paperback book titles currently in print.¹⁰ Between 20,000 and 25,000 of these sell on the mass market, and the balance includes school-books, technical texts, special interest books, and so on.¹¹

In 1969 over 4,600 new paperback book titles and over 2,400 new editions were introduced into the market;¹² 3,597 of these were released by the 12 largest national distributors, an increase of 385 over 1968.¹³

There are no official estimates of the total number of paperbacks distributed yearly on the mass market. However, a trade journal estimated that over 700

4. *Publishers' Weekly*, Feb. 9, 1970, p. 38. The total for 1968 was 2,811 fiction titles of 30,387; in 1969 there were 2,717 fiction titles of 29,579 new books or new editions.

5. *U.S. Industrial Outlook, 1970*, Business and Defense Services Administration (Washington, D.C.: U.S. Government Printing Office, 1970), p. 67.

6. *Ibid.*, p. 67.

7. *Release*, American Book Publishers Council, Inc., Dec. 1, 1969; reprinted, *Publishers' Weekly*, Dec. 8, 1969, pp. 25-28.

8. *Ibid.*

9. Estimated by Commissioner Freeman Lewis, former vice president, publisher, Simon & Schuster, Inc.

10. *Paperbound Books in Print: July 1970* (New York: R. R. Bowker Co.).

11. Estimate by Commissioner Lewis, see footnote 9.

12. *Publishers' Weekly*, Feb. 9, 1970, p. 39.

13. *CPDA News*, Nov.-Dec., 1969, p. 6; Jan. 1970, p. 13.

Table 1

BOOK PUBLISHING: TRENDS AND PROJECTIONS 1960-1970

[In millions of dollars except as noted]

Industry	1960	1963	1965	1967	1968 ^a	1969 ^a	Percent change 1968-69	1970 ^a	Percent change 1969-70
Industry^b									
Value of shipments	1,303.3	1,534.6	1,767.1	2,070.3	2,150.0	2,275.0	6	2,425.0	7
Total employment (thousands)	42.4	46.8	50.4	51.4	52.0	53.5	3
Production workers (thousands)	12.5	11.8	11.5	12.3	12.5	12.7	2
Value added	834.1	995.7	1,115.1	1,397.5	1,475.0	n.a.	n.a.
Value added per production worker man-hour (\$)	30.2	42.6	49.1	57.0	60.0	n.a.	n.a.
Product^c									
Value of shipments, total.	1,282.3	1,547.8	1,817.6	2,125.1	2,190.0	2,325.0	6	2,500.0	8
Value of imports	21.0	36.7	48.7	69.3 ^d	68.4 ^d	76.0	11	83.0	9
Value of exports	51.2	77.7	99.3	143.2	151.6	160.0	6	170.0	6

^aEstimated by BDSA; imports and exports actual values for 1968.

^bIncludes value of all products and services sold by the book publishing industry (SIC 2731).

^cIncludes value of shipments of books published by all industries.

^dNot comparable with 1966 and earlier years due to classification changes.

n.a.=not available.

Sources: Bureau of the Census and BDSA.

million paperback books were distributed each year in the I.D. (independent wholesaler distributor) market, and that 330 million paperbacks were sold in 1968.¹⁴ Since today's average retail price of mass market paperback books is nearly \$1.00,¹⁵ total retail sales of mass market paperback books certainly were near \$330 million in 1969. Again, only a fraction of the paperbacks included in this total could be considered obscene by anyone.

Periodical publishing

The Department of Commerce estimates that receipts by periodical publishers will be in excess of \$3 billion in 1970, an increase of over \$1 billion from 1960. Table 2 summarizes the trends and projections of periodical publishing for 1960 through 1970.¹⁶

The last official census of business in 1967 disclosed receipts to publishers of approximately \$2.6 billion.¹⁷ Of this, only periodicals such as comics, women's and home service, general interest, news, business, and entertainment magazines could possibly be of interest to the Commission. These produced receipts of \$1,445 million, of which \$560 million came from single copy and subscription sales and \$885 million from advertising revenue.¹⁸ Unfortunately, because of the varying price structures of magazine subscription sales, it is not possible to estimate total retail sales of periodicals.

Over 10,000 periodical titles are published each year, most of which are special interest magazines.¹⁹ Sales per issue range from a few thousand copies to over 17.5 million for the largest.²⁰ The total average sales per issue for all mass market magazines are almost 240 million copies,²¹ and the total number of periodicals distributed in 1969 has been estimated at more than 2.5 billion copies.²²

Distribution of mass market publications

PUBLISHERS

The publishing houses which create mass market magazines, paperback books, and hardbound books range from one-man, single-room operations to huge, multi-building complexes with hundreds of staff members. Because entrepreneurs constantly enter and leave the market, the actual number of producers is in a constant state of flux. At any one time, there are thousands of publishers in the market.

Publishers use a wide variety of marketing channels to distribute their products to the mass market. Each type of publication (hard-cover and paperback books

14. *1969 Bestsellers Who's Who in Independent Distribution, Periodicals and Paperbacks* (Philadelphia: North American Publishing Co., 1969), pp. 6-7.

15. *Publishers' Weekly*, Feb. 9, 1970, p. 50.

16. *U.S. Industrial Outlook; 1970*, op. cit. (footnote 5), p. 65.

17. U.S. Department of Commerce, *1967 Census of Manufacturers, Periodicals: Preliminary Report* (Washington, D.C.: Department of Commerce, 1970).

18. *Ibid.*

19. *U.S. Industrial Outlook, 1970*, op. cit. (footnote 5), p. 64.

20. *Gallagher Report*, Feb. 24, 1970.

21. *U.S. Industrial Outlook, 1970*, op. cit. (footnote 5), p. 64.

22. *Ibid.*

Table 2

PERIODICAL PUBLISHING: TRENDS AND PROJECTIONS 1960-1970

[In millions of dollars except as noted]

Industry ^b	1960	1963	1965	1967	1968	1969 ^a	1970 ^a	Percent change 1968-69	Percent change 1969-70
Value of shipments	2,133	2,296	2,626	2,930	3,115 ^a	3,310	3,520	6	6
Total employment (000)	70.3	68.2	69.7	74.6	75.7	77.4	77.4	2	2
Production workers (000)	29.5	27.0	25.3	25.8	26.3	27.5	27.5	5	5
Value added	1,211	1,349	1,603	1,804	2,030 ^a	2,030 ^a	2,030 ^a		
Product ^c									
Value of shipments, total	1,950	2,037	2,300	2,585 ^a	2,745 ^a	2,910	3,085	6	6
Value of imports	n.a.	n.a.	3.6	3.8 ^e	5.7 ^e	8.6 ^e	12.0 ^e	50	40
Value of exports	39.5	46.3	65.2 ^d	76.4 ^d	78.1 ^d	80.0 ^d	82.0 ^d	2.4	2.5

^aEstimated by BDSA.^bIncludes value of all products and services, sold by the periodicals industry (SIC 2721).^cIncludes value of shipments of periodicals made by all industries.^dNot comparable with 1964 and earlier years due to classification changes.^eNot comparable with 1966 and earlier years due to classification changes.

Sources: Bureau of Labor Statistics, Bureau of the Census, and BDSA.

and periodicals) is distributed in a different manner. In addition to the publishers who sell directly to retailers (especially hard-cover books and paperback books) or directly to customers (especially periodical subscriptions), there are a number of business organizations which assist in distributing publications.

BOOK CLUBS

A number of organizations with a regular list of subscribing customers lease or purchase publications from the publisher and sell directly to the customer by mail order. Book of the Month Club and The Literary Guild are two of the best known. Most sales are of hardbound "adult trade" books, although special interest books and paperbound books are also sold by some book clubs.

NATIONAL DISTRIBUTORS

Most publishers employ "national distributors" to control, in large part, the number of copies of every periodical and paperback book shipped to local wholesale distributors. National distributors ordinarily do not make initial distribution to wholesale distributors; such shipments are made directly from the printers. National distributors handle all returns (unsold merchandise), make billings and collections for publishers, and, in general, arrange and administer the distribution of publications to the wholesalers.

Fifteen national distributors administer the distribution of most of the well-known paperback book lines and periodicals;²³ there are also a number of smaller national distributors. In addition some publishers act as their own national distributors.

NATIONAL JOBBERS

These organizations are relatively new to the marketplace and are becoming increasingly important. National jobbers purchase paperback books from the publisher and sell directly to retailers (on a returnable basis). In effect, they combine the functions of national distributors and local wholesalers in one operation.

LOCAL WHOLESALE DISTRIBUTORS (I.D.s)²⁴

There are at least 570 local wholesale distributors (I.D.s)²⁵ in the United States. These organizations are franchised on a geographical basis to distribute

23. *Bestsellers*, op. cit. (footnote 14), pp. 139-159. These are Ace News Co.; Capital Distributing Co.; Curtis Circulation Co.; Dell Distributing Co.; Fawcett Publications Co.; Independent News Co.; International Circulation Distributors-Hearst Magazines; Kable News Co.; MacFadden-Bartell, Popular Publications, Inc.; Publishers Distributing Corp. (PDC); Select Magazines, Inc.; Simon and Schuster; Triangle Circulation Co.

24. The origin of the term I.D. (independent wholesale distributor) has an interesting historical basis. Originally, the American News Co., organized in 1865, was the sole national and local distributor for almost all of the periodicals in the country. Because some publishers were dissatisfied with the service provided, periodicals began to be distributed "independently" as early as 1893. Over the years a rivalry grew between the American News Co. and local wholesale distributors who acquired local distribution rights for certain publications. This competition ended in 1957 when the American News Co. closed all its local branches and left the distribution business. Thus, periodical and paperback distribution was left to the I.D.s. Today I.D.s are not "independent" of a major competitor, but the terminology persists. See Roger Damio, "A Short History of Independent Distribution," *1960 Who's Who in Independent Distribution* (Philadelphia: North American Publishing Co., 1960), pp. 7-12.

25. *Bestsellers*, op. cit. (footnote 14), pp. 9-137. Industry spokesmen state that there may be 50 to 75 additional wholesalers in the United States not listed in the *Who's Who*.

“mass market” national periodicals and paperback books on an exclusive basis. Each is a marketing specialist who has a heavy investment in a franchise which has been defined over a considerable period of time. Ordinarily there is only one I.D. in a city, town, or territory, although some of the largest cities have more. Some cities are also serviced by a secondary wholesaler who does not distribute mass market materials. Most of the I.D.s in the United States belong to a trade association, the Council for Periodical Distributors Association (CPDA).

I.D.s and retailers distribute and sell mass market sexually oriented materials only on a voluntary basis. Substantiated incidents of pressure in the distribution of publications, either from publisher to wholesaler or from wholesaler to retailer, have never been proved, although charges of this type have been made from time to time. However, because all periodicals and paperback books are distributed on a fully returnable basis (in effect, books are shipped on “consignment”), pressure to distribute unwanted merchandise in order to obtain desired publications (known as “tie-in sales”) would be self-defeating. Retailers obtain credit for unsold materials returned to the I.D., and wholesalers are credited for returns by the national distributors. Generally, forcing an unwilling wholesaler or retailer to accept unwanted merchandise would merely add to the shipping costs with no return in sales. An unwilling I.D. would probably not distribute the material, or an unwilling retailer would not display it.

Further, both wholesalers and retailers are ordinarily local businessmen and, as such, are sensitive to local opinion. Any attempt to force unwanted sexually oriented materials on either would doubtless result in unwanted adverse publicity for the company making such an attempt.

Thus, I.D. wholesalers and retailers cannot realistically be forced to distribute or sell any book or magazine. Today, competition among publications is fierce. Each I.D. has many thousands of titles to choose from in both magazines and paperbacks, more than he can possibly provide adequate distribution for. Thus, I.D.s must select out of the available publications those which sell best in his territory. Similarly, I.D.s offer retailers a choice of more material than they can display. Thus very few, if any, sellers can dictate what product “must” be handled.

Sexually oriented materials are handled by virtually all independent distributors. However, some I.D.s will not handle any line which is exclusively sex-oriented, and others reportedly return materials to the national distributors if any question arises about their suitability. Sexually oriented periodicals and books distributed by I.D.s cover a wide range of explicitness, but for the most part they are far from the most explicit material available in most cities. The more explicit secondary materials are not distributed by the majority of I.D. wholesalers, although many distribute selected publications. In any event, the dissemination of sexually oriented materials is never the sole basis of an I.D.’s business.

RETAIL OUTLETS

Dwight Yellen, an industry spokesman, recently was quoted as stating that there are 110,000 regular full-line outlets for general magazines, 80,000 of which handle paperback books: These are comprised of 24,000 independent drugstores and 5,000 chain drugstores; 24,000 supermarkets; 25,000 variety stores; 2,400

stationery stores; 2,400 cigar stores; and 2,000 newsstands in office buildings, 1,300 in hotels, and 1,800 in motels.²⁶ Roger Scherer, president of the Council for Periodical Distributors Association (the I.D. trade association) is in substantial agreement with this estimate.²⁷

METHODS OF DISTRIBUTION—BY MEDIA

The patterns or methods of distribution for the various types of publications directed to mass consumption can be briefly described as follows:

Hard-cover books

- (1) Publisher to national jobber to retailer or institution (library, school, etc.)
- (2) Publisher to book club to reader²⁸
- (3) Publisher to retailer
- (4) Publisher to reader by mail order

Paperback books

- (1) Publisher to national distributor to local wholesale distributor (I.D.) to retailer²⁹
- (2) Publisher to national jobber to retailer
- (3) Publisher to retailer³⁰
- (4) Publisher to reader by mail order

Periodicals

- (1) Single copy sales:
 - (a) Publisher to national distributor to local wholesale distributor (I.D.) to retailer
 - (b) Publisher to national jobber to retailer
- (2) Subscription sales³¹ — publisher to subscriber

MASS MARKET SEXUALLY ORIENTED PERIODICALS

A wide range of mass market periodicals can be classified as sexually oriented to some degree. The classifications used by the industry have been adopted; no

26. *Publishers' Weekly*, May 25, 1970, p. 28. Mr. Yellen is president of Select Magazines, Inc., a large national distributor, and cochairman of BIPAD, a leading trade association of publishers, national distributors, and I.D. wholesalers.

The 1967 Census of Business did not report upon the number of retail outlets selling books or magazines. Thus, industry figures are the only ones available.

27. Mr. Scherer estimated that there were 120,000 retail outlets for periodicals and paperback books. Public Hearings of the Commission on Obscenity and Pornography, May 12, 1970 (Transcript), pp. 154-58.

28. Estimated retail sales for 1968 were \$204 million (see footnote 7).

29. Industry sources estimate that 55% to 60% of all paperback books sold are distributed in this manner. Interview with George Wright, executive director, Council for Periodical Distributors Association (the trade association of I.D. wholesalers).

30. Industry sources estimate that 35% to 40% of all paperback books sold are distributed in this manner (*ibid.*). Very large retailers, especially chain operations of drug and variety stores, obtain paperbacks directly from the publisher.

31. An analysis of the leading 202 periodicals as judged by Audit Bureau of Circulation figures for the last 6 months of 1969 revealed that, per issue, these magazines had single copy sales of 64.5 million copies and subscription sales of almost 157 million (*Gallagher Report*, Feb. 24, 1970).

attempt was made to create a system of independent criteria for making judgments. Criticism might be voiced over this acceptance of trade usage. For example, some might argue that pictures of nude or scantily clad females warrant a classification of "sexually oriented," at least for a particular issue. Thus, some issues of *National Geographic*, *Time*, *Newsweek*, and *Life* could be so classified. Others might argue that articles dealing with human sexuality cause a periodical to be classified as sexually oriented. If this is a valid argument, most of the highly popular magazines can be so classified for some issues.³²

Rather than undertaking the futile enterprise of examining the sexual orientation of mass market magazines, the study was concentrated on types of magazines which regularly contain significantly greater sexual content than most best-selling magazines. Such periodicals are classified by trade usage as follows: "confession" magazines, "barber shop" magazines, men's "sophisticates," "sensational" newspapers and magazines, and "specials"—a catchall for periodicals not falling within the above categories. It must be emphasized that none of the magazines discussed below (at least as published to date) can be considered to be obscene under current judicial standards. While some have been prosecuted for obscenity in the past (primarily the men's "sophisticate" magazines), in recent years convictions, or even prosecutions, of mass market periodicals is almost unknown.

Consideration should be given to the particular measure of sales for the periodicals discussed below. The publishing industry ranks magazines on the basis of the average total paid circulation, that is, the average number of copies sold per issue. This measure, although understood by the industry, does not take into account the frequency of publication. Thus, *Reader's Digest* is ranked "number one" in the United States with sales over 17.5 million copies per issue. *T.V. Guide* is ranked "number two," with a total average sales of over 14.5 million per issue. In fact, *T.V. Guide* (a weekly) sells 3.5 times as many copies per year as does the *Reader's Digest* (a monthly).³³ Both average paid circulation (sales) per issue (the industry usage) and total sales per year are reported below.

Confession magazines

The sexual content of periodicals classified in the trade as "romance" or "confession" magazines is discussed at length in a report to the Commission by David Sonnenschein.³⁴ The report states that confession magazines primarily emphasize the sexual problems of young women and are aimed primarily at an audience of adolescent girls and young women, although the readership covers a wide range of older women as well.

Almost all confession magazines are published monthly. For the period from October 1, 1968, to September 30, 1969, the average paid circulation (sales) per issue for 38 selected confession magazines was approximately 10.37 million, and

32. See William Iversen, *Venus U.S.A.* (New York: Pocket Books, 1970), pp. 3-84. Although apparently written "tongue-in-cheek," the sexual content of certain mass market periodicals is described with some accuracy.

33. *T.V. Guide* sells more than 755 million copies per year, while *Reader's Digest* sells 210 million copies (*Gallagher Report*, Feb. 24, 1970). Circulation figures are based on Audit Bureau of Circulation statements by publishers.

34. *A Study of Mass Media Erotica: The Romance or Confession Magazine*, Technical Reports of the Commission on Obscenity and Pornography (Washington, D.C.: U.S. Government Printing Office, 1971); see also Iversen, op. cit. (footnote 32), pp. 85-232.

total yearly sales were 104.4 million copies.³⁵ Because sales information was not obtained for all confession magazines on the market, these figures reflect only minimum sales. Slightly more than 2 million copies per issue were by subscription; most of these were of two magazines.³⁶ All other reporting confession magazines sell more than 99% of each issue by single copy sales.

Confession magazines currently sell for 35¢ on the average; newsstand prices range from 25¢ to 50¢. Assuming total yearly sales of approximately 110 million copies (to account for those magazines not included in the survey), and an average sales price of 35¢, total retail sales for these publications were a minimum of \$38.5 million in 1969.

Barber shop magazines

The publishing industry classifies certain magazines aimed at male readership as "barber shop." These magazines primarily feature "action" stories, some of which are sex-oriented. Photo layouts, when present, are primarily of the "glamour" or "pinup" type. Recently, however, the pictorial content of barber shop magazines has increasingly depicted partially nude females (breast and buttock exposure).

The average paid circulation per issue (usually monthly or bimonthly) for 21 selected barber shop magazines was 3.45 million copies (only 6,000 by subscription) during 1969.³⁷ Thus, 29.9 million copies were sold during the year.

Most barber shop magazines are priced at 35¢, 40¢, and 50¢. Sales of these magazines in 1969 totaled approximately \$12 million. A number of similar magazines (such as "true story" detective magazines) were not surveyed.

35. Publications holding a second-class mailing permit are required by law to submit a statement of single copy sales and subscriptions for the preceding year to the Post Office Department as of October 1. 39 U.S.C. Section 4369. "Statement[s] of Ownership, Management, and Circulation," Post Office Department Form 3526, filed for the period October 1, 1968, to September 30, 1969, were examined by the Commission staff. The following publications supplied the circulation figures summarized above: *Career Girl Romances*, *Confidential Confessions*, *Daring Romance*, *Girls' Love Stories*, *Girls' Romances*, *I Love You*, *Just Married*, *Intimate Story*, *Love Diary*, *Modern Romances*, *My Confession*, *My Love Secret Confession*, *My Romance*, *Personal Romances*, *Real Confessions*, *Real Love Stories*, *Real Romance*, *Real Story*, *Revealing Romances*, *Romance Time*, *Romantic Story*, *Secret Hearts*, *Secrets*, *Teen Age Love*, *Teen Confession*, *Time for Love*, *True Confessions*, *True Experience*, *True Life Secrets*, *True Love*, *True Romance*, *True Secrets*, *True Story*, *Uncensored Confessions*, *Young Love*, *Young Romance*, *Your Romance*. Information on newsstand circulation of *Actual Confessions* was obtained from *Bestsellers*, October 1969, p. 10.

36. *Modern Romances* has subscriptions of 435,000 (average sales of 718,000), and *True Story* has 1,602,000 subscriptions (monthly sales of 2,196,000).

37. A number of "barber shop" magazines registered their average paid circulation with the Post Office Department in order to maintain their second-class mailing privileges (see footnote 35), namely, *Action for Men*; *Adventure*; *All Men*; *Battle Cry*; *Best for Men*; *For Men Only*; *Male*; *Man's Action*; *Man's Story*; *Man's World*; *Man-to-Man*; *Men*; *Men's Digest*; *Men Today*; *Modern Man*; *Real Man*; *Stag*; *True Action*; *True Adventure*; *True Men's Stories*. Data on newsstand sales of *Man's Action* were obtained from *Bestsellers*, October, 1969, p. 10.

Three important "men's magazines" are not classified by the industry as "barber shop" (*Argosy*, *Saga*, and *True*). Nude or even "pinup" pictures rarely appear in these magazines with a few exceptions (*True*, March 1969, pp. 44-46). These "men's magazines" have very substantial circulation; average paid sales per issue are 1,009,000 single copy and 3,776,000 subscription; total yearly sales amount to almost 60 million copies. The industry regards these magazines as no more sexually oriented than other popular mass market magazines.

Sensational newspapers and magazines

Sensational newspapers (sometimes called "tabloids") such as the *National Enquirer*, specialize in "exposé" stories. Formerly these papers contained a substantial percentage of "sexual adventure" stories. However, in recent years the sexual content has been reduced to make many of them generally acceptable to conservative retail outlets, such as supermarkets and variety stores. Some continue to employ the old formula with an emphasis on sexual topics. However, the dominant journal in the field, the *National Enquirer*, which has well over 50% of the total market, seems to have completely changed its editorial policy and presently plays down or eliminates sexual themes.

In 1969 the average paid circulation of 10 selected sensational newspapers and magazines (mostly weekly or biweekly) was 2.8 million, and total yearly paid sales were approximately 122 million.³⁸ Sensational newspapers are generally priced at 15¢ with a few priced at 20¢ to 25¢; one magazine is priced at 50¢.

Assuming an average retail price of 15¢, the minimum total retail sales in 1969 for the 10 selected publications was approximately \$18.3 million. Other journals not reported upon generated a considerable volume of sales.³⁹

Men's sophisticates

The most sexually oriented magazines in the mass market, especially insofar as nudity is concerned, are known as "men's sophisticates" (also known as "girlie" or "East Coast girlie"). Some of the magazines are derived from *Playboy*, although most are "updated pinup" magazines. None has been able to duplicate the success of *Playboy*, although many have tried.

The content of men's "sophisticate" magazines usually follows a rather rigid formula. A substantial portion of each magazine is devoted to photographic poses of one or more partially nude women.

There is a self-imposed taboo against the depiction of female genitalia. Males appear in the photographs very rarely, if ever. Little, if any, sexual activity is pictured or even implied. In addition to the pictorial features, the average men's "sophisticate" contains a number of articles, some of which are sexually oriented.

Total sales of 62 selected men's "sophisticate" magazines in 1969 were approximately 40.1 million copies. These magazines are sold at prices ranging from

38. Collection of sales data for sensational newspapers and magazines was more fragmentary than for the previously described publications. Only five have second-class mailing permits and have filed official statements of circulation to the Post Office Department: *Confidential* (magazine format); *National Informer*; *National Insider*; *National Tattler*; and *Whisper*. Sales data for the *National Enquirer* were obtained from the *Gallagher Report*, Dec. 2, 1969 and Feb. 24, 1970. Average sales of the *National Enquirer*, the dominant publication in this field, during 1969, were 1,288,000 copies per issue, or a yearly total of 66,976,000. Newsstand sales for the first 6 months of 1969 of *Hush-Hush News*, *Insider News*, *The Keyhole*, and *National Mirror* were obtained from *Bestsellers*, April 1970, p. 6. It should be noted that the time period surveyed for the sales of sensational newspapers and magazines was not constant. Those with second-class mailing privileges reported sales for Oct. 1, 1968, through Sept. 30, 1969. The *Gallagher Report* supplied sales figures for calendar year 1969. *Bestsellers* reported newsstand sales during the first 6 months of 1969 (projected for all of 1969).

39. A publisher of other sensational newspapers recently placed an advertisement in a trade paper which stated that in 1969 wholesalers had an annual profit of over \$2.5 million for distributing the following tabloids: *Midnight*, *Examiner*, *Bulletin*, *Spot Light*, and *Close-up* (*CPDA News*, April, 1970, p. 9). Assuming that the wholesaler retains 20% of the retail sales price, the ad indicates that these tabloids had \$12.5 million retail sales in 1969.

50¢ to \$1.00; the most typical cover prices are 60¢ and 75¢. Assuming sales during 1969 of approximately 41 million copies (to account for sales of magazines not surveyed), and an average sales price of 70¢, total retail sales for men's "sophisticate" magazines for 1969 were approximately \$28.7 million (at a minimum).⁴⁰ In addition, annual publications of certain men's sophisticates sell 803,000 copies (usually priced at \$1.00 or higher).⁴¹ Thus, sales for men's sophisticates were at a minimum of 42 million copies in 1969, and retail sales receipts approximately \$30 million.⁴²

Publishers and distributors of men's sophisticate magazines agreed that the market for men's sophisticates fell substantially during 1969. Circulation figures supplied for five well-known magazines reveal that during the first 6 months of 1968 they sold 3.26 million copies; during the comparable period in 1969 they sold only 2.04 million (a decline of 37%). Comparison of newsstand sales figures for 29 men's sophisticates from another source showed a 5% decline.⁴³ Industry sources hypothesize that greater availability of more explicit magazines accounts for this decline in sales.

Special magazines

Some prominent magazines, such as *Playboy*, do not adequately fit any of the above classifications. Although *Playboy* has some characteristics of a men's sophisticate magazine, it is not so categorized by the industry. *Playboy* is unique in the periodical industry and is almost an institution in its own right.

Insofar as the sexual content of *Playboy* is concerned, each issue contains no less than three (and sometimes four or five) pictorial features of partially nude females. In most cases, there is only breast and buttocks exposure, although on occasion very discreet photos of the female pubic area have been printed.⁴⁴ In addition, the magazine contains a number of drawings, both cartoons and "pinups," depicting nude females. It is not unusual for some of these drawings to depict couples in positions of sexual intercourse. The magazine also contains significant sexual orientation in its articles and fiction. However, its list of contributors is a "Who's Who" of famous authors and distinguished individuals.

Each year, 10 issues of *Playboy* are priced at \$1.00 and two at \$1.50. During 1969, *Playboy* sold 5,324,000 copies per issue (1,417,000 subscriptions and

40. Sales figures for "men's sophisticate" magazines were derived from a wide variety of sources. Fifteen of the magazines hold second-class mailing privileges (see footnote 35). For the period Oct. 1, 1968, through Sept. 30, 1969, the magazines listed below reported yearly sales of 16,780,000 copies to the U.S. Post Office: *Ace*, *Cavalcade*, *Escapade*, *Fling*, *Fotorama*, *Knight Magazine*, *Mr.*, *Nugget*, *Rascal*, *Scope*, *Sir*, *Swank*, *Tab*, *Tip Top*, *Vue*, and *Wildcat*. Although all of these magazines offer subscription, with the exception of *Scope*, none had subscriptions of 1% of their total sales.

Newsstand sales for another group of "men's sophisticate" magazines were reported in the April 1970 issue of *Bestsellers*. These sales figures were supplied by the publishers or distributors and covered the first 6 months of 1969. These sales figures, projected for the entire year, showed that approximately 19,227,000 copies were sold during 1969 by the following magazines: *Adam* and numerous *Adam Specials*; *Bachelor*; *Bold*; *Buccaneer*; *Cad*; *Cad Banner*; *Caper*; *Climax*; *Dude*; *Duke*; *Fillies*; *Gent*; *Gem*; *Jaguar*; *Knight Epic Edition*; *Night and Day*; *Photo*; *Pic*; *Pix*; *Rogue*; *Swinger*; and *Topper*.

Finally, other sources were used to develop sales figures for the following: *Cavalier*; *Dapper*; *Debonair*; *Lark*; *Man's Pleasure*; and *Swingle*. It is estimated that these magazines had total sales during 1969 of approximately 4,122,000.

41. *Bestsellers*, April 1970, p. 10, lists 11 such yearbooks.

42. A variety of sources were used and different time periods were used. This estimate is approximate and data on all sophisticates were not obtained.

43. *Bestsellers*, Oct. 1969, p. 10, and April 1970, p. 6.

44. The issue of July 1970, pp. 72-75.

3,907,000 singles). It ranked 12th in average paid circulation in the United States.⁴⁵ Retail sales were nearly \$64 million in 1969; in addition a yearbook sells over 500,000 copies at \$2.50 and more than 2 million calendars are sold annually. *Playboy* sales are more than twice those of all men's sophisticated magazines combined.

In the fall of 1969 a British-American magazine entitled *Penthouse* came onto the market. *Penthouse* is patterned after *Playboy*, even to the point of opening clubs serviced by scantily clad waitresses. No circulation figures are currently available, and it remains to be seen whether it will become a success or fall by the wayside, as did so many others who attempted to duplicate the formula.

A "ladies' " magazine, *Cosmopolitan*, has in recent years become known in the trade as "the woman's *Playboy*" because of numerous articles dealing with sexual matters. Occasionally nude pictures are published, but this is not an occurrence in every issue. During 1969 average paid circulation was 1,127,000 copies, all but 84,000 of which were single-copy sales. Total sales were slightly more than 13,500,000 copies,⁴⁶ or over \$10 million (75¢ per copy).

A few other magazines should be noted briefly. *Sexology*, devoted entirely to sexual matters, has an average paid circulation of 127,000 and yearly sales of approximately 1.5 million copies. Two "experimental" magazines contain some sexual content, including nude pictures and sexual stories, cartoons, and so on. These magazines, *Evergreen* and *Avant-Garde*, sold almost 3 million copies in 1969.⁴⁷

SEXUALLY ORIENTED MASS MARKET PAPERBACK BOOKS

No sustained effort was made to determine either the number of sexually oriented paperback book titles published for the mass market or the total sales of such books. Such sales figures are impossible to ascertain.⁴⁸ Most paperback book lines cannot be categorized as can magazines; rather, an individual judgment on each separate title would be required. Agreement on which titles should be classified as sexually oriented would be impossible. Even if a comprehensive list of mass market sexually oriented paperbacks were produced (including, no doubt, hundreds of titles), the required contact with dozens of publishers to request sales figures would have been beyond the capabilities of either the author or a contractor. Further, publishers would be unable to supply much of the required data even if they chose to cooperate with such a study. Surprising as it may seem, sales figures are very unreliable until a book has been off the market for some time. One fact is certain: tens of millions of copies of paperbacks are sold annually which could be classified as sexually oriented to some degree.

Almost all of the major paperback publishers distribute some books which might be classified as sexually oriented. *Bestsellers*, a trade journal, lists the 20 best-selling paperback books each month. This gives an indication of the

45. *Gallagher Report*, Dec. 2, 1969 and Feb. 25, 1970. The magazine ranks second in dealer profits, *Bestsellers*, July 1970, p. 8.

46. *Ibid.*

47. Second-class mailing permits (see footnote 35).

48. Paperback publishers do not make statements of circulation for purposes of setting advertising rates or for second-class mailing permits, as do magazine publishers. Moreover, books are not dated (as are magazines) and remain on the market as long as sales warrant.

popularity of sex-oriented mass market paperbacks, although sales figures are not provided. Table 3 summarizes the listings of certain best-selling paperback books (which might be characterized as sexually oriented) during the period of January 1969 to July 1970 which appeared on the list for more than one month.

Table 3

SELECTED SEXUALLY ORIENTED MASS MARKET PAPERBACKS—1969-1970

Title and publisher	Highest rank as "best-seller" ^a	Months on "Bestsellers" list
Portnoy's Complaint (Bantam)	2	5
The Crazy Ladies (Signet)	1	6
Naked Came the Stranger (Dell)	4	4
The Beauty Trap (Pocket Books)	6	3
Thy Daughter's Nakedness (Bantam)	8	2
The Voyeur (Fawcett Crest)	1	3
The World of Harold Robbins (seven titles) (Pocket Books)	3	3
The Madonna Complex (Dell)	4	2
The Family (Signet)	2	3
The Couples (Fawcett Crest)	1	6
Coffee, Tea or Me (Bantam)	2	6
Proposition 31 (Signet)	2	2
The Pretenders (Signet)	2	3
Ada (Fawcett Crest)	6	2
Romance of Lust (Grove)	8	3
The Exhibitionist (Fawcett)	6	5
Venus Examined (Fawcett)	4	4
Myra Breckinridge (Bantam)	4	4

^aBestsellers, Jan. 1969-July 1970.

Several publishers have established a reputation for sexually oriented paperbacks. The best known is Grove Press of New York City. This publisher pioneered sexually oriented "classics" in the mass market and has been involved in numerous obscenity prosecutions, including those of *Lady Chatterley's Lover* and *Tropic of Cancer*.⁴⁹ Sales of these books were in the millions (exact figures not available). Grove Press publications are not limited to sexually oriented books and cover a wide range of reading interests.⁵⁰

Other book lines specializing in sexually oriented paperback books are Midwood, Tower, and Bee-Line. Midwood-Tower publishes 20 titles per month with press runs of 75,000 to 80,000 (as of January 1970). During 1969 the total

49. *Grove Press, Inc. v. Christenberry*, 175 F. Supp. 488 (S.D.N.Y. 1959), aff'd, 276 F.2d 433 (2d Cir. 1960) (*Lady Chatterley's Lover*); *Grove Press, Inc. v. Gerstein*, 378 U.S. 577 (1964) (*Tropic of Cancer*). The company has also pioneered in motion picture distribution with its film *I Am Curious (Yellow)*, still in litigation.

50. The publisher supplied sales data on two of its recent best-selling sexually oriented books: through Sept. 30, 1969, sales records indicated that *The Pearl* had sold 825,000 copies, and *I Am Curious (Yellow)* (based on the film) had sold 250,000 copies. As of the same date, other Grove Press bestsellers included *Games People Play* (a book by a noted psychiatrist), which had sold 1,711,000 in paperback and nearly 500,000 copies in hard cover, and *The Autobiography of Malcolm X*, which had sold 1,086,000 in paperback.

distribution of these books was approximately 18 million copies. Although exact sales figures were not available, sales were estimated by knowledgeable sources at between 40% and 50%. 1969 sales were probably 7.2 to 9 million copies.

Approximately 12 Bee-Line titles were published each month during 1969. For the first 6 months of 1969, 68 new titles were distributed. The average press run per title was approximately 24,000, and sales exceeded 48% per title. Assuming that these figures can be projected for all of 1969, Bee-Line probably distributed about 6.5 million paperback books and sold approximately 3.1 million copies.

One or two other book lines, such as Lancer, at one time had a reputation for producing sex-oriented books. Recently, however, these lines have been regarded in the trade as "about the same" as books of other publishers. This, of course, does not mean that the sexual content has been reduced. On the contrary, it means that the sexual content of paperbacks published by the major companies in the field has increased to a level which formerly was reached by only a few minor publishers.

A number of publishers who distribute primarily in the secondary market also receive some distribution in the mass market outlets, such as Olympia Press and Ophelia Press of New York and Powell Publications, Publishers Export Co., Reed Enterprises, and Holloway House of California.

HARD-COVER BOOKS

No real attempt was made to measure the total sales of hard-cover books which might be classified as sexually oriented. Obviously, the same considerations which applied to a study of mass market paperbacks applied equally to the hard-cover book industry.

An indication of the interest in sexually oriented hard-cover books is provided by the reports of hard-cover best sellers during 1968, 1969, and 1970. Two of the "top 10" best-selling fiction titles of 1968 were regarded in the trade as "sexy books": *Couples* ranked second and sold "181,000 plus a big book club sale"; *Myra Breckinridge* ranked seventh and sold approximately 75,000 copies.⁵¹ In 1969, for the first time, the top 10 fiction best sellers sold almost as many copies as the top 10 nonfiction books (2% less)—usually nonfiction sales are twice those of fiction. Six of the top 10 fiction best-selling books were regarded by the industry as sexually oriented. The reported sales during 1969 were as follows:⁵² *Portnoy's Complaint*, 418,000 copies; *The Love Machine*, 293,000 copies; *The Inheritors*, 159,000 copies; *The Seven Minutes*, 100,000 copies; *Naked Came the Stranger*, 98,000 copies; and *The Pretenders*, 83,000 copies. Two additional sexually oriented books made the top 20: *Ada*, 64,000 copies, and *The Voyeur*, 56,000 copies.

During 1968 and 1969 none of the top 10 nonfiction best sellers was related to sex.

Through June 1970 the market had not produced a sexually oriented best seller in hard-cover fiction. To make up for this oversight, several nonfiction best sellers relating to sex appeared on the stands. As of May 1970, *Everything You Always*

51. *Publishers' Weekly*, March 10, 1969, pp. 30-31.

52. *Publishers' Weekly*, Feb. 9, 1970, p. 40.

Wanted To Know About Sex had 510,000 copies in print and had reportedly sold 400,000 copies.⁵³ *The Sensuous Woman* had reportedly sold 130,000 copies.⁵⁴ A third nonfiction book, *Human Sexual Inadequacy*, was also on the list of best sellers. The success of nonfiction books relating to sex can come as no surprise. It has been reported that there are over 1,500 marriage manual titles in print.⁵⁵

Many of the leading publishers of hard-cover books are represented by sexually oriented books in the above list of best sellers, including Knopf, Little Brown, Random House, Simon and Schuster, McGraw-Hill, and David McKay.

NEWSPAPERS

No effort was made to measure the sexual content of daily newspapers. It might be noted in passing that news stories and articles appearing in the daily newspapers reflect increased candor in discussion of sexual topics. Although "vulgar" language is avoided, descriptions of sexual activity are rather explicit.

One particular genre, the so-called "underground" newspaper, has often been criticized for excessive sexual content. While most underground newspapers are devoted primarily to political commentary, some also allot significant space to sexual matters, particularly in the classified advertisements. Most of the underground newspapers in the United States contain a large number of ads requesting sexual partners and offering services such as nude modeling, "massages," and so on.⁵⁶

Underground newspapers have experienced a number of obscenity prosecutions. In testimony before the Commission it was alleged that 45 underground newspapers had been prosecuted in the year 1969.⁵⁷

A spokesman for the Underground Press Syndicate, a press service for underground newspapers, has stated that in 1966 there were five underground newspapers with a circulation of less than 50,000, and that in 1970 there were 200 such newspapers with a circulation of 6 million.⁵⁸

The claimed circulation of 6 million is probably exaggerated. Four of the best known underground newspapers filed second-class mailing permits in 1969. These disclosed that the total average paid circulation was approximately 10.4 million for the period of October 1, 1968 to September 30, 1969.⁵⁹ Approximately 20% of this total was sold by subscription.

THE SECONDARY OR "ADULTS ONLY" MARKET

Sexually oriented printed materials, self-labeled "for adults only," are of far less importance and have substantially less economic impact than sex-oriented

53. *Time*, May 25, 1970, p. 52; *Publishers' Weekly*, June 15, 1970, p. 104.

54. *Publishers' Weekly*, June 29, 1970.

55. *Time*, May 25, 1970, p. 52.

56. A comprehensive report of the content and operations of the underground press, although somewhat dated, is by Gaye Sandler Smith, "The Underground Press in Los Angeles" (Unpublished; University of California, Los Angeles: submitted in partial satisfaction for master of journalism degree, 1968).

57. Public Hearings of the Commission on Obscenity and Pornography, May 13, 1970 (Transcript), p. 335.

58. *Ibid.*, p. 334.

59. *The Berkeley Barb* (San Francisco Bay area), *The East Village Other* (New York City), *The Great Speckled Bird* (Atlanta), and the *Los Angeles Free Press* (see footnote 35).

mass market materials. For example, the combined copy sales of all the "adults only" magazines probably do not equal one month's sales of the *Reader's Digest*.

To distribute "adults only" materials, separate channels for national and local wholesale distribution and for local retail sales have been created. This distribution system is usually referred to as the "adult" or "secondary" industry (as opposed to the I.D. or mass market industry), and the term "secondary" is applied to publishers, wholesale distributors, and retailers.

The exact size and scope of this "adults only" market, and even the number of publishers producing for this market, cannot be perfectly described. Indeed, there is a significant overlap of the markets: some publishers produce for both markets and constantly seek to expand the distribution of their publications. In addition, the sexual content of books published for the "adults only" market is becoming less distinguishable from that published for more general circulation, although distinctions remain (especially in pictorial media).

The "adults only" market is based upon the publications of 80 to 100 publishers, of whom 20 to 30 are important. All are relatively small in comparison to the major mass market publishers. Most of these publishers are located either in the New York City area or in California, primarily Los Angeles and San Diego. Only a handful of important national publisher-distributors are located in other cities as, for instance, in Atlanta, Baltimore, Washington, D.C., and Cleveland.

During 1969-1970 the most important publishers in the industry, many publishing both paperback books and magazines, were:

Reed Enterprises, Inc., and Publishers Export Co., San Diego; Buy-Rite Magazine Sales, Oasis Publications, Parliament News Co. (also known as London Press), Renegade Press, TR Press, Wyngate & Bevins, Columbia News (also known as All-Star), Cameo Library, Collectors Publications (reportedly out of business as of July 1970), DSI (also known as Commander Associates), Futura Books (also known as Monogram Publications and Banner Books), Golden State News Co., Meridian Publishing Co., Powell Publishing Co., Prima Book & Publishing Co., Triumph News Co., Inc. (reportedly not publishing as of July 1970), Venice Publishing Co., and Elysium, Inc., all located in the Los Angeles, California area; Associated Magazine, Bark Book Distributors, Inc., Camera Eye Labs, Inc., E.L. Publishing Co., Inc., Interstate Magazine Distributors, Penguin Publishing Co., Star Distributors Limited, Olympia Press, Inc., Ophelia Press, G-I Distributors, Cosmopolitan Book Distributors (formerly Eastern News), Interstate Book Distributors (formerly L-N), Photo-Form Publications, and Overstock Book Co., Inc., all located in greater metropolitan New York City; Pendulum Books (also known as Peachtree National Distributors), Atlanta; Central Sales, Ltd., Baltimore; Sovereign News Co., Cleveland; Marble Distributors, Boston; United Graphics, Inc., Delray Beach, Florida; Lance Books, Chicago; and Potomac News, Washington, D.C.

Publishers of paperbacks often do not attempt to build reader identification with a particular "book line." Many change their "line" frequently, and often paperbacks do not have a trade name nor identify the source of publication. Most publishers who identify their product for the reader merely do so by identifying themselves, such as TR Press, E.L., Columbia News (CN), Photo-Form, etc. The leading publishers in the field, however, attempt to distinguish their product from

the welter of competing publications. Among the best known book lines in "adults only" paperbacks are:

Greenleaf Classics (and 8 to 10 other lines)—Reed Enterprises
Brandon House and Barclay House—Parliament News
PEC—Publishers Export
Collectors Publications—(same)
Futura or Monogram—(same)
Travellers' Companion—Olympia Press
Pendulum—(same)

Magazine publishers make even fewer attempts to build reader identification with a particular brand name. There are only a few continuing titles, and those are not ordinarily published on a regular schedule. Probably an even higher percentage do not identify the publisher. Only a very few magazine "lines" seem to make an attempt to build customer loyalty, for example:

Jay Bird Series—Parliament News
Pendulum—(same)
Tudor House—Central Sales, Ltd.

The secondary publishing industry is extremely competitive. In 1969 many more paperback and magazine titles were published than could receive reasonable display time. In short, the market was considerably oversold. Although there was an increased number of retail outlets, the market did not come close to absorbing the production. As a result, press runs declined during 1969 and sales per title were down considerably. However, because more titles were produced, gross sales for the industry probably increased. This considerable overproduction led to significant price cutting. In addition, a vast amount of unsold merchandise was "dumped" back on the market at large discounts, sometimes for less than the original cost of production. The net result was something akin to absolute chaos. The financial difficulties of some publishers continued through 1969 and into 1970. In July 1970 a reliable source stated that one of the most important publishers in the industry was discontinuing 12 magazine titles per month (a reduction of more than 50%).

The secondary industry has one other interesting feature. Most of those involved are very antagonistic toward one another. In innumerable interviews the prevailing view was that there were only two or three people in the industry who could be trusted. The secondary industry truly supports its reputation as "cutthroat."

In spite of the highly competitive nature of the market, secondary publishers have formed an embryonic trade association known as the American Publishers and Distributors Association (APDA).⁶⁰ The association consists of publishers, wholesale distributors, printers, and retail store owners in a loose amalgamation. The primary purposes of the APDA are to provide legal expertise for defense of obscenity prosecutions, to expand distribution into mass market retail outlets, and to act as "spokesman" for the industry.

60. The association has held two conventions, Oct. 1969 in Hawaii and April 1970 in Puerto Rico. The author attended the convention in Puerto Rico.

SECONDARY PAPERBACK BOOKS

Sexual content

"Sex pulp" books. The content of "adults only" paperback books has undergone progressive "strengthening" in the past 10 years. This followed a number of important court decisions involving mass market books, such as *Lady Chatterley's Lover*, *Tropic of Cancer*, and *Fanny Hill*.⁶¹ The court decisions had a profound effect on the secondary market; insofar as secondary publishers were concerned, guidelines for the sexual content of books were established. Publishers projected a rationale from the court decisions which justified (in their opinion) greatly expanded sexual content in "adult" books.

Until at least the mid-1960's most secondary paperback books were of a type known in the trade as "sex pulp." The books followed a rather rigid formula which was accurately described by a defense witness during a trial⁶² of some 11 books:

... [A]ll of the books ... are novels; ... have discernible plots, motivations and themes; ... each book concerns itself with some kind of familiar fictional problem; ... in some cases it is a solution of a crime, in some cases it is a problem of marital discord, in some cases it is the adjustment of student or artistic life; ... about one half of each novel concerns itself with this kind of fictional problem; ... about one half of each novel concerns itself with erotic events of various kind.

... [T]he sexual activity portrayed in the books ... is generally described as sexual foreplay; ... the erotic activities described in these books have to do with titillation, with urging of sexual responses, but they do not deal in any graphic or detailed way with the sexual activities although the subjective states of minds of the participants are treated at some length.

... [I]n each of the books ... , there is no direct reference to the male or female sex organs as such; ... the strongest expressions used in these novels are damn and hell, and even these are relatively infrequent; ... the language used in these novels is not vulgar; ... there are no four-letter Anglo-Saxon words.

... [T]he books ... are representative of a stratum of literature that would include such things as mystery stories, sentimental romances, self-confessional literature, all written on a very elementary level geared to individuals who have limited background and ability.⁶³

In short, in the "sex pulp" formula, part of the sexual content was left to the reader, who was required to supply much of the imagery himself.

61. *Grove Press, Inc. v. Christenberry*, 175 F. Supp. 488 (S.D.N.Y., 1959), aff'd, 276 F.2d 433 (2d Cir., 1960) (*Lady Chatterley's Lover*); *Grove Press, Inc. v. Gerstein*, 378 U.S. 577 (1964) (*Tropic of Cancer*); *A Book Named John Cleland's Memoirs of a Woman of Pleasure v. Attorney General*, 383 U.S. 413 (1966) (*Fanny Hill*).

62. The trial court found books not to be obscene. The lower court decision was reversed by the Kansas State Supreme Court, 197 Kan. 306; this decision was reversed, in turn, by the U.S. Supreme Court on grounds which did not reach the obscenity issue. *Quantity of Copies Books v. Kansas*, 388 U.S. 452 (1967).

63. Testimony of Robert Cutler, associate professor of English, Wichita State University, Kansas, in unreported decision of Judge Raum, judge of the district court, Sedgwick County, Kansas, *Quantity of Copies of Books v. Kansas*, reprinted in Stanley Fleishman (editor), *Selected Obscenity Cases* (Los Angeles: Blackstone Book Co., 1968), p. 80.

By the middle or late 1960's much of the "sex pulp" formula had become passé, perhaps even before the first such books reached the Supreme Court and were "cleared."⁶⁴

Wholly textual "adult" paperback books, 1969-1970. Within the last 3 years, a new genre of secondary books has appeared in the "adult" market. All restraints upon language and upon the description of sexual activity have been eliminated (patterned after *Tropic of Cancer*). The "sex pulp" formula, with about half of the book devoted to a nonsexual plot, has been discarded. Often secondary books are nothing more than descriptions of nonstop sexual activity (patterned after *Fanny Hill*). Thus, secondary publishers combined elements of two widely sold mass market books to create a new breed.

Most paperback books are written for male heterosexual tastes. Publishers do not consider women to be potential customers. While the most common sexual activity described is heterosexual coitus, the subjects of paperback books cover the entire range of sexual activity, including bestiality, pedophilia, necrophilia, masturbation, female and male homosexuality. Less than 10% of paperbacks published are written for male homosexual tastes. In addition, small numbers of books are published for those with fetishistic or sadomasochistic sexual tastes (less than 5%). There are books directed to every variation on the theme of sadomasochism, especially bondage and spanking.

Some book lines continue the old "sex pulp" formula because some buyers prefer less explicit materials. However, even in "sex pulp" the formula has been modified. The unrestrained language and descriptions contained in many secondary books (and in many mass market books) have caused "sex pulp" books of 1970 to be less scrupulous about avoiding vulgar language, vivid descriptions, and so forth. Thus today "sex pulp" often can be identified only by indefinite measurements: Paperbacks with low-quality style, editing, and typesetting, and which apparently are written for poorly educated readers, are still regarded by the industry as "sex pulp." Because many current "sex pulp" books differ from other secondary books on grounds difficult to measure, "sex pulp" as a distinguishable category has little validity.

At present, virtually every book written in English which was originally thought to be obscene at the time of publication has been reissued by secondary publishers. All of the so-called "classic" erotic writings, including *Kama Sutra*, *Autobiography of a Flea*, *My Secret Life*, and the complete works of Henry Miller, Frank Harris, and the Marquis de Sade, have been published in this country and freely circulated. After the backlog of so-called "classic" erotic writings in English was exhausted, some publishers translated foreign "classic" erotic writings into English for publication. In addition, many current authors have attempted to duplicate "classic erotic literature."

Another type of sexually oriented book has become popular in the last few years—the pseudomedical case-study analysis of sexual activity. Such books usually purport to be written by a medical doctor or a Ph.D., but they differ little in sexual content from other secondary books.

64. A number of Supreme Court cases involved "sex pulp" books. In none of the cases was the obscenity of the particular books specifically discussed by the Court. Rather, the obscenity convictions below were reversed per curiam on the authority of *Redrup v. New York*, 386 U.S. 767 (1967) which did not deal with the content of the books involved. The pattern of per curiam reversals has persisted.

As of 1969-1970, publishers of sex-oriented, wholly textual paperback books are convinced that there is absolutely no legal restriction upon sexual content.⁶⁵ As a result, in the past 2 or 3 years tens of millions of paperback books have been sold in the United States which cannot possibly be exceeded in candor, graphic description of sexual activity, or use of "vulgar" language.

Illustrated paperback books, 1969-1970. Within the past 3 years, secondary publishers have included photographs in some books. Initially paperbacks reproduced the same type of photographs available in "adults only" magazines, that is, photographs depicting females posed to expose their genitalia. Paperbacks featuring "erotic art" were more direct; drawings often graphically depicted coitus, fellatio, and so on. Publishers have taken the attitude that "art" is not obscene under current judicial standards and is "defensible" in any prosecution.

In 1968 and 1969 two types of illustrated paperback books were published in fairly large numbers which revolutionized the sexual content of such books. One type was the "illustrated marriage manual." The first or at least most important of these was a paperback book entitled *Intercourse*.⁶⁶ This book contained nearly 50 photographs of a couple engaged in sexual intercourse. Only a few of the photographs revealed visible penetration of the female (and the camera did not focus on this). This "breakthrough" was followed by books which developed the theme. Most of the subsequent illustrated marriage manuals were more "discreet" in their pictorial content and did not contain photographs in which the genitalia of the participants were visible.⁶⁷ However, the latest secondary marriage manual graphically depicts vaginal penetration, fellatio, and cunnilingus.⁶⁸ While most of these illustrated marriage manuals were sold through mail order, all were available in some retail outlets.

An interesting aside provides an insight into the nature of the secondary market. *Intercourse* was copied (also known as "stolen" or "pirated") by at least four different publishers without regard to the copyright; another marriage manual was copied at least once.

The second "breakthrough" in illustrated paperbacks occurred in 1969 with the publication of *Sex, Censorship, and Pornography*, vols. 1 & 2,⁶⁹ which purported to be a serious study of the subject. These books contained illustrations of "erotic art" and, in addition, reproductions of "hard-core" pornographic photographs from Danish magazines. The photographs graphically depicted vaginal and anal penetration, fellatio, cunnilingus, and so on. Initially, many distributors and retailers in the secondary market were unwilling to distribute or display these books when they appeared in the spring of 1969. However, fears of legal complications eventually evaporated, and the books have had a rather wide circulation in many cities. The relatively "trouble-free" circulation of these books

65. This opinion may well be justified; see materials involved in *Hoyt v. Minnesota*, 399 U.S. 524 (1970).

66. (City of Industry, Calif.: Collector's Publications, 1968.) The publisher claims sales of over 500,000 copies both in retail outlets and through mail order.

67. For example, L. R. O'Connor, *The Photographic Manual of Sexual Intercourse* (New York: Pent-R-Books, Inc., 1969); *The Picture Book of Sexual Love* (New York: Cybertype, Inc., 1969).

68. Wendel M. Koble, M.D., and Richard Warren, *Sex in Marriage*, vol. 1 & 2 (San Diego, Calif.: Academy Press, 1970).

69. Donald H. Gilmore (San Diego, Calif.: Greenleaf Classics, Inc., 1969).

has led to the publication of a number of books containing "hard-core" photographs with textual commentary.⁷⁰ Publishers stated that the books are legally defensible because they represent a serious attempt to study the subject.

Thus, the pictorial content of some publications published and sold in the United States has almost reached the level of sexual explicitness found in Danish materials. However, Danish-style "pornographic" magazines made up entirely of photographs of sexual activity (no text) have not yet been openly published by domestic producers. While exactly the same sexual activities are depicted in some domestic publications, thus far the books always have included substantial text.

Production costs

Sexual content of paperback books has little relationship to production costs, with one important exception. The cost of printing a paperback book, whether for general distribution or for the "adult" market, is standardized. However, secondary books have a much higher unit cost (per copy) than books published for general distribution because press runs are much smaller.

Press runs for mass market paperbacks published by a major book line are seldom less than 100,000 copies. During 1969 and 1970 very few secondary publishers had initial press runs of 50,000 copies, and the range was usually between 10,000 and 30,000; the average probably did not exceed 15,000 to 20,000. Thus, "plant" costs such as manuscript, typesetting, cover art work, press setup, salaries, and office and sales overhead were proportionately much higher for secondary publications.

Table 4 is a price list, as of January 1970, for printing and binding "better quality," wholly textual, "print ready" secondary paperbacks supplied by a large commercial printer.

To illustrate production costs of typical secondary paperbacks, a few hypothetical examples are given below. A typical secondary paperback is either 160 or 192 pages in length (particularly popular sizes).⁷¹ A secondary publisher usually pays between \$500 to \$1,000 to purchase an original manuscript which will produce a sexually oriented paperback book of 160 or 192 pages. Some authors have an established audience for their books and can command higher prices for their product. A few publishers interviewed stated that they sign royalty contracts with certain authors. However, in today's market royalties are almost never paid, because "best sellers" are very rare in the "adult" market. As of June 1970 purchase prices for manuscripts were in a depressed state because there were more sellers than buyers. In order to prepare a manuscript for printing it must be typeset at a cost of approximately \$2.75 per page. Cover art work, if any, is additional. Thus on the average a secondary publisher has between \$1,200 and \$2,000 invested in an original manuscript delivered to the printer.

70. For example, Gordon Schindler (editor), *A Report on Denmark's Legalized Pornography* (Torrance, Calif.: Banner Books, Inc. 1969); William Sprague, *Pornography and the Law*, vols. 1 & 2 (San Diego, Calif.: Academy Press, 1970).

71. Books are printed in increments of at least 8 pages; increments of 16 or 32 pages are the most convenient (and least expensive) to print. Thus, a 160-page book consists of five 32-page "signatures," and a 192-page book is six "signatures."

Table 4

PRICE SCHEDULE^a

No. of pages per book title	For first 10,000 copies	Plus each additional 1,000 copies ^b
128	\$1,075	\$40.00
144	1,150	42.00
152	1,200	42.25
160	1,250	42.50
176	1,375	48.50
192	1,425	51.00
208	1,575	54.00
216	1,600	55.00
224	1,650	56.00
240	1,725	54.50
256	1,800	56.50
272	1,925	60.50
288	2,025	64.00
304	2,125	65.50
320	2,200	67.00
336	2,325	72.00
352	2,425	73.50
360	2,475	75.00
368	2,525	76.50
384	2,600	78.50

^aAll prices are based on 50 lb. offset paper, priced at \$3.20 per 16 pages per 1,000 paperback books. Paper cost for each 1,000 copies of a 160-page paperback book is \$32. This price does not vary with the number of copies printed. Thus, after the first 10,000 copies, approximately 75% of the cost of additional copies is for paper.

^bThe increments for additional pages are not uniform due to printing technology. Usually, additions of 32 pages cost proportionally somewhat less than additions of 16 pages, which in turn are proportionally less expensive than additions of 8 pages.

The printing cost for a 160-page book is approximately 12.5¢ per book for the first 10,000 copies and 4.3¢ for each 1,000 thereafter. For a 30,000 press run of a 160-page book, a secondary publisher may spend \$2,000 for "make ready" costs (including the cost of the manuscript) and an additional \$2,100 for printing. Shipping costs (from the printer to wholesalers or retailers) add 1¢ to 1.5¢ per book to the costs, or an additional \$300 to \$450. Thus, to deliver 30,000 books to the retail outlets costs approximately \$4,500, or approximately 15¢ per copy.

If the press run is 10,000 copies for a 160-page paperback (typical in today's "adult" market), the unit cost almost certainly will be considerably higher. Even if the anticipated small press run reduces the purchase price of the manuscript, the publisher will probably spend \$800 to \$1,200 in "make ready" costs. When printing costs (\$1,250) and shipping costs (\$100 to \$150), are added, the publisher will have an investment of between \$2,200 and \$2,600, or a unit cost of 22¢ to 26¢ per book.

The publisher incurs additional costs after the books have been shipped. The cost to return unsold copies is borne by the publisher. In addition, the publisher must consider overhead such as salaries, office and sales expenses, and the cost of administering the distribution of the books and the collection for sales.

Obviously, overhead varies greatly depending on the size of the publishing operation.

The hypothetical production costs above are merely representative. Cost can vary considerably depending on the length of the book, the size of the press run, and so on. Manuscript cost, for example, is highly variable; manuscripts of "classic" erotic writings cost nothing. Thus, a large press run of such a book with relatively few pages can reduce the unit cost to less than 10¢ per copy.

Most paperback books published for the secondary market cost between 10¢ and 20¢ per copy to produce. The latter figure is probably more typical in today's market of small press runs of about 10,000 to 15,000 copies. Secondary publishers interviewed unanimously agreed that press runs declined steadily during 1969 and continued to fall in 1970. A substantial glut of paperback books in the secondary market during 1969 resulted in very substantial returns of unsold merchandise, which in turn caused reductions in press runs and a rise in unit costs. Publishers formerly printing 40,000 or 50,000 copies per title reduced their press runs to 20,000 or 30,000. Others cut press runs of 20,000 or 25,000 back to 10,000 or less.

Pricing

To compensate for increasing unit costs and falling sales, the average cover price of secondary paperbacks rose steadily during 1969-1970. During late 1968 and early 1969 typical cover prices were 95¢, \$1.25, \$1.50, and \$1.75. Typical prices in 1970 are \$1.75, \$1.95, \$2.25, and \$3. Particularly "daring" paperback books often carry a cover price of \$4.75 or \$5.00, and some are priced even higher at \$7.50 to \$12.50. One illustrated paperback was priced at \$20.

Most publishers hope to recover 45% to 50% of the cover price for every copy of a new title sold. In today's market, secondary paperbacks ordinarily do not sell at a rate greater than 40% to 50%. Thus, in the hypothetical examples presented in the last section, a secondary publisher who produces 10,000 paperbacks with a cover price of \$1.50 will probably be able to sell only 4,000 to 4,500 copies, which return 67.5¢ to 75¢ per copy. If the publisher receives 45% of the cover price (67.5¢), and the book sells at the rate of 40%, gross return is \$2,700. As noted in the hypothetical example, he may have had an investment of \$2,600 in the book as shipped to the retail outlets. To have the unsold books returned, he will incur additional shipping charges. Thus the publisher will only break even on the distribution of the book (assuming all the retailers and distributors pay their bills). When general overhead is considered, he will be in a position of loss. Unless he is able to dispose of the remaining 6,000 books through reorders (very unlikely in today's market) or through mail order, the only solution is to dump the remaining 6,000 books on the "remainder market." A sale of remainders at 15c to 25¢ per copy will mean the difference between losing money and making a small profit. Of course, discount prices inhibit future sales of new titles, since the remainders will compete with new titles.

If the publisher is able to sell 50% of a 10,000 press run and receives 50% of a \$2 cover price, the book will show a profit without resorting to the remainder market. In such a case he will have received a return of \$5,000 on his investment

in the book of \$2,200 to \$2,600. In such a case he may choose not to sell the books on the remainder market.

Higher cover prices are more likely to result in some profit to the publisher if the books sell at a reasonable rate. For example, a press run of 30,000 copies of a \$2 cover price book will result in a substantial profit, if a reasonable level of sales can be achieved. If the publisher has invested \$4,500 in 30,000 paperback books with a cover price of \$2, and if he receives 50% of the cover price and the books sell at a rate of 40%, the gross return for the book will be \$12,000. In this instance, a sale of 40% of the books would be considered profitable.

Obviously, the reason that very few publishers have press runs of 30,000 in 1970 is that most secondary titles will not sell even 12,000 copies. Unless the book is accepted by a large percentage of the buyers of "adults only" material, a publisher with press runs of 30,000 may find that he has 25,000 copies returned and has therefore lost money.

Production volume and sales percentage

An attempt to estimate the total production volume and the percentage of sales of secondary books is admittedly a speculative effort. Independent sources are not available, and the information upon which to base an estimate was provided principally by the secondary industry.

For example, Table 5 presents an estimate of paperback production as of the summer of 1969. The estimate was supplied by perhaps the most knowledgeable publisher in the industry, who prefers to remain anonymous.

Table 5

ESTIMATE OF PAPERBACK BOOK PRODUCTION BY MAJOR SECONDARY PUBLISHERS—Aug. 4, 1969

The following list presents the major publishers and the average number of new titles each distributes per month. The print runs vary from 10,000 per title to 50,000. An educated guess on the average run would be 27,000 each.

	No. of titles
Reed Enterprises, Inc.	40
Publishers Export Company	10
All American Distributors	8
Venice Publishing Company	4
Triumph Publishing Company	4
Powell Publishing Company	4
Columbia News Company	8
Ram Classics	4
Golden State News Company	10
Tiburon Publishing Company	4
World Wide News Company	6
Eastern News	8
Continental Classics	8
Parliament News Company	20
Peachtree News Company	<u>15</u>
Total	153

The estimate in Table 5 projects to an annual production of 1,656 new titles, and the production estimate projects to 44.7 million copies during 1969. However, note that only 15 major publishers are covered out of the total 80 to 100 which produced for the market in 1969. Although the publishers listed are the largest in the industry, production of paperbacks by other publishers not on the list is substantial.

To further break down the total production of secondary materials, assistance was sought from the American Publishers and Distributors Association (APDA), the embryonic trade association of secondary publishers. In a survey conducted by Franklin Laven, a defense attorney from Los Angeles, 40 of approximately 80 publisher-distributors replied to a questionnaire sent under auspices of the APDA. Table 6 summarizes these responses:⁷²

Mr. Laven estimated that responses to the questionnaire accounted for approximately 50% of the total production of the industry. He suggested that the above figures be doubled for an accurate account of the total production of the industry. It is conceivable that sales figures were somewhat exaggerated by the responding publishers.

The Commission staff interviewed well over one-half of the important publishers of secondary materials. Those interviewed disclosed that they published at least 200 new paperback titles per month during most of 1969. Press runs at the time of the interviews (summer-fall, 1969) ranged from 10,000 to 50,000 copies per title, averaging approximately 15,000 to 20,000. Later discussions with many of these publishers indicated that press runs fell steadily during 1969. Based on information from these interviews, 30 to 35 million paperbacks were published by these publishers during 1969.

Most publishers stated that paperback sales ran between 40% and 50%, with 45% regarded as a "reasonable average sale" per title. Publishers interviewed thus claimed about 13.5 to 15.75 million copies sold, using the 45% rate. However, 1969 overproduction resulted in a glut on the market, which casts doubt on a 45% rate of sale. Assuming a 40% rate, 12 to 14 million copies were sold by the publishers interviewed. These figures should be increased by at least 50% and perhaps 100% to account for the entire industry. A rough "best estimate" is that the industry published between 60 and 70 million paperbacks and sold 25 to 30 million in 1969.

Table 6

SECONDARY PAPERBACK PRODUCTION AND SALES—1969:
RESPONSE TO INDUSTRY SURVEY BY 50% OF THE PUBLISHERS CONTACTED

	Paperback books
Titles per year	2,750
Average press run	14,000
Total press run	40,000,000
Average sales per title	7,800
Total sales	22,500,000
Total remainder sales	12,000,000

72. The complete report will be found in Franklin Laven, "Report on the Traffic and Distribution of Adult Books and Magazines in 1969" (1970). (See Appendix to this part, page 121.)

SECONDARY MAGAZINES

Sexual content, until the late 1960's

The progenitors of today's secondary magazines were nudist magazines and, to a lesser extent, "girlie" and "muscle" magazines. The effect of court decisions upon the sexual content of "adult" magazines has been nearly as profound as the effect of court decisions dealing with textual materials. In 1958 the Supreme Court reversed a decision which had found two nudist magazines containing pictures clearly revealing the genitalia of men, women, and children to be obscene.⁷³ Prior to that time, genitalia in photographs in almost all nudist magazines were eliminated by the use of an air brush. The court decision did away with this technique, although the changeover to genital exposure was not completed until at least 1963.⁷⁴

Throughout the early 1960's photographs in nudist magazines contained little, if any, erotic content other than complete nudity. Early nudist publications practiced a complete segregation of the sexes; males and females were never shown in the same photograph, and often not even in the same magazine. This practice gradually disappeared and the sexes were integrated. Thereafter, photographs consisted of pictures of individuals and family groups at work and play. Erotic posturing or sexual activity (even implied) was never depicted. Numerous articles accompanied the photographs extolling the virtues of nudism. Sex was never discussed.

At the same time, "girlie" magazines developed along another line and by the late 1950's presented partially nude females (breast and buttocks exposure) in innumerable issues. The posed photographs in these magazines were often explicitly erotic.⁷⁵

By the mid-1960's secondary publishers had become much bolder. Paid models and staged situations were presented, and implied erotic activity became an integral part of pseudonudist magazines.⁷⁶ To some extent, the new breed of secondary magazines combined total nudity (from nudist magazines) with posed eroticism (from girlie magazines). Authentic nudist magazines became increasingly rare. The prototype, *Sunshine and Health*, eventually discontinued publication, and other authentic nudist publications also passed into oblivion.

By 1967 or 1968 publication of authentic nudist magazines was virtually dead. In their place was a whole collection of magazines featuring female nudity. These magazines soon evolved into "crotch shot magazines," popularly known in the trade as "split beaver" or "spread beaver." Most contained little text and featured

73. *Sunshine Book Co. v. Summerfield*, 355 U.S. 372 (1958) (*Sunshine and Health, Sun*).

74. T. Lynch and C. O'Brien, "A Report to the California Legislature on Obscenity," Unpublished manuscript, Commission Files (1967) (hereinafter referred to as the *Lynch Report*).

75. The first "girlie" magazines (now called "men's sophisticates" in the mass market) did not reach the Supreme Court until 1967 (*Gent v. Arkansas*, 386 U.S. 767).

76. The Supreme Court reversed obscenity convictions for sales of dozens of pseudonudist magazines in *Rosenbloom v. Virginia*, 388 U.S. 450 (1967), and *Felton v. Pensacola*, 390 U.S. 340 (1968).

pictures of individual females posed in a manner which revealed their genitalia in detail.

During the 1960's, magazines directed to male homosexuals developed along similar lines. In 1962 the Supreme Court reversed a judgment which found three magazines containing photographs of nearly nude models obscene.⁷⁷ In effect, these magazines were "pinups" for homosexuals. Five years later, an obscenity conviction for magazines consisting entirely of photographs of nude men was reversed by the Supreme Court.⁷⁸

Homosexual magazines until the late 1960's were composed mostly of posed pictures of nude males. Although in most instances the pictures contained a single model, occasionally more than one model was shown. The genitals shown in the photographs were flaccid. Little physical contact between models was permitted, and sexual activity was generally not even implied.

Magazines produced for fetishists and sadomasochists (featuring bondage; wrestling and boxing girls; spanking; domination by chains, whips, clubs; rubber wearing apparel; high-heeled boots) were produced in relatively small quantities in the 1960's. Because the interest is atypical, most of these magazines contained considerably less nudity than other secondary publications. These were not a major factor in the market, although a number of titles were produced.

Sexual content, 1969-1970

During 1969 and continuing through July 1970, a steady strengthening of sexual content in secondary magazines was apparent. By early 1969 the most popular "adult" magazines were those primarily devoted to the graphic depiction of female genitalia. Variations upon this theme were introduced. One innovation was to add additional female models to the photographs (called "duals" and "triples"). Another technique which became increasingly popular was to feature male and female models together. Inevitably this mixture led to a considerable amount of implied sexual conduct, both coitus and oral-genital contact. Actual sexual activity was not depicted, however. One additional type of heterosexual magazine worthy of note is the "adult" version of the movie magazine. These usually feature stills from exploitation films. With the exception of the movie-type magazine, there is little textual content in most secondary magazines.

Homosexual magazines have also become "stronger" in sexual content. The prime feature of such magazines continues to be the depiction of male nudes, primarily individuals. However, the camera's focus on the genitals is much more direct, although very few contain photographs of erections. In addition, there is considerably more emphasis on photographs of two or more models. This leads to a considerable amount of implied sexual activity, some of which is relatively candid (both anal and oral-genital acts are sometimes strongly implied). One additional feature is sometimes found in homosexual magazines which is almost wholly lacking in those directed to heterosexual males. Very young males, both prepubescent and pubescent, are often used as models; some magazines are wholly devoted to such photographs.⁷⁹

77. *Manual Enterprises, Inc. v. Day*, 370 U.S. 478 (1962).

78. *Potomac News Co. v. U.S.*, 389 U.S. 47 (1967).

79. Photographs of very young nude females are found only in pseudonudist magazines, and then ordinarily only in a "nudist family" setting. Magazines wholly composed of photos of young girls are unknown.

In the spring of 1970 a survey of the secondary industry was made by a Los Angeles defense attorney, Franklin Laven.⁸⁰ Approximately 40 publishers responded to the survey (out of 80 to 90 secondary publishers contacted), reporting that they had published 1,000 new titles of magazines in 1969. Table 7 summarizes the publications by "type" (as classified by the industry).

As is apparent from Table 7, the overwhelming majority of secondary magazines are designed for heterosexual males. Only 7.5% of the reported magazines were directed to homosexuals. This may have been a slight under-report, but it is doubtful that more than 10% of all new titles are directed to homosexuals.

Fetishistic and sadomasochistic magazines are a minor factor and probably do not reach 5% of the total. The sample did not report any such magazines.

Cost of production

Magazines are considerably more expensive to produce than are paperback books. Much higher quality paper is required in order to reproduce photographs. Some use of color is almost mandatory, and the "package" cost of model fees, photographer fees, typesetting, and so on ranges from \$1,000 to \$4,000 per magazine.

Table 7

SECONDARY MAGAZINES BY "TYPE" IN 1969— APPROXIMATELY 40 SECONDARY PUBLISHERS REPORTING

Type	New titles - 1969
Movie ^a	75
Girlie—No split ^b	150
Nudist ^c	325
Boy ^d	75
Girlie ^e	150
Double girl ^f	100
Boy—girl ^g	125

a. Featuring stills from exploitation motion pictures. Consistent with the self-imposed taboos of that media, male genitals are almost never shown, while females often are photographed with the pubic area shown.

b. Featuring partially or totally nude females without focusing upon the genitals.

c. Pseudonudist magazines, mainly featuring paid models in posed situations.

d. Homosexual magazines featuring male nudes.

e. A single female posed with the camera focused on the genitals.

f. Two or more females posed as in (e) above.

g. One or more females posed as in (e) above, together with one or more males (sexual activity implied but no actual sex act depicted—males never shown sexually aroused).

80. See Appendix to this part. The survey had the support of many of the leaders of the defense bar and of the trade association of the secondary publishers (American Publishers and Distributors Association).

The length of secondary magazines varies considerably, which has a direct relationship to the production cost. Magazines are usually printed in increments of 16 pages. Although some contain as few as 24 all-color pages, typically the minimum number of pages is 32, and popular lengths are 48, 64, 72, and 96 pages.

Press runs for "adult" magazines are even lower than for paperbacks. Few secondary magazines had press runs in 1969 exceeding 25,000, although such runs were not uncommon in 1968. The range of press runs was between 6,000 and 8,000 to as high as 30,000. However, most magazines were printed in quantities of 10,000 to 17,500. Obviously, this greatly increased unit cost.

Costs of production for a typical secondary magazine with a press run of 10,000, having 64 pages and 4 color pages (including the cover), are approximately 45¢ per copy. Nudist magazines, which are fairly standardized at 64 pages with 16 pages in color, generally cost 50¢ per copy for printing. An all-color 64-page magazine will cost the publisher about 65¢ per copy. A 24- or 32-page all-color magazine costs less than 40¢ per copy on the average. A 96-page magazine with 16 pages of color and an expensive "package" may cost more than 70¢ each if the press run is 15,000 or less.

Magazine pricing

The average secondary magazine is priced considerably higher than the typical paperback (this, of course, reflects the higher cost of production). Although some secondary magazines carry a cover price of \$1.50, most are at least \$2.50 or \$3.00. Probably the most typical cover prices are \$3 and \$5 at the present time.

Most publishers allege that magazines sell at a higher rate per title than paperback books. Because magazines are more expensive to produce, publishers carefully avoid overproduction.

Production volume and sales percentage

Estimating the number of new titles of magazines published in 1969 is at least as difficult as it is for paperbacks. Publishers are more wary of pictorial materials, and a large percentage of magazines do not identify the publisher. While most are confident of the legality of any textual material, many are unsure of the "defensibility" of some pictorial matter. Moreover, the lack of continuing titles and "lines" makes an accurate count almost impossible.

The survey made by Franklin Laven, a defense lawyer from Los Angeles, under auspices of the American Publishers and Distributors Association, elicited responses from 40 publishers (of 80 to 90 contacted). Table 8 summarizes these responses.⁸¹

Mr. Laven estimated that responses to the questionnaire accounted for approximately 50% of the total production of the industry. He suggested that the above figures be doubled to achieve an accurate account of the total production of the industry. It seems likely, however, that magazine publishers reported well over 50% of the total in this survey. It is also conceivable that sales figures were somewhat exaggerated by the responding publishers.

81. See Appendix.

Table 8

SECONDARY MAGAZINE PRODUCTION AND SALES—1969: RESPONSES TO INDUSTRY SURVEY BY 50% OF THE PUBLISHERS CONTACTED

	Magazines
Titles per year	1,000
Average press run	12,000
Total press run	12,000,000
Average sales per title	8,200
Total sales	8,400,000
Total remainder sales	2,000,000

The author interviewed most of the major magazine publishers; they stated that they were producing almost 100 new magazine titles per month in 1969. The average press runs for these magazines probably did not exceed 12,000 copies and ranged from 8,000 to 25,000 copies per issue. Subsequent discussions with publishers revealed that an oversupplied market caused press runs to decline consistently during 1969. Sales of magazines were estimated by most publishers to range between 50% and 70%. In 1969 the total production of magazines by publishers interviewed was approximately 12 million copies. If sales averaged 50% to 60%, a total of 6 to 8 million copies was sold.

To account for the entire industry, the information on production figures elicited in interviews must be increased by 40% to 60%. The author's "best" estimate is that between 15 and 20 million "adult" magazines were produced in 1969, and that between 8 and 12 million of these were sold at retail.

SEX NEWSPAPERS

In late 1968 sex newspapers came into being. Although these may trace their origin to underground newspapers, they do not devote space to political topics. Rather, they are composed entirely of sexual material. The first and most famous is a New York publication entitled *Screw*. Quite a number of other newspapers followed this lead, such as *New York Review of Sex*, *Pleasure*, *Kiss*. To date, publication of sex newspapers has been restricted to New York City, although subscriptions and sales in "adult" bookstores provide some national distribution.

The content of the newspapers is basically unrestrained; they do not recognize taboos on the use of language. Numerous photographs of nudes appear, most of which have a strong implication of sexual activity. Thus far, no photographs have been printed which graphically depict sexual intercourse. However, cartoons and drawings found in the newspapers depict coitus, fellatio, cunnilingus, and so on.

The circulation of the sex newspapers was rather erratic in 1969. One report stated that in August 1969 *Screw* had a circulation of nearly 150,000, far outstripping sales of the *New York Review of Sex*, at 40,000 issues, *Pleasure*, at 70,000, and *Kiss*, at 55,000.⁸² Many of the journals have subsequently gone out of business.

Screw continues in weekly publication and had published over 70 issues as of July 1970. In May 1969 the first of several arrests of the publishers and retailers of *Screw* was made. In a subsequent lawsuit filed against the police commissioner

82. *Ramparts*, August 1969.

and district attorney of New York City, the complaint by the publishers stated that the arrests had caused the sales of the newspaper to decline from 75,000 per week to as low as 17,000. An application for a second-class mailing permit filed October 29, 1969, reports that the press run of the September 22, 1969, issue was 45,000; single copy sales were 36,000, and approximately 4,500 copies were sold by subscription. However, if the publishers are to be believed, *Screw* has revived in 1970. The June 15, 1970, issue claims that 94,500 copies are sold each week. If this rate is maintained during 1970, the newspaper can expect to sell nearly 5 million copies. Priced at 50¢ per copy in New York City, and 75¢ outside the city, gross retail sales for *Screw* in 1970 will be in excess of \$2.5 million. None of the other sex newspapers in New York City have approached this success. To date, *Screw* is certainly the leader in the field which it created (as its advertising is quick to point out).

DISTRIBUTION OF "ADULTS ONLY" PUBLICATIONS

Publishers

Most secondary publishers serve as their own national distributors. Publishers use several methods to distribute their materials. Of prime importance are secondary wholesale distributors, although some I.D. wholesalers also handle the product of certain publishers. However, there are not enough secondary wholesalers or I.D. wholesalers willing to distribute the materials to enable publishers to reach all their potential customers.

Secondary publishers are thus forced to use additional channels of distribution, especially direct sales to retailers. For example, one publisher supplied the Commission staff with a complete list of his customers. Approximately 25 distributors were listed, together with 75 individual retail outlets. Other publishers reported a similar pattern, especially for areas where local wholesale distribution is not available.

Publishers also distribute their product by entering the mail order business, while others supply materials to independent mail order operators. In such instances, the mailers buy only after a sale has been made.

Distribution of new titles is almost invariably made on a "fully returnable" (consignment) basis, usually at 50% to 55% off cover price to wholesalers and 40% off cover price to retailers. Payment can be made either in cash or by the return of unsold merchandise for credit. Quite a number of publishers offer additional discounts if the material is purchased outright (60% off is typical). Lately there have been few buyers who avail themselves of this discount.

Finally, merchandise which did not sell on its initial introduction to the market is often "dumped" by publishers on the "remainder market." In remainder sales, the buyer purchases the material outright. Such sales are made at very substantial discounts, as high as 75% to 90% off cover price.

I.D. wholesale distributors

An undetermined number of I.D. wholesalers distribute some "adults only" materials. Usually I.D.s limit themselves to paperback books and, on occasion,

some of the "milder" magazines. Ordinarily, however, the most graphic materials are not distributed by I.D. wholesalers. The refusal to deal in "strong" material is undoubtedly a combination of personal taste, fear of adverse publicity, or fear of prosecution, depending on the individual. Independent wholesalers, as a group, are sensitive to public criticism. Most content themselves with supplying only those sex-oriented materials which are available through mass market channels. Indeed, many refuse to distribute some of these mass market publications.

In nonurban areas, secondary materials are distributed by I.D.s for profit, to thwart possible competition, and as a service to customers. In larger population centers secondary wholesalers compete successfully in the sex-oriented market. Secondary publishers prefer to market through secondary wholesalers, because such publishers have learned from experience that I.D.s either will not carry a full line or will not give secondary merchandise a "hard sell."

The number of I.D. wholesalers distributing secondary materials is not known, especially since most are reluctant to discuss the subject. One of the largest secondary publishers stated that nearly 400 I.D.s distributed some of his publications. The publisher noted that most were willing to distribute only certain paperback lines. The Council for Periodical Distributors Association (the I.D. trade association), on the other hand, believes that the vast majority of I.D. wholesalers do not distribute any secondary materials.⁸³

Secondary wholesale distributors

A number of individuals have seized the opportunity to distribute "adults only" material to retail outlets. Thus, the base for secondary wholesale distributors is sex-oriented materials which otherwise would not be distributed locally by a wholesaler. After becoming established, many have sought to increase the number of periodicals and book lines which they distribute. A few deal extensively in nonsex publications; one of the largest textbook distributors in one large metropolitan area began with sex-oriented paperbacks and magazines. However, sex-oriented material comprises 80% or more of the stock of almost all secondary distributors, and the majority probably handle only sex-oriented publications.

Some publishers, especially in New York and Los Angeles, have created a secondary distributorship to coordinate with their publications. This has worked both ways—some distributors have expanded into publication. In some areas secondary distributors are bookstore owners who distribute books and magazines to stores which they own and to competitors.

Secondary distributors deal directly with publishers. Deliveries are normally made on a fully returnable (consignment) basis, although outright purchases of previously unsold materials (remainders) are increasingly important. For well-established secondary distributors, dealings with publishers are identical to those between an I.D. and a national distributor. New titles are automatically shipped in a set quantity and are placed in retail outlets. After a set period of time, generally 1 to 4 weeks, the unsold merchandise is picked up. The "returns" are then

83. Interview with George Wright, executive director, Council for Periodical Distributors Association, June 12, 1970.

shipped back to the publisher for credit. In 1969 secondary wholesalers had access to much more material than they could realistically distribute. In addition, retailers often demanded a constant stream of new titles. As a result, "shelf-life" for most publications was extremely short. If a new paperback or magazine failed to sell almost immediately after its introduction, it would be withdrawn from display within a week or two. The secondary distributors interviewed agreed that during 1969 the exposure of a new title seldom exceeded 3 or 4 weeks. Of course, a title which sold remained on display as long as the demand warranted.

Secondary distributors are usually able to purchase new titles for at least 50% off the cover price. One popular distributor discount was 50% off cover price plus 10% for cash within 30 days (in effect, 45% of cover price). Retailers pay approximately 60% of cover price (a one-third markup). In comparison, prices for mass market publications are usually 70% of cover to the wholesaler and 80% to the retailer. For a wholesaler, the greater discount he receives from secondary publishers can be economically potent in shaping his business. A wholesaler can make two to five times as much per copy on secondary material as on mass market publications because of the greater discounts and higher cover prices.

Most secondary distributors interviewed stated that their business did not result in much more than "a living." They claimed that most of the money to be made in the "adults only" market goes to publishers and retailers. This explains why many (and probably most) secondary wholesalers have interests beyond distribution, either publishing, retailing, or both.

Through a variety of sources the author gathered an accurate list of the important secondary distributors in the United States as of the fall of 1969. There were approximately 60 important secondary distributors serving from 10 or 12 to over 300 retailers, most of whom were located in large metropolitan areas. In addition, informed sources reported there are probably an equal number of bookstore owners who act as secondary distributors in areas which would not support a full-fledged secondary distributor.

Both New York and California have approximately 10 secondary distributors, although only three or four in each State operate on a large volume. Ten other States, and the District of Columbia, have two or more well-established secondaries: Florida, Georgia, Indiana, Louisiana, Massachusetts, Michigan, Ohio, Pennsylvania, Texas, and Wisconsin. Thirteen States have one secondary and 25 States have none.

Secondary distributors interviewed were very reluctant to discuss either gross sales or profits. As of 1967 a task force from the Office of the Attorney General had this to say about profits:

The gross take of a secondary distributor with 50 to 60 accounts has been estimated to be well in excess of \$150,000 a year. His costs will include warehouse rental and insurance and labor and gasoline to keep one truck going 10 to 12 hours a day. One secondary distributor estimated his net profit to be 5%, but others interviewed in the course of this study believe the net to be closer to 15%.⁸⁴

84. *Lynch Report*, op. cit. (footnote 74), p. 67. Note that, in either event, these figures hardly result in great profits—\$7,500 to \$22,500 per year.

The Commission contracted for three separate studies of the marketing of "adult materials" in San Francisco, Denver, and Boston,⁸⁵ including the operations of secondary distributors. Only the San Francisco contractor was able to obtain an estimate from a wholesaler as to his gross profits. In San Francisco, one wholesaler estimated that he made a 20% gross profit on all materials he sold to retailers, and that his annual gross sales were approximately \$700,000. Net profit was not disclosed.

"Junk dealers" and discount houses

The secondary wholesale distributors are under increasing competition for the business of retail outlets from "junk dealers" and discount houses which deal in "remainders," that is, unsold returned publications. Because paperback books are never dated, and "adult" magazines very seldom carry a date, remainders often are indistinguishable from new titles.

A "junk dealer" operates from a car or pickup truck and visits individual retail outlets. He offers a variety of remainder publications at greatly reduced prices on a "no-return" basis, usually at 50% to 60% off the cover price. Discounts may be considerably higher if competition warrants. Junk dealers are relatively unimportant because their operations are sporadic and unsystematized.

Discount houses, also known as "remainder houses," operate on a volume basis. They are often operated in conjunction with a publishing business, although some are independent. Because of volume sales, discount houses ordinarily offer reductions from 70% to 90% off cover price. Quite a number of remainders are sold at prices below the original printing cost. Examples of current discount prices are given below:

(1) In the spring of 1970 a well-known East Coast discount house offered 292 separate titles of paperback books for sale; prices were as low as 15¢ for a 95¢ book and 35¢ for a \$2.25 cover; the lowest discount was 48¢ for a \$1.95 cover. Book lines included in the offer were Vibra, Scan, Tudor, Pigalle Press, Wee Hours, Marlow, Kiowa, Classical, Unique Books, Collections Edition, Classical Novel, FF Novel, E & L Brand, Chelsea, and Victorian Classics, some which are fairly well-known in the market. Also offered for sale were 402 separate magazine titles; prices ranged from 50¢ for a \$5.00 cover to \$1.25 for a \$5.00 cover.

(2) In the spring of 1970, 500,000 copies of the "Traveler's Companion Series" of Olympia Press (a well-known line) were offered at prices from 10¢ each (purchase of 1,800 books) to 14¢ (purchase of 100). Cover prices were \$1.75, \$1.25, and 95¢.

Retail outlets

OPERATION OF STORES

The final step in the distribution of secondary materials is the retail outlet. Several methods of retailing are used.

85. Morris Massey, "A Marketing Analysis of Sex Oriented Materials in Denver, Colorado," Technical Reports of the Commission on Obscenity and Pornography (Washington, D.C.: U.S. Government Printing Office, 1971); Harold Nawy, "The San Francisco Erotic Marketplace," *ibid.*; Marvin Finkelstein, "Traffic in Sex-Oriented Materials; Adult Bookstores in Boston, Massachusetts," *ibid.*

(1) Some retail outlets are exclusively devoted to sexually oriented materials and are usually self-labeled "for adults only." Normally access to the store is restricted to those over 18 (or 21) years of age. Nationwide, the most common age minimum for entrance into such stores seems to be 21.

(2) An even larger number of stores provide a special segregated section reserved for the display and sale of secondary materials, and they also carry a wide range of general merchandise (usually including mass market periodicals and paperback books). Generally, these outlets impose age limits to restrict access of minors to the special "adults only" section. The emphasis on "adult" materials versus mass market materials varies greatly among outlets.

(3) A number of stores, such as cigar stores or newsstands, do not segregate secondary materials from mass market publications, and access to the materials is usually not restricted to adults. Perhaps some stores limit sales of such materials to adults, although no data has been developed on this (industry sources state that this is often the case). The newsstands, cigar stores, or bookstores which do not segregate the secondary materials from mass market materials tend to display the "milder" versions of the secondary materials, although this is not invariably true. For example, the author visited a few retail outlets displaying paperback books illustrated with Danish hard-core pornographic photographs in an unsegregated manner. Others sell "beaver" or "split beaver" magazines without making any apparent attempt to limit access to such materials to adults.

For purposes of convenience, retail outlets selling secondary materials will hereafter be referred to as "adults only" or "secondary" stores irrespective of whether the outlet is exclusively or partially devoted to the sale of such materials.

Retail outlets displaying and selling "adults only" material tend to be located in downtown or central city areas. If a city has an area which contains a number of bars featuring live entertainment (known variously as "the Tenderloin," "Combat Zone," "city core"), such outlets tend to cluster in this area. However, not all "adult" stores are limited to the central city in decaying downtown areas. A few outlets are found in suburban shopping centers or near colleges, for example.

The operation of such outlets was studied extensively by three contractors, involving the cities of San Francisco, Denver, and Boston. The operating procedures of those retail outlets are set forth in detail in the reports of the contractors.⁸⁶

Most bookstores self-labeled "adults only" operate long hours each day, 12 to 14 hours on the average. The stores are open at least 6 days each week, and many are open on Sunday. The stores range from "seedy" to "respectable" in appearance. Some are dingy, dirty, and poorly lighted, but the majority are at least clean, orderly, and well-lighted. A substantial number are as well kept as the average bookstore, and a few might even be described as having sumptuous or deluxe decor (with soft lighting, music, carpeted floors).

Depending on the size of the store, adult bookstores may display as few as 200 or 300 titles of paperback books and as many as 1,000 or more. With few exceptions, paperback books are displayed in the same fashion as in drugstores or conventional bookstores. Browsing by customers is permitted.

86. Op. cit. (footnote 85).

Most paperback books have a cover price printed on the book. With little exception books are seldom sold above the cover price. Often there is a special rack for "sale" items.

The majority of paperback books on display are written for heterosexual males. A strong minority are written for homosexual males. In addition, most bookstores carry a few books or pamphlets with a sadomasochistic or fetishistic theme. Such books seldom are displayed prominently, and almost invariably constitute a very small percentage of an outlet's total stock in reading material.

Depending on the size of the store, an adult bookstore displays anywhere from 100 or 200 to as many as 500 or more separate titles of magazines. The price of the magazines is often increased by the store owner by placing price stickers over the price printed on the cover. Many adult bookstores (perhaps the majority) inhibit browsing by enclosing magazines in sealed plastic bags (the customer is allowed only to examine the cover).

The majority of sexually oriented magazines on display are aimed at heterosexual males. Most are "split beaver" or nudist. A substantial minority of magazines are for the male homosexual market.

Most stores have some magazines dealing with fetishes such as bondage, spanking, wrestling or boxing girls, and so on. This type of magazine usually constitutes a very small percentage of the total display.

"Adults only" retail outlets also occasionally display a limited number of hard-cover books. A few books, such as the *Illustrated History of Pornography*,⁸⁷ *The Pictorial Guide of Sexual Intercourse*,⁸⁸ and, most recently, *A Report on Denmark's Legalized Pornography*,⁸⁹ have received some distribution. These books are priced considerably higher than most hard-cover books, as much as \$15, and constitute a very small percentage of the total sales of retail outlets.

In addition, the majority of "adult" bookstores sell sexually oriented materials other than books and magazines. Many sell 8-mm. home movie films, usually priced at \$15 to \$25. Some sell a wide variety of sexual devices, such as artificial vaginas and rubber penises, and a variety of lotions, potions, and elixirs, allegedly designed to improve sexual prowess.

The most important sideline, economically, for many is arcade movie machines, also known as "peep shows," found in a substantial percentage of the stores. Most arcade machines cost 25¢ for a 3- or 4-minute view of an erotic movie (usually in color). To view an entire reel a customer is required to spend between \$1 and \$2. Reports of bookstore owners indicate that the "peep show" business is extremely lucrative. Often receipts from this segment of the operation reportedly exceed the return of the books and magazines. Another advantage is that cash receipts are not recorded in a systematic manner (which provides an opportunity to reduce the taxes paid on actual income).

NUMBER OF ADULT RETAIL OUTLETS

In order to estimate the number of retail outlets for secondary material, the Commission staff sought the assistance of the Council for Periodical Distributors

87. Abe Richards and Robert Irvine (Los Angeles: Athena Books, 1968).

88. (New York: Cybertype, Inc., 1969.)

89. Gordon Schindler, editor (Torrance, California: Banner Books, Inc., 1969).

Association, a trade association to which almost all mass market wholesale distributors (I.D.s) belong. Each I.D. wholesaler is familiar with the territory in which he operates and is knowledgeable about both the number of outlets served by his company and all other retail outlets in the area. CPDA mailed a questionnaire to its 550 members in February 1970. Approximately 220 I.D. wholesalers returned the questionnaire.⁹⁰ Table 9 summarizes the data.

Table 9

RESPONSES OF I.D. WHOLESALERS TO CPDA QUESTIONNAIRE, FEBRUARY-MARCH 1970

1. Retail outlets in the area served by I.D. wholesale distributors selling books, paperback books, and magazines: 47,299.

2. Retail outlets selling books, paperback books, and magazines self-labeled as "adult bookstores" or as for "adults only" in area: 348.

(Note: An adult bookstore is one which is labeled by its owner as such. In addition to having a label of "adults only" prominently displayed on its entranceway or in its display windows, most or all adult bookstores make some effort to forbid entrance to those under the age posted in its notice.)

3. From 2 above, "adult bookstores" selling only self-labeled "adult material": 194.

4. Retail outlets providing a special, restricted access section for "adult" materials, while also having on sale materials for general audiences in a nonrestricted access area: 584.

5. Retail outlets listed in 2 and 4 above (those selling "adult" publications) located: *

a.	Downtown	440
b.	Suburban	165
c.	Rural	43
d.	Near University or College	28
e.	Total	676

6. Number of retail outlets also operating "arcade-type" movie machines: 72.

7. Number of retail outlets selling sex devices or other sexually-related goods in addition to books, paperback books, and magazines: 90.

8. Estimated number of outlets (or other similar outlets) listed in 2 and 4 above in business in the area served by you. **

a.	One year ago	424
b.	Two years ago	386
c.	Five years ago	313
d.	Ten years ago	278

*The total of question 2 (self-labeled as permitting access only to adults) and question 4 (special section in outlet for "adults only") is 932 outlets. Theoretically the total of question 5 should be 932, but many respondents did not answer this question.

**See footnote above. The increase of "adult" outlets reported in the spring of 1970 (932) from one year ago (424) apparently shown by the responses to question 8 is not reliable. Many respondents did not answer question 8.

90. The staff of CPDA reports that response to this particular questionnaire was the greatest in the history of its membership polling. Thus, although the response was less than 50% of the total membership the survey was regarded as a resounding success.

Responses from the CPDA questionnaire were further broken down by geographical region and by population of the city or town in which the responding I.D. wholesaler was located. Tables 10 and 11 present these statistics.

Industry sources for mass market materials estimate there are between 110,000 and 120,000 retail outlets selling mass market publications in the United States.⁹¹ For purposes of convenience, it is assumed that there are 115,000 retail outlets served by I.D. wholesalers in the United States; thus, responding I.D. wholesalers service 41% of the total. Assuming that the reporting I.D. wholesalers represent a fair sampling of all wholesalers in the United States, Table 12 projects the total number of "adults only" outlets in the United States.⁹²

Table 10

RESPONSES OF I.D. WHOLESALE DISTRIBUTORS TO CPDA QUESTIONNAIRE
BY GEOGRAPHICAL REGION*

	North East	North Central	South	West	Total
1. Retail outlets served by I.D. wholesalers	5,857	15,914	14,774	10,754	47,299
2. Self-labeled adult book stores	32	152	53	111	348
3. Self-labeled adult book stores selling only self-labeled adult material	19	64	35	76	194
4. Retail outlets with special adult section	43	225	192	124	584
5. Location of "adults only" outlets					
a. Downtown	36	114	152	138	440
b. Suburban	9	72	37	47	165
c. Rural	3	15	16	9	43
d. Near university or college	2	9	16	1	28
6. "Adult" outlets also operating arcade type movie machines	3	25	17	27	72
7. "Adult" outlets selling other sexually related goods in addition to books and magazines	1	51	6	32	90
8. Adult outlets in business					
a. One year ago	40	123	115	146	424
b. Two years ago	34	97	115	140	386
c. Five years ago	22	88	103	100	313
d. Ten years ago	18	80	115	65	278

*Standard Geographical Regions developed by the Bureau of the Census.

91. See footnotes 26 and 27, and accompanying text.

92. It is not claimed that the responses to the CPDA questionnaire represent a random sample. However, the responses were representative of the likely distribution of all retail outlets.

It might be assumed that such outlets are distributed across the nation in some rough correlation to the population. Over 50% of the retail outlets served by the I.D. wholesalers responding are located in metropolitan areas of over 500,000. According to the 1966 estimated census, slightly more than 50% of the total population in the United States lives in such metropolitan areas (99 million out of a total of 196 million.) However, the proportion of the questionnaires received from I.D. wholesalers serving areas of less than 100,000 population was much lower than the proportion of the population in such areas.

Responses by geographical region seem to have little correlation to population. Responses from the I.D. wholesalers, by the number of outlets served, were as follows: North East 12.2%; North Central 33.5%; South 31%; and West 23.3%. Census figures disclose that approximately 23% of the population live in the North East, 27% in the North Central, 30.5% in the South, and 16% in the West.

Table 11

RESPONSES OF I.D. WHOLESALE DISTRIBUTORS TO CPDA QUESTIONNAIRE
BY POPULATION OF CITY OR TOWN OF RESPONDENT

	under 100,000	100,000-500,000	over 500,000	Total
1. Retail outlets served by I.D. wholesalers	13,654	10,177	23,468	47,299
2. Self-labeled adult book stores	37	47	264	348
3. Self-labeled adult book stores selling only self-labeled adult material	15	30	149	194
4. Retail outlets with special adult section	174	149	261	584
5. Location of "adults only" outlets				
a. Downtown	115	106	219	440
b. Suburban	52	41	72	165
c. Rural	11	16	16	43
d. Near university or college	5	8	15	28
6. "Adult" outlets also operating arcade type movie machines	11	7	54	72
7. "Adult" outlets selling other sexually related goods in addition to books and magazines	9	15	66	90
8. Adult outlets in business				
a. One year ago	130	94	200	424
b. Two years ago	144	93	149	386
c. Five years ago	137	77	99	313
d. Ten years ago	111	85	82	278

Table 12

PROJECTED TOTAL OF "ADULTS ONLY" RETAIL OUTLETS
IN THE U.S.—SPRING 1970*

1. Retail outlets selling books, paperback books, and magazines self-labeled as "adult book stores" or for "adults only": 850.
2. Self-labeled adult retail outlets which sell only self-labeled adult materials: 475.
3. Retail outlets providing a special restricted access section for "adult" material which also have on sale material for general audience in a nonrestricted access area: 1,425.
4. Self-labeled adult book stores, or those having a special adult section, which operate arcade-type movie machines: 175.
5. Adult outlets which sell sex devices or other sexually related goods in addition to books, paperback books, and magazines: 220.

* Based on CPDA survey, see Table 9, and accompanying text.

The majority of "adults only" outlets are in metropolitan areas of 500,000 or more.⁹³ A separate study was initiated to determine the number of such outlets in the 30 major metropolitan areas of the United States having a population over 1 million. According to the 1966 census, these centers had a population of 74.5 million. Table 13 presents the results of this study.

Information was available for all 30 major metropolitan centers. Although the data were collected at slightly different time periods, it can be stated that at least 420 self-labeled adult bookstores operate in these metropolitan areas. In these stores access is restricted to adults, and materials sold are predominantly or exclusively secondary publications and other sex-related items. At least 430 outlets with an "adults only" section operate in 22 of the metropolitan areas. In addition, eight cities reported 138 stores, newsstands, and so forth that displayed secondary publications in an unsegregated fashion.⁹⁴

The total number of "adults only" outlets in the major metropolitan areas may be understated in Table 13. Those reporting probably were unaware of some outlets. In addition, the estimates were confined to the known outlets in the central city; outlets in suburban or nearby industrial areas were not within the jurisdiction of many of the reporting police departments.

SALES AND PROFITABILITY

The author interviewed innumerable publishers, distributors, and retailers engaged in the "adults only" market. Most stated they believed the average retail store had daily gross sales of approximately \$300, although estimates ranged from \$200 to \$500. Some retail stores, depending upon size, location, and so forth, were alleged to average at least \$500 per day in sales, and one claimed a daily record of over \$2,200. Because most "adults only" stores are open at least 6 days per week (and many are open 7 days) these estimates project to average gross sales of between \$1,800 and \$2,100 per week, or \$98,000 to \$110,000 per year for a typical "adults only" store. Retail outlets which sell materials other than "adult" material, such as liquor stores which have a rack of secondary materials, were not included. Industry sources claim that most outlets which sell both mass market publications and a full-line of secondary publications average approximately \$300 (range of estimates \$200 to \$400) from sales of "adult" materials each day.

Three contractors of the Commission made an effort to analyze the gross sales and profitability of "adults only" outlets in certain cities. The results of these studies are summarized below.

*Boston.*⁹⁵ As of the spring of 1970, there were 13 adult bookstores in Boston. In nine of them access was limited to "adults only"; four others contained a

93. See Table 11.

94. The police department of one of the smaller cities (population less than 1.5 million) reported over 300 such outlets. It seems almost certain that mass market magazines, such as "men's sophisticates" or even *Playboy*, were included in that estimate. Since the State has a *Ginsberg* statute which forbids the sale of pictorial nudity to minors, the view of the police department was not unreasonable. However, to include such an estimate would distort the picture insofar as secondary publications are concerned.

95. Finkelstein, *op. cit.* (footnote 85).

Table 13

 RETAIL OUTLETS FOR SECONDARY (ADULTS ONLY) PUBLICATIONS
 IN 30 MAJOR METROPOLITAN AREAS^a

Metropolitan Area	Population ^a	"Adults Only" Outlets	"Adult Section" In Outlets	Bookstores With Arcade Movie Machines
New York, N.Y. ^{b-c}	11,457,600	70	n.a.	n.a. ^j
Los Angeles-Long Beach, Calif. ^c	6,755,700	52	300 ^h	n.a. ^j
Chicago, Ill. ^b	6,711,200	13	2	6
Philadelphia, Pa. ^d	4,736,200	21	n.a.	n.a.
Detroit, Mich. ^{b-c}	4,073,300	12	8	9
Boston, Mass. ^e	3,226,500	9	4	4
San Francisco-Oakland, Calif. ^f	2,942,000	25	5	3
Washington, D.C. ^c	2,612,000	22	n.a.	n.a.
Pittsburgh, Pa. ^b	2,386,200	6	3	6
St. Louis, Mo. ^b	2,272,400	16	n.a.	2
Cleveland, Ohio ^c	2,049,500	10	6	10
Baltimore, Md. ^b	1,962,800	19	n.a.	11
Newark, N.J. ^b	1,875,600	0	0	0
Houston, Texas ^b	1,743,200	9	12	0
Minneapolis-St. Paul, Minn. ^{b-c}	1,619,800	8	12	4
Dallas, Texas ^b	1,362,600	4	2	n.a.
Cincinnati, Ohio ^{b-c}	1,353,300	2	1	0
Milwaukee, Wisc. ^c	1,334,700	18	22	n.a.
Buffalo, N.Y. ^{b-c}	1,323,500	8	8	0
Paterson-Clifton-Passaic, N.J. ⁱ	1,320,200	0	0	0
Atlanta, Ga. ^c	1,255,200	25	n.a.	n.a.
Seattle, Wash. ^d	1,231,600	3	8	5
Kansas City, Mo. ^b	1,201,100	2	9	1
San Diego, Calif. ^b	1,177,900	22	4	3
Anaheim-Santa Ana-Garden Grove, Calif. ^c	1,101,500	12	12	n.a.
Miami, Fla. ^{b-c}	1,034,300	5	7	5
Denver, Colo. ^g	1,074,000	8	11	2
New Orleans, La. ^b	1,045,600	4	4	4
San Bernardino-Ontario-Riverside, Calif. ^b	1,035,700	8	1	7
Indianapolis, Ind. ^b	1,029,500	1	3	1

n.a. = not available.

^a1966 Estimated Census, *1970 World Almanac* (New York: Newspaper Enterprise Association, Inc., 1970) pp. 264-293, 311-313.

^bInformation supplied by police department of center city, May-June, 1970.

^cInformation supplied by confidential sources to author, April-May 1970.

^dInformation supplied by Alexander B. Smith and Bernard Locke, *Response of Police and Prosecutors to Problems in Arrests and Prosecutions for Obscenity and Pornography*, Technical Reports of the Commission on Obscenity and Pornography (Washington, D.C.: U.S. Government Printing Office, 1971).

^eInformation supplied by Finkelstein, op. cit. (footnote 85).

^fInformation supplied by Nawy, op. cit. (footnote 85).

^gInformation supplied by Massey, op. cit. (footnote 85).

^hThe Los Angeles area is perhaps the only part of the country in which a large number of liquor stores and other outlets have small sections devoted to secondary materials. Thus, many of the 300 outlets sell relatively small quantities of "adult" materials.

ⁱPaterson, N.J. only; source, police department.

^jIn the opinion of the Commission staff, between two-thirds and three-fourths of all adult stores in New York and Los Angeles have arcade movie machines. A much smaller percentage of outlets with adult sections operate arcade movie machines.

well-defined "adults only" section. Of the 13 stores, four had arcade movie machines. In addition, five stores had a line of "very mild" sex-oriented materials which were not studied because they were not regarded by the contractor as true adult bookstores.

In his report on the adult bookstores in Boston, Marvin Finkelstein notes that the success of such bookstores, when measured by the business failure rate, must be regarded as excellent. This is particularly striking in light of national figures which show that of all retail establishments, bookstores have the second highest rate of failure.⁹⁶ The Boston study demonstrates that adult bookstores are quite profitable. The capital needed to open a bookstore in Boston was estimated to fall within the range of \$20,000 to \$25,000; one store owner claimed to have spent only \$5,000 to open. Most bookstores have several employees, but pay is low, usually \$2-\$2.50 an hour.

Finkelstein states that estimating profits for adult bookstores is difficult, as bookstore owners refused to discuss matters concerning finances and would not yield information on the subject. He notes that an article in a Boston newspaper asserted that one of the smaller stores had a net profit of \$60,000 in 1968 after paying salaries of \$25,000 to its two owners. From systematic observations of buyers and nonbuyers in the stores, Finkelstein concludes that it was possible to make a rough projection of estimated annual sales volume, overhead, and net profit. These projections, admittedly crude and somewhat speculative, suggest that annual net profits of \$50,000 to \$100,000 might not be unrealistic for the average adult bookstore in Boston.

A total of 14 hours of observations were made at 10 of the adult bookstores in Boston. All observations were made between 10 a.m. and 3:30 p.m. in warm, sunny weather. Of 455 customers observed, 162 (nearly 35%) made purchases. Thus, during the hours of observation, there were approximately 16 sales per hour on the average. Assuming the average sale was at least \$3, during the period studied sales were at a \$50 per hour rate. Since most stores are open for 12 to 14 hours a day, 6 to 7 days a week, an estimate of average daily gross sales of \$300 is quite conservative. An estimate of average sales in excess of \$500 per day is supported by the Finkelstein study. However, daytime hours on warm, sunny days are likely to yield sales much higher than average. Such a rate is unlikely to be sustained all year. Average sales of \$300 per day for a store open 320 days (assuming the store is closed on Sunday) results in gross sales per year of \$96,000. Average sales of \$500 per day yield \$160,000 a year. Assuming a markup of 100%, gross profits could be between \$45,000 and \$80,000 after deducting costs of goods sold. The net profit for the operation of an adult bookstore in Boston could be between \$20,000 and \$50,000 annually.⁹⁷

*San Francisco.*⁹⁸ In his report on the San Francisco erotic marketplace, Harold Nawy estimates that the average gross of 47 "adult" stores in San

96. *Dun & Bradstreet Reference Book* (June 1969), p. 6.

97. This is the author's estimate based on his analysis of the Finkelstein data. Mr. Finkelstein was less conservative in his estimate of net profits at perhaps \$50,000 to \$100,000.

98. Nawy, *op. cit.* (footnote 85).

Francisco is at least \$75,000 per year, and that several have grosses over \$100,000. In interviews with bookstore owners, four claimed that their original investment was between \$5,000 and \$14,000. Estimates by the bookstore owners of the average sale per customer ranged between \$3 and \$5. (One stated that in summer the average sale probably was \$7.) Three store owners responded to questions about gross sales in 1969, claiming sales of \$84,000, \$100,000, and \$150,000, respectively.

*Denver.*⁹⁹ Morris Massey and a team of investigators made in-store observations with the permission of the owners in two "adult" outlets in downtown Denver for 7 days: one was an "adults only" store; the other had an "adults only" section in a regular bookstore. Sales figures during the period ranged from a low of \$250 to a high of \$465. According to comments by the owners and clerks, daily average sales were \$300 to \$350 in the "adults only" section and \$400 to \$450 in the "adults only" store. The highest daily sales figure claimed was over \$700 (during a convention held in the spring of 1969) in the "adults only" store.

Massey states that the figures for these stores cannot be considered truly representative because of locational factors and physical facilities (both stores were relatively high-quality operations in comparison with most other stores in Denver).

Further, Massey doubts that the "adults only" store averages \$425 daily in sales or that the "adult section" store sells \$325 worth of secondary materials daily. Based on the observations of his staff, he estimates that the average "adult" store in Denver (21 in all) has yearly gross receipts of approximately \$60,000, although this is admittedly a "conservative" estimate.

TOTAL RETAIL SALES OF SECONDARY PUBLICATIONS

Any attempt to estimate the total retail sales volume of secondary publications is a speculative venture. This can be approached from a variety of directions, some of which are not particularly useful.

Popular estimates

Numerous articles in the press, periodicals, and other publications have made wholly unsupported, undocumented guesses as to the total sales volume of "pornographic" publications. These "estimates" have ranged between \$500 million and \$2.5 billion. The reporters have not given the least indication of what exactly was included in their speculative appraisals of the "smut" industry. Such estimates are totally useless and in addition are grossly exaggerated.

Estimate by a mass market source

A fairly reasonable estimate of retail sales of secondary publications was made by the *Magazine Industry Newsletter*, a publication for the trade. It estimated that retail sales of "genital-oriented magazines" totaled \$30 million to \$35 million in 1969, and that retail sales of secondary paperback books totaled \$25 million to \$30 million. Retail sales of the secondary industry thus were placed at between \$55 and \$65 million.¹⁰⁰

99. Massey, op. cit. (footnote 85).

100. December 9, 1969.

Secondary industry estimates in general

Estimates made in personal interviews of the total industry by secondary publishers, distributors, and retailers are very unreliable. While each publisher has information of his own business, few have much knowledge about the entire industry. Estimates ranged from retail sales of \$100 million to \$500 million for 1969. No consensus developed around one figure.

Estimate based on studies of retail outlets

Total sales of secondary materials can be estimated by projecting average gross sales of adult bookstores and other outlets for secondary material. There are perhaps 850 exclusively adult bookstores in the United States.¹⁰¹ If average retail sales during 1969 in each store was \$60,000 to \$75,000, the minimum suggested by three studies of such outlets,¹⁰² sales in all "adults only" stores totaled between \$51 and \$64 million. (Note: although the bulk of sales are books and magazines, "adult" stores also sell home movies, sex devices, and so forth, and many have arcade movie machines.)

If a higher figure is used for average sales, for example an estimate of \$100,000 as suggested by some of the data provided by the studies, a projection of \$85 million in retail sales for exclusively "adults only" stores could be made. However, it seems certain that the nationwide average sales of such stores fall below that level.

The proportion of total sales of secondary materials sold by the approximately 1,425 stores with "adult" sections, and in stores displaying unsegregated secondary materials, is difficult to estimate accurately because display patterns, sales emphasis, and dependence on such sales vary widely. A rough guess based on available information is that sales in other outlets are between 50% and 100% of the total sales made by exclusively "adult" stores.

Survey by Franklin Laven under auspices of secondary industry trade association

To further break down the total volume of production of secondary materials, assistance was sought from the American Publishers and Distributors Association (APDA), the embryonic trade association of secondary publishers. In a survey conducted by Franklin Laven, a defense attorney from Los Angeles, 40 out of approximately 80 publisher-distributors replied to a questionnaire sent under the auspices of the APDA. Summarized totals of these responses were supplied to the Commission and are shown in Table 14.¹⁰³

Mr. Laven estimated that responses to the questionnaire accounted for approximately 50% of the total production of the industry. He suggested the above figures be doubled to achieve an accurate account of the total production of the industry. It seems likely, however, that the publishers responding represented well over 50% of the total. It is also conceivable that sales figures were somewhat exaggerated by the responding publishers. If the results of this survey are

101. See Table 12 and accompanying text.

102. See footnotes 95 to 99 and accompanying text.

103. See Appendix to this part.

Table 14

SUMMARY OF LAVEN-APDA SURVEY OF SECONDARY INDUSTRY—1969

	Magazines	Paperback Books
Titles per year	1,000	2,750
Average press run	12,000	14,000
Total press run	12,000,000	40,000,000
Average sales per title	8,200	7,800
Total sales	8,400,000	22,500,000
Total remainder sales	2,000,000	12,000,000

projected as suggested, industry gross annual retail sales ranged between \$135 and \$160 million in 1969, based on an average new title sale price of \$1.75 for paperbacks and \$3 for magazines, and remainder sales of \$10 million to \$15 million.

Interviews of publishers

The author interviewed well over half of the important publishers of secondary materials. Those interviewed disclosed that they published at least 200 new titles of paperbacks per month during most of 1969. Press runs at the time of the interviews (summer to fall, 1969) ranged from 10,000 to 50,000 copies per title, averaging approximately 15,000 to 20,000. Subsequent discussions with many of these publishers indicated that press runs fell steadily during 1969. Based on these interviews, 30 to 35 million paperbacks were published by those publishers during 1969. Most publishers stated that paperback sales ran between 40% and 50%, with 45% as a "reasonable average sale" per title. The average cover price was probably \$1.75 to \$2. Publishers interviewed thus claimed about 13.5 to 15.75 million copies sold, using the 45% rate; retail sales would then range from \$28 to \$32 million. However, 1969 overproduction resulted in a glutted market which casts doubt on a 45% rate of sale. Assuming a 40% rate, 12 to 14 million copies were sold with receipts in the vicinity of \$21 million to \$28 million. These figures must be increased by at least 50%, and perhaps 100%, to account for the entire industry.

The Commission staff also interviewed most of the major magazine publishers. They stated that they were producing almost 100 new magazine titles per month in 1969. The average press run for these magazines probably did not exceed 12,000 copies, and ranged from 8,000 to 25,000 copies per issue. Subsequent discussions with publishers revealed that an oversupplied market caused press runs to decline steadily during 1969. Sales of magazines were estimated by most publishers to range between 50% and 70%. In 1969 the total production of magazines by publishers interviewed was approximately 12 million copies. If sales averaged 50% to 60%, a total of 6 to 8 million copies were sold. Cover prices for magazines averaged at least \$3, and possibly \$4, per copy. These publications generated total retail sales of \$18 million to \$32 million in 1969.

Based on the interviews, it seems probable that the entire industry is no more than one-third greater than the total produced by those interviewed.

Study by the Internal Revenue Service of 14 publishers—tax year 1968

A list of the 27 largest publishers of secondary materials was submitted to the Internal Revenue Service.¹⁰⁴ While the IRS is forbidden to disclose any data contained in individual or corporate tax returns, it does study and report upon industries or subindustries without revealing individual data. The IRS was able to locate 21 tax returns filed by 14 publishers from the list supplied.¹⁰⁵ Table 15 summarizes this IRS study.

Table 15 discloses that 14 major publishers had gross receipts of \$20.2 million and receipts less returns and allowances of just under \$19 million, gross profits of \$3.85 million (after cost of goods sold was deducted), and net profits of \$462,000 (2.25% of sales). As the range column shows, one publisher received nearly 50% of the total receipts reported.

If it is assumed that these publishers recovered 45% to 50% of the retail sales price, total retail sales of their publication were between \$38 million and \$42.2 million (projecting gross receipts less returns and allowances).

It is not known what percentage of the total market the 14 publishers represent. However, a best estimate is that these publishers accounted for a least 50% of the total market in 1968, and perhaps considerably more than that.

On the basis of innumerable interviews with industry members, it is believed that 1968 was a "good year" for secondary publications. Apparently 1969 was a much poorer year for the publishers, but total retail sales increased. An influx of additional publishers and an oversupplied market resulted in reduced sales for individual publishers, even though the total market expanded somewhat.

The Lynch Report—1966

In 1967 a task force from the office of the Attorney General of California reported to the State legislature. Only the operations of California publishers were analyzed in depth. The *Lynch Report* estimated that in 1966 the wholesale gross receipts of secondary California publishers were \$7.2 million for paperbacks, just over \$5 million for magazines, and \$800,000 for sadomasochistic and fetishistic publications, a total of \$13 million for all secondary publications.¹⁰⁶

104. The publishers appearing on the list forwarded to the IRS were as follows: *New York City area*: Associated Magazine Distributors; Camera Eye Labs, Inc.; E.L. Publishing Co., Inc.; Interstate Magazine Distributors; Star Distributors; Olympia Press. *Los Angeles and San Diego, California area*: Buy-Rite Magazine Sales; Parliament News Co.; Publishers Export Co.; Venice Publishing Corp.; Wyngate & Bevins; Columbia News Co.; Collectors Publications; Monogram Publications; Golden State News Co.; Meridian Publication Co.; Powell Publication Co.; Reed Enterprises, Inc.; Sherbourne Press; Triumph News Co., Inc.; Renegade Press; Elysium, Inc. *Baltimore*: Central Sales Ltd. *Atlanta*: Pendulum Books. *Cleveland*: Sovereign News Co. *Delray Beach, Fla.*: United Graphics, Inc. *Washington, D.C.*: Potomac News Co.

105. In its determination to avoid any disclosure problem, the IRS did not reveal the identities of those publishers whose tax returns were not located and whose sales and income are not included in the study. All that is known for sure is that the 21 tax returns summarized in table 15 were submitted by 14 of the 27 publishers listed in footnote 104.

106. Lynch op. cit. (footnote 74), p. 106.

Table 15

SELECTED FINANCIAL DATA AND RANGES^a

Selected firms engaged in the production and distribution of sexually oriented publications tax year—1968

Items	Distributors and Producers of Books and Magazines ^c	
	Total	Range ^a
	(Dollars)	
Number of business firms included ^c	14	
Gross receipts	20,179,047	9,195,324
Gross receipts less returns and allowances ^d	18,962,878	1,185,696
Cost of goods sold and/or operations ^e	15,099,558	6,824,863
Gross profit ^f	3,844,124	1,181,446
Net Profit (or loss) ^g	461,733	204,284

a. The range is defined as the difference between the greatest and the smallest amounts; for instance, the difference between the greatest and smallest gross receipts figures reported was \$9,195,324.

b. Additional gross receipts, and so forth, may be associated with business entities listed but not reported on the tabulated returns.

c. Data were summarized from 21 tax returns from 14 publishers and distributors.

d. Gross operating receipts of the company reduced by the cost of returned goods, merchandise discounts, and so forth.

e. The direct cost of producing the company's "gross receipts."

f. "Gross profit" defined as company's "gross receipts" reduced by company's (1) returns and allowances, and (2) cost of goods sold.

g. "Net profit" (or loss) defined as company's total income reduced by company's total deductions. (Line 11 less line 27, Form 1120).

Source: Statistics Division, Internal Revenue Service, August, 1970.

Assuming a 50% return to publishers, this represented sales of \$26 million in 1966. If California publishers comprised at least one-half of the total market in "adult" publications as industry sources believed, nationwide sales of \$52 million in 1966 could be projected.

Synthesis of estimates

An overall appraisal of the total retail volume of secondary materials can be made by reviewing and synthesizing all the estimates. These range from a low of \$55 million to a high of \$160 million plus. Any estimate falling within the range can be justified to some degree, and in large part an analysis of the data presented can logically lead to a rather wide range of supportable conclusions. Thus, to specify a single dollar value for retail sales of "adults only" publications, or even a narrow range of sales, is somewhat speculative.

With that caveat in mind, the author believes that 60 to 70 million copies of secondary paperback books were published in 1969, 25 to 30 million were sold,

and total retail sales for these were between \$45 million and \$55 million. Receipts from secondary magazine sales probably amounted to about half of the receipts from books, although production volume was much lower. The author's best estimate is that between 15 and 20 million magazines were produced, eight to 12 million were sold, and total retail sales volume was between \$25 million and \$35 million. Thus, total sales of adult publications during 1969 are estimated at between \$70 million and \$90 million. The author believes that the lower end of the range more accurately reflects actual sales.

APPENDIX

REPORT ON TRAFFIC AND DISTRIBUTION OF ADULT BOOKS AND MAGAZINES IN 1969¹

by Franklin Laven

On behalf of the Commission on Obscenity and Pornography, research was conducted on the volume of production of sexually oriented magazines, paperback books, and books which are typically marketed through secondary wholesale distributors and sold in self-labeled "adult bookstores."

One of the purposes of the empirical survey was to determine the volume of production and consumption of the adult type of material produced and ultimately consumed throughout the nation. A similar cursory survey was made in 1966 to establish the traffic and volume of sex-oriented paperbacks. Otherwise, aside from a concurrent survey being made at the present time by the Commission on Obscenity and Pornography, there does not appear to be any statistics as to volume of production and consumption of the type of material in question.

The survey

It was intended to have the survey cover 1969, but information on 1968 and 1970 was also requested. Since the information obtained on 1968 and 1970 was most limited it is not included in this report.

A survey information chart, together with correspondence, was sent to approximately 90 known publishers-distributors of the type of material in question. A survey information chart was forwarded to each of the companies from whom the information was solicited. Approximately 10% of the companies to whom the request was made replied that they did not believe that their publications were within the category of the type of material included in the survey. It was necessary to assure the recipients from whom the information was requested that the information submitted would be confidential and would not be available to competitors, and that it would be used in composite form only. Two followup

1. Ed. note: Mr. Laven is a member of the California Bar and is active in the defense of obscenity prosecutions. The survey of secondary publishers described in his report was conducted with the approval of many leading defense attorneys and had the approval of the American Publishers and Distributors Association (APDA), the trade association to which a majority of the important secondary publishers belong.

letters were forwarded to publishers-distributors who did not initially reply. In addition, at the Obscenity Law Seminar in San Juan, Puerto Rico, in April 1970 all counsel and panelists were urged to ask their clients to cooperate and furnish the requested information.

In all the communications and requests that were made for response to the survey, it was stressed that a fair and accurate profile of the industry would reflect that the nation as a whole accepts "adult" works and that the industry is an important and beneficial part of our national economy.²

Response to survey

As a result of the solicitation and cooperation of other counsel, replies have been received from approximately 50% of the publishers-distributors of paperback books and magazines which are typically marketed through secondary wholesale distributors and sold at retail in self-labeled adult bookstores.

It is accurate to state that the response represents an equal half of the total volume of traffic of the industry. In considering total sales, the percentage given related to the primary market only and does not include what is commonly termed "the remainder market." It is a fair statement to consider that a minimum of one-half of the approximate 50% of remainders are ultimately consumed in the retail market. Accordingly, when total consumption is considered, the additional 25% represented by the remainders should be added to total sales. In response to the survey information chart, complete information was not given by all of the companies who responded. The chart itself reflects the most common cover prices of the paperback books, and the magazine chart likewise reflects the most common retail prices of various magazines. In view of the fact that complete information is unavailable in the cover price area, no attempt will be made to speculate as to total figures in this regard. A more accurate analysis was forwarded in the category of magazines, and accordingly that information is deemed to be relatively accurate.

Survey Results

Following is a compilation of the survey which was conducted as described above. It is to be recognized that there is not included in the total figures the volume of production and consumption of the material of those publishers and distributors who do deal in sex-oriented material which is commonly distributed through I.D.s (independent distributors).

It is to be noted that the figures that have been adopted are "round figures" and comprise the various categories of magazines indicated in the survey chart.

2. Ed. note: This, of course, represents the view of Mr. Laven and the APDA only. Note the argument made to publishers to convince them to provide the requested information.

The figures adopted for the quantity of titles for the various categories are as follows:³

Movie—150
Nudist—650
Boy—150
Boy-Girl—250
Double-Girl—200
“Girlie,” No-split—300
“Girlie,” Split—300

The average press run per title approximated 12,000 copies per title.

Magazines:

Titles per year	2,000
Average press run per title	12,000
Total press run	24,000,000
Average sales per title	8,200
Total sales	16,400,000
Remainder sales	4,000,000

Paperback books:

Titles per year	5,500
Average press run per title	14,000
Total press run	80,000,000
Average sale per title	7,800
Total sales	45,000,000
Total remainder sales	25,000,000

Dated: May 15, 1970

3. See Table 7 and accompanying text.

Part III

Mail Order

INTRODUCTION—DIRECT MAIL ADVERTISING

The United States Post Office is a huge operation¹ which in 1969 processed an estimated 82 billion pieces of mail; 46.4 billion of these were first class.² Advertising materials comprise a substantial percentage of the total volume, authoritatively estimated at 26% for 1967.³ Therefore, in 1969 the general public probably received over 21 billion advertising solicitations. The Direct Mail Advertising Association (DMAA), the largest trade association in the field,⁴ claims that the industry is the third largest advertising medium in the nation. DMAA estimates that in 1969 U.S. businesses spent nearly \$2.9 billion to create and produce mail advertising and that sales generated by such advertising were between \$30 and \$40 billion.⁵ The full economic impact claimed for direct mail advertising is not limited merely to responses to solicitations.

The vast majority of direct mailers, including all those of significant economic importance, do not advertise sexually oriented materials.⁶

The relatively insignificant amount of sexually oriented direct mail advertising has generated public concern and criticism vastly disproportionate to its economic impact. As will be detailed below, over the years hundreds of thousands of complaints about such advertising have been directed to the Federal Government, and special laws have been passed to deal with the subject. This has been in response to a subindustry which mails less than 0.23% of the total direct mail advertisements each year and which generates perhaps 0.04% of the total sales through mail order.⁷

The fact that this business is relatively insignificant does not detract from the public concern, nor does it mean that the detailed analysis which follows is

1. The estimated revenue and reimbursement of the Post Office for fiscal 1969 were \$6,430,000,000, and the Post Office spent \$7,334,800,000 with a resulting operating deficit of \$904,800,000. The estimated postal revenue and reimbursement for fiscal 1970 were \$6,656,000,000; Post Office expenditures totaled \$7,843,200,000, and the operating deficit was estimated at \$1,186,600,000 (*Official Survey of Postal Rates*, U.S. Post Office Department, April 15, 1969).

2. *1969 Annual Report of the Postmaster General* (Washington, D.C.: Government Printing Office, 1970), p. 197.

3. *Towards Postal Excellence, The Report of the President's Commission on Postal Organization* (Washington, D.C.: Government Printing Office, 1968), p. 87.

4. The DMAA has approximately 2,600 individual members from 1,600 business firms, including most of the largest direct mail advertisers.

5. Interview with John Jay Daly, vice president, DMAA, January 15, 1970. Mr. Daly stated that these estimates of dollar sales are conservative speculation. See brochure entitled "Testimony of Mr. Robert DeLay, President, Direct Mail Advertising Association, Inc., (DMAA) before the House Committee on Post Office and Civil Service, Postal Reorganization, July 25, 1969" (DMAA, 921 National Press Bldg., Washington, D.C., 1969).

6. The code of practice of the DMAA prohibits the advertising of "vulgar, immoral, profane or offensive matter."

7. Based on estimates of the total direct mail industry of 21 billion advertisements and at least \$30 billion in sales, see footnotes 3 to 5, and accompanying text, and estimates for the sexually oriented mail order business of 45 to 48 million letters and \$12-\$14 million in sales, see later sections entitled "Volume of Sexually Oriented Direct Mail Advertising," and "Sales Volume of Mail Order Erotica."

inappropriate. Moreover, the national survey of adults, conducted on behalf of the Commission, found that 27% of men and 19% of women reported receiving direct mail advertising for erotic materials at some time, and under 5% of young people age 15 to 20 reported receiving such advertising.⁸ These advertisements were mainly for sex manuals, though advertisement for movies, magazines, photos, and sex devices were also reported. Obviously a substantial number of the population has been exposed at least once to such advertising; many were offended by it.

In the following discussion, one inescapable fact should be kept in mind: Mailers of sexually oriented advertising do not possess a "secret formula" for instant riches, nor do they escape the laws of economics which govern all direct mail operations. Factors which determine whether an advertiser makes a profit apply equally to all mailers. Finally, there is one fact peculiar to mail order erotica which distinguishes it from erotica in motion pictures, books, and magazines. As of 1970, there is almost no gray area of overlap in mail order. While there is a considerable variance in the sexual content of both the advertising and the products sold, the dividing line between mailers so engaged and other advertisers is relatively clear.

SEXUALLY ORIENTED ITEMS OFFERED FOR SALE BY MAIL ORDER

A prospective mail order customer may select from an incredible array of sexually oriented materials. Products available through the mails can be separated into the following categories: books and magazines; 8-mm. "home movie" films and still photos; sexual devices (allegedly prosthetic) and related items such as balms, lotions, pills; miscellaneous items such as playing cards, whips, chains, and fetishistic clothing; and membership in "social" clubs.

Books and magazines

Thousands of new titles of sexually oriented paperback books and magazines are published each year, referred to in Part II as "secondary" or "adult" books. Although press runs of "adults only" books and magazines are relatively small, 40% to 50% are returned unsold to the publisher. Many of these "remainders" are offered for sale through mail order. In addition, a few highly promoted books have been published primarily for sale through mail order.

The wide variety of "adult" books sold by mail is exemplified by two sample catalogs mailed during 1969 by two mailer-publishers. Publisher A, located in California, mailed a free catalog which offered over 325 sexually oriented paperback book titles (some illustrated with artwork or photographs), two hard-cover books, and one film. Book prices ranged from \$2 to \$15.

Publisher B, located on the east coast, sold his 48-page, full-color catalog for \$1. Over 600 separate magazines titles (ranging in price from \$1 to \$7.50 per copy) were offered for sale. The vast majority featured nude females, many of which focused upon genitalia, although some homosexual magazines (male nudes)

8. H. Abelson, R. Cohen, E. Heaton, & C. Suder, "Public Attitudes Toward Experience with Erotic Materials," *Technical Reports of the Commission on Obscenity and Pornography* (Washington, D.C.: Government Printing Office, 1971).

were also included. Over 500 paperback titles were also offered for sale, the majority of which apparently dealt with heterosexual relations, although many titles indicated homosexual, "discipline," or fetishistic themes. Prices ranged from a low of 25¢ to a high of \$2.95. The catalog also offered such items as "comic" credit cards with sexual themes, playing cards, party jokes, and so on.

The wealth of choices offered to the potential customer in the two catalogs is not typical. Ordinarily, mailers advertising books and magazines feature between six and 25 books in each ad.

A technique employed by some mailers, including two of the largest, is to offer a very limited selection at relatively high prices. For example, one of the five largest mailers used several such promotions in 1969. First, a choice was offered of five books for \$17.98 or three books for \$9.98, later reduced to five for \$9.98 or three for \$4.98. In another promotion, this mailer offered a single book for \$15, subsequently reduced to \$9.98. His last major promotion of 1969 offered a two-book set for \$9.98. Similarly, the largest mailer in the country promoted one book priced at \$9.98 during 1969. Some books published primarily for mail order sales have pioneered in the illustrated "marriage manual" field, such as *Intercourse*, *The Photographic Manual of Sex Intercourse*, and *The Picture Book of Sexual Love*. Mail order advertising also pioneered, or at least heavily exploited, books containing erotic paintings and drawings graphically depicting sexual intercourse. Sometime during 1968 to 1969, a few mailers apparently concluded that sexual activity could be graphically portrayed in "art."⁹

8-mm. home movie films and photo sets

During the 1950's and 1960's private ownership of 8-mm. motion picture projectors became quite common, with a concomitant expansion in the market for preprocessed film. Commercially distributed preprocessed 8-mm. film is the product of professional photographers and commercial laboratories, although the films are usually referred to as "home movies."

There are probably well over 100 mailers selling 8-mm. home movie films through the mail, most of whom are located in the Los Angeles area. The films are advertised extensively via mail order and in periodicals such as men's "sophisticate" magazines, "sex" newspapers, and "barber shop" magazines.

A review of the sexual content of home movie films provides an insight into the changing nature of the marketplace. Although there were one or two individuals offering preprocessed sexually oriented films before World War II, the business did not really begin until 1949 or 1950.

Throughout the 1950's, two distinct types of sexually oriented films were available, "pinups" and "nudes." Pinup films consisted of one or more girls (usually one) either posing or "acting" in a simple story; clothing consisted of underpants and either a brassiere or "pasties" (an opaque covering of the nipple), or bikini bathing suits. "Nude" home movies of the 1950's consisted of seminude girls posing or acting in simple nonerotic stories, with breasts and buttocks exposed.

9. One mailer interviewed stated, "If it is art, it isn't pornography." This conclusion apparently was not dependent upon the quality of the drawings or paintings.

Beginning about 1960, mailers began to offer "nudist" films of totally nude girls "romping in the sun," engaged in such activities as swimming, volleyball, badminton, and so on. In about 1961 males were added to the nudist films. Throughout the "nudist" film period, which lasted 3 or 4 years, the camera did not focus upon genitalia.

In 1964 or 1965 mailers began to advertise films showing "men and women together." In these films there was some interaction between the participants, but sexual activity was basically left to the imagination. Females were shown fully nude, while initially the male genitals remained covered (usually underpants). After a year or two (around 1966), male participants also appeared fully nude. Both "nudist" and "men and women together" films are known in the trade as "beaver" films, a slang term for female pubic hair.

Sometime in late 1967 or 1968 (knowledgeable industry members disagree as to the exact time) the industry began offering "rough beaver" or "split beaver" films. Such films focus on female genitalia, with the models provocatively posed with their legs apart for "close-up" detail. Initially these films featured one woman. Sometime in 1969, males were added to rough beaver films. The same pattern as noted above was followed: initially males were not shown nude. In rather short order, both participants were shown nude, and considerable erotic activity was depicted.

As of the spring of 1970, in general, 8-mm. films do not show erections or penetration. All types of erotic activity are shown, and sexual intercourse is strongly implied. At present, few if any home movie films graphically depict intercourse.

Films for those with a homosexual interest are also available. Generally, the level of sexual activity in such films is somewhat less than in heterosexual films. Similarly, films devoted to fetishes, such as bondage, spanking, wrestling, are available through mail order. Usually the sexual explicitness is relatively low in such films. As explained by a mailer-producer of these films, this is a result of the fact that "it is the fetish, not sex, which is the attraction." Homosexual and fetishistic films are not very important in the market.

Existing taboos, whatever they might be, are under constant attack by some dealers. Presently some films purport to depict couples engaged in sexual intercourse, allegedly as "education for married couples." The use of camera angles and focus usually results in a question of whether the activity displayed on the screen is actual or simulated intercourse. The day when domestic producers of 8-mm. home movies advertise so-called "stag films" through the mail seems nearly at hand, if current trends continue. Home movie producers have invariably followed patterns established in other media of sexually oriented materials.¹⁰ Because the level of sexual explicitness in other media has become much greater, it is likely that "home movies" will follow the lead.

Prices of home movie films vary considerably: a 200-ft. black-and-white 8-mm. film may be purchased for as low as \$8, and a 100-ft. color film is priced at \$8. Ordinarily, however, 200-ft. black-and-white films are advertised for \$15 or \$20, and 200-ft. color films cost from \$25 to \$40. (Super 8-mm. film costs approximately 10% more).

10. Mailers often consider the reaction of postal inspectors to their advertising and "tone down" sexual content to forestall investigation or prosecution.

Almost all mailers offer still-photographs related to the films advertised. Representative prices for photographs are \$5 for 12 4-in. by 5-in. black-and-white photos and \$10 for six 4-in. by 5-in. color photos. All mailers interviewed stated that photo sets were a very small percentage of their business.

Sexual devices and pseudomedical products

Sexual apparatus and pseudomedical elixirs, lotions, balms, and so on are sold only through mail order and in a few "adult bookstores." Sexual devices can be divided into three categories: artificial male genital devices (usually rubber or plastic reproductions of a penis), artificial vaginas, and vibrators for genital stimulation. The devices are advertised under such names as "coital training device," "duo-stimular," "artificial vagina," "coitus splint," "Vib-E-Rect," and so on. The widely advertised "artificial vagina" is a derivation of an artificial bovine receptacle used in the dairy and cattle industry. After alleged "improvements," the device resembles human female genitals.

A wide variety of pseudomedical elixirs, lotions, and pills alleged to improve sexual prowess or delay climax are also advertised through the mail.¹¹ For example, a single 1969 catalog offered the following items for sale: colored prophylactics, "tight" prophylactics, regular prophylactics, nine varieties of creams, seven varieties of tablets and elixirs, two allegedly aphrodisiac scents, seven different clitoral stimulators, an artificial vagina, a hydrometer, and six different dildoes.

Sexual devices and pseudomedical products are not nearly as widely advertised in mail order as books or home movies. However, relatively large markups make these products profitable to advertise to a carefully selected list of potential customers. Most mailings of these brochures are made to those with a proven interest in sexually oriented materials.

Miscellaneous items

A wide range of miscellaneous materials are sold by mail, such as "love dice," strip-poker cards, high-heeled shoes, corsets, lingerie, microphones and telescopes for voyeurism, rubber or leather wearing apparel, wigs, whips, clubs, chains. These items are advertised in men's "sophisticate" magazines and "barbershop" magazines. Apparently, there is no significant amount of mail advertising of such items. Of approximately 400 business firms against which complaints were made in a 20-month period ending December 31, 1969, none sold fetishistic materials. The only advertisers complained against in the sample selling miscellaneous sex-related items were two well-known manufacturers of "sexy lingerie."¹²

Social and correspondence clubs

Over the past few years a number of "social" or "correspondence" clubs claiming to specialize in sex have come into being. These clubs often use the key

11. These "potions" are not sold by prescription, but are patent medicine or "snake oil" remedies for sexual dysfunctions.

12. See later section entitled "Prohibitory Order Survey."

word "swingers" to promote the alleged sexual activities of club members (primarily spouse-swapping and group sex). The clubs allegedly arrange meetings between people who are interested in group or promiscuous sex. A "swingers" club generally publishes a brochure containing a large number of provocative ads and photographs of nude or partially nude females.

Advertising by such clubs is not a source of complaint. In a sampling of complaints to the Post Office from April 1968 through December 1969, not one complaint was made against a "swingers" club.

*Sexually oriented mail order products —
The Maryland Crime Investigating Commission study*

The Maryland Crime Investigating Commission was established over 10 years ago to investigate criminal activities in the State of Maryland, particularly with regard to pornography. In the summer of 1959, five ads appearing in "one of the more erotic men's magazines" were answered by a volunteer using his first initial and last name. Four of the ads were for "art studies," and the other purported to be that of a "lonesome model." A post office box was opened to receive answers to these inquiries (no other letters were ever sent from this box). Two letters were delivered to the advertisers, one in New York and the other in California. Two replies were intercepted by the Post Office (the envelopes were returned to the sender stamped "Unlawful—mail to this address was returned by order of the Post-master General"),¹³ and another was returned because the company was no longer at the address given.

Between August 1959 and December 31, 1969, the Maryland Crime Investigating Commission received a total of 753 separate letters, 90% of which were sex-oriented advertisements. Table 1 summarizes the advertising received by product type.

Advertising brochures

Judgments about the sexual content of advertising brochures tend to be very subjective. Clearly, many members of the general public find all sexually oriented advertising brochures indistinguishable. However, the mail erotica industry classifies advertising brochures on a continuum which ranges from very mild to very strong (or "rough") in sexual content. "Stronger" or "rough" advertisements are those which contain the greatest degree of sexual content, as judged by the industry.

By studying this subject for a considerable period of time, the author has become acquainted with the trade terminology and with the various criteria which distinguish between "strong" and "mild" material. For the most part, advertisements for books tend to be of the mild variety, especially those of the two largest advertisers of books. Ordinarily, advertisements for books do not contain photographs depicting human genitalia. Further, long quotations of highly erotic passages are usually absent. Often, brochures advertising marriage manuals contain

13. Administrative determinations of probable obscenity, resulting in the return of letters to the sender by the Post Office, have been discontinued. See *U.S. v. The Book Bin*, 306 F. Supp. 1023 (N.D. Ga. 1969); *Rizzi v. Blount*, 305 F. Supp. 634 (C.D. Calif. 1969).

Table 1

MARYLAND CRIME COMMISSION POST OFFICE BOX—
GENERAL TYPE OF MAIL RECEIVED

August 1959-December 1969^a

Type of Material Related to ^b	First 8-1/2 yr. period (Aug. 1959- June 1968)	Next 1-year period (July 1968- June 1969)	Last 6 mos. period (July 1969 Dec. 1969)	Total (9-1/3 years)
Sexually oriented photos, slides, and films	260	44	27	331
Sexual literature of all types	268	62	30	360
Miscellaneous merchandise ^c	78	5	6	89
Magazines and periodicals of a primarily sexual content	78	17	4	99
Contraceptive devices and sexual aids	71	25	5	101
Lonely hearts materials	21	0	0	21
Recordings and tapes (objectionable in content)	18	1	1	20
Social clubs (with emphasized erotic interests)	31	6	1	38
Vitamins and medicines ^c	16	3	1	20
Insurance offers ^c	5	0	0	5
Sadism, beatings, torture, etc.	11	3	3	17
Automobile accessories ^c	1	0	0	1
Solicitations for charities ^c	1	0	0	1
Hate materials ^c	1	0	0	1
Total	860	166	78	1,104^b

^aThe Maryland Commission classifies the mail received at its post office box as "unsolicited." As defined herein, all sexually oriented advertising received was semisolicited.

^bThe Maryland Commission received 753 letters containing 1,104 separate advertising brochures or pamphlets. The judgments as to classification were made by the staff of the Maryland Commission.

^cApproximately 10% of the brochures received by the Maryland Commission were not advertisements for sexually oriented materials.

explicit sexual passages; however, most marriage manuals are written in a matter-of-fact or medical journal style rather than in a titillating style.

The strongest advertisements for any materials sold through the mail are for those books containing "artistic" illustrations of erotic paintings and drawings. Several brochures used by three or four mailers in Los Angeles and New York graphically depicted drawings of intercourse, fellatio, cunnilingus, and so on. At least through the end of 1969, these brochures were the "strongest" in sexual content receiving relatively wide dissemination. Advertisements for magazines are usually regarded as "strong" because genitalia are shown.

At present, advertising brochures for home movie films are considered by mailers to be relatively "strong" in sexual content. The majority present photos of full nudity, and ads for films focusing on female genitalia include such photographs in the brochures. Advertising copy is generally high-pressure in nature with provocative descriptions such as "orgy of thrills—torrid sex action—voluptuous, wickedly, wanton girls performing—intimate bedroom scenes, wide-open poses."

The sexual content of the brochures advertising sexual devices is rather hard to gauge. All depict the product for sale; advertising copy is invariably based on a "medical" or prosthetic theme. While mailers seem to regard brochures for these products as "mild" in sexual content, reactions of recipients to pictures of a plastic or rubber penis may be more negative than anticipated by the mailers.

FAKE OBSCENITY ("SCAM") MAILERS

Until quite recently, perhaps as late as 1968 or 1969, mailers commonly advertised materials in a manner which promised "the real thing," but the materials actually delivered had no relationship to any reasonable expectation based on the ad. These ads were nothing but fraudulent schemes to deceive potential customers. Apparently, mailers have noted a reluctance to purchase by those who had been previously hoodwinked. As a result, there has been a significant reduction in the most blatant fake obscenity schemes (known as "scam operations").

While advertisements still sometimes promise more than is delivered, gross abuses of confidence are much less prevalent. For example, for several years (until 1967 or so) a mailer used a brochure offering photographs of "a girl and a dog—lucky dog," "two girls and a man—they really gave him a workout," and so on. The delivered photographs revealed exactly what the title promised and no more. For instance, "a girl and a dog" showed a fully dressed girl playing with a dog.

Another "scam" operation in 1968 offered a 200-ft. 8-mm. black-and-white home movie on "sex education" for \$20 and a "marital relations manual" for \$15. The mailer claimed that "two young married students volunteered for a social science sex education breakthrough" by demonstrating sexual techniques and positions. For the purchase price, the customer received pictures of two fully clothed individuals (in neck-to-ankle black leotards) separately demonstrating sexual positions.¹⁴

Of course, some customers may be disappointed by the level of explicitness in the pictorial materials generally available through mail order. For example, two of the best-selling illustrated marriage manuals sold through the mail promise to picture sexual positions and techniques. While couples are shown in positions of sexual intercourse, it is impossible to discern whether such activity is actually shown because there is no genital exposure. Such books are not considered "scam" in the trade, even though the purchaser may have expected more.

THE ECONOMICS OF SEXUALLY ORIENTED DIRECT MAIL ADVERTISING

The volume of sexually oriented advertising is sufficient to blanket the nation's households. However, such advertising is actually received by only a limited number of individuals.¹⁵ Although millions of U.S. citizens have received unwanted sexually oriented advertising, all available evidence points to the fact that

14. The format involved two pictures for each "position" demonstrated. For example, one picture showed the female model lying on her back and an accompanying picture showed the male model lying on his stomach (both fully clothed).

15. Replies to the national survey conducted by the Commission indicated that 5% of adult males, 4% of adult females, and 4% of all adolescents (15 to 20 years old) have received such advertising at some time (Q-19).

most of this material is received by those who have either "solicited" such advertising or indicated an interest in such materials. The distinctions between solicited, semi-unsolicited, and unsolicited mail advertising for sexually oriented materials are as follows:

"Solicited advertising" is defined as all mail received by an individual who has made an inquiry, requested to be put on a mailing list, or purchased from a particular mailer of sexually oriented materials. (The latter could legitimately be classified as semi-unsolicited advertising, since a purchase arguably is not a request for further correspondence.) All direct mail advertising received by an individual from that particular mailer can be viewed as solicited.

"Semi-Unsolicited advertising" is defined as advertising received from mailers dealing in sexually oriented materials after the individual has made an inquiry about or a purchase of sexually oriented materials from another mailer. The individual has demonstrated an interest in such material and has indicated his receptivity to such advertising.¹⁶

"Unsolicited mail" is defined as receipt of sexually oriented advertising by an individual who has never placed an order or made an inquiry for information to any mailer of such materials.

Repetitive mailings of solicited or semi-unsolicited mail

The majority of those engaged in the business of advertising sexually oriented materials by mail send only solicited or semi-unsolicited advertising. Lists of individuals solicited by the majority of the mailers are compiled through inquiries or purchases, or are obtained from competitors who also deal in sexually oriented materials. A large part of the business is based upon the idea that the most likely customers are to be found among those who have demonstrated an interest in this type of material.

During the period from April 14, 1968, through December 31, 1969, only six mailers had the reputation in the trade of making large-scale unsolicited mailings. To determine whether advertising was unsolicited, one can examine complaints to the Post Office. If those complaining are medical doctors (an easy list to compile from professional listings) or business firms (such as Joe's Diner, the XYZ Corp.) this is a certain indication that the mail was unsolicited. A study of complaints to the Post Office revealed that these six mailers generated almost all of such complaints.¹⁷ A survey of postage expenditures revealed that although these six mailers accounted for only 43% of the total expended by 28 mailers studied during fiscal 1969,¹⁸ these mailers generated almost 65% of the complaints against all mailers in the country (including those not studied for postage purchases) for both fiscal 1969 and for a 20-month period ending December 31, 1969.

16. Of course, the fact that an individual may exhibit interest in one type of sexually oriented materials, such as heterosexual books, is no guarantee that the same individual will not be offended by receipt of another type of advertising, for instance, sexual devices, homosexual materials. Moreover, the "taste" of mailers varies considerably. An individual who has purchased an apparently legitimate marriage manual, in response to a "tasteful" ad, could be offended by a more blatant solicitation of a competing mailer.

17. See later section entitled "Prohibitory Order Survey."

18. See later section entitled "Postage Expenditure Survey."

Three experimental projects indicate that after an individual makes an inquiry or purchase from a mailer and his name is placed on a mailing list, a considerable volume of solicited or semi-unsolicited mail follows.

The Maryland Crime Commission study

The details of this study have been outlined above, and tabular summaries of the results are found in Tables 1 and 8.

Solicitation of sexually oriented advertising by the Commission staff

In September and October 1969 the author mailed 31 inquiries in response to sexually oriented advertising.¹⁹ Nine of the addressees were in foreign countries; three were in Sweden, two in Denmark, one in England, and three in Canada; 23 were located throughout the United States. The majority of the advertisers required an expenditure by the addressee of between 25¢ and \$3.50 "for further information . . . giant catalog . . . etc." The most common charges were \$1 and \$2. Three of the letters were returned unclaimed, and six apparently were not delivered, as checks therein were not cashed or no response was made. One letter was received and the enclosed check cashed, but no response was received. Twenty-two inquiries definitely reached the addressee (either a check was cashed or there was a response). Table 2 summarizes the 70 advertisements received in response to these inquiries as of July 15, 1970.

In addition, the Commission staff made three purchases of sexually oriented materials in June 1969 using three fictitious names. During the following year, one "buyer" received no further contact by mail. The second "buyer" received three advertising solicitations from a mailer with a different address from that of the original seller. The third "buyer" received eight advertising solicitations from the original seller and 16 ads from other mailers to whom his name had obviously been rented or traded.

Unsolicited mailings

From the foregoing it should not be concluded that unsolicited mail is rare; on the contrary, several major dealers seek to expand their market by making large-scale unsolicited mailings. When interviewed, these mailers stated that they did not plan to remain in business for a long period of time, but rather sought to "make a killing and get out." In order to expand business volume rapidly, mass mailings must be made to the general public. For example, one of the largest mailers in the country acknowledged that he considered anyone who had ever made a purchase through the mail to be a prospective customer and that he would mail to "every list he could lay his hands on." Mailers who make large-scale unsolicited mailings also create lists from sources such as legal directories, medical directories, lists of businesses, and so forth. As would be expected, these mailers generate a large number of complaints about their advertising.²⁰

19. The advertisements appeared in the September 4, 1969, issue of *Screw*, a self-labeled "sex newspaper" published in New York City.

20. See later section entitled "Prohibitory Order Survey."

Table 2

RESPONSES TO 31 INQUIRIES TO SEXUALLY ORIENTED ADVERTISING

September 1969-July 1970

Letters sent		Total solicited ads received from original addressee	Total semisolicited ads received from firms other than original addressee
No response	10 ^a	0	n.a.
1 response	9	8	1
2 responses	5	8	2
3-5 responses	5	10	7
6-10 responses	0	0	n.a.
10-20 responses	1	4	7
Over 20 responses	1	0	23
Total	31	30 ^b	40

n.a. = not applicable.

^aIncludes nine inquiries which probably did not reach the addressee (envelopes returned and/or checks not cashed) and one to which the addressee did not respond after receiving the inquiry (check cashed).

^bA total of eight advertisements were received from foreign countries in response to five inquiries, all from the original addressee.

Many mailers decry this practice and are content to advertise their wares only to those with proven interests. These mailers state that unsolicited mailings endanger their occupation by arousing the ire of the general public. Some claim to object to unsolicited mail on moral grounds, emphasizing the right of privacy.

The mailing list

The basic ingredient for direct mail advertising, whether the product is automobile tools or sexually oriented materials, is a list of names and addresses of potential customers. Lists change constantly as names are added and nonbuyers are removed.

ADVERTISING FOR NAMES TO CREATE OR EXPAND A LIST

One common method of creating a new list is to advertise in magazines or newspapers likely to appeal to potential customers. Although relatively expensive, this approach has built-in sales potential, since everyone responding is a high-quality prospect.

Five men's "sophisticate" magazines were purchased in September 1969 (*Caper, Dude, Gent, Rogue, Vue*). The five magazines contained 87 ads for books and magazines (by 22 business names), 151 ads for 8-mm. home movie films (by 69 firms), and 157 ads for other sexually oriented materials, such as photos, apparel, whips, dating clubs, devices (by 70 firms). Ads in five issues of *Screw*, a self-labeled "sex newspaper" published in New York City, were also analyzed.²¹ Each issue had between 31 and 70 ads; a total of 254 ads were placed by 214

21. Issues of June 6, August 7, September 29, November 17, and December 15, 1969.

separate firms, 32 of which had foreign addresses. Only a very few firms advertised in more than one or two issues of the newspaper. While this seems to be a great turnover, it is impossible to estimate how many individual advertisers were actually involved, because they often change the business firm name used.

Obtaining new names for a mailing list through advertising is relatively expensive. A 1-inch ad in one of the men's "sophisticate" magazines cost an average of \$60 to \$70. One mailer informed the Commission staff that he spent \$2,000 to \$2,500 per month on such advertising. The cost to obtain a name can be as high as \$2, and almost never falls below 50¢; average cost is probably more than \$1 per name. To offset this high cost many advertisers make the purchase of a sample an integral part of the ad (usually priced at \$1 to \$2).

Sales of samples and the product advertised are not considered to be money-makers. Most mailers are satisfied to "break even," or even sustain a small loss in their advertising. The value gained is the list of potential customers.

CREATING A LIST FROM OTHER SOURCES

Some mailers of sexually oriented advertising have created mailing lists by using sources generally available at little cost. At least two mailers have resorted to legal directories to make nationwide mailings to lawyers; several others have solicited medical doctors listed in directories. Some mailers have used yellow pages to obtain addresses of those in particular occupations, such as plumbers, barber shops, service stations, garages, and other small businesses. A few have even made "occupant" or "adult householder" mailings from address directories. This type of list is created without regard to any expressed interest in sexually oriented materials. As might be expected, the number of complaints generated by such mailings is substantially higher than for mailings to individuals who have indicated an interest in such materials.

TRADING OR SWAPPING LISTS

Another popular and commonly used method of expanding potential sales is list trading. In this procedure, Mailer A mails his brochures to Mailer B's list, and vice versa. The two mailers usually do not exchange physical possession of their lists; each insures that his brochures are mailed to individuals on the traded list. In such an arrangement, anyone who purchases is placed on the second list. Operator A can thus acquire a "property" in the name of a buyer obtained through the trade. Names of those who do not buy remain the "property" of the original list owner.

MAILING LIST BROKERS

In the conventional direct mail industry, there are 25 qualified members of the Mailing List Brokers Professional Association who bring buyers and sellers together. One efficacious way to sift out people who logically might be interested in a particular product is to consult a list broker who represents hundreds of list owners. The broker's task is to analyze the renter's needs, collect data on what is available, and to present recommendations on these availabilities. In general, the

buyer does not purchase anything tangible; rather, he purchases the privilege of renting a list, almost always without seeing it.

As far as can be discovered, none of the major list brokers will knowingly deal with an individual mailing sexually oriented advertising.²² To fill this void, there are a few list brokers who specialize in sexually oriented lists.

The one significant difference between the operations of a conventional list broker and a list broker specializing in sexually oriented lists is that the latter often owns the list. These list brokers collate a number of small lists into a master list in order to provide an economically viable list (15,000 to 50,000 names). One list broker, for example, reportedly has a standing purchase offer of 15¢ per name for each individual who has made an inquiry or purchase of sexually oriented materials within the previous 90 days. To insure that the names supplied are genuine, the envelope as proof of an inquiry or purchase is usually required. In this way, a list broker can compile lists of usable size from names obtained by a large number of small mailers.

The best known and largest broker of sexually oriented mailing lists stated that he has about 140 lists containing 2.5 million names and 50 active lists. He has four or five lists developed from buyers of sexual devices, 10 to 12 lists of 8-mm. film buyers, one list compiled from 20 smaller lists of lingerie buyers, 20 to 30 general sexually oriented lists, and two "gag" lists for those interested in novelties with a sexual connotation. Five of the lists have 60,000 to 70,000 names, and none has fewer than 15,000 names.

PROTECTING A MAILING LIST

A persistent fear of a list owner is that his list will be stolen by a competitor. In order to guard against this, many mailers will not part with physical possession of their lists. Often the list owner requires that a trustworthy mailing service be used. The renter delivers his brochures and envelopes to the mailing service; the mailing service stuffs the envelopes, affixes the postage, addresses the letters, and makes the mailing. Since the list renter never sees the names, a theft is virtually impossible as long as the mailing service does not act in collusion with the renter.

Another universally used method to protect a list is the use of "dummy names." All list owners include as "dummies" the names of friends, relatives, and acquaintances on their lists. Each piece of mail received by the dummy is forwarded to the list owner. The list owner is thus able to keep a watch on his list and ascertain if an unauthorized mailing has been made.

In the business of advertising sexually oriented materials, many operators are fly-by-night. As a result, the security established by list owners is intense. For example, one broker stated he had spent \$50,000 to install a foolproof burglar alarm to protect his lists.

LIST RENTAL PRICES

List rental prices range between \$5 and \$50 per thousand names for a single mailing in the mail order industry; prices for a single mailing (known in the trade

22. Of course, some people are of the opinion that mass market publishers and nationally known book clubs deal in sexually oriented materials. To some degree this is true, since many of today's "best sellers" contain a relatively high degree of sexual content.

as a "one-shot") are somewhat higher for sexually oriented lists. The minimum rental fee for a sexually oriented mailing list is \$20 to \$25 per thousand names. The average fee is probably \$30 to \$35 per thousand names, and a "golden list" of proven buyers sometimes rents for as high as \$75 to \$100 per thousand.

A complete list is ordinarily rented only after a test mailing. If a list contains 50,000 names, a mailer will mail his advertising to 2,000 to 3,000 individuals. If the test response justifies the rental of the entire list, the mailer pays the agreed price. Some list brokers provide the names for test mailings free of charge. If, as a result of the test, a mailer decides to use the entire list, the test names are paid for along with the remaining names on the list.

TOTAL NUMBER OF SEXUALLY ORIENTED LISTS AND TOTAL NUMBER OF NAMES ON SUCH LISTS

Members of the industry have given widely varying estimates as to the total number of sexually oriented lists available for rental and the total number of names on these lists. For example, one knowledgeable operator estimated that there were 300,000 different names of film buyers on more than 100 separate lists. Others have estimated that there are more than 500,000 different buyers of 8-mm. film on available lists. Estimates range from 2 to 3 million "good names" to 12 million names of those who have purchased a "sex item" in the past two or three years. There was no available method to ascertain which of these widely varying estimates is correct. An educated guess by the author, after an in-depth study of the industry, is that the lower figure is more accurate; that is, there are probably no more than 2 to 3 million individuals on lists derived from purchases of or inquiries about sexually oriented materials.

Many large-scale operators have lists containing hundreds of thousands of names, but there is a great duplication from list to list. Buyers of sexually oriented materials, or those making inquiries, are likely to be on many separate lists.

This duplication of names not only extends from dealer to dealer, but the lists of a single dealer may contain considerable duplication. Because the operators constantly change their business names, it is not uncommon for a prospective customer to make several inquiries or purchases from a single operator. Each time this occurs the name may be added to a dealer's list. For example, one large mailer dealing in 8-mm. home movie film created his list by advertising in men's "sophisticate" magazines and through trades with his competitors. When the operator placed a list of 25,000 names on a computer in order to modernize his operation, he discovered that 20% of the names were duplicates.

Cost of mailing sexually oriented advertising

Out-of-pocket costs to mail sexually oriented advertising usually range between \$100 and \$200 per thousand letters mailed (the standard trade reference to all direct costs),²³ or between 10¢ and 20¢ per letter. The rather wide range of mailing costs is the result of many factors.

23. Allocation of costs such as overhead, creativity, and so forth, is not included.

BROCHURES

The cost of printing advertising brochures depends upon the size and complexity of the brochure, quality of the paper, colors used, number of photo insets, size of the press run, and so on. The cost of printing brochures mailed by dealers in sexually oriented materials may range from \$10 to \$15 per thousand up to \$40 or more per thousand.

Mail order operators typically enclose between one and five brochures in a mailing. The cost of brochures varies widely between those who attempt "to get by cheaply" and those who attempt to project the impression of "a first class operation."

MAILING ENVELOPES

The cost of the outer envelope depends upon the quantity and the quality of the envelope and the printing. The price range is from \$2.50 to \$7 per thousand.

RETURN ENVELOPES

Almost all mailers enclose a self-addressed envelope with the advertising. With only one or two exceptions, the customer is required to provide his own stamp. The cost of the return envelope is generally lower than the mailing envelope, ranging from under \$2 to \$4 per thousand, depending on quality and quantity.

ADDRESSING OF ENVELOPES

The form in which a mailing list is obtained greatly affects the cost of addressing. If the letters can be processed by machine, this cost may be as low as \$3 per thousand. On the other hand, if the addresses must be typewritten on the envelopes or typed on labels and affixed by hand, costs may run as high as \$21 per thousand.

INSERTING

Insertion of the brochures and return envelopes into the mailing envelope generally ranges between \$7 and \$9 per thousand when done by machine.

POSTAGE

Almost all major mailers use either postage meters²⁴ or first-class postage permits which allow the postage to be printed on the envelope. Some small mailers regularly use postage stamps (and a few large mailers occasionally do). The cost of affixing such stamps necessarily raises the per-item cost of mailing.

With almost no exception, mailers of sexually oriented advertising use first-class postage (at \$60 per thousand) for their advertising solicitations. In 1969 only one major mailer used a third-class mailing permit to mail letters (at a cost of \$38 per thousand), and one other mailer used a third-class bulk permit to mail a catalog.

24. According to Pitney-Bowes (the leading lessor of postage meters), the minimum charge for a postage meter is approximately \$50 per month. This seems to be a small price to pay to avoid affixing stamps to 6,000 letters per week, as one operator reportedly did during 1969, or purchasing \$18,000 worth of 6¢ stamps (representing 300,000 letters) as another did.

It seems strange that mailers do not make greater use of bulk mail permits, since the cost savings for large mailings would be significant. Although the question was discussed with many mailers, none of the answers given was wholly satisfactory. They mentioned factors such as the sanctity of first-class mail; that first-class mail is more likely to be opened by the recipient; that the Post Office might be unwilling to grant a third-class mailing permit without being compelled to do so by a court order; and that the mailer's activities would be called to the attention of the Post Office.

LIST COST

The cost of list rental ranges from \$20 to \$25 per thousand names for an ordinary list, to a high of \$100 per thousand for a so-called "golden list." The average list rental cost probably does not exceed \$30 to \$35 per thousand.

TOTAL COSTS

It is possible to mail advertising for about \$100 per thousand letters. For example, one mailer advertising 8-mm. home movies stated that he generally encloses one inexpensive brochure and a return envelope in his mailings. His out-of-pocket costs for a mailing of approximately 25,000 letters are as follows:

\$ 9.00	Stuffing and sealing
60.00	Postage
2.00	Address labels
5.00	Typing
9.00	Envelopes (2)
15.00	Brochures
<hr/>	
\$100.00	Per 1,000 letters

Note that there was no cost allocated to list rental or overhead. The mailer uses his own list or trades lists with one of his competitors. The cost of obtaining names for his list through advertising was not included.

While it is possible to make mailings for approximately \$100 per thousand, most operators exceed this cost. As a public service, two of the major direct mailers²⁵ in the United States agreed to make a cost analysis of several typical sexually oriented advertisements. The estimated cost per thousand letters varied considerably, depending upon the quantity and quality of the mailing. According to these cost analyses, the most expensive mailing cost approximately \$184 per thousand for a mailing of 10,000. The least expensive mailing cost \$113 per thousand for a mailing of 1 million. Tables 3 and 4 detail these studies.

The cost analysis data indicate that mailers spend between \$14 and \$84 per thousand to have their brochures and envelopes printed, and the most typical costs range between \$20 and \$40 per thousand. The printing costs are only a small percentage of the total out-of-pocket costs of direct mail advertising: the most significant expense is postage, especially since all sexually oriented advertising is sent first class. It appears that the average mailer spends approximately \$120 to \$150 per thousand letters (12¢ to 15¢ each).

25. Both business firms making these cost estimates deal in products wholly unrelated to the sexually oriented advertising under discussion.

Table 3

COST ANALYSIS BY ABC CO. OF FIVE TYPICAL SEXUALLY ORIENTED ADVERTISEMENTS—JANUARY 1970

The following cost analysis was performed by the advertising department of one of the largest direct advertising mailers in the United States. The company produces products used in almost every household. The advertisements analyzed are described below.

AD NUMBER 1

Mailer:

Cybertype Corp., New York, New York

Contents:

- A. Black-and-orange four-page brochure entitled "Secrets of Scandinavian Sexual Power"
- B. Blue one-page brochure entitled "Secrets of African Sexual Power"
- C. Return coupon
- D. Return self-addressed envelope
- E. Mailing envelope

Items for sale:

Five books; minimum purchase \$9.98, maximum purchase \$17.98

AD NUMBER 2

Mailer:

Adult Novelty Co., Northridge, California

Contents:

- A. Black-and-white one-page brochure, four photo insets, entitled "The Most Revealing Adult Movies and Photos Ever"
- B. Return envelope
- C. Mailing envelope

Items for sale:

Three 8-mm. films and photo assortments; minimum purchase 32 photos at \$15 or one 8-mm. 200-foot film at \$25; maximum purchase three super 8-mm. color films and color photo set at \$110

AD NUMBER 3

Mailer:

Stemar Press, Ltd., New York, New York

Contents:

- A. Black, white, and red four-page sealed brochure; nine photo insets, entitled "You Can Become a Sexual Superman"
- B. Return coupon
- C. Return envelope
- D. Mailing envelope

Table 3 Cont'd

Items for sale:	One book at \$9.98
AD NUMBER 4	
Mailer:	Athena Books, Los Angeles, California
Contents:	<p>A. Black, red, and white four-page slick-paper brochure; 14 photo insets in browntone plus photos of covers of 18 pocketbooks</p> <p>B. Black, red, and white two-page slick-paper brochure; one photo inset in browntone entitled "Epic 300"</p> <p>C. Return envelope</p> <p>D. Mailing envelope</p>
Items for sale:	18 books at \$2; two books at \$3; six books at \$5; one book at \$15; one book at \$20. Minimum purchase: \$2. Maximum purchase: \$83 for 28 books
AD NUMBER 5	
Mailer:	Mondo Movies, Hollywood, California
Contents:	<p>A. Black-and-white two-page brochure, 17 photo insets, entitled "Sock It To Me"</p> <p>B. Return envelope</p> <p>C. Mailing Envelope</p>
Items for sale:	Four 8-mm. 200-foot films, black and white, at \$15; color at \$25; plus photo sets; minimum purchase, \$15; maximum purchase, \$74

ESTIMATED COSTS PER ONE THOUSAND LETTERS MAILED

	Quantity Mailed						
	10M	25M	50M	100M	250M	500M	1MM
AD NUMBER 1							
Printing costs ^a							
A	\$ 35.00	\$ 30.00	\$ 25.50	\$ 20.25	\$ 19.50	\$ 18.00	\$ 17.25
B	3.84	3.28	2.75	2.65	1.87	1.79	1.76
C	5.29	4.72	4.12	4.01	3.08	3.00	2.87
D	44.13	38.00	32.37	26.91	24.45	22.79	21.98
E	3.00	3.00	3.00	3.00	3.00	3.00	3.00
Total printing costs	9.00	9.00	9.00	9.00	9.00	9.00	9.00
Addressing of piece ^b	60.00	60.00	60.00	60.00	60.00	60.00	60.00
Inserting in env. and mlg.	25.00	25.00	25.00	25.00	25.00	25.00	25.00
Postage	138.13	132.00	126.37	120.91	118.45	116.79	115.98
List cost ^c							
Total cost per M	\$ 1381	\$ 3300	\$ 6318	\$ 12,091	\$ 29,611	\$ 58,395	\$ 115,980
Total mailing cost							
AD NUMBER 2							
Printing costs ^a							
A	\$ 18.20	\$ 16.00	\$ 15.00	\$ 14.00	\$ 13.00	\$ 11.00	\$ 10.00
B	4.09	3.52	2.99	2.88	2.08	2.00	1.97
C	5.29	4.72	4.12	4.01	3.08	3.00	2.27
D	27.58	24.24	22.11	20.89	18.16	16.00	14.94
E	20.00	20.00	20.00	20.00	20.00	20.00	20.00
Total printing costs	7.00	7.00	7.00	7.00	7.00	7.00	7.00
Addressing of piece ^b	60.00	60.00	60.00	60.00	60.00	60.00	60.00
Inserting in env. and mlg.	25.00	25.00	25.00	25.00	25.00	25.00	25.00
Postage	139.58	136.24	134.11	132.89	130.16	128.00	126.00
List cost ^c							
Total cost per M	\$ 1396	\$ 3406	\$ 6706	\$ 13,289	\$ 32,540	\$ 64,000	\$ 126,940
Total mailing cost							

Table 3 Cont'd

	Quantity Mailed						
	10M	25M	50M	100M	250M	500M	1MM
AD NUMBER 3							
Printing costs ^a							
A	\$ 13.40	\$ 11.00	\$ 10.00	\$ 8.50	\$ 8.00	\$ 7.50	\$ 7.00
B	39.40	31.00	27.00	22.50	21.00	19.00	17.00
C	3.84	3.28	2.75	2.65	1.87	1.79	1.76
D	6.91	6.22	5.65	5.54	3.86	3.69	3.61
Total printing costs	\$ 63.55	\$ 51.50	\$ 45.40	\$ 39.19	\$ 34.73	\$ 31.98	\$ 29.37
Addressing of piece ^b	21.00	21.00	21.00	21.00	21.00	21.00	21.00
Inserting in env. and mlg.	8.00	8.00	8.00	8.00	8.00	8.00	8.00
Postage	60.00	60.00	60.00	60.00	60.00	60.00	60.00
List cost ^c	25.00	25.00	25.00	25.00	25.00	25.00	25.00
Total cost per M	\$ 177.55	\$ 165.50	\$ 159.40	\$ 153.19	\$ 148.73	\$ 145.98	\$ 143.37
Total mailing cost	\$1776	\$4138	\$7970	\$15,319	\$37,183	\$72,990	\$143,320
AD NUMBER 4							
Printing costs ^a							
A	\$ 43.60	\$ 36.00	\$ 32.00	\$ 28.00	\$ 26.00	\$ 24.00	\$ 22.00
B	32.00	27.00	23.00	20.00	18.00	16.00	14.00
C	4.09	3.52	2.99	2.88	2.08	2.00	1.97
D	5.29	4.72	4.12	4.01	3.08	3.00	2.97
Total printing costs	\$ 84.98	\$ 71.24	\$ 62.11	\$ 54.89	\$ 49.16	\$ 45.00	\$ 40.94
Addressing of piece ^b	6.00	6.00	6.00	6.00	6.00	6.00	6.00
Inserting in env. and mlg.	8.00	8.00	8.00	8.00	8.00	8.00	8.00
Postage	60.00	60.00	60.00	60.00	60.00	60.00	60.00
List cost ^c	25.00	25.00	25.00	25.00	25.00	25.00	25.00
Total cost per M	\$ 183.98	\$ 170.24	\$ 161.11	\$ 153.89	\$ 148.16	\$ 144.00	\$ 139.94
Total mailing cost	\$1840	\$4256	\$8056	\$15,389	\$37,040	\$72,000	\$139,940
AD NUMBER 5							
Printing costs ^a							
A	\$ 42.60	\$ 38.00	\$ 35.00	\$ 33.00	\$ 29.00	\$ 27.00	\$ 22.00
B	3.84	3.29	2.75	2.65	1.87	1.79	1.76
C	5.29	4.72	4.12	4.01	3.08	3.00	2.97
Total printing costs	\$ 51.73	\$ 46.01	\$ 41.87	\$ 39.66	\$ 33.95	\$ 31.79	\$ 26.73
Addressing of piece ^b	21.00	21.00	21.00	21.00	21.00	21.00	21.00

Inserting in env. and mlg.	7.00	7.00	7.00	7.00	7.00	7.00	7.00
Postage	60.00	60.00	60.00	60.00	60.00	60.00	60.00
List cost ^c	25.00	25.00	25.00	25.00	25.00	25.00	25.00
Total cost per M	\$ 164.73	\$ 159.01	\$ 154.37	\$ 152.66	\$ 146.95	\$ 144.79	\$ 139.73
Total mailing cost	\$1647	\$3975	\$7744	\$15,266	\$36,738	\$72,395	\$139,730

^aThe last item shown under "printing costs" is, in each case, the mailing envelope.

^bIt is particularly difficult to estimate an addressing cost, since there is no way of knowing the form in which the original lists were obtained. For Ad Number 1, it was assumed that the list was purchased on Cheshire address tapes which were then affixed mechanically. For Ad Number 2, it was assumed that the pieces were addressed by typewriter from a master list. For Ad Numbers 3 and 5, it was assumed that the gum labels were addressed by typewriter with at least one carbon from a master list and then later affixed by hand to the pieces. (Number 3 appears to be an original whereas Number 5 appears to be a carbon copy.) For Ad Number 4, it was assumed that the list was obtained on stencils which were then used to address the pieces.

^cA constant list has been shown with a cost of \$25 which, again, is a very rough estimate. There are so many sources for such lists that it would be impossible to make an accurate estimate. It is known that the cheaper lists can be obtained for \$10 to \$15 per M, whereas other lists may cost \$50 per M.

Note: The response necessary to cover original mailing costs if each return results in \$10 sale would be between 1% and 2% for each of the sample advertising pieces furnished.

Table 4
 PRINTING COST ANALYSIS (ONLY) BY XYZ CORP. OF FIVE TYPICAL SEXUALLY
 ORIENTED ADVERTISEMENTS—JANUARY 1970

The following is another cost analysis of printing costs for five typical sexually oriented advertisements. This analysis was performed by another of the largest direct mailers in the United States. The company is involved in printing and publishing, as well as direct mail advertising. The sample advertisements analyzed are described below.

AD NUMBER 1

Mailer: Cybertype Corp., New York, New York—Same as Table 3

AD NUMBER 2

Mailer: Adult Novelty Co., Northridge, California—Same as Table 3

AD NUMBER 6

Mailer: Stemar Press, Ltd., New York, New York

Contents: A. Blue, black, white, and red six-page brochure, one photo inset, entitled "Secrets of Scandinavian Sexual Power!"
 B. Return coupon
 C. Return envelope
 D. Mailing envelope

Items for sale: Five books; minimum purchase, three books at \$4.98; maximum purchase, five books at \$9.98

AD NUMBER 7

Mailer: Tru/Art Distributing Corp., New York, New York

Contents: A. Large full-color two-page brochure, 12 photo insets entitled "Nudist Pajama Party"; small, black-and-white one-page brochure, 18 photo insets, entitled "Over 500 Wild Nude Pictures"; small one-page blue-and-black brochure, four photo insets, entitled "Free Bonus '69 Nudist Calendars"
 B. Return coupon
 C. Return envelope (first-class permit postage paid)
 D. Mailing envelope

Items for sale:

Four 100-ft. 8-mm. films, 20 full-color 35-mm. slides; 500 pictures; minimum purchase 500 pictures at \$3; or, 100-ft. 8-mm. film at \$15 black-and-white, or \$17 color; five 35-mm. slides at \$7; maximum purchase 40 400-ft. black-and-white film at \$25 or 400-ft. color at \$60, four sets color slides at \$15, and 500 nudist pictures at \$3; total \$103

AD NUMBER 8

Mailer: Lindley Sales, Los Angeles, California

Contents: A. Black-and-white one-page brochure, two photo insets, entitled "The Tax Collector Comes!"

Items for sale: 200-ft. 8-mm. black-and-white at \$15; 200-ft. 8-mm. color at \$25; set of 12 stills 4 x 5 at \$10. Minimum purchase \$10; maximum purchase \$35

	Ad #1	Ad #2	Ad #6	Ad #7	Ad #8
Quantity	25,000	50,000	100,000	250,000	500,000
	1,000,000				
	2 Envelopes	2 Envelopes	2 Envelopes	2 Envelopes	1 Envelope
	2 Brochures	1 Brochure	1 Brochure	1 Brochure	1 Brochure
	1 Card		1 Card	3 Cards	
Cost	\$ 1,223.75	\$ 643.75	\$ 1,255.00	\$ 1,988.75	\$ 492.50
	2,152.50	1,210.00	2,165.00	3,142.50	917.50
	4,050.00	2,285.00	3,995.00	5,470.00	1,775.00
	9,342.50	5,562.50	9,115.00	12,082.50	4,187.50
	18,430.00	10,925.00	17,765.00	23,245.00	8,250.00
	36,105.00	21,600.00	35,015.00	45,495.00	16,350.00

2/6/70

Postage \$60.00/M
1st Class or 6¢ each

Cost of goods sold and markup

The relatively high markup of sexually oriented materials sold through mail order has sometimes been cited as a reason why "mailers of sex materials are getting rich." In reality, the cost of goods sold is minor in this method of selling. The cost of obtaining sales by direct mail advertising is such that a high markup is required merely to break even. If, for example, a book costs 50¢ to produce and is sold for \$10, the markup of 20 times sounds outrageously high. However, if the advertiser must spend between \$7 and \$9 to find a buyer, profitability narrows considerably. This, in effect, is the typical experience of direct mail advertisers of all types, including those who sell sexually oriented materials.

BOOKS AND MAGAZINES

As noted previously, production costs for paperback books range from 10¢ to 40¢ per copy. Printing costs for a hard-cover book range approximately from 75¢ to \$3, depending upon the quality, press run, manuscript costs, length, photo insets, and so on. Magazines can be printed for from 30¢ to 35¢, or from 65¢ to 70¢, depending upon the amount of color, number of pages, photo insets, and so forth.

Many mailers advertise books produced by others; for example, the Monogram and Futura books are sold extensively through the mail.²⁶ The books cost mailers 90¢ to \$1.05 each, and are sold for \$4 per copy (a 400% markup).

If the mailer is also a publisher, the markup on his books sold through the mail is substantial. The publisher may spend 15¢ or 20¢ per copy for a paperback and sell it for \$1.95 to \$2.95 by mail. The markup is 10 to 15 times the original cost.

Certain highly promoted paperbacks, such as *The Photographic Manual of Sexual Intercourse*,²⁷ have an even higher markup. Although the books cost well under \$1 to produce, the mailer charges \$10.

Hard-cover books often have a lower markup than paperbacks. For example, one book which sold well in fiscal 1969 was *The Illustrated History of Pornography*.²⁸ The first edition cost was probably in excess of \$2 per copy, although subsequent printings probably reduced the copy cost to under \$1. The book was sold at \$15.

8-mm. FILMS

The cost to produce a sexually oriented 8-mm. "home movie" is highly variable. If a single actress is hired, the model cost will be only from \$50 to \$100. When more "actors" are used, production costs may rise to over \$500. The films are usually shot by a professional photographer, often the mailer himself. Independent photographers sell films to mailers for cost plus \$100 to \$300.

After spending between \$100 to \$500 to produce or purchase 800 ft. of 8-mm. home movie film, a mailer incurs the cost for prints (approximate) shown in Table 5.

26. These books are 8 1/2 x 5 1/2, with good quality paper, a slick cover, illustrations, and 208 to 240 pages in length.

27. L. R. O'Conner (Pent-R-Books, Inc., New York, 1969).

28. Abe Richards and Robert Irvine (Athena Books, Los Angeles, 1968).

Table 5

8-mm. PRINT COSTS—DECEMBER 1969

Length (feet)	Type	Cost per print (under 50)	Cost per print (over 50)
100	b/w	\$ 1.00	\$ 0.90
100	color	4.00	3.00
200	b/w	2.00	1.85
200	color	8.00	6.00
400	b/w	4.00	3.70
400	color	16.00	12.00

The standard home movie is 200 ft. 8-mm., black and white. The retail price ranges between \$10 and \$25. On the average, color film costs from \$25 to \$50 for 200 ft. (8-mm.). The markup on sexually oriented 8-mm. home movies generally ranges between 600% and 900% over out-of-pocket costs.

SEXUAL DEVICES

Sexual devices, lotions, elixirs, and pills consistently have a high markup. Various rubber and plastic devices, such as artificial penises, can be purchased by mailers for \$1.50 (up to \$3) and manufactured for less than \$1. Such items are sold for prices ranging anywhere from \$7.50 to \$25; \$15 is probably an average price (markup ranges between 500% and 3,000%).

Various pills and elixirs which promise increased sexual prowess are also available and are even more profitable. A bottle of "potency" pills or a tube of anesthetic cream can be produced for a few cents; typical prices charged range from \$2 to \$3 and as high as \$10.

Percentage of response

BOOKS AND MAGAZINES

In general, books and magazines sell for the lowest prices of all the various sexually oriented materials available by mail order. The percentage of response required to make advertising books profitable is relatively high. If the minimum purchase is only \$2 or \$3, the mailer must receive at least an 8% to 10% response to break even. Fortunately for the mailers, the average customer purchases more than the minimum.

Mailers do not measure success by percentage of response; rather, the common yardstick of success is stated in terms of return per letter mailed (incoming receipts divided by the number of letters mailed). Thus, a 1% response for a \$25 item and a 2 1/2% response for a \$10 item are both referred to as a "25¢ per letter return."²⁹

Response ratios vary considerably. One mailer stated that his solicitations for books have elicited responses ranging from 0.5% to 8.5%. Another mailer claimed an overall response of 10% for the first "illustrated marriage manual" (priced at

29. For each 1,000 advertising letters mailed, a 1% response equals 10 sales of a \$25 item, or \$250; a 2 1/2% response equals 25 sales of a \$10 item, or \$250. Profits on the sales of the \$25 item are likely to be greater since there will be less handling, and the cost of the goods sold will probably be less.

\$4.95);³⁰ if true, this was a return of 50¢ per letter, a very high return rate for books.

On special promotions the response rate may soar to a very high level. For example, one mailer stated that 65,000 individuals on his mailing list had not made a purchase for over a year. An advertisement was mailed which stated that the individual's name would be removed from the list if a purchase was not made. The mailer claimed a 30% return on this selective mailing to former customers. However, many of the items offered sold for low prices, and gross return was only slightly more than \$1 per letter.

Two of the largest mailers of book advertisements stated that they could rely on a 2% response during 1968-1969. As a result, both almost always advertised books which sold for at least \$10; the expected 2% response would thus yield \$200 (20¢ per letter) for every 1,000 letters mailed, and the mailers made a profit.

If such statements are accurate, the average return on book advertisements does not exceed 30¢ per letter, and 20¢ per letter is most typical.

HOME MOVIES

Response to advertising of 8-mm. home movies depends upon such factors as the time of year, the "pulling power" of the brochure, the "appeal" of the items for sale (particularly the attractiveness of the models), and the competition at the time of mailing. For example, one mailer stated that in January and February it was normal to receive a return of almost \$1 per letter, while during the summer the return was likely to fall as low as 25¢ to 30¢ per letter. Another mailer stated that he mailed about 25,000 letters every 35 to 40 days. For part of 1969 the response rate per letter was as follows: March, 45¢; April, 33¢; May, 66¢; June, 11¢ (the mailer lost money).

Advertising of sexually oriented 8-mm. home movies elicits responses ranging from 1% to 5%. Returns vary between 10¢ and \$1.75 per letter, and 15¢ per letter is considered the break-even point. For a "regular customer" list, most mailers claim the average return is 50¢ per letter. Rented or traded lists usually elicit about 30¢ per letter. Golden lists (customer lists from competitors) ordinarily elicit a response equal to or better than the mailer's own customer list.

SEXUAL DEVICES

The markup of sexual devices is quite high. As a result, the percentage of response needed by mailers dealing in such materials to insure profitability is approximately the same as that required for home movie films. Because the average purchase is perhaps \$15, a 1% to 1 1/2% response yields a profit.

Potions, lotions, and potency pills are very minor factors in the market and are usually advertised only in conjunction with sexual devices.

Hypothetical mail order operators

8-mm. FILMS

To illustrate the mechanics of the mail order erotica business, a hypothetical example of the operations of a typical, moderately large mailer dealing in sexually oriented 8-mm. motion picture films is presented below.

30. *Intercourse* (Collectors Publications, City of Industry, California, 1968).

For January 1970 the mailer produced four interrelated films, each 200 ft. long. He hired three females and one male because he had decided that customers demand more complex films. He used 2,000 ft. of 16-mm. color film (all filming is initially done in 16-mm.) in order to produce four 200-ft. 8-mm. segments.³¹ By the time the film was developed and modeling expenses were paid, the mailer had invested approximately \$700.

The operator then designed and mailed 30,000 advertising letters. Twenty thousand names were on his own mailing list, and an additional 10,000 names were rented from a competitor for \$30 per thousand. The solicitation contained a return envelope and a two-page brochure depicting scenes from the films. Each letter cost approximately 12¢ plus the list rental fees, a total of \$3,900. In addition, he rents an office at \$300 per month, employs two secretaries at \$400 per month, and has additional overhead expenses such as post office box rental, insurance, depreciation, and so forth, of \$500 per month.

The films are priced as follows: 200-ft. black-and-white at \$15; 200-ft. color at \$25; all four black-and-white at \$45; and, all four color at \$75. From the original (30,000) mailing, the operator receives a response of 2 1/2%, or 750 orders. The mailing is regarded as very successful. The most common purchase is a single of 200-ft. black-and-white film at \$15, but one out of every six orders is either for color film or for more than one film, and the average purchase is \$20. The mailer has gross sales of \$15,000 (750 orders × \$20), or 50¢ per letter (most orders arrive within two weeks, but orders trickle in for months).

The mailer also spends \$2,000 to advertise his film in magazines, newspapers, and so forth. This advertising breaks even because of purchases of films or samples and does not affect profits. The purpose of the ads is to build the mailing list. Anyone who responds will be placed on this mailing list for an indefinite period of time. The results of the January 1970 mailing are shown in Table 6.

Table 6

HYPOTHETICAL 8-mm. HOME MOVIE ADVERTISER

Gross sales (750 films × \$20 average sale)	\$15,000
Less expenses	
Film production cost	700
Mailing cost (30,000 advertisements)	3,900
Cost of goods sold (includes postage and the more expensive color film)	2,300
Office expenses	300
Labor cost	800
Miscellaneous expenses	500
Approximate expenses for January 1970	\$ 8,500
Gross profit	\$ 6,500

31. Reducing 2,000 ft. of 16-mm. film to 8-mm. yields 1,000 ft.; editing should yield four 200-ft. segments.

If response level remains at 2 1/2% (or 50¢ per letter), the operator can live quite comfortably. Returns at this rate would result in a yearly gross income of \$70,000.

However, if the brochures have less pulling power, if a seasonal variation cuts down the response, or if competition is particularly aggressive, the return can fall to 25¢ per letter. In such an event, expenses remain approximately the same (except that the cost of goods sold is reduced proportionately). Gross sales fall to \$7,500, expenses are about \$7,450, and sales barely cover out-of-pocket expenses.

Note that one of the mailers interviewed stated that his return inexplicably fell to 11¢ per letter for one mailing, a money-losing proposition. Many mailers operate on just such fragile profit margins. While an individual mailer can live comfortably on the profits to be made in 8-mm. home movie film mailings, it is doubtful that few, if any, have an annual income in excess of \$30,000 or \$40,000. The mean net income for more than 100 mailers of 8-mm. home movies is probably not more than \$20,000 or \$25,000. It seems clear that selling sexually oriented home movies through the mail does not make many millionaires.

BOOKS AND MAGAZINES

In the situation described above, the hypothetical mailer lost money if his return fell below 25¢ per letter response. Mailers selling books usually operate on a much greater volume. The market for books is much larger than for home movies, and a response as low as 20¢ per letter can assure profits if volume is high. Assume, for example, that a mailer advertises a sexually oriented book priced at \$10 which costs him \$1 to deliver. If the mailer solicits 500,000 individuals per month to purchase the book, a 2% response yields a profit. (See Table 7.)

Six million advertisements per year yield gross profits of \$300,000. If this can be continued over a period of time, a mailer can become relatively wealthy.

In fiscal 1969, there were only three mailers in the United States who operated on the volume basis described above. Other mailers who offer books through mail order have a volume of business which more closely approximates the operations of the typical 8-mm. film mailer. That is, most mailers probably have gross profits under \$25,000 or \$30,000 per year.

Table 7
HYPOTHETICAL BOOK ADVERTISER

Gross receipts (2% response, or 10,000 sales at \$10)	\$100,000
Less expenses	
Mailing cost (500,000 advertisements)	59,000 ^a
Cost of goods sold (10,000 books at \$1)	10,000
Office expenses	1,000
Labor cost (six employees at \$500 per month)	3,000
Miscellaneous expenses	2,000
Total expenses	\$ 75,000
Gross profit (monthly)	\$ 25,000

a. See Table 3, Ad Number 1.

One additional factor affecting profitability of mail order operations requires at least passing mention. The Postal Inspection Service is convinced that many mailers do not report orders received with a cash payment to the Internal Revenue Service. Indeed, many mailers acknowledge that "some" of their competitors probably engage in this patently illegal practice. The extent of this practice is unknown, although if this procedure is widespread and occurs with some regularity, profitability is enhanced by the receipt of "tax-free gravy."

NUMBER AND LOCATION OF MAILERS

It is impossible to estimate the total number of individuals and firms dealing in mail order erotica in the United States because the market is in a constant state of flux. This business provides easy entry for a very small investment (an individual can start with one or two thousand dollars).

The folklore of the industry is replete with stories of operators who became "rich overnight." One such story, reportedly verified by the office of the Attorney General of California, concerns a young man who arrived virtually penniless in Los Angeles. He made a contact in the industry and somehow acquired access to a mailing list. He used this to solicit customers for a battery-powered device for stimulating the male genital organ. The device was, in fact, a slightly modified battery-powered back scratcher which was imported from Japan and packaged here at a total cost of \$3 per unit. Its retail mail order price was \$24.95. The mailer netted approximately \$100,000 before taxes in approximately one year.³²

In the past few years, there have been hundreds of individuals or business firms who have advertised sexually oriented materials through the mails. The files of the postal inspectors in Los Angeles contain the names of over 330 individuals whose operations have been investigated for possible violation of the statutory prohibitions against mailing obscene matter.³³ Some have been advertising erotica for 10 to 12 years; others have entered and left the business; and still others are new to the business.

A factor which makes it exceedingly difficult to estimate the number of erotica mailers is the widespread use of ever-changing firm names, usually known as "d/b/a's" (doing/business/as). As of January 1970 the Commission's files contained a list of approximately 1,300 business firm names used by mailers during the past 2 or 3 years. While some mailers use a set of trade names for years in order to build buyer identification, others use a d/b/a for only one or two mailings and then abandon it. Some major dealers have used as few as five or six d/b/a's over the past several years, while others have used as many as 40. The number of "firms" generating complaints actually does not indicate the number of mailers engaged in business.

After extensive interviews with mailers, an exhaustive review of business firm names used in the past 2 years, and a review of the advertising in magazines, "sex newspapers," and the underground press, and after consultation with the Postal

32. T. Lynch and C. O'Brien, "A Report to the California Legislature on Obscenity," Unpublished manuscript, Commission Files (1967) (hereinafter referred to as the *Lynch Report*).

33. 18 U.S.C. 1461.

Inspection Service, it can be reasonably estimated that during fiscal 1969 as many as 500 individual enterprises, both major and minor, offered to sell sexually oriented materials by mail.³⁴ Of this number, only a few are large-scale or "major" mailers; at any point in time, fewer than 20 are major factors in the marketplace.³⁵

Ordinarily, the city and State from which sexually oriented advertising originated can be determined from the return address on the envelope or from the postmark.³⁶ The overwhelming majority of such advertising is mailed from the Los Angeles area and New York City. Of the approximately 1,300 d/b/a's in the Commission's files, just over 60% have return addresses in the Los Angeles area, 12% in the New York City area, and the balance are scattered throughout the United States.

In a random sampling by the Commission staff of complaints made to the Post Office between April 14, 1968, and December 31, 1969, approximately 400 separate business firm names were complained against.³⁷ Of these, approximately 60% used return addresses in California, and 30% were from New York. Fourteen other States, with one to six business names per State, were represented in the random sampling of complaints.

The concentration of mail order advertising in New York and California is also demonstrated by an analysis of complaints made to the Post Office. For the 20 1/2 month period, from April 14, 1968, to December 31, 1969, a sampling of Prohibitory Orders issued disclosed that 40.6% of all complaints were against mailers with return addresses in California and 58.1% against mailers with New York addresses.³⁸

A study of sexually oriented mail advertising has been conducted by the Maryland Crime Investigating Commission since August 1959, when a post office box was opened to monitor such mail. Up to December 31, 1969, over 750 letters were received, almost all of which were sexually oriented. Of these, 60.9% were from California and 22.7% were from New York. The balance of the letters were from 18 other States and foreign countries (Pennsylvania and Canada led with 4.5% and 3.1% respectively). The ratio of mail from California and New York has remained remarkably stable over the years. (See Table 8.)

Another example of the dominance of California and New York mailers is provided by an analysis of advertisements from mail order erotica sampled from

34. Estimates of the number of mailers from the industry vary widely. One publication claims to list over 800 domestic and over 200 foreign mailers of erotica. *Adult Yellow Pages* (Indianapolis: Helotic & Co., 1969). However, many of the d/b/a's listed are merely different business names used by a single enterprise.

35. See *Part I, Obscenity in the Mails*, Hearings on H.R. 10867, Before the Subcommittee on Postal Operations of the House Committee on Post Office and Civil Service, 91st Cong., 1st Session (1969), pp. 15, 49 (hereinafter cited as *Obscenity in the Mails*). In testimony, Hon. David Nelson, general counsel, Post Office Department, estimated that "95 percent of the current complaints about obscenity in the mails results from the indiscriminate direct mail advertising of some 15 major promoters." Hon. Will Wilson, assistant attorney general of the Criminal Division, testified that the Department of Justice had indicted "25 major dealers," nine of whom were major distributors, with "a total of 35 individuals and 26 corporations" involved. "Another 14 major dealers" were under investigation.

These "major mailers" have been the subject of an extensive study conducted by the Postal Inspection Service in response to a request by the Commission. This study will be discussed in the section entitled "Postal Expenditure Survey."

36. Occasionally a mailer in State A uses a post office box in State B.

37. See later section entitled "Prohibitory Order Study."

38. See later section entitled "Prohibitory Order Survey."

Table 8

MARYLAND CRIME COMMISSION STUDY—ORIGIN OF SEXUALLY ORIENTED
ADVERTISING RECEIVED

August, 1959-December 31, 1969

STATE	First 8 1/2 yr. period (Aug. 1959- June 1968)	Next 1 year period (July 1968- June 1969)	Last 6 mos. period (July 1969- Dec. 1969)	Total 9 1/3 years	% of Total
California	355	74	30	459	60.9
New York	134	26	11	171	22.7
Pennsylvania	29	3	2	34	4.5
Canada	19	1	3	23	3.1
Illinois	16	0	1	17	2.3
New Jersey	6	5	2	13	1.7
All other States ^a	24	6	4	34	4.6
Foreign countries ^b	1	0	1	2	...
Total	584	115	54	753	100.0

a. Mail from 11 other States and the District of Columbia was received.

b. Mail from two foreign countries was received.

men's "sophisticate" magazines purchased in September 1969. Table 9 summarizes the results of this sampling.³⁹

From the foregoing it can be estimated that approximately 60% of all sexually oriented advertising originates from California (primarily in the Los Angeles area), and approximately 25% from New York (primarily New York City). Mailers in the remaining 48 States probably account for no more than 15% of the traffic in mail order erotica; mailers in Illinois, Pennsylvania, New Jersey, and Florida account for most of the remainder. However, insofar as the advertising which causes the general public to complain to the Post Office, almost 99% originates in New York and California.⁴⁰

COMPLAINTS AGAINST SEXUALLY ORIENTED MAIL

Prior to April 14, 1968

Although by all accounts there was an upsurge of sexually oriented advertising in 1968 and 1969, such advertising is by no means a new phenomenon. Mailers have used the mails to solicit customers for sexually oriented products for many years. Before April 14, 1968, all that could be done by a recipient of "objec-

39. See text accompanying footnote 21.

40. See later section entitled "Prohibitory Order Survey."

tionable" mail was to complain to the Post Office. The Post Office investigated such complaints, and if, in the judgment of the Post Office Department and the U.S. Attorney, an advertisement or product was legally obscene, a prosecution was initiated. The number of recorded complaints, obscenity arrests, and convictions compiled by the Post Office for fiscal years 1961 through 1968 are presented below in Table 10.

Table 9

RETURN ADDRESSES OF ADVERTISERS OF MAIL ORDER EROTICA IN FIVE "MEN'S SOPHISTICATE" MAGAZINES

September 1969^a

Material Advertised	Total No. of Ads	Return Addresses		
		New York	California	Other: State & Foreign
Books	23	14	6	3
8-mm. Home Movies	72	7	51	14
Miscellaneous (Catalogs, sexual devices, whips, lingerie, rubber & leather wearing apparel, etc.)	75	23	30	22
Total	170	44	87	36

a. The five magazines purchased in September 1969 were *Caper*, *Dude*, *Gent*, *Rogue*, and *Vue*.

Table 10

ARRESTS, CONVICTIONS, AND COMPLAINTS FOR "OBSCENE" MAILINGS FISCAL 1961-1968

Year	Arrests	Convictions	Complaints
1961	457	377	62,000
1962	605	503	52,263
1963	761	637	52,711
1964	805	627	86,291
1965	874	696	128,140
1966	746	638	197,277
1967	386	354	140,786
1968	345	263	167,792 ^a

Source: U.S. Post Office Department, Office of W. J. Cotter, Chief Postal Inspector.

a. For a short period in fiscal 1968 (April 14 through June 30, 1968), the Anti-Pandering Act, 39 U.S.C. 4009, was in effect. During this period, 39,353 complaints were filed under the act and are included in the statistics for fiscal 1968.

After April 14, 1968

Since April 14, 1968, an offended recipient of sexually oriented mail has had legal recourse under 39 U.S.C. 4009, hereafter referred to as the Anti-Pandering Act.⁴¹ A person who receives a "pandering advertisement which offers for sale matter which the addressee in his sole discretion believes to be erotically arousing or sexually provocative" may complain to the Post Office and request that the "Postmaster General . . . issue an order . . . directing the sender and his agents or assigns to refrain from further mailings to the named addressee." A parent or guardian may request that the names of minor children under the age of 19 residing with him be included or request that an order be issued on behalf of any addressee child or ward under the age of 19 who resides with him. This "Prohibitory Order" further directs the sender to delete the name of the addressee from the mailing list and forbids him to trade in the mailing list unless the required deletion has been made.

To insure the cessation of further mailings, the mailer is required to strike the name of the addressee from all mailing lists which he owns, rents, or controls. A mailer makes his first mailing to an addressee without fear of sanction (assuming that the advertisements mailed are not legally obscene). After receiving a Prohibitory Order, the mailer can mail a second letter to the addressee without fear of direct sanction, although the second mailing theoretically results in a Federal court order enjoining further mailings to the addressee. If the mailer sends a third letter to the addressee after a court order has been issued, he is subject to a contempt citation.

The volume of complaints and the resultant prohibitory orders accumulated at an increasing rate during the first 20 1/2 months after the effective date of the Anti-Pandering Act (April 15, 1968, to December 31, 1969), but have radically declined during 1970. Table 11 summarizes the complaints received and prohibitory orders issued through June 30, 1970.

Table 11 reveals that a large percentage of complaints do not result in issuance of a prohibitory order.⁴² This is mainly attributable to the care given complaints by the Post Office. If a complaint is unsigned by the addressee or in some other way appears defective, the Post Office requests the complainant to correct the deficiency. In many instances complainants do not make the necessary corrections, and as a result a prohibitory order is not issued.⁴³

One difficulty in administering the Anti-Pandering Act should be noted. The statute is designed to prohibit a mailer from making repeated offensive mailings to a complainant regardless of the business firm name used. In practice, the frequent

41. The legislative history of the act is discussed at length at pp.4-14 in the brief filed by the Government in *Rowan v. U.S. Post Office Department*, 397 U.S. 728 (1970), which upheld the constitutionality of the act.

42. Approximately 81% of the complaints resulted in issuance of a prohibitory order for the period April 1968 through June 1970.

43. A study of prohibitory orders issued by 12 postal service centers (discussed later) revealed a small percentage of orders should not have been issued (about 4.3%). For example, orders have been issued on the basis of a complaint signed by someone other than the addressee, usually the apparent spouse. Some orders include children who are over 19 years old. The small percentage of orders issued in error can be contrasted with the fact that almost 20% of the complaints filed with the Post Office do not result in a prohibitory order because of the care taken by postal employees.

Table 11

PROHIBITORY ORDERS ISSUED BY U.S. POST OFFICE

April 14, 1968-June 30, 1970^a

Date	Requests for prohibitory orders	Prohibitory orders issued	Violation cases	Court Orders	Average prohibitory orders issued monthly
April 14, 1968- Dec. 31, 1968	113,419	93,172	--	--	10,960
Jan. 1, 1969- Dec. 31, 1969	292,689	231,396	2,250	13	19,283
Jan. 1, 1970- June 30, 1970	63,138	57,091	1,556	282	9,515
Total	469,516	381,559	3,806	295	13,388

^aInformation supplied by office of David A. Nelson, general counsel, Post Office Department.

change of business names has served to camouflage repeat mailings.⁴⁴ A system has not yet been devised to communicate the identify of the mailer behind a business name to postal service centers. Thus, many repetitive mailings go unnoticed if the mailer uses different business names. Moreover, many postal service centers do not have a cross-reference for complainants. The complainant must notify the Post Office when a prior prohibitory order has been violated by a particular mailer. The complainant cannot possibly know that a different business name has been used.

All experts on mail order erotica agree that the volume of sexually oriented advertising substantially increased in 1968 and 1969 in spite of the Anti-Pandering Act. It can be fairly stated that the act apparently has not greatly inhibited the volume of sexually oriented advertising (if this was a purpose of the act). The act has provided a means whereby recipients of unwanted sexually oriented mail may seek redress, however cumbersome the procedure may be. The act also has increased the cost of doing business in sexually oriented materials (this may be thought to be a positive result by some). Mailers who diligently comply with prohibitory orders issued against them estimate that it costs \$5 to remove a name from a mailing list. An unfortunate result of the act (which is clearly negative) is the increased cost to the Government. It has been estimated that it costs the Post Office over \$5 to process each prohibitory order.⁴⁵

The reasons for the radical decline in the rate of complaints and orders issued by the Post Office during the first 6 months of 1970 are not known. Purely

44. It is not the purpose of this report to criticize the administration of the Anti-Pandering Act. Initially, the administration of the statute was beset with problems stemming from failure of Congress to appropriate funds to administer the act. As the Post Office absorbed these difficulties, administration became more efficient.

45. In a letter to the Hon. Jack Brooks, chairman, Subcommittee on Government Activities, House Committee on Government Operations, dated August 8, 1969, David A. Nelson, general counsel, Post Office Department, stated that as of July 31, 1969, the estimated cost to the Post Office for the administration of the Anti-Pandering Act was \$1,202,000. Dividing this cost by the number of orders issued, the average prohibitory order cost \$5.15. This estimate did not include enforcement costs.

speculating, several possible reasons for this can be assigned: First, the large number of prohibitory orders issued (over 380,000 by June 30, 1970) has enabled mailers to delete from their mailing lists the names of many of those individuals who do not wish to receive such mail. Second, two or three mailers who generated a large number of complaints because of their practice of unsolicited mailings have either left the market or discontinued such practices. Some of these mailers doubtless found unsolicited mailings to be unprofitable. Third, it is possible that some people who were offended may have given up because their complaints to the Post Office did not stop all offensive mail. Fourth, it is also possible that the public takes a more permissive attitude toward sexual stimuli, especially in light of the trends in mass market publications and general release motion pictures. Probably all the above factors have contributed to the decline in complaints about "obscenity" in the mails.

Prohibitory order survey

Between April 14, 1968, and December 31, 1969, approximately 325,000 prohibitory orders were issued by the Post Office under the Anti-Pandering Act. Files relating to the issuance of these prohibitory orders are maintained in 64 postal service centers across the country and contain the complaints, the offending material, and the resultant prohibitory order. The author visited 12 postal service centers representative of a national cross-section and compiled data from randomly selected files. These 12 centers were Chicago, Dallas, Houston, Indianapolis, Kansas City, Missouri, San Francisco, Los Angeles, Nashville, New York City, Phoenix, Washington, D.C., and Charlotte, N.C.⁴⁶ At each center one out of every 100 prohibitory orders was randomly sampled, and data were obtained for both the complainant and the mailers. In addition, data relating to the mailer were recorded for one of every 10 prohibitory orders issued in Nashville, Phoenix, and Washington, D.C., and for every order in Houston.

Initially, it was thought that it might be necessary to arrange for a random sample of orders in all 64 postal service centers. However, the samples from the 12 centers demonstrated that a more comprehensive sampling was unnecessary. The percentage of complaints against various major mailers was relatively stable in all the centers sampled.

Table 12 demonstrates that the 12 centers visited were fairly representative of the nation as a whole. Approximately 28% of the U.S. population is served by these 12 centers, and 26% of the prohibitory orders were issued by these centers.

The ratio of prohibitory orders to the population served by the 12 postal service centers varied considerably. Prohibitory orders are issued at twice the rate in the centers located in the West (Los Angeles, San Francisco, and Phoenix) as in the South (Nashville and Charlotte). It can be hypothesized that this is the result of a much greater advertising coverage in western States. Because of the large number of mailers on the west coast, it is likely that mailing lists for citizens in that area are more available to the mailers. Further, it can be speculated that fewer residents in the South have caused their names to be placed on any mailing list, and especially on sexually oriented lists.

46. The 12 postal service centers were not selected at random. The author visited those cities on other business and collected data on prohibitory orders in conjunction with other duties.

Table 12

RATIO OF PROHIBITORY ORDERS FILED IN 12 POSTAL SERVICE CENTERS TO POPULATION SERVED

April 14, 1968-December 31, 1969

Postal Service Center Surveyed	Population Served ^a	Prohibitory Orders Issued April 14, 1968-December 31, 1969	Ratio: Prohibitory Orders to Population
Charlotte, N.C.	4,974,000	4,500	1:1105
Chicago, Ill.	10,786,000	13,500	1:798
Dallas, Texas	2,950,000	5,900	1:500
Houston, Texas	2,567,000	3,500	1:733
Indianapolis, Ind.	4,254,000	7,200	1:590
Kansas City, Mo.	1,819,000	2,400	1:757
Los Angeles, Calif.	10,637,000	18,300	1:581
Nashville, Tenn.	2,686,000	2,800	1:959
New York, N.Y.	5,072,000	5,500	1:922
Phoenix, Ariz.	1,603,000	4,000	1:400
San Francisco, Calif.	4,941,000	12,000	1:411
Washington, D.C.	3,079,000	5,100	1:603
Total	55,368,000	84,700	1:653
United States	195,658,000	325,000	1:602

^a1970 *World Almanac* (New York and Cleveland: Newspaper Enterprise Assn., Inc., 1969), pp. 294-310, based on 1966 estimated population, Bureau of Census. The population served by the various postal service centers was compiled from the *World Almanac* and the *Postal Manual* §318.5, Postal Procedures TC-223, 11-12-68.

THE MAILERS COMPLAINED AGAINST

With the full cooperation of the Post Office Department, the author attempted to determine the percentage of complaints made against both major and minor mailers of sexually oriented advertising.⁴⁷ The survey of prohibitory orders disclosed the following facts:

- (1) Complaints have been filed against hundreds of business firm names used to mail sexually oriented advertising.
- (2) A few major mailers generate the vast majority of the complaints.
- (3) Overall, the percentage of people complaining in relation to the total volume of mail is small.

The random sampling of one of every 100 prohibitory orders in the 12 postal service centers disclosed over 150 separate business firm names complained against by the general public. However, hundreds of d/b/a's used by mailers dealing in sexually oriented materials were not encountered in the random

47. The Post Office had estimated that between 80% and 95% of the current complaints to the Post Office about "obscenity in the mails" results from indiscriminate mail advertising by approximately 15 major promoters: *Obscenity in the Mails*, op. cit. (footnote 35), pp. 14-15, 49. (Testimony of Hon. David Nelson, general counsel, Post Office Department, accompanied by William J. Cotter, chief postal inspector.) Subsequently, the chief inspector lowered this estimate to 80% - 90% (letter to Commission dated January 2, 1970).

sampling. For example, a one in 10 sample of prohibitory orders in three centers uncovered an additional 100 business firm names which had at least one order issued against them in those centers. The Houston postal service center has a cross-file of approximately 290 mailers against whom prohibitory orders have been issued. Nearly 150 of these did not appear in the sampling made by the author, while nearly 100 of the business names encountered by the author in the other 11 centers did not have an order filed against them in Houston.

Despite the variances described above, the percentage of complaints against the significant mailers was virtually the same in all centers. For example, while over 3,500 prohibitory orders had been issued by the Houston postal service center against almost 300 business firms as of January 17, 1970, only 59 of these had five or more prohibitory orders issued against them, and only 15 of these generated more than 1% of the total. All of those mailers appearing below on Table 13 who generated over 1% of the sampled complaints were included in those 15. Moreover, the rank order and the percentage of total complaints for those major mailers were almost identical. The modal number of prohibitory orders issued against a particular business firm name in Houston was one.

Table 13 lists the mailers or business firm names which generated more than 1% of the total complaints in the 12 sampled postal service centers. From the sample it is possible to project the total number of prohibitory orders filed against mailers in the United States for the period April 14, 1968, through December 31, 1969.

As Table 13 demonstrates, a small number of mailers accounted for the bulk of the prohibitory orders during the period sampled. Only 17 mailers generated more than 1% of the prohibitory orders issued in the 20 1/2 month period; the 17 mailers account for 80% of the total; of these, five caused 61% of all orders to be issued, and two mailers accounted for over 40% of the total.

Only a small percentage of sexually oriented direct mail advertising results in the issue of prohibitory orders. As discussed in the later section on postage expenditure, the Commission staff estimates that between 45 and 48 million sexually oriented advertisements were mailed during fiscal 1969.⁴⁸ During this period, approximately 230,000 prohibitory orders were issued. Thus between 0.67% and 0.72% of sexually oriented advertising results in a prohibitory order. A higher percentage, between 0.84% and 0.9%, results in complaints (20% of which are not converted into prohibitory orders). The issuance of prohibitory orders, or even of complaints, is not, of course, an accurate measure of the amount of offense caused by sexually oriented mail advertising. In order to have a prohibitory order issued on his behalf, a complainant must go to a good deal of trouble. He is generally required to visit a local post office station and fill out a form. If the form is erroneously filled out, a follow-up letter is sent to the complainant which means another form to complete. In addition, many offended recipients of such advertising have forwarded their complaints to Congressmen, local law enforcement officers, governors, State legislators, the Commission on Obscenity and Pornography, and even to the President. Many of these complaints do not result in the issuance of a prohibitory order. Public indignation about sexually oriented mail advertising is somewhat reflected by the total number of prohibitory orders issued, but this is certainly not a complete measure.

48. See later section on "Postage Expenditure Survey."

Table 13

PROHIBITORY ORDER SURVEY—APRIL 14, 1968-DEC. 31, 1969
 PERCENTAGE OF SAMPLED ORDERS ISSUED AGAINST MAILERS AND
 BUSINESS FIRM NAMES^a

Mailer by business firm names	Mailer no. ^b	7-1-68- 6-30-69 (fiscal 1969)	7-1-69- 12-31-69	Total 4-14-68- 12-31-69 ^c	Projected total of prohibitory orders ^d
Cybertype; Stemar; Medical Products of NY; Medical Press of NY	26	29.6%	17.2%	27.3%	88,725
Pent-R-Books; EBC; RAS Enterprises; Daro; Book Bargains, Inc.; Empire Distributors; Tru/Art; Majestic	25	10.9%	20.6%	13.6%	44,200
Adult Novelty; Denmark Productions; X-Sales	21	5.3%	14.1%	7.9%	25,675
Collector's Pubs; G&M Enterprises, Inc.	15	9.7%	6.2%	7.8%	25,350
Robert Kent, Inc.; MD Press; Roselle Co.; Olympia Co.; Dougabear	27	8.2%	2.4%	5.5%	17,875
Medon Distributors, Ltd. ^e	n.a.	0	7.6%	2.6%	8,450
Cinema Products ^f	8	0.8%	5.5%	2.4%	7,800
USA Advertising ^g	n.a.	2.9%	0	2.1%	6,825
Twilight Press; C & A Sales; Jackie Rogers; Beneficial Sales	2	2.7%	0	1.7%	5,525
L.A. Surgical Supply; Quality Products	24	2.1%	1.0%	1.5%	4,875
Richlee Publishers	n.a.	1.6%	1.0%	1.3%	4,225
Premier Products; Premier; Ralco	13	1.4%	0	1.2%	3,900
John Amslow & Assoc.; Gem Products	14	0.2%	2.4%	1.1%	3,575
Elorac Books	n.a.	1.8%	0	1.1%	3,575
John Merryweather ^h	n.a.	0	3.1%	1.1%	3,575
Great Western Surgical Supply	n.a.	1.4%	0.7%	1.1%	3,575

Table 13 Cont'd

Mailer by business firm names	Mailer no. ^b	7-1-68- 6-30-69 (fiscal 1969)	7-1-69- 12-31-69	Total 4-14-68- 12-31-69 ^c	Projected total of prohibitory orders ^d
Barbara Martine; Wendel & Spears; Private Collectors	23	0.6%	1.7%	1.0%	3,250
Sub-total		81.8%	84.5%	80.3%	260,975
Other important mailers ⁱ	n.a.	3.3%	2.1%	3.9%	12,675
All others	n.a.	14.9%	13.4%	15.8%	51,350
Total		100.0%	100.0%	100.0%	325,000

n.a. = Not applicable.

^aOnly mailers who generated over 1% of the total prohibitory orders samples are listed by business firm name(s). The identification of the mailers, almost all of whom use multiple business names, was made by the Postal Inspection Service.

^bThose mailers assigned as "mailer number" were studied for postage purchases during fiscal 1969; see later section entitled "Postage Expenditure Survey."

^cThe sampling of the first 2½ months was too small (less than 10% of the total sample) to project for that period.

^dFor the period from April 14, 1968, through December 31, 1969, 325,568 prohibitory orders were issued by the Post Office (letter dated January 23, 1970, from David A. Nelson, general counsel, Post Office Department).

^eMedon Distributors did not begin its mailings until after fiscal 1969.

^fCinema Products made one large mailing in June 1969, and its operations were then discontinued for a period. Allegedly the business was sold to another mailer later in the year and mailings were resumed.

^gU.S.A. Advertising was in business only during the first half of 1968, and mailings were permanently discontinued about June of that year.

^hJohn Merryweather did not begin its mailings until after fiscal 1969.

ⁱAn additional 17 mailers were studied in the postage expenditure survey, none of which generated 1% of the total prohibitory orders issued.

On the average, between 6.7 and 7.2 prohibitory orders are issued for every 1,000 advertising letters mailed. However, the rate at which mailers generate complaints varies considerably. For example, one mailer who advertises homosexual materials and restricts his mailing to a selected list of known buyers mails about 1 million advertisements per year. This mailer has had one prohibitory order issued against him for every 20,000 letters mailed since the effective date of the Anti-Pandering Act. This is typical for mailers of advertising directed to homosexuals, because such mailings are not made to addresses on unrefined mailing lists. Through experience such mailers know that general mailings are not profitable.

Mailers of heterosexually oriented advertising cause widely varying rates of prohibitory orders to be issued. The postage purchased by 28 mailers studied for fiscal 1969 revealed that they sent approximately 36 million letters during the period.⁴⁹ Overall, the 28 mailers incurred approximately five prohibitory orders

49. See later section on "Postage Expenditure Survey."

for every 1,000 letters mailed. Within this group of mailers, the second largest mailer (as judged by postage purchased) mailed millions of letters in fiscal 1969 but incurred only about 1% of all prohibitory orders issued. On the other hand, 13.6% and 27.3% of all prohibitory orders issued for the period were against the largest and third largest mailers, respectively (again judged by postage purchased in fiscal 1969). The rate at which prohibitory orders were issued against some of the mailers studied varied from one prohibitory order for every 2,000 advertising letters mailed to 10, 16, 20, and 26 orders for every 1,000 letters mailed. Thus, some important mailers are over 50 times as likely to cause a prohibitory order to be issued as are others.

The number of prohibitory orders issued against a particular mailer is dependent upon many factors. The primary cause of most complaints apparently stems from whether the mail was solicited, semisolicited, or unsolicited. Those mailers who use mailing lists obtained from sources not related to sexual interest incur a relatively high degree of complaints. As an example, one popular method of creating a mailing list for unsolicited advertising is to resort to professional directories or listings of medical doctors in the Yellow Pages. Sixteen separate business firm names were complained against by medical doctors in the prohibitory order survey, and 7.3% of all the orders in the sample were issued on behalf of doctors. It can be projected that nearly 24,000 doctors complained to the Post Office about such mailings during the period April 14, 1968, through December 31, 1969. Five mailers were the key offenders of this type of unsolicited mail, namely, Cybertype-Stemar, MD Press, and Medon Distributors, Ltd., all in New York City; and Adult Novelty and Collector's Publications in the Los Angeles area.

Another indication of unsolicited mail is provided when the addressee is a business, such as Joe's Diner, XYZ gasoline station, George Washington High School. During the sample period, over 16% of all prohibitory orders were issued on behalf of business establishments, which projects to over 52,000 prohibitory orders during the period. About 30 business firms had such orders issued against them during the period. Five firms who were the chief offenders, were Cinema Products and Collector's Publications of the Los Angeles area, and Pent-R-Books, Cybertype-Stemar, and MD Press of New York City.

Another factor which bears on the number of prohibitory orders generated against particular advertising is the degree of sexual content in the brochure. Individuals in the industry interviewed believed that the "strongest" ads (highest degree of sexual explicitness) were mailed by Cinema Products, Collector's Publications, and MD Press. The combination of a significant amount of unsolicited mail and a particularly high degree of sexual content in brochures resulted in far more prohibitory orders per 1,000 advertising letters against these mailers.

It should be noted that not all prohibitory orders were issued because the recipient has been offended by erotica. In the sample, about 1% of all orders in the sample were issued against advertisers of nonsexual materials, such as mass market magazines, soap companies, gasoline companies, and so on. Thus far, however, requests for prohibitory orders against products not related to sex comprise a very small percentage of the total.

In addition, at least a few prohibitory orders are issued in instances when it is very unlikely that the recipient has been offended by the advertising. For example, one mailer advertising homosexual materials has had 102 orders issued against him since the prohibitory Anti-Pandering Act went into effect (on mailings of over 2 million letters). The mailer sends his advertising only to those who have made a direct request or purchase in the past. Access to the files of this mailer was given to the author: of the 102 prohibitory orders issued against the mailer, 70 complainants had purchased materials from the mailer on some prior occasion, and 68 of these had been on the mailing list for one year or more. Of the prohibitory orders issued on behalf of former customers, eight requests for orders were made by the parent or guardian of the individual. Of the remaining 32 prohibitory orders, all were on the mailing list for at least 2 months, and one-half had been on the mailing list for 6 months or more.

THE COMPLAINANTS

The advertising letter and the resultant complaint provides certain information about the complainant. In most instances it is possible to establish his address, whether the complainant and the addressee are the same person,⁵⁰ the sex of the complainant, the age of an addressee minor,⁵¹ and the number, sex, and age of minors (under 19) listed as living in the home of the complainant. In some postal service centers it is possible to ascertain the number of prohibitory orders issued on behalf of a particular complainant.⁵² Information as to the complainant's occupation, age, income, and so on is usually unavailable, although there are exceptions, such as owners of small businesses and medical doctors.

A detailed examination by the author of approximately 850 prohibitory orders permits certain general conclusions to be drawn. First, it appears to be virtually impossible for mailers of sexually oriented advertising to avoid causing offense to some recipients. Although those with long-term exposure to sexually oriented advertisements (such as postal inspectors and those in the industry) are able to judge gradations of sexual content in individual advertisements, recipients with limited prior exposure may be offended by "mild" as well as "rough" advertisements. Innumerable requests for prohibitory orders were accompanied by personal letters which made this abundantly clear.

A few mailers have attempted to mitigate the amount of offense by using several techniques. Judging by letters from recipients, such attempts have been uniformly unsuccessful. For example, the largest mailer during 1969 (judged by postage purchases) printed the following "warning" on the outside of every envelope mailed during 1968-1969.

50. Complaints filed by someone other than the addressee are supposedly void. The sampling disclosed that a small but measurable percentage of prohibitory orders were issued on invalid complaints—approximately 4.3% of all orders sampled. The volume of complaints makes it almost inevitable that some errors of this type will be made. Typically, these orders are issued upon the request of the apparent spouse of the addressee (three of four of these are requests by wives). In the national survey conducted by the Commission (Abelson, *op. cit.*, footnote 8), data suggest that "the wife or homemaker may be the person most likely to open the mail."

51. If the addressee is a minor (under 19), the statute permits a parent or guardian to file the request for a prohibitory order.

52. In eight of the 12 postal service centers complaints issued on behalf of an individual are filed alphabetically—either by filing the prohibitory orders in this manner or by a separate cross-reference file on index cards. In two of these centers, the cross-reference file was not complete.

NOTICE TO ADDRESSEE

This envelope contains an UNSOLICITED ILLUSTRATED BROCHURE offering for sale to Adults Only, a new marriage manual. If you do not wish this mail or if you are not over the age of 21 years, DO NOT OPEN THIS ENVELOPE! Simply mark this envelope "REFUSED," sign your initials and return it to your mailman. Upon the return of this envelope, we will endeavor to remove your name from our mailing list. Thank you.

Despite the notice, the mailer had received over 44,000 prohibitory orders by December 31, 1969.⁵³

Other mailers have attempted to be very discreet in their descriptions of the materials offered for sale. Some have used an approach which can best be described as: "Psst Buddy, I have some hot material for sale. Contact me if you are interested." Ads of this type do not contain illustrations, "four-letter words," or lurid descriptions of the materials. Such ads elicit complaining letters drawn in the same terms as letters written about the most lurid ads possible, such as those featuring artificial genital organs or photographs of female genitalia.

It seems to make little difference whether advertisements are sent to the home of the individual or to his place of employment. Letters accompanying requests for prohibitory orders often cite the possibility of the advertisement falling into the hands of a minor, even if the advertisement was mailed to the recipient's place of business. This was a response typical of medical doctors (who requested 7% of the prohibitory orders sampled), although almost all advertisements were mailed to their business address.

It also appears that sexually oriented advertising is offensive to some recipients even when it is solicited or semisolicited. While it is probable that unsolicited mail results in the greatest percentage of complaints, solicited or semisolicited mail also generates complaints.

Of the 602 complainants whose sex could be determined, 70% were males and 30% were females. Six letters were addressed to "adult householder" or "occupant," 136 were sent to business firms, and 22 were addressed to "Mr. & Mrs." Approximately 30% of the letters were sent to addresses in a major city, 62% to suburbs or small towns, and less than 5% were mailed to an obviously rural address (R.F.D.). Approximately 65% of the complainants did not list minor children residing with them on their request for a prohibitory order. More than 20% listed one or two minors, and 15% listed three or more. Of those minors included in the prohibitory order, 60% were males. Over 50% of the minors included in the prohibitory orders were 15 to 18 years old, 30% were 12 to 14, and less than 20% were under 12.

Because of the filing system used in some postal service centers, it was possible to determine the number of prohibitory orders issued on behalf of the individual complainant for 44% of the orders sampled. Of these, 77% had caused only one prohibitory order to be issued on their behalf, 17.5% had two or three orders issued, and approximately 5.5% had four or more orders issued on their behalf. The author believes that many of those who had four or more orders issued on their behalf during the sample period had inquired about or purchased sexually oriented materials in the past.

53. As projected in Table 13.

Receipt of sexually oriented advertising by minors has been the subject of considerable comment. Protection of children from exposure to sexually oriented material has been of concern to Congress, the Commission, and to many State legislatures.⁵⁴ All mailers interviewed vigorously disclaimed any interest in mailing to minors. Some mailers stated that such solicitations were morally wrong, and others claimed that minors are poor prospects. Most mailers, however, disclaim an interest in soliciting minors because to do so arouses public indignation—sometimes most mailers prefer to do without.

A few mailers stated they had “taken steps” to avoid mailing to minors, such as printing a warning on the outer envelope forbidding those under 21 from opening the letter. Such a procedure is remarkable only for its ineffectiveness, naiveté, and self-serving character. In fact, there is no available method under present practices of the industry to prevent sexually oriented mail from being sent to minors. While the source of the mailing list sometimes provides a clue as to the percentage of minors included thereon, mailers have no knowledge of the age of the addressees on mailing lists.

While the extent of solicitation of minors by mail order operators in erotica may have been exaggerated by critics of sexually oriented advertising, the sampling of prohibitory orders disclosed that approximately 5% of the orders were issued on behalf of minor addressees. Projecting this percentage to the total orders issued through June 30, 1970, approximately 19,000 have been issued on behalf of minor addressees.

If this same percentage factor could be projected to the total volume of sexually oriented mail (45 to 48 million letters yearly), it could be estimated that well over 2 million minors received such advertising in 1969. Logic dictates that it is improbable that such a projection is accurate. It seems likely that a high percentage of such advertising addressed to minors results in prohibitory orders; parents and guardians are probably willing to take the trouble to request a prohibitory order when a child has been solicited to purchase a sexually oriented product.

While some sexually oriented advertising addressed to minors undoubtedly passes the parental barrier unnoticed, a survey conducted under the auspices of the direct mail industry indicates that only 16% of all direct mail advertising is opened by the individual addressee, while 75% of all direct mail is opened by the head of the household (the remaining 9% presumably is opened by the spouse).⁵⁵ Based on this survey, it may be concluded that the majority of the minors are supervised with regard to the receipt of mail advertising. However, the national survey by the Commission indicates that most adults permit their minor children to open a wide variety of mail, even if it may be potentially unwelcome.⁵⁶

In summary, a small percentage of sexually oriented advertising is directed at or perhaps intercepted by minors. Some of this mail is undoubtedly solicited or semisolicited. Of the 45 orders issued on behalf of minors in the sample, the

54. Eighteen States and the District of Columbia have “Ginsberg” statutes, which restrict commercial sales of specifically defined sexual stimuli to minors, and 23 other States have some type of special prohibition regarding the distribution of erotic materials to minors.

55. Report on a national consumer survey to the Direct Mail Advertising Association, “Direct Mail Attitudes and Opinion,” June-July 1964 by A.C. Nielson Co., summarized in *What People Think About Direct Mail*, p. 10, (DMAA, Washington, D.C., 1965).

56. Abelson, op. cit. (footnote 8).

author was able to determine how many orders had been issued on behalf of 22 of these. Fifteen had only one order issued for them; of the remaining, four had three or more orders including one with 12 and one with 31. It cannot be doubted that minors who have had a large number of prohibitory orders issued on their behalf have solicited such advertising.⁵⁷

Of the 45 minor addressees for whom prohibitory orders were issued in the survey,⁵⁸ none was less than 10 years old: nine were aged 10 to 13, 11 were 14 to 15, and 25 were 16 to 18 years old.⁵⁹ About 90% of these minors were male.

Based on the study of complaints and prohibitory orders, it may be concluded that the only way to eliminate the offense caused by sexually oriented direct mail advertising is to suppress all such advertising. Whether this course is legally permissible or desirable is not the subject of this report. It is clear that if sex is involved in a mail order advertisement, a percentage of the recipients will complain.

VOLUME OF SEXUALLY ORIENTED DIRECT MAIL ADVERTISING

The Commission staff interviewed dozens of experts on the subject of erotic materials in the U.S. mail, including Post Office officials, members and officers of the Direct Mail Advertising Association, and mailers of sexually oriented advertising and their attorneys. All those interviewed expressed the opinion that there was a significant expansion of sexually oriented advertising during 1968 and 1969. Because the total volume of sexually oriented advertisements had never been accurately measured, the extent of this alleged expansion cannot be determined. However, if the estimate of the Post Office that approximately 20 million pieces of sexually oriented advertising were mailed in 1967 was reasonably accurate,⁶⁰ the annual rate of such advertising had more than doubled by fiscal 1969.

POSTAL EXPENDITURE SURVEY

Records in various post office stations, uncollated and widely scattered, were gathered to form the basis of a relatively precise estimate of the total volume of sexually oriented direct mail advertising. Almost all such mailers affix first-class postage to their advertising letters by use of a postage meter or a first-class bulk mailing permit. In either event, records of all postage purchases are kept in individual post office stations.⁶¹ By canvassing all the postal stations patronized by a mailer, the total postage expenditure of that mailer can be determined.

57. The issuance of five or more prohibitory orders is an almost certain indication that sexually oriented mail was solicited or semisolicited. If the number of orders exceeds 10, it seems certain that the addressee requested information or purchased a sexually oriented item in the past.

58. Two of the 45 sampled orders issued on behalf of minors had the appearance of being spurious; for instance, the claim that Mrs. John J. Doe requested an order on behalf of her minor son, John J., Jr., although the letter was addressed to J.J. or John J. Doe.

59. One prohibitory order was issued for a 19 year old in error.

60. *Creating a Commission on Obscenity and Pornography*, Hearing before Select Subcommittee on Education of the House Committee on Education and Labor, 90th Congress, 1st Session (Washington, D.C.: Government Printing Office, 1967). Prepared statement of Henry B. Montague, chief postal inspector, p. 36.

61. Postage on meters is set by post office clerks and expended as the meter is used. First-class bulk mailing permits allow the mailer to print the correct postage on the envelope. The letters must be taken to a designated station, where the postage is charged against a predeposited account.

Data on postage expenditure for various mailers have been gathered in the past by the Postal Inspection Service in connection with investigations for possible prosecution under the statutory prohibition against obscene mail.⁶² The Commission sought the assistance of the Postal Inspection Service in order to gather data on mailers of sexually oriented advertising. Limitations of available manpower prohibited a comprehensive survey of all of the hundreds of mailers. The Postal Inspection Service agreed to collate traceable postage expenditures during fiscal 1969 of certain major mailers and mailing services in Los Angeles and New York City.⁶³ The word "traceable" should be emphasized because it is believed that some of the mailers studied sent a portion of their advertising in a manner which cannot be traced. For example, some mailers may have had print shops make mailings for them. Others used postage stamps in addition to meters and bulk mail permits. Except in a few instances where large purchases of stamps were noted by postal clerks, it was impossible to estimate the number of letters mailed with stamps.

Mailers studied

LOS ANGELES MAILERS

The Chief Postal Inspector's Office agreed to gather and collate the postage expenditures during fiscal 1969 of 24 mailers and three mailing services specializing in the processing of erotic materials in the Los Angeles area.⁶⁴ Interestingly, the data gathered were substantially the same as that volunteered by those mailers interviewed by the Commission staff.⁶⁵

The traceable postage expenditures of the 24 Los Angeles dealers during fiscal 1969 totaled over \$1,083,000.⁶⁶ The size of the operations of the mailers studied varied widely: one mailer spent more than \$250,000; another spent over \$100,000; five spent between \$60,000 and \$90,000; seven spent between \$25,000 and \$50,000; five spent between \$15,000 and \$20,000; and five spent less than \$10,000.

In addition, postage meters used by three mailing services specializing in processing and mailing sexually oriented advertising disclosed an expenditure of nearly \$344,000.⁶⁷ The 24 mailers and three mailing services studied in the Los Angeles area spent a total of at least \$1,427,000 on postage in fiscal 1969.

62. 18 U.S.C. 1461.

63. Mailers in New York City and the Los Angeles area account for the vast majority of sexually oriented advertising (estimated at 85%, see footnotes 32 to 41 and accompanying text) and almost 99% of the complaints about such mail made to the Post Office (see Table 13, and accompanying text).

64. Originally the postage expenditure survey was designed to include 31 Los Angeles mailers. Seven of the Los Angeles mailers had no traceable postage expenditures in fiscal 1967 because they used postage stamps or a mailing service.

While not all of the mail processed by the three mailing services in Los Angeles consisted of erotic advertising, the overwhelming majority of the mail handled by these companies was of that character.

65. Over one-half of the mailers included in the postage expenditure survey were interviewed. The figures given voluntarily corresponded closely to those disclosed by the postage expenditure survey.

66. More than 50 postage meters and first-class bulk permits were used by the 24 mailers.

67. Not all the advertising letters processed by these mailing services were sexually oriented, although the vast majority was of that type. The entire postage expenditure of the three firms has been included in the survey, although to do so overstates the total volume of sexually oriented advertising by an unknown factor. (Probably 10% of the business of the mailing services is in nonsexual advertising.)

NEW YORK CITY AREA MAILERS

The Postal Inspection Service also surveyed postage expenditures of four New York City area mailers who spent a total of approximately \$762,000 during fiscal year 1969. Two mailers who dominate the New York scene spent more than 90% of that total.

Table 14 lists the mailers studied in the postage expenditure survey under the business firm names they used during fiscal year 1969. The names of the individuals behind the business firm names and the exact amount of postage purchased by each dealer are not specified.⁶⁸

The numbers assigned to the various mailers in Table 14 bear no relationship to the size of the mailing operation. As judged by traceable postage expenditures, three mailers had significantly greater business than the others. These are, in rank order, No. 25 (Pent-R, etc.), No. 14 (John Amslow, etc.), and No. 26 (Cybertype, etc.). Each of these purchased postage of between \$200,000 and \$520,000 in fiscal 1969. Seven additional mailers, Nos. 2, 12, 15, 20, 21, 23, and 24 purchased postage of approximately \$50,000 to \$100,000 in fiscal 1969. Each of the remaining 18 mailers purchased less than \$45,000 in postage during the measured period (11 less than \$20,000 and five of these less than \$10,000).

Projected total volume of sexually oriented advertising

The total traceable postage expenditures of the 24 Los Angeles mailers, three Los Angeles mailing services, and four New York mailers for fiscal 1969 was approximately \$2,190,000. If the entire sum was expended for advertising solicitations, the maximum number of first-class letters sent by these mailers in fiscal 1969 was approximately 36,750,000.⁶⁹ Actually, the maximum number of advertising letters sent by these mailers in fiscal 1969 is probably somewhat higher because some large mailings were made with stamps affixed which are untraceable. Possibly the number is as high as 38 to 40 million letters. However, it is almost certain that the actual number of advertising letters mailed was somewhat smaller than the maximum. Many of the mailers used the same postage meters to deliver goods. Perhaps 5% to 10% of the total meter expenditure of most mailers can be deducted for this reason.⁷⁰ In addition, the inclusion of the entire postage expenditures of the three Los Angeles mailing services overstates the total volume of sexually oriented advertising, because not all mail processed by those firms was of that type. In short, a realistic estimate would be that the mailers studied mailed 36 million letters during fiscal 1969.

68. The primary reasons for not reporting individual names or the exact amount of postage expended by each are:

- (1) While all firms listed mail sexually oriented advertising, this is not to say that all, or any, of these mailers are necessarily engaged in illegal acts. Although many have been indicted for mailing obscene materials, only two or three of these have been convicted in the past two or three years, and those convictions are currently pending appeal. Thus, identifying individuals might be unfair.
- (2) Exact postage expenditures are of interest primarily to competitors.

69. All advertising letters were mailed first class with the exception of about 500,000 letters mailed under a third-class bulk permit at a cost of 3.8¢ per letter (these have been considered in the estimate).

70. A 5% to 10% deduction for the cost of delivering goods sold assumes (a) a 25¢ average delivery cost by third-class or fourth-class mail, and (b) a 1½ to 3% response. The amount spent for deliveries by one of the major mailers was found to average 23¢.

Table 14

MAILERS (BY BUSINESS FIRM NAMES) STUDIED FOR POSTAGE
EXPENDITURES – FISCAL 1969

LOS ANGELES MAILER	BUSINESS FIRM NAMES USED DURING FISCAL 1969 ^a
#1	Lindley Sales; Jo Lee; Artist West
#2	Twilight Press; C & A Sales; Jackie Rogers; Beneficial Sales
#3	Cal-Mail
#4	Tiffany Enterprises
#5	Libra Films; Collectors Series; French Imports
#6	Action Publishing; Swedish Imports
#7	United Book Supply; United Surgical Supply; Pacific Clearing Co.; Tiffany Fontaine
#8	Cinema Products
#9	Contact Productions
#10	Virtu Imports; Art Prinz; O.K. Jackson; Elloween Mayne; Jack Sparr
#11	Pacifica; ASEF; Zephyr Publications
#12	Athena Books; Artemis Books
#13	Premier Products or Premier; Ralco
#14	John Amslow & Associates; Gem Products
#15	Collector's Publications; G & M Enterprises, Inc.
#16	Mondo Film Club; T-P Sales
#17	Copa Productions; Rosslyn News; Kamera; S & L Productions; Amboy Products
#18	Wyngate & Bevins; S & D Products; Freedom Press
#19	Liberty; Key Room; Emerald; The Professional; Personal Publications
#20	Commander Associates; DSI; The Photographer's Guild; Books Unlimited; Mark IV Enterprises
#21	Adult Novelty; X-Sales; McCoy Products
#22	Home Products, Inc.; American Sex Education Films a/k/a AMSEF
#23	Barbara Martine; Wendel & Spears; Private Collectors; Car-Mar Enterprises, Inc.
#24	Los Angeles Surgical Supply; Quality Products
THREE LOS ANGELES MAILING SERVICES ^b	
NEW YORK CITY MAILERS	
#25	Pent-R-Books; Book Bargains, Inc.; Majestic; EBC; Empire Dis- tributors; Tru/Art; Daro; RAS Enterprises
#26	Cybertype; Stemar; Medical Products of New York; Medical Press of New York
#27	Francine & Company; Warron Books; MD Press; Roselle Co.; Olympia Co.; Dougabear; Robert Kent, Inc.
#28	101 Enterprises; Discus; Vulcan

^aAlso known as d/b/a's or "doing/business/as." The list of d/b/a's is representative, but not comprehensive. Some of the mailers listed have used as many as 40 business firm names over the years.

Identifications of the d/b/a to the numbered mailers were made by the Postal Inspection Service.

^bThe mailing services do not make mailings under their own business name, but rather process and mail advertising provided by customers.

As discussed earlier,⁷¹ the Commission staff took a random sampling of complaints made to the Post Office during fiscal 1969. In this sampling, the 28 mailers in the postage expenditure survey accounted for slightly more than 75% of the total number of prohibitory orders issued during fiscal 1969.⁷² The mail processed by the three Los Angeles mailing services for mailers not included in the survey (some 5,735,000 letters) almost certainly increased this proportion to 80% or more. While there seems to be little correlation between expenditure and percentage of prohibitory orders issued against an individual mailer, it is likely that those who incur a high proportion of complaints are balanced by those who have a low rate of complaints. Thus it is not unreasonable to project the national total of sexually oriented advertising from the known percentage of prohibitory orders filed against the 28 mailers studied. Because these mailers studied incurred 75% to 80% of the total prohibitory orders on a volume of 36 million letters, it can be estimated that between 45 and 48 million letters containing sexually oriented advertising were mailed by all domestic mailers in fiscal 1969.

Although the volume of sexually oriented advertising in the United States is substantial, in absolute terms it is rather insignificant when compared to the total amount of direct mail advertising. The 45 to 48 million sexually oriented ads mailed in fiscal 1969 represents almost exactly 0.1% of all first-class mail in the United States and slightly more than 0.05% of all mail in fiscal 1969 (46.4 billion and 82 billion pieces, respectively).⁷³

RETAIL SALES VOLUME OF MAIL ORDER EROTICA

Study by the Internal Revenue Service for tax year 1968

The 28 mailers and three mailing services studied in the postage expenditure survey for fiscal 1969 (above) spent \$2,114,000 on postage. Of these a list of 20 mailers⁷⁴ was submitted to the Internal Revenue Service for a study of gross receipts and income.⁷⁵ These 20 mailers spent a total of \$1,770,100 on postage in fiscal 1969, which represents total mailings of between 26.5 and 29.5 million advertising letters that year.⁷⁶

71. See section entitled "Prohibitory Order Survey."

72. See Table 13 and accompanying text.

73. *1969 Annual Report of the Postmaster General*, op. cit. (footnote 2), p. 197. See footnotes 1 to 3 and accompanying text. It can be projected that sexually oriented advertising is 0.23% of all direct mail advertising (estimated at 21 billion pieces).

74. These 20 mailers are listed in Tables 13 and 14 as Mailer Nos. 2, 4, 5, 7, 11, 12, 14, 15, 16, 17, 18, 19, 20, 21, 23, 24, 25, 26, 27, and 28. The other eight mailers studied for postage expenditures were all very small. It was determined that if these were included in the IRS survey, the true picture of the operations of major mailers would be distorted. The three mailing services were not included because their income has no relationship to the income of their customers.

75. The Internal Revenue Service is forbidden by statute to disclose income data for any individual or corporation. However, it is permitted to analyze industries or portions of industries if no individual income figures are disclosed. The IRS scrupulously followed this procedure in making the survey of the mail order erotica business. No individual income reports were revealed to the Commission or its staff.

76. The higher figure, 29.5 million letters is the maximum number of first-class advertising letters sent by the mailers in fiscal 1969 ($\$1,770,100 \div 6d$). The lower figure, 26.5 million letters, arbitrarily deducts 10% of the total postage expenditure as cost to deliver goods sold.

Two difficulties were encountered in the IRS study. Tax returns for 1969 were not yet available, thus sales and income were analyzed for 1968. Also, the IRS was unable to locate the tax returns of five of the mailers on the list submitted.⁷⁷

Table 15 is a summary of the sales and income in tax year 1968 of 15 large mailers of erotica in the United States. In fiscal 1969 these 15 mailers spent \$1,433,000 on postage,⁷⁸ which represents between 21.5 and 23.9 million first-class advertising solicitations for sexually oriented materials.⁷⁹ This is approximately 50% of the total amount of such advertising in fiscal 1969, as projected by this report.⁸⁰

Table 15

SELECTED FINANCIAL DATA AND RANGES^a

Selected firms engaged in the production and distribution of sexually oriented mail order advertising — tax year 1968

Items ^b	Direct Mail Order Sales ^c	
	Total (1)	Range ^a (2)
Number of mailers included ^b	15	
Gross receipts	\$5,280,815	\$2,331,104
Gross receipts less returns and allowances ^d	5,225,395	49,333
Cost of goods sold and/or operations ^e	2,534,489	907,172
Gross profit ^f	2,700,121	1,375,385
Net profit (or loss) ^g	(78,375)	261,917

^aThe range is defined as the difference between the greatest and the smallest amounts; for instance, the difference between the greatest and smallest "gross receipts" figures reported was \$2,331,104.

^bData were summarized from 16 tax returns of 15 mailers from a list of 20 mailers submitted for analysis. Additional gross receipts and so forth may be associated with business entities listed in mailer blocks but not reported on the tabulated returns.

^cFirms listed in footnote 74.

^dGross operating receipts of the company reduced by the cost of returned goods, merchandise discounts, and so on.

^eThe direct cost of producing the company's "gross receipts."

^fGross profit defined as company's gross receipts reduced by company's (1) returns and allowances, and (2) cost of goods sold.

^gNet profit (or loss) defined as company's total income reduced by company's total deductions (line 11 less line 27, Form 1120). When deductions exceed income, a net loss occurs (amount in parenthesis).

Source: Statistics Division, Internal Revenue Service, August 1970.

77. Consistent with its duty not to reveal individual or corporate income reports, the IRS did not inform the Commission staff which mailers were not included in the survey.

78. Admittedly, the time periods covered overlap, but they are not identical. However, the periods are close enough in time to provide a reasonably accurate picture of the market as of either 1968 or fiscal 1969.

79. See footnote 76.

80. See footnotes 69 to 73 and accompanying text.

The IRS survey reveals some startling facts. The 15 mailers studied, who probably represented at least 50% of the total industry in 1968, had total sales of less than \$5.3 million. These mailers reported an aggregate loss of \$78,000 for that tax year. The range of net income in Table 15 indicates that most mailers made a profit in 1968. The range of figures in Table 15 also shows that one or two mailers dominated that part of the industry studied.

One additional projection may be made from Table 15. The 15 mailers had sales of \$5,280,815 in tax year 1968 and mailed a total volume of 21.5 to 23.9 million advertising letters in fiscal 1969.⁸¹ Thus it can be projected that these mailers had a return of between 23.7¢ and 26.3¢ per letter during either fiscal 1969 or tax year 1968.

Estimated retail sales volume of mail order erotica, 1969-1970

It was estimated above that the total volume of sexually oriented advertising during fiscal 1969 fell within a range of 45 to 48 million letters. If each letter costs the mailer approximately 15¢ to 20¢, including overhead, the break-even point for the industry is \$7.5 million to \$9.5 million. Because the business is continuing and growing, obviously this minimum break-even point is exceeded at present. The average mailer elicits gross receipts of between 25¢ and 50¢ for each letter mailed. Based on the estimate of the total volume of letters mailed, the total number of retail sales generated by advertising sexually oriented materials amounted to approximately \$12 to \$24 million for fiscal 1969. In light of the report of the Internal Revenue Service for tax year 1968 (supposedly a "good" year for mailers), it appears virtually certain that total sales were on the low end of this range, that is, \$12 million to \$14 million at a maximum. It appears very probable that the average return per letter ranges between 25¢ and 30¢. It is believed that in fiscal 1970 there was no dramatic increase or decrease in sales over fiscal 1969 or over tax year 1968. Thus it can be estimated that the retail sales of mail order sexually oriented materials for fiscal 1970 was approximately \$12 million to \$14 million.

In all candor, it must be acknowledged that the IRS study and the conclusions of the author are contrary to the common belief that mail order operations are extremely profitable. It should be noted in this connection that, while the aggregate mailers studied reported a net loss for tax year 1969, most find the business to be profitable, although not excessively so. Of course, the tax returns analyzed may have been fraudulent. If so, this is a matter for the IRS. However, in the opinion of the author most mailers are more fearful of the IRS than they are of other law enforcement agencies. Remembering Al Capone, they are probably unlikely to falsify their tax returns to any great degree. Perhaps the only exception to this general rule is the allegedly widespread practice of mailers who pocket cash orders and regard such receipts as "tax free." Even this illegal practice is merely conjecture and cannot be proven. If this is indeed a common practice, gross sales and net income may be greater than reported by an unknown, but significant, factor.

81. Not identical time periods.

Part IV

“Under-the-Counter” or “Hard-Core Pornography”

INTRODUCTION

Scope note—market meaning of “hard-core” pornography

In most localities certain sexually oriented materials are sold “under-the-counter”—that is, covertly, with an apparent belief by the seller that the material sold is illegal. Ordinarily, materials sold under-the-counter are the most explicit materials available in the place of sale. Under-the-counter materials are sold both at established retail outlets for books or other products and in nonretail settings, such as bars, barbershops, factories, and so on. The shorthand reference used in the marketplace for such materials is “hard-core” pornography.¹

Over the past 25 years, specific characteristics in the sexual content of materials sold under-the-counter have changed considerably. At one time, wholly textual “erotic classics” were sold in that manner. Similarly, photographs of human genitalia were also thought by sellers to be hard-core, or obviously illegal. Today, in most localities, materials which were once sold under-the-counter are freely available, such as photographic depictions of human nudity and books by famous authors of erotica including Henry Miller, Marquis deSade, Frank Harris. Nonetheless, there is no nationwide standard regarding materials which may be sold openly. Books or magazines which circulate without restriction in one city may be sold covertly in another locality.

There is one genre of sexually oriented material which is almost universally sold under-the-counter in the United States: wholly photographic reproductions of actual sexual intercourse graphically depicting oral, vaginal, or anal penetration. These materials have been available virtually since the invention of the camera and have always been the most explicit sexual stimuli available in general circulation.

At present, distinctions between materials sold openly and those sold covertly have become extremely unclear. Prior to about mid-1969, producers of erotic materials were of the opinion that graphic photographic depictions of human sexual intercourse were illegal irrespective of the context in which such photographs were presented. However, in the past year a great increase of sexual content in both motion pictures and illustrated paperback books (see Parts I and II of this report) has altered this concept. In many metropolitan areas, motion pictures are openly exhibited and illustrated books are openly sold which contain graphic photographic depictions of coitus, fellatio, and cunnilingus. At least to some extent, these materials have made any discussion of the “under-the-counter” concept passé.

1. Some judges have employed the term “hard-core” pornography as a synonym for “material which can be legally suppressed.” In this report, the term is used as a synonym for “under-the-counter” or covertly sold materials. This is, in effect, the definition of “hard-core” as applied in the marketplace. Because of the confusion about the meaning of the term, which stems primarily from an undefined legal concept, it would be well to avoid using the term altogether. See *Jacobellis v. Ohio*, 378 U.S. 184, 197 (1964) (Justice Stewart concurring).

Sales of under-the-counter materials have not been eliminated by the more explicit materials available in the past year, however. Wholly pictorial materials, unaccompanied by some textual or narrative "justification" of the graphic photography in books and magazines, are still sold covertly. Generally, materials sold openly are in separate markets from under-the-counter materials.

To avoid vagueness in the following discussion of the "under-the-counter" market, a detailed explanation of terms is necessary. As of 1970 the most graphic sexual stimuli available in the marketplace are photographic depictions of actual sexual intercourse of all types. The market ordinarily separates such materials from those which are somewhat less explicit (often termed "borderline" or "questionable" materials).

Thus, the erotica market contains segregated layers of explicitness which, even if not recognized by the average citizen, are clearly known and understood by sellers. In order to report on the submarket, broad, ill-defined language is insufficient.

The characteristics of hard-core materials are as follows:

1. The sexual activity depicted is certain. That is, photographs of human sexual intercourse (including bestiality) leave nothing to the imagination. The viewer has no doubt that the activity depicted is real, not simulated, intercourse.
2. The photographic depiction of the sexual activity focuses upon the sexual contact of the genitals. The male genital organ is shown erect, rather than in the flaccid state depicted in "borderline" materials.
3. Intromission, or penetration, whether oral, vaginal, or anal, is clearly shown with particular emphasis on oral-genital contact.
4. The materials are not openly sold but are distributed in an under-the-counter manner.

The market definition of "hard-core" pornography has considerable value. First, it is consistent with the usage of the term by those engaged in disseminating sexual stimuli (either in the hard-core market or for mass distribution), by many of the knowledgeable, experienced law enforcement officials, and by all the academic experts who have made a study of the "obscenity" field.

Second, the definition, which limits hard-core pornography to photographic depictions of sexual intercourse, includes only those materials which at present are universally sold "under-the-counter" (although in some parts of the country, less explicit borderline magazines and textual materials are also sold in this manner). Hard-core photographic materials have been available under-the-counter for decades.

Third, classification by use of the market definition comports with accepted practice in the social sciences.²

2. David Sonenschein, a graduate student in anthropology at the University of Texas, has had extensive experience in the area because of his work at the Institute for Sex Research. He explained:

[T]he "market definition" is the best and most valid approach—certainly from an anthropological or ethnographic point of view. This is the approach that is used in the "ethnoscience" school in anthropology in which the informants or the group being studied defines the categories in which the data are classified. It is by this method that . . . a greater dimension of reality is given to the material at hand and gives . . . an analytic advantage in working with material that is particularly slippery conceptually as obviously pornography and obscenity are. (Letter dated May 6, 1970, to the author.)

Hard-core pornography, as defined above, is generally available in three forms: motion picture films (generally known as "stag" films, "blue" movies, or "French" movies),³ photo sets, and picture magazines or brochures.

Materials not within the definition of "hard-core"

Materials once similarly classified as "hard-core" have been reclassified as "borderline" over the years by the market and by law enforcement officials in response to judicial decisions. Only photographic hard-core materials, as defined above, have remained relatively constant in both content and its restricted availability.

It is not unreasonable to state that sexual stimuli which are readily available in most, if not all, metropolitan areas can be automatically excluded from the classification of hard-core pornography. While materials sold openly may be obscene and thus illegal, materials openly sold to adults should be classified as "questionable" or "borderline." Thus, the definition used herein is contingent upon the concept of pandering; that is, the manner of sale is important in determining what is hard-core.⁴

Examples follow of materials which are excluded from the classification of "hard-core".

ALL TEXTUAL MATERIALS

Publishers of sexually oriented printed matter take the position that no wholly textual description of human sexual activity can be labeled pornographic. Sexually oriented books available in the market reflect this viewpoint.⁵ Certainly no wholly textual material is presently classified as "hard-core" in the marketplace. This is concurred in either explicitly or implicitly by many law enforcement officials.⁶

ARTISTIC OR PSEUDOARTISTIC ILLUSTRATIONS

Depictions of sexual activity by "artistic" methods, as in paintings, drawings, etchings, sculptures, and pottery, are not considered hard-core by the market. The contention that "art" cannot be hard-core pornography is supported by the relatively unimpeded current circulation of several "art" books depicting explicit sexual activity—that is, sexual intercourse with oral, vaginal, or anal penetration clearly shown.⁷

3. One expert, Frank A. Hoffmann, reports that in his experience hard-core films were often called "skin flicks" by some of the college population. In today's market the term "skin flick" usually refers to a sex-oriented motion picture shown in a public theater and is less explicit than hard-core.

4. See *Ginzburg v. United States*, 383 U.S. 463 (1967).

5. See materials involved in *Hoyt v. Minnesota*, 399 U.S. 524 (1970).

6. Interestingly, the analysis of law enforcement officials more closely parallels the state of the market than that of commentators and scholars. As recently as November 1969 an article elaborating on "hard-core" pornography in literature appeared; Michael Gordon and Robert R. Bell, "Medium & Hard Core Pornography: A Comparative Analysis," *The Journal of Sex Research* (Nov. 1969), p. 260.

7. Philip Rawson, *Erotic Art of the East* (New York: G.P. Putnam's Sons, 1968); Drs. Eberhard and Phyllis Kronhausen, *Erotic Art* (New York: Grove Press, 1968); Theodore Bowie and Cornelia V. Christenson (eds.), *Studies in Erotic Art* (New York: Basic Books, Inc., 1970). These studies of erotic art circulate freely without legal interference. The publisher of the book by the Kronhausens reported that as of December 4, 1969, over 8,500 copies had been sold (cover price \$25).

"BORDERLINE" PHOTOGRAPHIC DEPICTIONS

A few years ago, a close-up camera focus on female genitalia was undoubtedly classified as "hard-core" in the marketplace. Today, however, literally millions of magazines, photographs, and motion pictures featuring close-up photographs of female genitalia are openly sold. Whether such materials are "obscene" or "pornographic" is still an open question,⁸ but such materials are no longer classified as "hard-core" by the market.

To be classified as "hard-core," a photograph or movie must leave nothing to the imagination of the viewer. The market classifies the following photographic material as "borderline":

- (a) Photographic focus on female genitalia or upon flaccid male genitalia;
- (b) Apposition of genitalia (in any combination) with no intromission and the penis in a flaccid state;
- (c) Implied fellatio or cunnilingus (no matter how strong the implication);
- (d) Sexual intercourse which could be simulated because penetration is not shown; and
- (e) Sexual intercourse which is apparently real but which does not focus on the genitalia. This particular category is doubtless the "most borderline."

Thus, the "hard-core" pornography classification does not include the vast majority of magazines openly sold in self-labeled adult bookstores in the United States. In addition, the frontiers are constantly challenged. Individual photographs of "hard-core" activity are now found in books and magazines containing related text and non-hard-core photographs. The legal status of this technique is as yet unresolved.

Methodology

In other inquiries into the traffic and distribution of sexually oriented materials the Commission staff was able to conduct a relatively straight-forward investigation. Extensive interviews were held with scores of publishers, distributors, retailers, mailers, and producers of sexually oriented materials. Producers of borderline materials operate openly and subject themselves to public scrutiny, police investigations, and innumerable prosecutions. For them, the issue has been joined; any dispute over the legality of their products is fought openly in court. Such producers, who are the subject of the bulk of this report, publicly take the position that their activities are protected by the First Amendment.

On the other hand, an investigation into the hard-core market is difficult to conduct through interviews, because producers of hard-core material do not believe that their activities are legal or that such materials can be defended in

8. It seemed that the question of whether focus on female genitalia was obscene was decided negatively by *Central Magazine Solds, Ltd. v. U.S.*, 389 U.S. 50 (1968), reversing 373 F. 2d 633. Similar materials were subsequently found non-obscene in a number of Federal and State cases, for example *U.S. v. 127, 295 Copies of Magazines*, 295 F. Supp. 1186 (D. Md. 1968); *California v. Noroff*, 433 P. 2d 479 (1967). However, the recent denial of certiorari by the U.S. Supreme Court in a case involving convictions for the sale of similar material has reopened the question: *Johnson v. Massachusetts*, 396 U.S. 990 (1969).

count. Accordingly, identities are carefully concealed and operations are conducted out of the public view, especially away from the watch of the law enforcement officers. This desire for anonymity considerably altered the staff's methods of investigation. Attempts to directly interview any acknowledged domestic producers, distributors, or retailers of hard-core materials were rebuffed. Interviews were limited to law enforcement officers, prosecutors, and academic experts. While it must be acknowledged that reliance on expert opinion has many inherent weaknesses, the experts consulted expressed a remarkable unanimity of opinion on all material points. In defense of this method, it should be emphasized that there is a marked lack of concern with hard-core pornography by most elements in society, including law enforcement officers, the general public, and elected representatives. Thus, a more comprehensive investigation into the hard-core market did not seem warranted.⁹

The following report represents the consensus opinion of a number of experts in the field: local law enforcement officers in several major metropolitan cities (who prefer to remain unidentified); Federal law enforcement officers in the Bureau of Customs, Post Office Department, and F.B.I.; the staff at the Institute of Sex Research, Bloomington, Indiana; folklorist Professor Frank A. Hoffmann, Department of English, State University College, Buffalo, New York; Professor William Brown, School of Criminal Justice, State University of New York, Albany, New York; film critic Arthur Knight, Los Angeles, California; and David Sonenschein, Department of Anthropology, University of Texas at Austin.

HISTORICAL PERSPECTIVE¹⁰

From prehistoric times until the present, artists have used every artistic medium to portray human sexual activity. As several current "art" books amply demonstrate, artistic depiction of sexual activity is a universal phenomenon.¹¹ By about 1850 the camera joined brush, pen, and chisel as a means of depicting erotica; the earliest surviving erotic photograph in the Institute of Sex Research collection in Bloomington, Indiana, dates from about that time. Shortly after Edison developed his motion picture camera in 1890 the process was put to erotic use. By the turn of the century, many film catalogs listed such "entertainment" as

9. All of the academic experts consulted and many of the law enforcement officers have contacts with producers of hard-core materials. An effort was made by some of these to arrange meetings with the Commission staff, but the producers were wary of a possible threat. It was then determined that the limited time and resources of the staff should be applied to developing data on sexually oriented materials generating greater public concern.

David Sonenschein, one of the experts consulted, stated:

Most elements in society are not concerned with hard-core pornography. What the general public is concerned about is that currently available representations of erotic *may lead* to more realistic kinds of representation and ultimately to what you . . . call hard-core pornography. It's not that they are unconcerned about hard-core pornography, but that they are concerned that such forms will ultimately appear, given the license of current representations. (Op. cit., footnote 2).

10. The most comprehensive discussions of hard-core materials generally available are Arthur Knight and Hollis Alpert, "The History of Sex in Cinema, Part XVII, The Stag Film," *Playboy*, November 1967, p. 154; David Sonenschein, "Pornography and Erotica in America," from *Sex and the Contemporary American Scene* (Edward Sagarin, ed.), (New York: Dell, in press). Two other excellent treatments of the subject with limited distribution are by Frank A. Hoffmann, "Prolegomena to a Study of Traditional Elements in the Erotic Film," *Journal of American Folklore* (April-June 1965), p. 143; and *An Analytical Survey of Anglo-American Traditional Erotica*, doctoral thesis, Indiana University (1968).

11. Op. cit. (footnote 7).

girls disrobing for bed, girls exercising or dancing about in wispy costumes or no costumes, communal bathing in a sultan's harem. It was not long before the potential of the motion picture camera to present the most graphic and explicit depiction of human sexual activity was realized. By the early 1900's the first "stag films" reached the market and have been with us ever since. The earliest stag film in the Institute for Sex Research collection was produced around 1915. It is likely, however, that experiments with hard-core motion pictures had been initiated some years previously.

Although there are Federal, State, and local laws making the production, distribution, sale, and exhibition of hard-core pornography a serious criminal offense, such materials are a familiar and firmly established part of the American scene.¹² Strangely enough, there has been little written on the subject; no other aspect of erotica has received less attention from scholars and social scientists. This is curious because hard-core pornography, and especially stag films, seem to cause uniquely ambivalent social attitudes. In public, such films are universally condemned, as evidenced by strict legal prohibitions against their manufacture and sale. Privately, stag films are endorsed by a large and responsible element of the community, as evidenced by the frequent sub rosa stag screenings historically sponsored by civil, social, fraternal, and veterans' organizations.

STAG FILMS

During the 20th century, the hard-core pornography market has been dominated by motion picture films variously known as "stag films," "French films," or "blue" movies. By the early 1900's the classic pattern had been established; Professor Frank A. Hoffmann, a folklorist, summarized a 1915 film as follows:

Here already developed are many of the basic elements which made up a typical pornographic film; a simple but contrived situation to provide initial motivation; sexual excitation of the female by visual means, comparatively rare in real life but a persistent theme in these films; a rapid and direct seduction—so direct and rapid that in many films it cannot properly be called seduction at all; and finally, sexual activity, which, of course, is the focal point of the film.¹³

Film critics Arthur Knight and Hollis Alpert also have described the content of the stag films:

What distinguishes . . . [commercial motion pictures with erotic themes] from the stag film, making one award-winning art and the other pornography? Is it simply that legitimate art films are sensitively and artistically executed, while stag films are, for the most part, crudely done? Taste and sensitivity in the production of any creative work is certainly a consideration, but there is a more basic difference. . . . Unlike the erotic realism of the commercial

12. A national survey conducted for the Commission revealed that 44% of the adult male population interviewed acknowledged having seen one or more stag films in his lifetime; H. Abelson, R. Cohen, E. Heaton, and C. Suder, "Public Attitudes Toward Experience with Erotic Materials," *Technical Reports of the Commission on Obscenity and Pornography* (Washington, D.C.: Government Printing Office, 1971).

13. Hoffmann, "Prolegomena," op. cit. (footnote 10), p. 143.

cinema. . .stag films are intended to be sexual fantasies. Nothing as negative as real life is permitted to intrude, if the producer of pornography can help it. In the fantasy world of pornography, all females are in a state of almost constant sexual arousal, anxiously waiting to be serviced by the first male who happens onto the scene. Thus, the beginning of common stag reels concerns a female who becomes stimulated sexually by [visual or audio stimuli, or almost any other pedestrian human activity] As for the male participants in these erotic fantasies, they are supposedly always potent, ready, and raring to go. . . .These pornographic pictures portray a supersexual world in which erotic refusal and frustration are relatively unknown. The plots, when there are any, are used only to get participants together at the start of the picture; thereafter, sexual activity is all important.¹⁴

Finally, and crucial to the restricted market description of hard-core pornography adopted by this report, stag films graphically depict sexual activity. For example, penetration is always clearly shown, as is the oral-genital contact which occurs in most stag films.

Throughout the more than 55 years of stag film production in this country, the sexual content of stag movies has changed in form only, not in substance. The activity depicted is, of necessity, limited and repetitious in nature because human beings are physically limited. Early films record the same basic inventory of acts found in the latest productions of 1970. Similarly, hard-core pornographic photos, magazines, and brochures have changed little in the sexual content depicted for over 100 years.

Content and format of stag films

BEFORE WORLD WAR II

Stag films, while adhering to the general characteristics noted above, have altered their format somewhat over the years. Several factors have contributed to the changes: new and improved photographic techniques; a gradual change in the type of people involved in production; and a larger, more diversified audience, which allows for appeal to diverse tastes.

There is no specific time which can be given as the turning point for the change in emphasis, but the advent of World War II serves as a rough dividing line between the old and new formats. Stag films made before World War II had the following characteristics as compared to postwar versions: (a) more humor—in the display and use of genitals, in the characters, and in the sex act; (b) more scripting—plots, while contrived, were more definite and extended; (c) more attention was given to nonsexual activity—for instance, facial expression and actor interaction were used for comic effect, and the usual ending was tied to the plot with a comic twist; (d) the relative emphasis on humor, plot, and nonsexual activity naturally resulted in less time, proportionately, spent in sexual “action”; (e) surprisingly, there was more technical adequacy from a production standpoint—that is, more editing, camera set-ups, titles, flash cards, and so on.¹⁵

14. Knight and Alpert, op. cit. (footnote 10), pp. 158, 170.

15. Sonenschein, op. cit. (footnote 2).

Much of the initial stag film production apparently was photographed by individuals involved in legitimate movie production. There were even attempts at "acting" in a dramatic sense in the earlier films, although none of the supposed sexual screen tests of famous actors and actresses has ever come to light. In addition, producers of the earlier films were often professional purveyors of sex—madams, independent prostitutes, and pimps—as well as third-rate professional entertainers in need of money. Most of the women were in their late twenties or early thirties. Many were attractive, but most had the hard, well-used look associated with prostitution. In comparison to those in the newer films, a substantial percentage of the female performers were decidedly unattractive. The men were usually older, and comparatively few could be called handsome. Many appeared quite regularly, indicating a more than casual connection with the women or the producers. Often the faces were not shown or were disguised, at times grotesquely. The indoor setting for these films were usually tawdry, cheap hotels or motels, or sometimes a brothel itself. However, most producers used professional cameramen.

SINCE WORLD WAR II

After World War II, movie equipment became available to many amateurs. As a result, quality initially dropped off sharply as the quantity of films available increased. The change seemed to be from a few people making a number of films to a number of people making a few films.

While prostitutes are still a reliable standby, there now are many more "actresses" who engage in prostitution only as a secondary pursuit, or who have no connection whatsoever with it and participate in the films for other reasons. The women in modern films tend to be much more attractive than their pre-World War II counterparts. Many current female performers appear to be in their late teens or early twenties. The male performers today are much younger and are frequently handsome, well-groomed, and clean-cut. The indoor settings are usually private homes or apartments, often attractively furnished. The most recent films also appear to be more intelligently planned, show greater cohesion, and move smoothly.

Since the 1950's American films have shown a marked inclination to emphasize sexual activity exclusively and to exhibit comparatively little in the way of plot or story development. In an analysis of post-1960 American films, Professor Frank Hoffmann found that significantly less than half had a clear story line. In comparison, well over 50% of the earlier films had recognizable plots, although the story lines were frequently very thin. In modern films there is much more sexual activity of all kinds, and it is usually introduced much more quickly than in the earlier films.

Differences between films do not result solely from the time of production; the country in which the films are made is a significant factor as well. Latin American and European films present a wide range of sexual activity. European films are often more extreme in this respect than most American films. However, foreign films nearly always maintain a clear story line, and frequently a complex one. There are also limited attempts at character delineation and development.

Especially in the last 15 years, as compared with American films, European films have tended to feature: (a) more humor; (b) more erotic focus on clothing—

for instance, some clothing, such as female underclothes, is retained during the "action," while the American preference is for complete nudity; (c) more sado-masochistic activity such as bondage, rape, and whipping; (d) more "unusual" activity such as anal intercourse and excretory displays; and (e) a considerable percentage of films with an anticlerical theme, especially from Roman Catholic countries. In the 1960's American films made some movement toward featuring more bizarre activities. For example, of over 1,000 American, French, and English films in the collection at the Institute of Sex Research, America produced the only one dealing with necrophilia.

The cast of characters in stag films ranges from couples, which is the most common, to groups of three or more, with the occasional addition of a well-trained dog. Films featuring group sex use a wide variety of combinations. Perhaps the most popular grouping is two males and two females, but this is not an invariable combination. For example, English films, which are a strong factor in the market, seem to prefer odd numbers, usually two males and one female or two females and one male. English films have used as many as seven "performers." American films tend to be less exotic in this regard, but all combinations are found in domestic films. The activity depicted covers the full spectrum of sexuality, both heterosexual and homosexual, including fellatio, cunnilingus, anal intercourse, and so on.

The emphasis in stag films reflects the preferences and prejudices of middle-class American males. In an analysis of over 1,000 films produced between 1920 and 1967 believed to be representative of the entire commercial stag film market produced during that time, Arthur Knight and Hollis Alpert¹⁶ reported that male homosexuality was relatively rare: 4.9% of the films pictured homosexual sequences, and only 1.4% were completely homosexual. Lesbian activity was quite common: 19.2% of the films included some lesbian activity, and 6.6% were exclusively lesbian. The authors stated that the divergence was understandable in a society which has strong male homosexual taboos but which has no similar attitude regarding lesbianism. This social bias, coupled with the fact that many males have a strong heterosexual reaction to the depiction of lesbian activity, explains the substantial difference in the frequencies of male as opposed to female homosexual activity in stag films. Heterosexual oral-genital activity is quite common in the films, especially in those produced during the 1960's. Fellatio was shown in 68.8% of the films, and 46.1% included cunnilingus. More films featured woman-dog relations (2.1%) than exclusively male homosexual activity (1.4%).

Another reliable expert, who prefers to remain unidentified, stated that the sexual content of stag films has undergone a considerable change since 1960. He estimated that at least 75 out of every 100 films produced during the last few years feature group sex. In some disagreement with this estimate, Professor Frank A. Hoffmann, in his content analysis of over 600 films, found that 62% of the pre-1960 films featured a single couple and that this proportion declined only slightly to 56% for post-1960 films.¹⁷

16. Op. cit. (footnote 10), p. 170.

17. Films featuring homosexual activity, primarily lesbian contact, were disregarded in this analysis, although most lesbian films also feature only two performers.

Of every 100 films produced in the past few years, one or two were exclusively male homosexual films. Although such films are not limited to one geographical area, the West Coast seems to be the leader in this type. During the early 1960's some producers apparently believed that the best approach was to provide something for everyone and included such variety in group films. These producers discovered that incidents of male homosexuality in basically heterosexual films did not appeal to the average customer. For the most part, sexual contact in films between males now appears to be limited exclusively to homosexual films.

One or two of every 100 films produced show some animal contact, which almost invariably occurs between a woman and a dog. Only one stag film has been discovered which shows male contact with an animal.

Between five and 10 films of the average 100 depict female homosexual contact exclusively. Perhaps as many as one-half of the group sex films (basically heterosexual in nature) devote some portion of the footage to female homosexual conduct.

While quite a number of stag films show some elements of domination, sadomasochistic films are very rare; only 13 of over 1,000 films in the library at the Institute of Sex Research depict sadomasochistic behavior. Because it is probably that the 13 films in the ISR library were specifically sought out, they are not a fair sampling of the total number of films produced for the market during the period covered by the collection. Sadomasochistic films apparently comprise less than 1% of the total number of stag films produced.

The remaining 82 to 87 of the average 100 stag movies feature heterosexual sex. As noted above, there is some slight disagreement by the experts as to whether the majority of these feature a single couple or groups.

Although the average age of the actors in stag films has dropped considerably in the last few years, producers of such films have avoided using prepubescent or pubescent children in their films. This taboo has apparently remained almost inviolate. One amateur film depicts sexual activity of a pubescent male estimated to be between 12 and 15 years of age. Three known films featured "very young females," 13 to 15 years old.¹⁸ In all other discovered films the performers are clearly adults or late adolescents. Prepubescent children are apparently nonexistent in stag films. This is attributed to a belief on the part of producers that such content will not be acceptable in the market. Experts believe that the average consumer would feel children were being offensively exploited.

One social taboo (or former taboo) which has been consistently assaulted in American stag films is that of miscegenation. In the earlier films, this was limited to white male and Negro female contact, but during the 1960's Negro male and white female contact was added to the repertoire. Miscegenation is still a much

18. Unpublished data of David Sonenschein from his analysis of 735 films. He also has noted: It seems more films are featuring attempts at *representing* young people. This occurred very early in the history of stag films where older women dressed in the clothes of young girls, particularly school uniforms. This does seem to appear slightly on the increase in American stag films—though not significantly. This has been more the case in European films where there has always been an active interest in young girls. Quite a number of English films feature school girls either in costuming or in titles and actually feature girls in their middle teens. (Op. cit., footnote 2)

used theme in today's market, but apparently the boom in such films has ended. Miscegenation seems to be particularly popular in foreign stag films.

Number of stag films produced

Despite almost universal prohibitions against the production and distribution of stag films, the business has flourished fitfully in the United States for the last 55 years. Because of the illegality of such activity, it has been impossible to make an accurate estimate of the number of different film titles currently on the commercial market, the number of prints in circulation, or the total number of films produced. However, it appears that Knight and Alpert correctly stated that production estimates of 1,000 to 2,000 different titles as of 1967 were low.¹⁹

Any attempt to estimate the number of different stag film titles currently on the market is complicated by the fact that films often remain in circulation for long periods of time. Some of the more popular titles originally produced in the 1930's and 1940's are still available today. The virtual immortality of these films was recently demonstrated by the appearance in the New York market of an American film produced in 1919 and another produced in France in the early 1920's. As long as a reasonably good print of a film exists, it is possible for a producer to make a new negative and thus renew its life cycle.

Another complicating factor is the common practice of retitling old films and redistributing them. Many films have been sold under three or four different titles. Further, certain titles appear on wholly different films. One title has been used at least five different times.²⁰

The Institute for Sex Research at Bloomington, Indiana, has a collection of hard-core motion picture films containing over 1,000 films.²¹ The ISR has over 500 films produced from approximately 1915 through the mid-1950's. The staff and directors of the ISR have estimated that the more than 500 films represent between 25% and 50% of the total produced during that time. These estimates of the first 40 years of stag film production place the total number of titles at between 1,000 and 2,000. Most of these, 75% or more, were on 16-mm. film.

Since 1955, the institute has collected over 500 additional films, nearly all of which are 8-mm. These 1955-1969 films are believed to represent 10% to 25% of the total produced during the period. Thus the total number of titles produced in the last 15 years was somewhere between 2,000 and 5,000.

A "title" can refer to any section of film sold as a unit. Because several "titles" can be made from one session, the large number of titles does not necessarily reflect a large number of endeavors at pornographic film making. It probably means that producers try to get the most mileage from relatively few sessions.

The stag film market

BEFORE 1960

The hard-core stag film market were dominated by 16-mm. movie films from approximately 1920 until at least 1950 and declined steadily thereafter until

19. Op. cit. (footnote 10), p. 170.

20. Ibid., p. 172.

21. The ISR does not have the largest collection in the world, as is sometimes reported in the press. At least one private collection is reputed to be twice as large. Most of the collection is post-1958; Sonenschein, op. cit. (footnote 2).

1960, by which time 8-mm. films had completely captured the market. Before 1920, only 35-mm. cameras and projectors were generally available, and the expense of such equipment prohibited any wide dissemination of stag films.

From 1920 until the 1950's, the vast majority of the stag film business was in the rental field; persons traveled a designated "circuit" with their own projectors and films. For a rental of between \$25 and \$100 (usually averaging \$40 or \$50), these operators displayed their wares in 1- or 2-hour shows to audiences of from 50 to 200 individuals. These performances, known as "stag nights," "smokers," or "stag shows," became an integral part of the folklore of this country. Operators usually had well-established customers, such as respectable lodges, veterans' organizations, and college fraternities. Some operators also provided "live" entertainment with a consequent increase in price.

Knight and Albert viewed the stag show as follows:

The participants can be seen as a kind of community of respectable middle-class males. For these men, the stag evenings have a kind of ritual function; they allow the males to express crude emotions in a masculine context, and each gets from this, in a sense, homosocial confirmation. The viewing of stag films by males was in no sense to be regarded as an indication of homosexuality, either latent or actual The need for this approbation of his fellows is at least as strong as his need for approbation from women.²²

AFTER 1960

Throughout the 1940's and into the 1950's the largest market for stag films remained "men only" smokers. However, shortly after the end of World War II, home movie equipment became available at a far more reasonable price. This caused a revolution in the stag market because customers began to prefer to rent or purchase stag films for private viewing or for screening at parties with friends. Those who had been operating the road shows for many years became the first distributors, wholesalers, and retailers for this new market. Some camera stores began stocking a few reels of stag films for rental to special customers. Films not only paid for themselves in two or three rentals, but also served as a catalyst for the rental or purchase of movie projectors, screens, cameras, and other equipment. For a time, both 8-mm. and 16-mm. stag films were available, with 16-mm. more popular at first. At that time, the rental charge for a 400-foot 16-mm. stag film averaged between \$5 and \$10, and the purchase price started at \$25.

As a direct result of the home movie boom, the market for "traveling road shows" of hard-core stag films dramatically declined during the 1950's and became relatively rare in the 1960's. By 1970 only a few operators put on stag

22. Knight and Alpert, *op. cit.* (footnote 10), p. 172.

shows for groups of 50 to 200 people.²³ In some parts of the country, however, the traditional form of "stag show" has retained some viability.²⁴

In conjunction with the demise of the traveling road show, the stag market was increasingly dominated by 8-mm. film during the 1950's, and the transition to 8-mm. was complete by 1960. The greater convenience and lower cost of 8-mm. equipment finally destroyed the market for 16-mm. films.

The production and distribution of stag films has been remarkably persistent in spite of the risks involved. There is undoubtedly a definite but rather low-level demand for hard-core motion picture films throughout the nation. However, the availability of stag films varies considerably from place to place, depending on the social mores of the community, the activity of the local police, and the existence of a seller willing to take the risk. For example, Chicago has long had the reputation as a very difficult city in which to produce or sell hard-core films in safety. On the other hand, a number of cities (such as New York, San Francisco, Baltimore, Atlanta, and Miami) are reputed to be good marketplaces for hard-core films. Interestingly, there is not necessarily a correlation between the availability of "borderline" sexually oriented materials and "under-the-counter" materials, although the two often go together. Los Angeles is an example of this paradox. Although borderline sexually oriented materials are widely available in the Los Angeles area, the under-the-counter market is believed to be relatively inactive, although there is some indication that this situation has recently changed.

The market for stag films has traditionally been localized and self-contained. Historically, a film produced on the West Coast received a distribution only in selected local markets for a period of time. Eventually, however, the overlapping circles of the various markets absorbed the film, and nationwide distribution was achieved. This was usually accomplished by the pirating of films from other markets rather than through a conscious distribution pattern set by the producer or distributors. For example, *Smart Alec, Part I*, probably the most famous stag film on the market today, was made in Texas about 1953. Although the film had more appeal than most because it starred a well-known striptease artist, the film did not receive national exposure for several years. The distribution of the film followed this pattern: Texas, Southwest, West Coast, East Coast, Midwest.

Because most producers are independent entrepreneurs, an average local market usually contains between 15 and 50 retail outlets. The largest producer probably serves no more than 100 retail outlets. Because there are overlaps in the local markets, it is possible for a film to travel slowly across the country from market to market. In addition, some producers may have between two and 10 retailers

23. "Stag nights" have been advertised in local newspapers in the 1960's in some towns. Even these sporadic replays of "the old days" appear to be increasingly rare as of 1970. A raid on a stag party in New Orleans (December 19, 1969) made national headlines.

24. David Sonenschein reports:

The use of films for the gathering of groups is still very much in practice, particularly for all male, hypermasculine organizations. I have found here in Texas that the practice is still very much in vogue, being used for American Legion groups, the National Guard, etc. Some of the older films in 16mm are still used, in fact they are preferred by these groups because they project a larger image on a screen and are more adequate for group showing. There is a declining but still active market in 16mm films, although most of the products are put in 8mm. It is of note, however, that the 16mm films obtained are the older ones, of course, and consequently their function becomes less erotic and more humorous and "homo-social." As time goes on, the older films look more and more ridiculous, and the function of humor in the context of "togetherness" becomes a more important factor in the demonstration of a masculinity than the elicitation of the erotic response per se. (Op. cit., see footnote 2)

who serve several markets. In this way, a film may ultimately receive national coverage, but the process is often quite slow.

At present, the stag film market continues to be localized and circular in nature. However, law enforcement sources state that this isolationism is breaking down. For example, New York City authorities claim that most of the hard-core production in that city is being exported to other parts of the nation. Los Angeles authorities concur, reporting that there is little production in the city, but that importation of hard-core films from other parts of the country is steadily increasing. Even with these changes, however, at present there is no national distribution of stag films produced at a central location. Rather, distribution of stag films between local markets occurs on a hit-or-miss basis.

The pattern which has emerged in recent years appears to be a tying together of local markets by a few producers. A New York producer, for example, may have contacts in San Francisco, New Orleans, Boston, and Cleveland. The availability of his product in widely scattered points gives the appearance of national distribution. In reality, most of the local markets in the nation do not have access to his films. Eventually the market coverage by the films may be national, but more often than not this will be the result of local producers pirating the film from an 8-mm. copy and distributing the product as their own.

At this juncture, it is probably necessary to mention the spectre of "organized crime" and its alleged involvement in production and distribution of hard-core films. This thorny question is the subject of much dispute, and no clear answer as to the involvement of syndicated crime in hard-core production, distribution, or sales exists at this time.²⁵

Economics of today's hard-core stag film market

From all available evidence, the production of hard-core pornography has generally been a sporadic affair. Few, if any, producers have made a living from stag films for any length of time. Profits are small, and the localized production and distribution is too disorganized to support the multimillion-dollar business which has sometimes been alleged to exist. The following hypothetical example graphically illustrates the nature of the business.

HYPOTHETICAL EXAMPLE

Mr. A decides to produce a hard-core film in expectation of substantial profits. He may know a few prostitutes, semiprofessionals, or uninhibited young women in need of money, and a few young men able to perform in a stag movie.²⁶ Often, however, he seeks performers on a random basis. He purchases 1,600 feet of

25. Compare M.M. Finkelstein, "Traffic in Sex-oriented Materials, Part II Criminality and Organized Crime," and A. Smith and B. Locke, *Response of Police and Prosecutors to Problems in Arrests and Prosecutions for Obscenity and Pornography*, Technical Reports of the Commission on Obscenity and Pornography (Washington, D.C.: Government Printing Office, 1971) with David Sonenschein, "Pornography: A Fake Issue," *Psychiatric Opinion*, February 1969.

26. Apparently, this ability is not as common among men as may be supposed. Sexual performance is often greatly inhibited by the lights, cameras, and "kibitzers." Surprisingly, experts agree that finding women able and willing to perform in stag films is a much easier task than finding men able and willing to do so.

unexposed 16-mm. color film and notifies the performers (two males and two females, for example) to meet him on a corner at a predetermined time. The females are paid whatever they can demand, typically between \$25 and \$100, usually the latter figure. Once in a while women make such films for "kicks." The males, on the other hand, are usually not paid. Occasionally a male will be completely uninhibited and particularly able; in such cases, he may be paid between \$50 and \$100. Many males in such films are simply recruited from local bars; servicemen are popular.

In the "old days," Mr. A would have picked up his models and driven to a cheap motel or hotel in which a room had been rented; today he is more likely to drive his models to an expensively furnished apartment or house. The group will be met by a photographer with the necessary camera equipment, often borrowed or rented. The photographer will be paid between \$300 and \$600 for 4 hours of work. Lately, cameramen are often those who make industrial or technical films for a living. Of course, if the producer is a photographer this expenditure can be saved.

On location, the four participants will engage in various forms of sexual conduct. The photographer will film almost continuously until the unexposed film is used. At the end of the shooting, the exposed film will be handed to the producer. The photographer and performers will be paid and dismissed and will probably never see each other again.

The next step is for Mr. A to make a color master with an optical reducer. Very little, if any, editing is done on the exposed film. After the master has been secreted in a safe place, copies will be made on 8-mm. film, generally by using a semiportable processing plant. Stag films are sometimes developed in commercial labs, but it is very difficult to keep such activities secret in industrial or commercial lab facilities. In addition, a depletion of supplies might be noticed, a factor which limits production even if a laboratory is used. One of the main reasons for the producer to develop his own film is that he might be reported to the police by his competitors if they learned of these activities.

The original film will normally be cut into four 200-foot, black-and-white segments, each separately titled. If there is some waste, fewer new titles may be developed for commercial exploitation. If Mr. A is an amateur producer, he is unlikely to be able to create more than one or two new titles from a single filming session.

Mr. A is likely to print approximately 100 copies of each new title. He will then either place 100 to 200 unspooled reels in a suitcase and visit retailers or pass the films on to a wholesaler or a distributor. At this juncture, Mr. A has invested between \$300 and \$800 to shoot the film. His cost to produce 100 black-and-white copies 200 feet long of each of his eight new titles runs between \$2 and \$3 per copy, depending on whether he supplies the reels and cans. No allowance has been made for the time he has spent developing the copies. The 800 reels, which have now cost him between \$2,000 and \$2,500, may recover anywhere from \$2,400 (at \$3 per reel sold to a distributor) to \$4,800 (at \$6 per reel, sold to wholesalers) or \$8,000 (at \$10 sold directly to retailers). These prices are only approximate, and vary considerably throughout the country.

After a new title or series of titles has been produced, the distribution pattern takes one of several courses. One method is to distribute the films to wholesalers, who in turn sell the films to retailers. The producer himself often does this, but an independent distributor in contact with several producers and many wholesalers also may perform this function.

Wholesalers are usually truck drivers, salesmen, or other whose business includes a good deal of traveling. A few producers also act as their own wholesaler. They almost always travel a specific route in the course of their employment and act as wholesalers of hard-core films only to supplement their regular income.²⁷ The wholesaler simply purchases 100 to 200 reels of film from the producer, strictly on a cash basis, and then resells the films to the retailer, again for cash only.

The most likely outlet for stag films is the self-labeled adult bookstore, although most do not carry hard-core materials. However, clandestine outlets for stage films can be found in a wide variety of places, such as bars, gas stations, photography shops, delicatessens, insurance agencies, auto junkyards, industrial catering services, industrial tool rooms, barber shops, and so on. Often the retailer is an employee acting without the knowledge of the employer.

Prices at the various levels of distribution vary considerably from area to area. Producers may receive as little as \$2.50 to \$3 per reel if the films are sold in bulk (several hundred) to distributors, although prices to distributors range up to \$5 or \$6. Wholesalers may pay as little as \$5 to \$8, or as much as \$12.50 to \$15 per reel, depending on the market and the quantity purchased.

Retail prices seem to vary a great deal from section to section. Table 1 summarizes current retail prices supplied by experts in various parts of the country.

The prices shown in Table 1 are almost always subject to negotiation. It is highly probable that most regular customers pay no more than \$15 to \$16 per reel once their genuine interest in stag material has been established with a supplier.

It seems obvious that the production and sale of hard-core films, with a highly circumscribed and limited market, does not produce outstanding profits. The Eastman Kodak Company graciously supplied certain information with regard to the costs of film production. This report is attached as an Appendix to Part IV.

The experts consulted were in substantial agreement that the hard-core market, at present, is very small. For example, one regular producer of such films made 10 titles from three filming sessions in 1969. Based on excellent sources, his income for 1969 from this business was \$2,300. One particularly knowledgeable expert stated that there are no more than a half-dozen individuals or groups who net more than \$10,000 per year in the business.

Producers of hard-core stag films

Experts believe that hundreds and perhaps more than a thousand individuals or groups have produced hard-core films over the years. Most production efforts are

27. This "part-time work" is not unique to wholesalers. Almost everyone in the hard-core business devotes only a portion of his working time to hard-core material.

Table 1

TYPICAL PRICE OF 8-mm. STAG FILMS—1970

REGION	PRICE TO RETAILERS	PRICE TO CUSTOMERS
West Coast		
1st city		
200' b/w	\$8	\$20-\$25
200' color ^a	\$12	\$35-\$50
2nd city		
200' b/w	\$12.50-\$20	\$30-\$40
200' color ^a	\$15-\$25	\$45-\$60
Midwest		
200' b/w	\$ 7.50-\$12.50 \$15 (max)	\$25-\$35
East Coast		
1st city		
200' b/w	\$7-\$8	\$16-\$25 (or 2 @ \$40)
200' color ^a	\$12	\$25-\$40
2nd city		
200' b/w	\$6-\$8	\$12-\$16
3rd city		
200' b/w	X	\$15 or 2 @ \$25
South		
200' b/w	\$12.50	\$25-\$35
Southwest		
Mean of 4 cities		
200' b/w	\$10	\$22-\$25
200' color ^a	\$25	\$35-\$50
200' 16-mm. b/w	\$15	\$30

^aHard-core film in color is relatively rare and has not made any substantial impact on the market.

limited to a single filming session, which generally results in one to four new titles. However, as many as eight new titles can be made from a single filming conducted by experienced producers.

One comprehensive catalog of stag films lists nearly 2,000 separate titles and identifies the producers of the films by location and style, not by name. This list identifies over 50 individuals or groups who have produced five or more films, which implies more than one filming session. Two groups in New York City and two in London have produced over 100 films each. Approximately eight groups have produced between 50 to 100 films. The remaining individuals or groups have produced less than 50 films, usually eight to 16.

Perhaps with the exception of a few of the producers mentioned above, the production of hard-core motion picture films has historically been a very transient

business, with easy entrance and exit from the market. The risk and the lack of easy, large profits is primarily responsible for this poor staying power.

Some experts believe that stag film makers are "hooked" on the product and are emotionally as well as economically involved in their work. While this may be partially true, doubtless the hope of substantial profits causes most to enter the field, even if they have a greater than average interest in pornography. The lack of staying power of the vast majority of stag film producers doubtless is caused by the fact that the business is not economically rewarding. Real profits are very rare, if indeed they exist at all.

HARD-CORE PHOTOGRAPHS AND PHOTO SETS

The widest circulation of hard-core material has historically been accomplished through the use of photographs or photo sets. Circulation from hand to hand of "dirty (French) post cards or pictures" is a relatively common experience. Unfortunately, there is no way to estimate accurately the number of hard-core photos or photo sets which have been circulated or commercially exploited over the years.

A number of factors have contributed to what appears to be an irreversible decline in the commercial exploitation of photographs and photo sets. First, photographs are easily copied with very simple, easily purchased equipment. This enables a person to reproduce hard-core photographs virtually at will, thus constricting the commercial market for exploitation of such photographs. Second, the moderate price of self-developing cameras has enabled many potential customers to make their own hard-core photographs. Third, the widespread availability of highly erotic, domestically produced materials which offer the customer "more for his money" has cut into the photo market. The closer these materials move to the "borderline," the more likely it is that potential customers will not be able to make a distinction. Fourth, the increasing availability of foreign hard-core materials, especially those produced in Scandinavia, has cut into the photo set market. Hard-core Scandinavian magazines and brochures contain clear, full-color pictures.

Prices for commercial hard-core photographs and photo sets vary greatly, depending upon availability. The price structure is not nearly as uniform as that for stag movies. For example, the cost of a set of six or eight 3 X 5 inch black-and-white photographs ranges from \$2.50 to \$20, and the average price is probably between \$5 and \$10. The following are examples of recent prices: in November 1969, a packet of six to eight hard-core photographs could be purchased in New York City at \$2.50 to \$3; during mid-1969, the standard price in Denver for six photographs was \$3.50; Los Angeles authorities reported that a packet of eight 3 X 5 inch black-and-white photos were selling at \$7 in January 1970; and San Francisco authorities reported that sets of eight 3 X 5 inch black-and-white photographs were selling for about \$6 and color photographs were priced at about \$8.

The content of hard-core photographs and photo sets is similar or identical to the sexual activity depicted in hard-core stag films. With some exception, the life span for commercial exploitation of such photographs is considerably less than that for stag films. However, certain hard-core photographs are considered

classics. A fair number of hard-core photographs still in circulation are 30 to 50 years old, and some even predate the turn of the century. For example, 16 photos of female bestiality between a woman and a horse were taken in 1933 near Peru, Indiana, during a circus winter layover in that area. These photographs have consistently reappeared through the 1960's. The photographs of this rare form of bestiality have apparently gained international circulation. Within the last three years, an anthropologist returned from Mexico with pictures purporting to be photographs of rare deviant practices among the natives of a primitive Indian tribe. Upon examination, it was discovered that these were merely altered versions of the original 1933 photos. In order to make the photographs seem authentic, a Mexican saddle had been hand-drawn on the back of a circus draft horse. Another classic picture of sexual activity between woman and horse has been dated to the 1890's.

The pattern for distribution of hard-core photographs often follows the general pattern established by stag films. Many wholesalers carry a line of both stag films and photo sets and sell both to their regular retail outlets. The markup for photo sets is quite a bit higher than for stag films. A set of six or eight photographs cost only a few cents to reproduce and typically sell from \$2.50 to \$10.

There does not seem to be sufficient demand to support much traffic in photo sets at present. Moreover, the net profit is greater on stag films (because of the higher selling price) even though the markup is not as great a percentage. Photo sets are not nearly as significant a factor in the hard-core market as are films or magazines.

HARD-CORE MAGAZINES AND BROCHURES

Hard-core magazines and brochures are generally nothing more than a series of hard-core photographs which have been bound together, and usually range from eight to 32 pages in length. The sexual content of such magazines follows the basic pattern of stag films and photo sets.

Meaningful traffic in magazines and brochures is a relatively new phenomenon, although the form has been present for decades. Apparently the chief outlets for such materials are self-labeled adult bookstores. While films and photo sets are sold by a wide variety of retailers, distribution of magazines has been more restricted. Perhaps the fact that bookstores regularly handle printed media accounts for this. Many "adult" stores carry a small stock of such magazines and will make under-the-counter sales to regular customers. Indeed, in some cities adult bookstore clerks offer such materials almost as soon as a customer walks in the door.²⁸ Some clerks sell hard-core materials under-the-counter with the consent of the store owner, while in other cases this is done without his knowledge.

There are two major supply sources for hard-core magazines in the United States. Since the legalization of pictorial pornography in Denmark and relaxation of enforcement in Sweden, hundreds of new titles (generally 32 pages in full color) have been published. The total number of copies produced runs into the millions. Production in Scandinavia has far outstripped the capacity of the local

28. Personal experience of the Commission staff.

market to absorb the supply.²⁹ Scandinavian publishers have sought to dispose of their product by exporting it. Customs officials believe that some large-scale importation of hard-core magazines is being made. Although the Customs Bureau has not intercepted any large shipments, certainly some bulk importation of Scandinavian magazines is being made, because they are available under-the-counter in some cities. However, most of it is imported on an individual basis by mail order.

In addition, the import trade is supplemented by reprints made in the United States. Full-color magazines have usually been reproduced in black and white in the United States; the resulting versions are vastly inferior to the originals.

Prices for Scandinavian or domestic hard-core magazines generally range between \$5 and \$10. Some magazines or brochures have been quoted at a price of \$20, and perhaps a few have sold at that price. Overall, however, it is doubtful that the average price received exceeds \$8 per copy.

The number of outlets at which hard-core magazines may be purchased is relatively small. Although it is impossible to estimate the total traffic in such materials, they have not been a significant factor in the market to date. However, this may be changing rapidly.

HARD-CORE PORNOGRAPHY AND LAW ENFORCEMENT

Expert commentators on the market agree that most law enforcement officials do not view hard-core material as a serious problem. In part, this disinterest may have an historical basis: very respectable and legitimate organizations were primary customers in the days of rental showings of stag movies. Usually law enforcement officers chose not to intervene. This "live-and-let-live" attitude persists today. If the materials are not displayed or sold openly, and if sales to minors are scrupulously avoided, law enforcement officials will not seek out the sellers of hard-core pornography. Investigations are undertaken and arrests are made only if sales become public and notorious, if a seller carelessly places himself directly in the path of the police, or if a specific complaint is filed by a citizen. Because sellers are discreet and purchasers of hard-core pornography materials are unlikely to complain, such investigations are rarely undertaken, unless the retailer is publicly selling borderline materials in an "adults only" store. Enforcement concentration on individuals who are likely to affect large numbers of the public is probably justifiable on the basis of selective enforcement criteria and ordering of priorities.³⁰

A lenient attitude toward hard-core pornography sellers is not universal. Some law enforcement agencies undertake vigorous investigations with arrest and prosecution as a goal. However, most police appear to believe that ceaseless investigation of the hard-core market has a relatively low priority in a well-

29. Bert Kutschinsky, *Pornography in Denmark: Studies on Producers, Sellers, and Users*, Technical Reports of the Commission on Obscenity and Pornography (Washington, D.C.: Government Printing Office, 1970).

30. Professor William Brown, School of Criminal Justice, State University of New York at Albany notes: The person who is selling hard-core pornography as an isolated case is an extremely small and unimportant operator unless he makes a practice of selling to children or in some way carrying out his business in a manner that would demand attention. No police official in his right mind would want his men hunting such a person down. (Letter dated May 1, 1970, to the author)

ordered program of law enforcement. At present, most police and other law enforcement agencies acknowledge that their major concern in the obscenity field is with the over-the-counter market, which involves public displays and results in numerous complaints from the community. In response to such complaints, the vast majority of time spent by the police on the "vice" of obscenity is directed against public motion picture theaters and self-labeled adult bookstores. Of course, discovery of hard-core sales by such outlets is regarded as a windfall by the police.

One prosecutor (who cannot be identified for obvious reasons) stated that a rather discreditable reason underlies the lack of enforcement activity against sellers of hard-core pornography. The prosecutor stated that the arrest of "some sleazy character" selling hard-core photos or stag movies merits no more than a line or two in the local newspaper, if indeed any note is taken of the police action. On the other hand, arrests of motion picture theater operators or adult bookstore owners make headlines even if no conviction follows.

This lack of concern over the discreet under-the-counter or underground market in hard-core pornography is also reflected in State legislatures and in the Congress. Over the years, numerous legislative hearings have been held on the "problem of obscenity." A review of the records of such hearings discloses that legislators, who can be assumed to reflect the concern of society at large, are primarily concerned with dealers in sexually oriented materials who achieve, or seek to achieve, mass distribution in an open and notorious manner.³¹

Another indication of the relative lack of concern with hard-core materials is demonstrated by the survey of prosecuting attorneys made by the Commission (see Tables 2 and 3).

The public sale of "borderline" materials, which comprise almost all of the materials mentioned, are the chief cause of concern to those prosecutors who view the "obscenity problem" as a serious matter. Note the relatively low level of concern expressed over "stag films shown in clubs, etc.," the only clear hard-core material mentioned.

31. See, for example, *Obscene Matter Sent Through the Mail*, Report to the Committee on Post Office and Civil Service by the Subcommittee on Postal Operations, H.R. 86th Congress, 1st Sess. September 1959; Hearings Before the Subcommittee to Investigate Juvenile Delinquency of the Committee on the Judiciary, U.S. Senate, 89th Congress, Part XVII, *Youth, Obscene Materials and the U.S. Mail*, Dec. 16, 1966 and Feb. 9, 1967; *Parts I and II, Obscenity in the Mails*, Hearings before the Subcommittee on Postal Operations of the Committee on Post Office and Civil Service, H.R. 91st Congress, Aug. 5-6, 1969, October 1, 9, 22, and December 10, 1969.

In these hearings, almost no mention was made of hard-core pornography. The indiscriminate distribution of sexually oriented materials which are described variously as obscenity, pornography, or borderline materials received the most attention.

The Report of September 1959 to the Committee on Post Office and Civil Service summed up a view which continues today:

This material takes various forms. It may be classified into two categories, however, according to the degree of its vulgarity. The first is "hard core" pornography. This consists of depictions of acts of sexual intercourse or perversion. There is no question concerning the illegality of this type of material. It is however, difficult to detect since the producers, knowing that it is clearly outside the law, distributed only by surreptitious means.

The second type is described as "borderline material"; it includes photographs, movies, slides, magazines, and articles which, though unfit for the indiscriminate mind of the child, cannot meet the definition of "hard core" pornography.

The great problem existing today is with the borderline material. (pp. 8-9)

The report makes little further mention of hard-core pornography.

Table 2^a

CONCERN BY SIZE OF COMMUNITY

Q: Are the volume of traffic and patterns of distribution in obscene and pornographic materials within your jurisdiction sufficient to constitute a matter of serious concern to your community?

SIZE OF COUNTY	NUMBER RESPONDING	
	Yes	No
500,000	39	3
100,000-499,999	57	33
20,000-99,999	27	55
20,000	13	68
Total	136	159

^aSee *Report of the Commission on Obscenity and Pornography; Legal Panel*. (Washington, D.C.: Government Printing Office, 1970.)

Table 3^a

KIND OF MATERIAL THAT IS CAUSE OF CONCERN BY SIZE OF COMMUNITY

KIND OF MATERIAL	SIZE OF COMMUNITY							
	500,000		100,000-499,999		20,000-99,999		20,000	
	Item cause of concern		Item cause of concern		Item cause of concern		Item cause of concern	
	No.	%	No.	%	No.	%	No.	%
Erotic films shown in theaters	32	78	36	40	18	22	3	04
Erotic paperback books	31	76	45	50	17	21	11	14
Magazines featuring models with genitals or pubic hair exposed	32	78	32	36	8	10	2	02
Homosexual magazines	26	63	25	28	6	07	3	04
Girlie magazines	24	58	32	36	16	20	8	10
Nudist magazines	21	51	26	29	11	13	6	07
Erotic films for sale or rental	15	37	14	16	6	07	7	09
Underground newspapers	15	37	9	10	3	04	2	02
Sexual devices	11	27	9	10	3	04	5	06
Films shown in arcades or peepshows	10	24	2	02	1	01	0	00
Sex tabloid newspapers	10	24	10	11	3	04	0	00
Still photographs or playing cards	9	22	9	10	2	02	2	02
Other books (marriage manuals, medical books, etc.)	6	15	9	10	5	06	5	06
Erotic literary novels	5	12	15	17	6	07	4	05
Erotic phonograph records	5	12	2	02	0	00	1	01
Stag films shown in clubs, etc.	2	05	5	06	7	09	3	04
Other	6	15	4	04	1	01	0	00

^aSee footnote a, Table 2.

SUMMARY

The nationwide traffic in and distribution of hard-core pornography is only a small part of the total traffic in sexually oriented materials. The exact extent of the distribution of hard-core materials cannot be reliably estimated. Although the hard-core market may be a million-dollar business, it is highly doubtful that these materials make up any substantial percentage of the total traffic in sexually oriented materials. Restrictions placed upon mass distribution by the law severely curtail any large-scale business in this area. While a few operators may make a living from hard-core materials, generally the producers and sellers of hard-core pornography only supplement their regular income from other gainful employment through such sales. As far as can be determined, there are no "kingpins" in the hard-core market. Rather, the market is composed of individual entrepreneurs who scratch out a dollar here and a dollar there. An estimate of a retail market in the range of \$5 million to perhaps \$10 million seems reasonable, but actual sales could very well be considerably less than \$5 million nationwide. A reliable method for making such an estimate does not exist.

There are two important aspects of the hard-core market which have been discussed in earlier sections. First, a substantial and expanding amount of hard-core pornography is sent through the mail from foreign countries, as discussed in Part III. Second, within the last year certain publishers specializing in sexually oriented materials have included hard-core photographs in books and magazines together with non-hard-core textual and pictorial materials. This technique has been discussed in Part II.

APPENDIX

Costs of hard-core film production

EASTMAN KODAK COMPANY^a

June 15, 1970

Dear [Sir]:

.... You requested information regarding the cost of producing pornographic motion pictures.

.... [W]e can properly develop information with regard only to our own products. In addition we have included some price information from what may be considered a typical medium-sized processing laboratory.

Ektachrome Commercial Type 7252 — This is a new product replacing the former Type 7255. This is a 16mm reversal color camera film and the most prevalent used for 16mm productions. It has an ASA speed of 25 and can be pushed in processing for an equivalent ASA speed of 50. 100-foot roll — \$7.10; 200-foot roll — \$13.70; 400-foot roll — \$26.40.

^aThe letter has been edited for brevity. The author gratefully acknowledges the cooperation of the Eastman Kodak Company.

Ektachrome EF Film Type 7241 (Daylight), Type 7242 (Tungsten) — This color reversal camera film is used primarily in television news, and because of its relatively high speed, ASA 160 for daylight and 125 for tungsten, the requirements of supplementary lighting are minimized. The price of this material is the same as that for the Ektachrome Commercial above.

Processing of the Ektachrome Commercial is primarily done in Kodak laboratories, i.e., Color Print and Processing. However, Ektachrome EF films can be processed in many places throughout the United States. At last count, there were approximately 350 licensees to this process.

Ektachrome R Print Type 7388 — This is a reversal print film compatible to the camera film Ektachrome EF. It is priced at \$.04455 per foot. It is available for 16mm printing or for reduction printing to super 8. In the latter case, although 16mm in width, two rows of super 8 can be printed onto it. This film is processed in the same chemistry as the Ektachrome EF and would be the most prevalent for reversal printing.

Black-and-White Reversal Camera Films — We have three black-and-white reversal camera films: Plus-X Reversal Type 7276; Tri-X Reversal Type 7278; and 4-X Reversal Type 7277. The tungsten speeds of this material are 40, 160, and 320 respectively. The price is the same for each film: 100-foot camera spool — \$4.32; 200-foot camera spool — \$8.04; 400-foot roll — \$14.88. These materials can be processed in any black-and-white reversal process. Black-and-white reversal processes are very prevalent throughout the United States.

Eastman Reversal Duplicating Film Type 7361 is the most likely material to be used for prints. As the title indicates, it is a reversal print film and is available at a price of \$.0315 per foot. As with the color reversal print film, this black-and-white reversal print film is available for reduction printing from 8mm.

The above films, camera and print, assume limited number of prints. If any volume was to be obtained, say over 20, the chances are a positive release system would come into play. In this case, materials such as Eastman Color Print Film Type 7381, available for both 16mm prints and super 8 prints. The price in 16mm width is \$.01785 per foot. This material, however, would lead the producer into certain color labs throughout the country. As an example, quantity rates on units of 300 feet or longer, 20 to 49 prints are quoted for 16 mm silent at \$.063 per foot in a lab which we would assume typical.

If printing were to be done black and white on positive material, the equivalent Kodak product would be Eastman Fine Grain Release Positive Type 7302 which sells for \$.01025 per foot. A quantity of 20 to 49 prints would be \$.035 per foot.

This same laboratory quotes contact reversal prints for 16mm 20 to 49 prints as black and white \$.079 per foot, \$.104 per foot for color.

If printing were made by reduction to super 8 and using a quantity of 24 to 47 prints through either the Type 7302 or the Type 7385, the price would be approximately \$.055 per foot for black and white and \$.061 per foot for color.

If release printing were made on reversal print stock, there is only one price, no quantity, black and white \$.123 per foot and color \$.132 per foot.

There are a number of pieces of printing apparatus available on the market ranging from approximately \$1,000 to very sophisticated equipment in the order of \$75,000 to \$100,000. The later equipment will be found in very large sophisticated laboratories, and the printing rates in speeds would be in the order

of 100 feet per minute. The cheaper equipment is very slow and the output would be in the order of 10 feet per minute.

... it is hard to go beyond this point. There could be editing costs and other complications of production, including sound. The type of production being investigated is not of the normal variety and it is hard to give any guidelines. Certainly the price of the finished product would have little resemblance of the raw stock and processing costs involved. The other thing that is a guide at this point might be the relative comparisons between black and white and color raw stock.

There are a great many types of processing machines now on the market. With the advent of Ektachrome type color films, color processing is now becoming as prevalent as black and white was formerly in the marketplace. TV news has had a requirement for rather small compact color reversal processing machines, and several of these are available in the order of \$10,000.

Part V

Conclusions

The preceding four parts of this report have been concerned with an objective statement of the facts as found by the author regarding the traffic and distribution of sexually oriented materials in the United States up to August, 1970. Insofar as possible, a conscious attempt was made to preclude any bias or personal subjectivity from intruding into the discussion. In addition, there was an attempt to refrain from drawing conclusions about the data presented, leaving such conclusions to the reader. In this brief section, the author believes the reader is entitled to know his conclusions about the marketplace drawn from over fifteen months of study.

The first basic conclusion is that at the present time sexual stimuli in the media discussed (books, magazines, motion pictures and mail order) are extremely commonplace. The degree of explicitness varies considerably within and between these media, depending upon the audience sought by the producer. However, in all media and for all audiences, the degree of sexual explicitness has greatly increased since 1960. This trend rapidly accelerated during 1969 and 1970. The 1960s saw a shift of such major proportions that the degree of explicitness at the frontier in 1960 is now found in mass media widely distributed to the general buying public. During this same period, the most explicit materials available on the open market became more and more graphic. By August 1970, the most explicit materials available "above the counter" were approximately equivalent to the most explicit materials ever produced for covert sale.

In conjunction with these changes, the sub-industries producing the most explicit "adults only" publications and motion pictures openly available have solidified and expanded. In proper perspective, production of "adults only" materials remains a relatively minor business in the total U.S. economy. Nonetheless, some producers of explicit materials can and do find the business very lucrative, especially when judged on an individual basis.

The second major conclusion to be drawn from the data is that there is a significant market for sexually oriented materials of varying degrees of explicitness in all media. To the producers of such materials, whether aimed at mass distribution or at the limited "adults only" market, the opinion of the general public exerts a very limited influence. For example, the views of the general public about the sexual content of general release motion pictures or widely distributed books and magazines cannot be determinative of a producer's business judgment. The view of the actual purchaser of a particular media is all important. This is no more than simple good business sense. It is clear that a significant proportion of the customers of the various media discussed will purchase a variety of sexually oriented materials.

The final conclusion based on the study of the 1970 market is that the most explicit materials available are approximately equal to the self-labeled "pornography" openly sold in Denmark and Sweden. The 16mm motion pictures exhibited in many cities in the United States in public theaters (sometimes with a

“private club” facade) do not differ one iota from the “pornographic sex films” exhibited in Denmark. While it is true that the self-labeled “pornographic” magazines sold in Denmark are not ordinarily sold openly in this country, the American version of such publications is virtually as explicit. The only difference between Danish “pornographic magazines” and the current crop of American “adults only” illustrated paperback books and magazines is that the latter contain a significant amount of textual material. The degree of sexual explicitness in the photographs contained in both are identical. Thus, with only this minor reservation, it can be stated that the so-called “Danish experiment” is currently underway in the United States.

Predictions for the future are hazardous, at best. However, the author is willing to venture that, in the absence of new and sweeping rulings by the Supreme Court, distribution of the most explicit possible sexual materials will increase both in volume and in nationwide coverage (at least in metropolitan areas) in the near future. That is, “16mm stag films” shown in theaters open to the public and illustrated publications containing photographs of graphic coitus, fellatio, cunnilingus, etc. will capture much, if not all, of the “adults only” market.

The degree of explicitness in more widely distributed materials, i.e., mass market books and magazines and general release motion pictures, will probably not change markedly in the near future.

Long range predictions about the future of sexually oriented materials are beyond the competence of the author. Only time will tell whether today’s American version of the Danish experiment will continue unabated and become an ingrained part of society, or whether the buying public will grow tired of such materials. In addition, the market does not operate in a vacuum. It is possible that new court decisions will reverse the apparent trend of the marketplace.

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