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National Campaign for the Reform of the
Obscene Publications Acts
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4 September 1981

Dear Mr Webb,

I am writing to a number of interested bodies to seek their assistance in the consideration which we are giving to the position of commercial cinema 'clubs'. I think it may be helpful if, before inviting your views on certain proposals, I describe briefly the background to this request.

Section 5(1) of the Cinematograph Act 1952 contains an exemption from cinema licensing requirements for cinematograph exhibitions 'to which the public are not admitted'. This exemption was intended to apply to non-commercial exhibitions organised by film societies and other bodies. But it has been exploited by commercial cinemas, operating, or rather purporting to operate, a club system, with the result that such cinemas are able to show uncensored films and do not have to comply with the fire and safety requirements imposed in regulations made under the 1909 and 1952 Cinematograph Acts. The Cinematograph and Indecent Displays Bill, introduced in 1973 by the Government of the day, sought to correct the position by excluding from the exemption from licensing cinematograph exhibitions promoted for private gain. But the Bill fell with the Dissolution of Parliament in February 1974. Subsequently the position of these 'clubs' has been considered by the Williams Committee on Obscenity and Film Censorship. The Committee saw a need to introduce some control over the nature of the films shown in the 'clubs' and over the conditions in which they are exhibited. The Committee proposed that, as in the 1973 Bill, the exemption from film censorship should not apply to exhibitions promoted for private gain. The Committee also recommended, however, that a new '18R' film certificate should be introduced with the intention of permitting at least some of the uncensored films presently shown by these 'clubs' to be exhibited, under this certificate, to a restricted audience in any cinema which had been designated for this purpose by a local authority.

In a debate on the Committee's report in the House of Commons on 26 June, Mr Mayhew, the Minister of State, re-affirmed that the Government saw no early prospect of general Government legislation on the matters considered by the Williams Committee. He made it clear, however, that the Government supported the continuation of the pre-censorship of films. With regard to the commercial cinema 'clubs', Mr Mayhew said that the Government agreed with the Committee's view that the present position is unsatisfactory and that it should, if possible, be remedied. He went on to say that this might be a matter in which, failing agreement on more comprehensive legislation, some limited action might be taken which would be widely supported. Mr Mayhew added, however, that it was clear that the Committee's proposals for an '18R' film certificate were controversial.

It is against this background that we have been considering what steps it would be necessary to take if it were intended to ensure that the commercial cinema 'clubs' had to comply with the censorship and safety requirements applying to other commercial cinematograph exhibitions. Our provisional view, on which we should value your observations, is that the most satisfactory approach would be, as was proposed in the 1973 Bill, to amend the exemptions from licensing in section 5 of the 1952 Acts so that they would not apply to exhibitions promoted for private gain. You may find it helpful, in considering this suggestion, to refer to Appendix A to this letter in which is reproduced the text of the relevant part of the 1973 Bill as it would have looked had Government amendments tabled for the Commons Report Stage of the Bill been accepted. (Clause 1(1)(b) would have effected the amendment to section 5 of the 1952 Act; clause 1(1)(a) was intended to ensure that a cinema 'club' could not open in a large private house and thereby take advantage of the exemption from licensing in section 7(4) of the 1909 Act in respect of exhibitions given in private dwelling houses to which the public are not admitted; and the remainder of clause 1(1) provided that the Commissioners of Customs and Excise should not give a certificate of exemption under section 5(4) of the 1952 Act to an organisation if it appeared to them to be giving exhibitions promoted for private gain. Clause 1(2) was a 'deeming' provision by virtue of which exhibitions of a certain character were to be deemed to have been promoted for private gain unless the contrary was shown.)

Our present view is that the objective of bringing the commercial cinema 'clubs' within the ambit of the cinema licensing system should not affect in any way the position of bona fide film societies or other societies which occasionally give cinematograph exhibitions to which members of the public are admitted on payment. The 1973 Bill contained, on introduction, a clause which would have enabled licensing authorities, at their discretion, to impose controls over exhibitions given by such bodies if the exhibitions were publicly advertised and a charge made for admission. We would not envisage, however, that this proposal would be revived. Indeed, it might well be possible to ensure that, as subsection (3) of the clause in Appendix A was intended to do, a commercial exhibition given for the benefit of a society as a whole would not bring the exhibition within the scope of the cinema licensing system.

We would not expect any amending legislation giving effect to the above proposal to alter in other respects the existing film censorship arrangements. But it would be for consideration whether other minor reforms of the Cinematograph Acts might be made at the same time. These might include the following:

- (i) revision of the definition of 'cinematograph exhibition' in section 9(1) of the 1909 Act in the light of subsequent technological changes, in particular the use of video equipment;
- (ii) an increase in the maximum penalties (currently a fine of £200 and, in the case of a continuing offence, a further fine of £5 per day) under section 3 of the 1909 Act for giving an unlicensed exhibition or one which is in contravention of the terms of a licence;
- (iii) reformulation of the latter offence so that (as proposed in a Government amendment tabled for the Commons Report Stage of the 1973 Bill) liability would be placed on any person concerned in the organisation or management of the offending exhibition rather than, as at present, on the owner of the apparatus and the occupier of the premises;

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(iv) provision of powers for the police to seize, and the court to order forfeiture of, property (eg projectors) used in the commission of an offence.

I should emphasise that the various possibilities mentioned in this letter are no more than our provisional view of the action which it would be necessary to take - should Ministers conclude that this is desirable - in order to remedy deficiencies in the operation of the Cinematograph Acts 1909 and 1952 and that they should not be taken as implying any commitment on the Government's part to bring forward legislation on these lines.

This letter equally implies no commitment as regards any resource implications of these legislative options; on this it would be particularly helpful to receive comments on whether - bearing in mind the existing extent of local authority and police involvement with such premises - there would be likely to be any resulting impact on local authority expenditure. Our preliminary analysis suggests that, for cinema licensing authorities, the extra burden would be small and perhaps offset by the payment of licensing fees - which are now set at a realistic level. There may also be a limited amount of extra work for fire authorities in Metropolitan areas - but this may be offset by the extent to which they are already informally involved with such premises. It would be helpful to have advice on this specific aspect of the problem.

We should, therefore, find it extremely helpful to receive any observations you may care to make on these proposals or on any other related matters which you think should be considered. It would be particularly welcome if these could reach us by the end of September. We should, in any case, be glad to have provisional comments by then. We should be very willing to arrange a meeting in the course of this month if you would find it helpful.

I am sending copies of this letter to the bodies listed in Appendix B.

Yours sincerely
M E Head

M E HEAD

Clause 1 of the Cinematograph and Indecent Displays Bill (as amended at Commons Committee Stage and with the addition of Government amendments tabled for Commons Report Stage)

1. (1) An exhibition which is promoted for private gain shall be excluded -

- (a) from the exhibitions to which, by virtue of section 7(4) of the Cinematograph Act 1909 (exhibitions in private dwelling houses) that Act does not apply; and
- (b) from the exhibitions which are exempted exhibitions for the purposes of section 5 of the Cinematograph Act 1952 (exemption from licensing and certain other requirements);

and the Commissioners of Customs and Excise shall not give a certificate under section 5(4) of the Act of 1952 with respect to any organisation the activities of which appear to them to consist of or include the giving of exhibitions promoted for private gain.

(2) If in proceedings for an offence under section $\sqrt{3}$ of the Cinematograph Act 1909⁷ any question arises whether an exhibition was promoted for private gain and it is proved -

- (a) that payment was required for admission to the exhibition or to the premises at which it was given and that the exhibition was advertised to the public; or
- (b) that any facilities or services provided for persons admitted to the exhibition were provided for private gain; or
- (c) that the amount of any payment falling to be made in connection with the promotion of the exhibition was determined wholly or partly by reference to the proceeds of the exhibition or any facilities or services provided for persons admitted to it.

the exhibition shall be deemed to have been for private gain unless the contrary is shown.

(3) Where the proceeds of an exhibition promoted by a society which is established and conducted wholly for purposes other than purposes of any commercial undertaking are applied for any purpose calculated to benefit the society as a whole, the exhibition shall not be deemed for the purposes of this section to be promoted for private gain by reason only that the application of the proceeds for that purpose results in benefit to any person as an individual.

(4) In subsection (3) of this section 'society' includes any club, institution, organisation or association of persons, by whatever name called.

Association of Chief Police Officers
Commissioner of Police of the Metropolis
Association of County Councils
Association of District Councils
Association of Metropolitan Authorities
Greater London Council
Magistrates' Association
Association for Cinema Club Standards
Association of Independent Cinemas
Association of Specialist Cinemas
British Academy of Film and Television Arts
British Board of Film Censors
British Federation of Film Societies
British Film Institute
British Film Producers' Association
Cinematograph Exhibitors' Association
Independent Film Distributors' Association
Institute of Amateur Cinematographers
Society of Film Distributors
Defence of Literature and the Arts Society
National Campaign for the Reform of the Obscene Publications Acts
National Viewers' and Listeners' Association
Nationwide Festival of Light
Joint Fire Prevention Committee of the Central Fire Brigades Advisory Councils
Cinematograph Films Council