THE MOTION PICTURE INDUSTRY IN POLITICS
AND GOVERNMENT

A Thesis Presented for the
Degree of Master of Arts

By

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THE OHIO STATE UNIVERSITY
1947

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INTRODUCTION

The motion picture industry possibly has had more publicity lavished upon it than any other industry in the world. Yet this publicity seldom delves any deeper than concern with the love lives of the personalities associated with the screen, the habiliments of these personalities, how much money was spent on a highly-touted production, or indignant editorials against the destructive influences that an unbridled cinema brings to bear on immature and unstable minds.

Little information finds light in the popular press concerning the guiding hands that pilot the vehicles of the industry through the critical period of corporation finance that precedes the production, distribution and exhibition of films. True, there may appear on the financial pages of the newspapers of the nation from time to time a few paragraphs informing the reader that Atlas Corporation has acquired a substantial block of shares in Twentieth Century-Fox Corporation, or that Metro-Goldwyn-Mayer is no longer a separate corporation but merely the producing division of Loew's, Incorporated. But the circumstances which led up to these occurrences are not often revealed.

The sad fact - for the inquisitive - is that the precise terms of operation of the motion picture industry have been and are suppressed. As the biggest customer of other media of communication it compels the others to obfuscation. Publishers, for instance, have too much to lose by freeing in print knowledge of the machinations of film producers and distributors. This power of filmdom and reticence of the publicists have grown with the years. It was headlined in the trade publication Film Daily for March 13, 1945 that story pools of the major producers were valued at $25,000,000. This marks an increase
of four hundred per cent, according to *Film Daily*, in the past ten years.

News of threatened censorship of movies is occasionally brought to the attention of the public. It is perhaps significant that arguments against censorship are more available than are the pleas of reformers for enlightened supervision of entertainment media. Textbooks may weigh the values of censorship on the one hand and our familiar doctrine of freedom of speech and action on the other hand, but it is to be remembered that textbooks have limited circulation at best.

Provisions of bills proposing statutory regulation of the motion picture are often vaguely reported in the least-read sections of newspapers. Anti-trust litigation usually creates more stir, but the same vagueness is apt to prevail as to prayer of the prosecution.

It can be reasonably assumed that every moviegoer — casual or inveterate — is conscious of the Hays Office. Some may even know that its official name was Motion Picture Producers and Distributors Association, Incorporated. Also that under Mr. Hays’ successor, Eric 1 A. Johnston, it has merged with the Association of Motion Picture Producers to become the Motion Picture Association of America, Incorporated. It would be venturing on less safe ground, though, to predicate that the reasonably well-informed citizen is aware that the Hays organization is a trade association conspicuously successful in defending the trade practices of the industry it represents against the everpresent menace of legislative or anti-trust action.

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1 Mr. Johnston replaced Mr. Hays in November 1945 (*Cf Film Daily Yearbook for 1946*)
The history of the film industry has been marked throughout by expediency. Inasmuch as its very existence is dependent on public acceptance of its product to a degree very much greater than that of any other comparable industry, it is forced willynilly to accede to social pressures brought to bear against it. Because of its peculiarly vulnerable position and exposed finances, the motion picture industry is in the position that the railroads used to occupy. State legislators and some congressmen know all too well about the movie gold. As a result the Hays organization and the industry at large have been unmercifully victimized by some of the state capitol gangs. Measures to clamp down rigorous censorship and regulation on motion picture theaters are regularly introduced in some state legislatures for no other reason than to collect on nuisance value. The fight filmdom may put up against the weapons of the opposition must be covert and yet not arouse public suspicion. In such cases the MPPDA (now MPAA) is forced to protect producer interests as best it can. On the whole, representatives of the industry have been able to protect it against direct opposition. Although the economic position of filmdom in the political arena has become more and more embattled - especially true under the New Deal of Franklin Roosevelt - it has thus far suffered few changes of form.

One is inevitably confronted by the Hays Office in examining the politics of the movie-making business. It is the buffer which the industry has put between itself and the public. It is a trade association, yes, but it is much more than that. The Temporary National Economic Committee study epitomizes it thusly:

Crawford, Kenneth G., *The Pressure Boys*, p. 92
"... (It) is an illuminating example of the cooperation of large business units for self-protection. It was then and it is today, supported exclusively by the large companies. It was conceived in fear of regulation of the industry by the public and dedicated to the proposition that outsiders should never dictate its policies".3

The far-flung contacts MPPDA made throughout the nation with influential groups, clubs and associations by means of its Community Service Department (originally the Public Relations Committee) is truly remarkable. In answering the charges of angry reformers, both social and economic, compromise and expediency—tried and true stand-bys of the politicians—have been offered.

Robert A. Brady's significant book on trade associations offers these comments which can be especially applied to the MPPDA and the new MPAA:

"...(Trade associations), regardless of the original purposes of their sponsors, rarely confine themselves for long to strictly 'economic' matters. As a general rule, the bigger and more comprehensive trade associations become, the more clearly do social and political policies edge to the fore. Economic problems thus come to be quickly inter-twined with these other issues, and the trade association begins to take on an entirely new cast of thought and to hew a line in keeping with newly transformed political directives".4

The Hays Office is the storm center of a host of angry charges from the various corporations which form the industry, most of them initiated by the smaller units (who consider themselves maltreated by the more powerful organizations). For years trade papers have blasted the Hays Office for what was called its do-nothing record. Some think the Code instituted to guide production ethics is outgrown; others are angry at foreign quotas that limit US films abroad.

3 U.S. Temporary National Economic Committee, Monograph No. 43, The Motion Picture Industry—A Pattern of Control, p. 6
4 Business As a System of Power, p. 11
Warners' was obliged to pay full-rate salaries to borrowed stars who appeared in Hollywood Canteen, a philanthropic venture for the Army Relief Fund. Warner Brothers paid the Screen Actors Guild $250,000 out of court to settle the affair and announced sourly that the Hays office had not given them any aid. Business Week, June 30, 1948, p. 26
"evidence" in defense of the trade practice of block-blocking, among others. They contend that the movies can protect their enormous investment in their products in no other way. The part restrictive trade practices play in the structure of the industry is expanded on in Chapter IV.

The big movie producers have fortified themselves against the eventuality of loss. They own the key houses in the major cities. Within less than twenty years five firms achieved apparently stable control over an industry consisting originally of thousands of independent units. The recent economic study of the motion picture industry quotes the Bureau of the Census in reporting 15,115 theaters operating in the United States in 1939. Approximately sixteen per cent, or 2600, are owned by the five integrated (vertical combine covering production, distribution, exhibition) companies, which dominate the industry through such ownership of a relatively small proportion of the total number of theaters. In addition, the present companies through contract agreements control the motion picture players and directors and others of high technical ability. Production equipment and personnel may be jointly used through mutual loans. These facilities are not generally available to independents on these terms.

From its beginning the industry has been characterized by some form of domination. Delimitation of the practices developed to maintain control over the field and to render it profitable is the purpose of this report. Usually such studies are made from the point of view of the economist. The writer has attempted herein to describe the motion picture industry in the light of the politics of business.

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Huetter, Mae D., *Economic Control of the Motion Picture Industry*, p. 6, 8
More emphasis has been placed on the period since the advent of sound because published materials with regard to movie politics are scarcer in this latter-day period. Also, the history of the motion picture industry since assumption of control by the major financial interests shows more clearly the rallying cry of industrial warfare in the battle of producer interests against consumer interests. The clash of producer outlook with distributor outlook is apparent in every phase of this strange amalgamation of art and commerce. With rare exception, efforts of the movie makers to keep their own house clean are shown to be subterfuges designed to placate reformers who would relegate accumulation of profits to a position decidedly secondary to that of production of films with undistorted social values. The entire story of American moviemaking is one of obstinate hostility on the part of the controlled industry to any governmental regulation designed to further the public welfare through discriminating employment of this marvelous medium of communication.
CHAPTER I

CONSOLIDATION AND INTEGRATION OF THE MOTION PICTURE INDUSTRY

I. THE MOTION PICTURE PATENTS TRUST

Motion picture producers have found it expedient to keep a
weather eye on governmental probings into cinematic affairs ever
since 1913, when William Fox took advantage of the strong anti-trust
sentiments crystallizing under the first Woodrow Wilson regime to
accuse the Motion Picture Patents Company of violation of the Sherman
anti-trust law. This firm, which controlled patent rights to Thomas
Edison's camera and Thomas Armat's projector, had issued licenses to
its nine producer members which gave them the legal right to manufac-
ture motion pictures.

Organization of the Motion Picture Patents Company in 1908 had
been prompted by the pyramiding demand for pictures after the phenomenal
success of The Great Train Robbery, made by Edwin S. Porter for the
Edison Company in 1903. Recognition of the financial potentialities
of the movies led to the pumping of new capital into the field and
the beginning of a monumental struggle for control. The three pioneer
manufacturers - Edison, Biograph and Vitagraph - had banded together
with seven other producers and one major distributor of foreign films

Few industries are of lower origin than the film - which may account
for the jealousy with which big-name producers today guard their
respectability. Many of the men responsible for the industry's
original growth were emigrants from central Europe and of Jewish
extraction; they had encountered prejudice and opposition in associ-
ating themselves with other industries. Terry Ramsaye's A Million
and One Nights (v. 1 and 2. New York: Simon and Schuster, 1926)
is the most definitive work on the mushrooming of movies from the
peep-show stage into a billion dollar industry.
in order to protect their legal rights against the mounting number of manufacturers, importers and exchange men. The Patents Company had issued licenses to exhibitors for a weekly fee of two dollars. This license entitled the exhibitors to use projectors and to rent films from members of the trust. Confiscation of projectors and stoppage of service, as well as prosecution under the patent laws, was threatened to any exhibitor who dared to show any film made by an outlaw firm.

In order to secure its monopoly control the Motion Picture Patents Company in 1910 established a national film exchange, the General Film Company. This firm swallowed up all the licensed film exchanges but one, so that by January 1, 1912 all the principal exchanges - fifty-seven out of fifty-eight - had been bought out. The one company that did not succumb was the Greater New York Film Rental Company, owned by William Fox. Fox, who owned many theaters in New York City, was powerful enough to become one of the leading opponents of the trust. He undertook the production of movies and instituted the lawsuit above-mentioned against the Patents Company as an unlawful conspiracy in restraint of trade. The lawsuit eventually resulted in dissolution of the Patents Company by the courts in 1915.

Despite its formidable threats and apparent strength, the Motion Picture Patents Company engendered more competition than it killed, so that by 1912 dozens of firms were offering stiff competition to the trust. Most important among the outlaws were Fox and the R.P., headed by Carl Laemmle. Also, most important among the protective organizations formed to fight the trust - the organization was dubbed "Patents Company without the patents" - was Laemmle's Motion Picture
Distributing and Sales Company. This company was prepared to sell
and ship bootleg products of any independent producer. It collected
fees and deducted a percentage from its members' receipts for a common
defense fund in the battle against the trust.

The period before the first world war was replete with cutthroat
competition and multiplying lawsuits. Indeed the hegira to Los Angeles
from New York by the independent producers was prompted in part by the
nearness of Mexico as a haven from injunctions, subpoenas and thugs
hired by the enraged patent owners to smash their equipment. The
acute competition focused attention on self-improvement, and the
quality of the motion picture was raised in order to attract people
of higher economic status into the burgeoning "movie houses". All the
while, vaudeville was steadily being relegated to a secondary position
in the world of popular entertainment.

Again Carl Laemmle, with his advertising genius Robert H. Cochrane,
impelled a new development in the cinema world, the "star system",
as a means of drawing customers away from the pictures of his licensed
rivals. General Film had made no effort to exploit the popularity of
"Little Mary" Pickford after exhibitors noted that audiences partic-
ularly liked the Biograph pictures in which she played. Laemmle there-
upon snatched her away from Biograph, put her name above the title of
the film in which she was acting, and the race of stars began.

II. COMBINATIONS, WAR AND THE BATTLE OF THE THEATERS

Wall Street entered the fray to break Laemmle in 1912 when the
banking partnership of Kuhn, Loeb and Company launched the Mutual
Film Corporation for the release of the new feature pictures which
Adolph Zukor's Famous Players-Lasky Company had introduced. Zukor
became a dominant figure in the movie hierarchy when, again with the aid of Kuhn, Loeb, he combined Famous Players-Lasky with W.W. Hodkinson's Paramount film exchange to form Paramount Pictures.

The introduction of feature pictures immediately caught the public taste, and they became the vogue. Within a few years Zukor's firm, which was releasing three or four features a week to some five thousand theaters, was charging as high as $700 a week for a single feature, when before 1914 the highest prices received by the members of the patents trust for their short films had been $150 a week. Dogged refusal by the members of the trust to make the more expensive features led to the shrinking of the once-powerful General Film Company into insignificance. Both Edison and Biograph sagged and expired. Taking a tip from Zukor, survivors of the combination merged. The resulting coalitions were VSLE and Triangle. The latter firm, later known as Fine Arts, had the three leading directors of the industry - Thomas Ince, D.W. Griffith and Mack Sennett - in charge of its production studios. While these consolidations were being effected, however, Paramount, Universal (Laemmle's organization) and Fox were making rapid strides forward both in perfecting the motion picture art and in controlling film outlets.

Movie making had become a large-scale operation predicated on a mass market. The old Bronx and Flatbush studios in New York had become inadequate. Passage in 1917 in New York of the Wheeler Bill, which provided for the taxation of manufacturers of motion pictures, assured removal of the film industry to California. Hollywood and adjacent areas became the setting for magnificent new studios where companies tried to outdo each other in the size, scope and equipment of their production plants. Costs of production skyrocketed with
development of new processes, payment of screen rights for stories, specialization of crafts and increase of personnel, and the astronomical figures of the salaries being paid to stars.

Producers were faced with the dilemma of how to standardize production. The three principal means of stabilizing production adopted were the star system, the formula picture - dramas or melodramas, romances, action pictures, thrillers, comedies, and large-scale advertising, or exploitation campaigns. The heyday of the directors gave way to businessmen armed with production charts. It soon became clear to the moviemakers that large-scale production was practicable only if accompanied by large-scale distribution and consumption. Making of profits, elimination of rivals and control of the market depended on quantity distribution. Attainment of such distribution therefore became the goal of the competing movie magnates.

Zukor's Paramount brought forth the producer-distributor plan known as block-booking. Under the plan an exhibitor contracted in advance to buy a stated number of films to be made within a definite time. Paramount promised quality films and the exhibitor advanced a certain sum of money on account. Advantages of the plan were obvious to other producers, who quickly adopted it. Block booking had vital consequences on the industry in that it led to new standards in the rating of films. The principal attendant evil of the system was that promises of the producers often were not lived up to. Film rental prices became exorbitant and malicious tactics were adopted to make the exhibitor dependent on block booking.

Animosity of the exhibitors toward block booking mounted rapidly. In 1917 twenty-seven executives of established theater circuits, which included many important first-run houses, established its own distri-
buting organization, First National. A bitter struggle for control
of distribution ensued between First National and Paramount. Paramount,
in order to retain leadership, was forced to enter the exhibition
business, while First National became producers. A temporary suspension
of block booking was accomplished at length, and by 1918 the system
presumably had been killed.

Newsreels also figured in the maneuvers which had broken up the
patents trust. William Randolph Hearst, whose quarrel with the
financial interests back of some members of the movie trust had been
evidenced earlier, was a principal disrupting factor. One instance
of the quarrel occurred in 1904 when he was defeated for the Democratic
presidential nomination by the Rockefeller candidate, Alton B. Parker.
Another occasion, perhaps connected, was his defeat for governor of
New York in 1906 by Republican Charles Evans Hughes. Hughes' campaign
fund held contributions from J.P. Morgan, John D. Rockefeller and Kuhn,
Loeb and Company. Hearst's entry into the motion picture accompanied
organization of Hearst papers' photographic departments into a world-
wide picture syndicate service. The first Hearst newsreels were refused
distribution by the trust's Pathe News, but arrangements were soon made
by Hearst with another trust member, Selig, for their distribution
through the General Film exchange. At this point Pathe withdrew from
General Film and began its own competitive exchange. DuPont money
was introduced into the French and American Pathe companies. Pathe
then expanded its production and distribution facilities to include
features and other shorts.

Rockefeller interests, represented by the American Tobacco Company
(through Benjamin B. Hampton, one of the chroniclers of movie history)

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6 Johnston, Winifred, Memo on the Movies: War Propaganda, 1914-1939,
p. 10, 11
and Standard Oil, also furnished backing for studios later swallowed up in the postwar era of mergers: Triangle and Greater Vitagraph. William Fox's jump into the ranks of the screen mighty was aided by Tammany and Washington political alignments and financial backing by a group of Newark, New Jersey capitalists headed by the then president of the Prudential Life Insurance Company, John F. Dryden.

Winifred Johnston wrote in *Memo on the Movies: War Propaganda, 1914-1918* that

"In the years between 1914 and 1918 the American motion picture industry suddenly came into its present position of importance as the purveyor of world entertainment. With the entertainment went ideas. The American movies became doubly interesting to financial interests: first as an investment; second, as an influence on public opinion".9

The latter interest was evidenced by a number of the films produced during the first world war. While the war was still primarily a matter of European concern, some films and newsreels showed sympathy for the Germans. But after the sinking of the *Lusitania* newsreels showing litters of wounded German soldiers and features with any suspicion of a pro-German attitude were smothered. In their place were substituted such films as *Battle Cry of Peace*, which had been based on Hudson Maxim's book *Defenseless America* and *Hearts of the World*. The latter film was D.W. Griffith's effort to get on the war band-wagon after having made the stirring pacifist film *Intolerance*. Henry Ford castigated *Battle Cry of Peace* in full-page advertisements throughout the country as "plain propaganda for professional war merchants and munitions makers". Ford further pointed out that Maxim munitions stock was then on the market. As the war fever progressed, more and more films were produced which extolled the

9 Ibid, p. 6
10 Ibid, p. 27
Allied countries in all their valor. With American entry into the war - just three days before the Supreme Court finally dissolved the Motion Pictures Patents Company by declaring that the purchaser of a patented projector could not be legally forced to exhibit only the manufacturer's own films - Hollywood movies began to heap the most execrable insults upon German Kaiser and people.

The industry's War Cooperating Committee, headed by William A. Brady and including most of the top producers, aided the United States Committee on Public Information in making propaganda pictures "as long as they returned money to the producers". In connection with forces behind the war films, Miss Johnston made much, in her pamphlet, of the English financing which first put the DuPont family among the financial giants, Morgan-partner Henry Davison's chairmanship of the American Red Cross (with relation to distribution of movies to troops abroad), and the activities of Cleveland H. Dodge, the munitions maker generally regarded as Woodrow Wilson's financial backer.

During the last months of the war DuPont and Chase National Bank money enabled Edgar Selwyn and Samuel Goldfish to form Goldwyn Pictures Corporation and to move into the studios of the collapsed Triangle. Lewis Jacobs notes the new Samuel Goldwyn, "the late Samuel Goldfish, not dead but legally annihilated". Marcus Loew, a theater magnate who owned a chain of seventy important houses, in 1919 acquired control of Metro studios, which dated from 1915. The formation of Metro-Goldwyn-Mayer in 1924, and its combination with Loew's, Incorporated - which was for many years under the aegis of the banking firm of Lehman

11 Ibid, p. 33
12 Op. cit., p. 424. The erstwhile glove salesman liked the name "Goldwyn" so well that he adopted it as his own, after court approval.
Brothers - was the first important integration of production, distribution and exhibition. This was the organization which was to have such peculiar financial and political entanglements with the future affairs of Ufa, the company supported by German munitions makers.

Upon completion of these important mergers, savage battles were fought for control of the big theaters. The principal participants were Paramount, First National and, to a lesser extent, Loew's. Independent theater owners were forced to the wall and often squeezed out of business. The Federal Trade Commission temporarily halted the operations of Paramount's Adolph Zukor, who had managed to acquire a block of First National stock and was boring from within, on charges of violation of the Sherman Act by producing, distributing and in addition owning from 400 to 600 theaters. Zukor, however, formally separated production and exhibition units of Paramount into Paramount Pictures and Publix Corporation in order to satisfy the letter of the law. With the absorption of the Balaban-Katz circuit of theaters into Publix Corporation the power of First National was broken. When Warner Brothers became a major studio in 1929 through purchase of the powerful Stanley group of theaters, First National lost its independence and was eventually engulfed by Warner Brothers.

III. SOUND PICTURES, DEPRESSION AND A PATTERN OF CONTROL

The year 1929 is generally regarded by current cinema historians as the final year of the motion picture industry's developmental period. The "maturity" of the industry was reached after the bombshell of sound films had been launched by the Warner Brothers in 1927 and their
production of Al Jolson's *Jazz Singer* achieved great success. Fox matched the Warners' Vitaphone with his own more flexible Movietone system in the same year. Other companies held out until the middle of 1928 when the enthusiasm of the public for the sound film could no longer be denied. Anxious to get their own "talkies" on the market and to overtake the lead of Warner Brothers and Fox, they signed so-called "suicide contracts" with Electrical Research Products, Incorporated (ERP). This firm was and is the sound equipment division of Western Electric, manufacturing subsidiary of the Morgan-controlled American Telephone and Telegraph Company.

Radio-Keith-Orpheum Corporation appeared in 1928. It had been organized by Radio Corporation of America (which was originally an outgrowth of the Rockefeller's General Electric Company) to make talking pictures with the RCA-developed equipment, Photophone. Producing and distributing organizations were acquired through the purchase of Films Booking Office Productions (FBO), Incorporated, and the Pathe exchanges; the name was changed to RKO-Radio Pictures, Incorporated. Soon thereafter a controlling interest was acquired in one of the country's largest theater chains, Keith-Albee-Orpheum, along with additional theaters. The history of RKO-Radio might well be called "How to Become a Major Motion Picture Company, Even Though Late". The other two firms, which have not been mentioned before, of what has come to be known as the Big Eight are Columbia Pictures Corporation and United Artists. Columbia was formed in 1924 by producers Harry and Jack Cohn with the financial backing of banker A.H. Gianinetti through purchase of a number of independent film exchanges and short subject producing companies. United Artists originally took form in 1919 — also

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13 Huettig, Mae D., *op. cit.*, p. 48
with Gianinni money, in part - as a distributing company for the productions of those stars and directors whose talents had become too high-priced for permanent maintenance on the payrolls of other studios (i.e., Mary Pickford, Douglas Fairbanks, Charlie Chaplin, and D.W. Griffith).

The "Battle of the Theaters" that had occupied the first years of the postwar decade gave way before the scope of operations offered by sound, which wrought further changes in the business of making, distributing and exhibiting motion pictures. The great crash of 1929 and the ensuing depression panicked the nation. Despite the loss of many movie fortunes and lowered consumer purchasing power, however, sound was successful at first in keeping box office receipts at a high level. Difficulties were experienced by most of the big companies as their theater holdings and real estate investments depreciated. Too, the installation of sound equipment in both studios and theaters proved to be a heavy financial burden. The peak box office year of 1929, which was probably in excess of a billion and a half dollars, was not again approached until the war boom of 1942.

The modern financial rank of the industry came out of the battle for sound. The tremendous expense of installing sound equipment and producing talking films required a concentration of capital which the movie magnates themselves could not amass, especially when they were also faced with the debacle of the stock market crash and the concomitant depression. Naturally enough they sought assistance from the great banking houses. Wall Street had "gazed in astonishment at what appeared to be a depression-proof industry" and was only too willing

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Hampton, B.B., A History of the Movies, p. 408, quoted in Huettig, Mae D., op cit, p. 53
to lend money in return for the hypothecated stock of the motion
picture producers' and exhibitors' corporations, plus positions on
the boards of directors of these corporations.

Western Electric had nurtured the Warner experiments with sound
film, so after the success of Vitaphone — in line with the new-born
determination of the Morgan interests to control the sound film
industry — lengthy court battles were held between Vitaphone and ERPI
as to who should control the patent rights. The litigation was
finally settled in 1935 when the Telephone Company's affiliates were
adjudged the victors.

William Fox was in a stronger position than the Warners had been,
since he possessed the American rights to the Tri-Ergon sound patents
(those used in the continental Klangfilm system), from which Fox
Movistone had been developed, as well as personal control of Fox Films
and Fox Theaters. However, Fox was in the midst of refinancing and
an ambitious expansion program which would have made him the kingpin
of the cinema industry when the Stock Market crashed. Telephone
Company opposition prevented Fox from getting financial backing, and
he was forced to sell out to a group which immediately made licensing
arrangements with Western Electric. This despite the fact that Fox
had offered his patent rights free to the new owners of the Fox
companies. In 1935 the Supreme Court, reversing all the lower courts,
annulled William Fox's patent rights.

RCA Photophone had been largely restricted to the RKO studios and
theaters because of the domination by Western Electric's ERPI of the

The fascinating story of William Fox's struggle to keep control of
his companies from the titans of finance is chronicled by Upton
Sinclair in Upton Sinclair Presents William Fox, Pasadena: Upton
Sinclair, 1933.
rest of the industry. When RCA came under control of the Rockefellers in 1930, however, powerful influence was brought to bear in the form of a complaint against the American Telephone and Telegraph Company's affiliates charging unlawful restraint of trade. A peaceful agreement was achieved in 1935 whereby RCA equipment became available to all who wished to use it. RCA has been making steady advances in supplying the studios and theaters since, taking advantage of Western Electric's slowness in improving their equipment.

Thus by the middle thirties the motion picture industry was pretty well consolidated. Lewis Jacobs epitomized the postwar activities of the industry in these pungent phrases:

"The merging and remerging of companies into fewer and larger producer-distributor-exhibitor corporations had gone on merrily in the post-war decade, the bulk of power being centralized more and more in Wall Street. Upon the advent of sound, the enormous expense of installing sound equipment and undertaking the production of talking films required a further concentration of capital and put the motion picture industry, after a long and bitter battle, under the indirect control of the two dominating financial groups in the United States today - The Morgan group (telephone interests) and the Rockefeller group (radio interests). Between these financial powers now rests the control of the motion picture industry".\(^\text{16}\)

The depths of the depression furnished the dominant financial interests their opportunity to control the industry directly through financial backing as business slipped down into the red and motion picture stock became a drug on the market. In 1933 Paramount was adjudicated bankrupt; RKO-Radio and Universal went into receivership; Fox Film interests were reorganized.

When Paramount was reorganized in 1935 as Paramount Pictures, Incorporated, control passed from Kuhn, Loeb and Company to a group consisting of the Lehman Brothers banking firm, Atlas Corporation.

\(^{16}\text{Op cit, p. 419}\)
(an investment trust within the Morgan sphere of influence) and the Telephone trust. Commenting on this change, Representative A.J. Sabath, chairman of the congressional committee investigating real estate bond reorganization, stated: "The reorganization of the Paramount Publix Corporation, now Paramount Pictures, Incorporated, was marked by collusion, fraud and conspiracy". This is a case where control of the company was grabbed by the American Telephone and Telegraph Company and other interests. Also in 1935, RCA sold half its interest in RKO to Atlas Corporation and Lehman Brothers. It appears, however, from the RKO Corporation Registration Statement with the Securities and Exchange Commission, June 1940, that Rockefeller interests remain predominant in RKO through stock held in the name of Rockefeller Center. Atlas Corporation seems to exercise prerogative in operation of the corporation.

The tangled Fox empire was merged in 1935 with Joseph Schenck's Twentieth Century Corporation, a quality-picture production unit which had been releasing through United Artists. Chase National Bank, a Rockefeller concern, and the Rockefeller family itself, apparently control the firm. Morgan interests are represented in Twentieth Century-Fox by a minority holding of Atlas Corporation. Loew's is also within the Rockefeller sphere of influence by virtue of its head, Nicholas Schenck (brother of Joseph Schenck) being a director of the Chase National Bank. Only an anti-trust action had prevented William Fox from controlling Loew's, and even now Loew's and Twentieth Century-Fox have close working arrangements.

17 New York Times, October 11, 1935, quoted in Klingender, F.D., and Legg, S., Money Behind the Screen, p. 76
18 Huettig, Mae D., op. cit, p. 48
Although Warner Brothers have apparently managed to remain clear of the giant interests directly, New York banks within the Morgan sphere of influence "are tied up with Warners as transfer agents and registrars for stock and as trustees and interest agents for bond issues".

So it can be seen that the "Big Five (Paramount, Twentieth Century-Fox, Loew's, Warner Brothers, RKO-Radio)", which are completely integrated industries, are controlled both directly and indirectly by the most powerful financial groups in the United States, if not in the world. The three satellite firms (Columbia, Universal, United Artists) which are included in the "Big Eight" must follow in the lead of the completely integrated firms, inasmuch as they are producer-distributors chiefly, and must depend on the outlets of the Big Five for exhibition of their films.

Concentration and consolidation is apparent even among the independents. Republic, which has been admitted to membership in MPPDA/MPAA, and Monogram release the productions of a number of shoe-string operators. Producers Releasing Corporation - controlled by Robert Ralph Young along with his railroad and Pathe interests - accounts for most of the remainder of the Poverty Row product which seeks general distribution.

Current operations, including intervention of Britain's erstwhile miller, J. Arthur Rank, into the American film market, are described in the last chapter. This chapter has attempted to show how financial control of the movie industry was achieved. This control has been maintained under conditions largely static from the middle thirties until the second world war, when wartime taxes allowed a wider latitude for production only by independent operators.

19 Klingender, F.D., and Legg, S., op cit, p. 77
CHAPTER II

CENSORSHIP AND SELF-GOVERNMENT

I. EARLY EFFORTS

The first concerted attempt to restrict the exhibition of motion pictures occurred in New York City in 1908. Because of the alleged conditions in the theaters themselves and the alleged character of some of the films exhibited therein, the mayor had closed the motion picture theaters of that city. The exhibitors of the city appealed to the late Dr. Charles Sprague Smith, founder and director of the People's Institute of New York, a citizen's bureau of social research. In response, he formed a volunteer citizen's committee to inspect films before they were released to the public. The membership of this committee, which became known as the National Board of Censorship, included representatives of civic, social, and religious agencies, all cooperating on a voluntary basis. The Board went to work devising standards and ordering deletions and changes in the films, which were again allowed display.

It was not long before requests of innumerable communities made the work of the board national in scale. This organization became one of the chief advocates of regulation of motion pictures by the industry itself, inasmuch as the People's Institute wearied of the financial burden which the Censorship Board placed upon it. Eventually subsidies were accepted from the motion picture producers to enable it to carry on. Acceptance of subsidization caused some of the partici-

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^20 Lewis, Howard T., The Motion Picture Industry, p. 366
pating organizations to withdraw, arguing that claims of impartiality were rendered nugatory by such subsidization.

The National Board of Censorship changed its name to the National Board of Review in 1914, stating its purpose to be "selection" and not "censorship" of films. By this time the stamp of approval of the board had become recognized throughout the country. In many cities this stamp was a necessary adjunct to all pictures. A Better Films National Council was organized by the board to furnish advance information regarding the better films; the rest were ignored. These preview criticisms were supplied to women's clubs, religious and social groups by means of a weekly bulletin. It is opposed to legal censorship of the screen by any arbitrary group. The Board's own policy is to function simply as a private, non-partisan, non-sectarian organization. The legend "Passed by the National Board of Review" does not mean that the board necessarily approves or recommends the picture; it simply means that in the opinion of the reviewing committee the picture will not have a subversive effect upon large numbers of persons in different sections of the country, or conflict with the obscenity laws.

The services of the National Board of Review were for a number of years an effective defense against public censorship agitation. But it became apparent that the activities of the board were not preventing the vulgarity and offensiveness of the movies, and therefore it was inevitable that those who denounced the movies were not impressed by the likelihood that the board would prompt improvement of the films. Critics were outspokenly advocating legalized censorship. Articles published by such organizations as the Federal Motion Picture Council

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of America, Inc., and the International Reform Federation, charged
the board with deceiving the public by posing as a governmental body,
with being subsidized by the producers and with not having prevented
the exhibition of films of alleged immoral character.

Pennsylvania pioneered in placing a film censorship law on the
statute books. This act dates from 1911. Ohio and Kansas followed
suit in 1913. The United States Supreme Court, acting in 1915 on cases
brought against Ohio and Kansas by the Mutual Film Company (headed by
William A. Brady), upheld both statutes as valid exercises of the
police power. Following this decision regulatory statutes were
enacted by Maryland in 1916, New York and Florida in 1921 and in
Virginia early in 1922. The Florida law soon became inoperative and
was adjudged unconstitutional because it depended upon the work of the
New York censoring unit. Wording of the law stated that acceptable
films would be ones passed by the New York board.

Defenses which the industry had established had not stood up.
During the winter of 1921 censorship bills were fought in thirty-six
states. The National Association of the Motion Picture Industry,
established in 1916 under the direction of William A. Brady by most
of the producers and distributors and some exhibitors, spent most of
its resources battling censorship bills at the various state capitol.
In 1919 the NAMPI had voted to censor its own pictures, and in 1921 it
adopted a set of thirteen criteria relating to the representation of
sex, commercialized vice, drunkenness, gambling, et cetera on the screen.
These criteria had previously been set up and adopted by Famous Players-
Lasky. The association, however, was not a strong affair, nor was the
industry itself well organized. So their resolutions were not taken

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Lewis, Howard T., op. cit., p. 347
seriously beyond giving them a grudging lip service.

Soon welfare organizations complained that the producers made no
effort to comply with the standards. Agitation for censorship had
been further spurred by a series of scandals involving motion picture
personalities which filled the tabloid pages from 1920 to 1922.
Several federal censorship bills had been presented in Congress. The
Smith-Hughes Bill in 1915 would have created a federal motion picture
commission as a part of the Bureau of Education in the Interior Depart-
ment. Since this bill did not contain standards for the production of
films, Senator Gore and Congressman Herrold introduced bills which
would have prevented transportation and exhibition of films purporting
to show crime and criminals. None of these bills was passed.

Business conditions in general were depressed after the first
world war. For the first time in its history the box office intake
of what had been soaring profits wavered. An influx of foreign films
that were far superior to the Hollywood product did not help matters
any.

II. THE MOTION PICTURE PRODUCERS AND DISTRIBUTORS ASSOCIATION

Faced by the need for self regulation both on the moral front
and on the business front, the industry united individual efforts
under one head through organization of the Motion Picture Producers
and Distributors Association (MPPDA) in New York in April of 1922.
Perhaps not solely because of his abilities as an administrator, the
industry hired to head this organization a prominent political figure,
Will H. Hays, then Postmaster General and Chairman of the Republican
National Committee. At the time of Hays' appointment as president of MPPDA there was pending before Congress an "investigation threatened by the Myers Senate resolution, the complaint and resolution begun on August 31, 1921, by the Federal Trade Commission, the Applyby Bill in Congress for the Federal Regulation of Motion Pictures...".

Section 2 of Article I of the by-laws of the association states that the object for which the association was created was to foster the common interests of those engaged in the motion picture industry in the United States by establishing and maintaining the highest possible moral and artistic standards in motion picture production, by developing the educational as well as the entertainment value and the general usefulness of the motion picture by diffusing accurate and reliable information with reference to the industry, by reforming abuses relative to the industry, by securing freedom from unjust or unlawful exactions and by other lawful and proper means. It adds also that the association has no jurisdiction or control over the internal affairs or business policies of its members.

Will Hays was dubbed the "Movie Czar" when he took office. Raymond Moley, in his extremely laudatory book on Hays and the Hays Office, describes the means which Hays saw as practicable in attaining the purpose of the MPPDA:

"First, freedom of motion pictures from the deadening hand of governmental interference through political censorship;"

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23 Hays' employment and salary (100,000 per year in his first five-year contract; later raised to 150,000) were guaranteed by a contract with the association, plus contracts with the individual member companies, which also indemnified liabilities incurred by agreements is considered unique among trade organizations. 
Moley, op cit, p. 42

24 Lewis, Howard T., op cit, p. 371, 372
second, a larger and larger measure of self-regulation within the industry itself; third, an increased public interest and understanding which would ultimately result in a rising level of public taste for better pictures; and fourth, improved relations among producing companies and also among the greater producer, distributor and exhibitor groups in the country. His concern in the business relations of the industry was only to prevent practices which became a matter of public concern and which would injure the standing of the industry with the public and its government.25

One of the first moves of the new organization - which became known immediately as the Hays Office - was the setting-up of a committee on public relations. It was composed of representatives of sixty-two national welfare organizations representing social, educational, commercial and religious groups. The function of this body was to act in an advisory capacity in assisting the industry in the interpretation of public demands and moral standards. The committee functioned in a reasonably satisfactory manner until 1924 when, following Hays' refusal to blacklist a well-known actor of questionable moral status, a number of the welfare organizations withdrew their representatives. Also in 1924 there was formed in California the Association of Motion Picture Producers, Incorporated to deal with production problems. The members of the AMPP, usually called the "California Association", are with one exception, also members of the MPPDA.

The Massachusetts legislature had passed in 1920 a film censorship bill which was vetoed by Governor Coolidge. In 1921 the bill was approved. At the time Will Hays took over in his new position, this latter bill was subject to referendum. Since bills that would legalize movie censorship were in legislative hoppers all over the country,

25 Koley, Raymond, op cit, p. 44. "Hays conceived of his job 'not as Caesar, but as Caesar's slave', with reference to the legend that Julius Caesar had ordered a slave to stay by his side at all times, whispering in his ear, 'thou too art mortal, Caesar.'" p. 87
Hays realized that if political censorship prevailed in Massachusetts it might sweep the country. And, nothing could be so spectacular for his cause than a popular rejection of censorship in this mother state of the American Revolution. Hays therefore decided to take a desperate gamble in concentrating his forces there, for the tide of indignation against movies, movie advertising and movie people was running high in the Bay State.

A representative of the MPDFA toured the state in the spring of 1922, and talked to virtually every small-town newspaper editor. The representative, Courtland Smith, succeeded in aligning the newspapers against the censorship bill. Speakers against censorship were hired and citizens' committees also joined the crusade. Hays journeyed to Massachusetts in September and delivered several addresses. Further, he persuaded both political parties to send out a statement of principles on the subject of film censorship. Ladies' auxiliaries, movie audiences and street crowds were presented with the argument against censorship and for self regulation which served the MPDFA then and since.

This argument is presented by Raymond Moley in a strengthened and more sophisticated form:

"While the arts, of which the motion picture is one, demand autonomy within their own sphere, those who have in their care the welfare of some part of the community are justifiably concerned with the protection of the public from the physical or moral injury that may result from fully asserted liberties of any art. But political censorship cannot resolve these conflicting claims.

"It cannot because, in practice, it permits restrictive power to be exercised by politically appointed, poorly paid individuals, whose decisions are dictated chiefly by their personal predilections and prejudices; because it has resulted in a vast confusion of standards of propriety as between the states and within the same states, as the personnel of the censor boards changed; because the number of motion pictures produced yearly is so great that no political censor board now existing can
inspect all of them, and so much of the work of reviewing them is delegated to poorly qualified subordinates; and because censorship of a completed motion picture is excessively costly, if not impossible...

"The only satisfactory way to protect the public interest without destroying or impairing the vitality of the motion picture, therefore, is to insist that the art control itself, that it voluntarily set up instrumentalities which will balance artistic and prudential standards at the source of production and deny to the art only those liberties which jeopardize individual character and conduct".[27]

Whether or not these supplications were accepted, or if it was just that the people of Massachusetts did not want to see censored films, count of the referendum showed that the bill at issue had been defeated almost three votes to one. A later bill which set up a censorship board for films shown on Sunday was not contested by the Hays organization.

The association set up rules for arbitration and exhibitor units to eliminate monopoly practices and establish ethical standards. Just how far-reaching its reforms were can be judged from the fact that in 1925, three years after the association was formed, Vitagraph withdrew, on the ground that theaters were still producer-owned. Importance of these Film Boards of Trade, as they were called, is discussed in a later chapter.

The self regulation promised by Hays was embodied in a "Formula" which was adopted by the board of directors of the association. (It must be remembered that the board is composed of heads of the principal producing and distributing firms). The Formula was little more than a resolution which would permit the MPPDA to see the material that was planned for the screen. There was no legal obligation to follow the advice of the Hays office regarding objectionable themes, nor was there

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[27] Ibid, p. 54, 55
any answer to the fundamental question of what specific situations or elements were objectionable, when presented on the screen.

Furthermore, it applied only to material which had appeared in book, play or story form. To say that the producers followed this formula wholeheartedly would be in flagrant contradiction of the continuing protests of the organized groups who were now lobbying for federal supervision of the film industry.

These righteous organizations had banded themselves together as the Federal Motion Picture Council of America, Inc. It included parent-teacher associations, women's clubs, federations of church women, missionary societies, home missions, YMCA's, women's independent voters' associations, branches of the WCTU, literary clubs and others. The Federal Motion Picture Council supported the bill presented in Congress by Congressman Upshaw of Georgia (first presented in 1923, reintroduced in 1926) which would have created a Federal Motion Picture Commission under the Department of the Interior as a division of the Bureau of Education. Among other things, the Upshaw bill provided definite standards governing the production of films. The standards proposed, it is interesting to note, were virtually the same as those which had been adopted by the industry's earlier effort at self government, the National Association of the Motion Picture Industry, in 1921. The bill also provided for the licensing of all films entering interstate or foreign commerce. The penalty for violation was to be confiscation of the offending film.

Howard T. Lewis has listed a number of the reasons pertaining to censorship which Canon William Sheafe Chase, general secretary of the Federal Motion Picture Council of America, Inc., gave in favor of

Ibid, p. 69
federal supervision:

"1. To prevent improper political activities of the trust.  
"2. To maintain the freedom of the screen from the strangle
gasp of a few covetous men.  
"3. To secure conformity to moral standards before the
films are produced.  
"4. To save expense and make censorship unnecessary.  
"5. To provide a centralized neutral distributing agency
and furnish a fair market for meritorious films owned by inde-
pendent producers and also for nontheatrical teaching and
religious films, now impeded by about 10 trust-owned exchange
systems each in about 26 key cities all over the United States.  
"6. To lessen the danger of graft possible in local and state
censorship boards and to secure better moral supervision of
films than through such boards.  
"7. Because local and state censorship, which can only cut
out evil from the films after they are produced, is inadequate
and because the industry has broken its various promises to
reform itself.  
"8. To enable the nation to assist parents in protecting their
children from movie exploiters of youth.  
"9. To compel the motion picture industry to conform to the
laws and ideals of America, and thus properly train the future
citizens of our country.  
"10. To preserve American business in other lands through
films acceptable in foreign countries. Otherwise other nations,
like Russia, may adopt government ownership of films and exclude
American films.  
"11. To protect exhibitors from the producers and distributors
and to develop the industry to its largest capacity to maintain
a broad open field of endeavor in its every branch.  
"12. To prohibit the block system of renting films and the
producer ownership of theaters as unfair business methods contrary
to the antitrust laws.  
"13. To provide wholesome films for the world and insure
universal peace." 29

However noble the purposes of the Upshaw bill, it failed of
passage. President Coolidge, who had previously vetoed a state censor-
ship bill when governor of Massachusetts, opposed the bill. It might
also be well to take notice of the fact that Will H. Hays and Coolidge
had been in the same administration from 1920 to 1922 and that Hays
had had previous contact with him in his capacity as chairman of the
Republican National Committee. The bill was opposed, among others, by
leaders of the Roman Catholic Church and the American Federation of Labor.

29 Lewis, Howard T., op cit, p. 377
In opposing federal censorship, Edward F. McGrady, then legislative representative of the American Federation of Labor, said that the Federation had consistently opposed film censorship. He believed that censorship tended to stifle and suppress the venturous spirit of a free people, and to enforce by law a predetermined moral, social, political and economic code, and a bureaucratic form of government.

Two other bills which would have exerted censorship over the movies, one by Senator Brookhart in 1928 and the other by Representative Hudson in 1930, did not achieve legal status.

The storm of protest was rising to great heights. One cleric thundered, "The prevalence of the cheap, the nasty and the suggestive in our commercial showings is the bane of popular amusement. The person with high ideals and a moral repugnance for the vulgarities and obscenities with which the modern producer of motion pictures feels it necessary to fill even his greatest film is continually offended by these features. The last few years' standards are much lower. Mr. Hays' much boasted control has not helped any".

III. SOUND FILMS AND VOLUNTARY MORAL STANDARDS

Hays had earlier sent Jason Joy to Hollywood where Joy was to be liaison man between the public and the studios. Officially his position was that of head of the studio-relations committee, which was composed of employees of the Association of Motion Picture Producers, Inc. (the California Association). His job was to urge the producers to take

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30 Harley, John Eugene, World-Wide Influences of the Cinema, p. 58
31 Mitchell, Rev. William S. "A Seven-Day Church at Work", The Literary Digest, 102:30, Sept. 21, 1929, cited in Moley, Raymond, op cit, p. 66
account of the opinions expressed by organized groups and representatives to the public relations department of the MPPDA. Joy not only established rapport with studio officials, but visited various state and municipal censor boards and "attempted to find from these capricious guardians of the public morality what sort of thing they objected to and why - a job of pioneering calculated to reduce a Daniel Boone to fingernail biting, for less than ten percent of the same eliminations were ever made by two or more boards".

The solemn renunciations of questionable practices which Joy collected were embodied in a committee report which was adopted by the AMPP. It was formalized into eleven "Don'ts" and twenty-six "Be Carefuls" by Hays. The studio-relations committee met once a month to discuss difficulties encountered with regard to pictures in production or just released. The Hollywood office covered all features and comedies produced by members, and recommendations were made for revision where it was needed. In addition, pictures were previewed by members of the advisory bureau immediately upon their release from the studios.

With the advent of sound films and the "backstage musical", the movie reformers renewed their outbursts and columnations. Early in January of 1929 Joy sent to Hays a memorandum describing the shortcomings of the existing setup. Boiled down, they were: 1) less than half the member companies of the AMPP were cooperating with the Joy office's attempt to carry out its "educational" policy of persuasion; 2) some companies did not require their directors and editors to carry out Joy's recommendations; 3) the Joy office had no authorized method of determining whether or not their suggestions had been incorporated into the scripts; 4) it was beyond the ability of his small staff to

32 Ibid. p. 63
check the extemporized lines which the influx of stage people brought to the talking film; 5) the "Don'ts" and "Be Carefuls" were purely negative; it was possible to produce extremely offensive pictures while observing all the requisites.

The voluntary regulation of films before production by members of the association had provided a measurable improvement over the former policy of receiving the completed prints in New York and then shipping them back to the coast for changes, nevertheless. Following the stock market crash in late 1929, though, it became increasingly apparent that the producers would seek short cuts to public patronage. Such short cuts would be evidenced by sensationalism and low moral standards.

At the same time the producers recognized the costs of further censorship. These costs involved the loss of income from the actual banning of a picture, the costs of censorship in those locales where it was in effect ($3 per reel in the state of Ohio; if 67,000 reels were inspected within a year's time, this would account for $201,000 for just one state), and the difficulties in making changes in sound film.

IV. THE PRODUCTION CODE

The Motion Picture Producers and Distributors of America announced in March 1930 the adoption of a code of moral principles to govern the production of films. This Production Code was subscribed to by the twenty leading producing companies. It was designed to govern the

33 Ibid, p. 66, 67
35 The code is in Appendix A (General Principles and Particular Applications)
production of films portraying crimes against the law, sex, vulgarity, obscenity, profanity, costumes, dances, religion and repellant subjects. The code became effective January 1, 1931.

The code was the brain child of Martin Quigley, publisher of one of filmdom's most influential trade papers, The Motion Picture Herald, and a well-known Catholic layman. Quigley, after having witnessed and applauded formation of the MPPDA, had reached the conclusion that the machinery and procedures of the Hays office were not doing the job which eight years' tenure would lead one to expect. So he set himself to draft a code which was an exposition of the philosophy of morality as applied to public entertainment. The resultant code was a collaboration of the efforts of Quigley and those of Daniel J. Lord, S.J., Professor of Dramatics at St. Louis University. Father Lord was the editor of a religious magazine, The Queen's Work, which gave considerable attention to motion pictures. He had also acted as consultant on the picture, King of Kings.

The Production Code is in two parts. The first part, known as the "Code", was prepared by Father Lord. It is a summary of the "Reasons", which makes up the second part of the code. This second part, an enumeration of the moral principles which were to guide the producers, was drafted by Quigley and Father Lord. The whole proposal was assented to by Hays, who cooperated throughout the working period with Quigley and Father Lord. Some items in the amended code were added by Hays from the old "Don'ts" and "Be Carefuls".

The code was adopted after three strenuous meetings of the association. In the main, it is a list of prohibitions not involving matters of theology, based on moral principles going back to the Ten Commandments. "For that reason, the Code, while originally drafted by
members of the Catholic religion, was universally acceptable by the members of all Western religions. There was no other common ground upon which all who were concerned could stand. So the Code suggests the basic moral unity of Western civilization".

Supplementary to the code itself was an agreement which made obligatory the submission to the studio-relations committee of every picture produced. No prints for distribution were to be made until the instant picture had been approved by the association. If the picture violated any of the provisions of the production code, the producer was required not to release the picture until indicated changes had been made. If the studio-relations committee's decision on a picture was contrary to the views of the producing company, the producing company could appeal to a committee of three of the MPDPA's production committee (composed of one executive from each of the member companies). A final appeal could be made to the board of directors of the association. A total of ten appeals were made to this "Hollywood Jury" of three; the Hays office lost out in every instance.

The New York censor estimated that during the first six months of 1931 the amount of cutting and elimination required substantially exceeded that of the six months of the year preceding adoption of the code. A stringent warning was issued to Hollywood by the New York censor that more effective measures would be taken if the producers did not change their policies. It was strongly intimated that the producers never intended to follow the code and that voluntary censorship was unsatisfactory.

36 Moley, Raymond, op cit, p. 71
37 Lewis, Howard T., op cit, p. 389
The deepening depression was evidenced by falling receipts and subsequent financial troubles. In this situation the temptation to be sensational was intensified. Objectionable pictures continued to be produced and exhibited.

V. THE LEGION OF DEGENCY AND ENFORCEMENT OF THE CODE

The most powerful body ever organized to bring pressure to bear on the motion picture industry in behalf of better pictures came into being in April of 1934 with the creation of the Legion of Decency. It was instituted by a committee of American bishops of the Catholic Church which had been authorized to consider means of protecting members of the Church - with especial reference to children - from the deleterious influences of allegedly immoral pictures. The Legion was organized on a nation-wide basis from headquarters in New York. Membership soared into millions. Each member signed a pledge to boycott movies which were listed as offensive by authorities in the various dioceses. Protestant and Jewish leaders praised the drive, while the Federal Council of the Churches of Christ in America issued a warning that unless the Production Code was enforced, the Council would do its utmost to achieve federal censorship.

The boycott was causing box office receipts to drop drastically. So much so that when the committee of bishops which instigated the Legion met in Cincinnati in June of 1934, Hays sent Martin Quigley and Joseph I. Breen to represent the MPPDA. Breen was a former newspaper man and press agent for the Eucharistic Congress whom Quigley had first hired to aid in setting up the production code. At the time of the committee meeting, Breen was chairman of the studio-relations committee which administered the code. The bishops made their position
exceedingly clear to the representatives of the association. Quigley and Breen managed, however, to elicit a tentative agreement from the Legion heads. The bishops agreed to relax the drive of the National Legion of Decency if the producers made a genuine effort to enforce the code.

On July 1, 1934 the studio-relations committee of the MPPDA became the Production Code Administration. Breen was placed at its head, with an enlarged staff of personnel. The administration had definite teeth in it, since members of the association agreed to pay a $25,000 fine to the Hays Office for the exhibition in any affiliated theater of any picture which lacked the PCA seal of approval and did not have a certificate of approval signed by the director of the Production Code Administration.

The Advertising Advisory Council had been organized by Hays in 1933. By it members of the association are required to use advertising approved by the council exclusively. The council performs relatively the same functions with respect to motion picture advertising as the Production Code Administration exercises with films themselves. Non-observance is punishable by a fine of from $1000 to $5000.

The administration has been operating since 1934; there have been only minor revisions in the code. It represents the principal effort of the motion picture industry to regulate the moral tone of its product. In commenting upon Hays' achievements, Bosley Crowther wrote in the New York Times, "(Hays) helped to impress a concept of moral responsibility upon an inchoate group of movie showmen which was full of cheap entrepreneurs, and he set up a good front for the industry."

38 Actual administrative steps of the Authority are given in Appendix B.
in business and cultural fields. But being more prone to the techniques of compromise than of fight - and being essentially conservative - Mr. Hays also counselled great caution. The chief of his pacifying straddles was the prudish production code". The Nation earlier had this to say, "The films are still subject to the worst kind of censorship, the censorship of private bigots operating without any authorization of law under a production code which enables the Catholic Church to bully the movie magnates and the magnates to bully the independents".

Evidence that the industry had cleaved to the code was seen in a booklet put out by the National Legion of Decency, in which it evaluated on moral grounds 439 feature pictures released from November 1942 to November 1943. It gave Hollywood a respectable report card in that no picture of a major or leading independent studio was represented in the final total of four condemned or Class C pictures.

In an editorial of January 18, 1947, however, The Columbus (Ohio) Evening Dispatch warned, "News from the west coast that Catholic and Protestant church leaders are joining in a movement against a new $5,000,000 movie, charging it with being flagrantly immoral, is a clear warning to those Hollywood producers who have become bolder and bolder since the virtual collapse of the standards insisted upon by the old Hays office. For all its inflexibilities and the absurdities of some of its stipulations, the Hays code was good for the industry as well as for the more impressionable segment of the movie-going public. It was circumvented, at times, by the smart lads who sometimes seemed to sit up nights figuring how to imply what it forbade. But it

39 Sept. 23, 1945, II, 1:8
40 Sept. 20, 1941, 153:241
did protect the industry from its own worst impulses and by putting all the studios under the same regulations, made it impossible for anyone to profit by putting anything over on a competitor".
CHAPTER III

PUBLIC RELATIONS AND THREATENED FEDERAL LEGISLATION

I. EARLY PROPOSALS AND THE NRA

Edgar Dale has listed, from Harrison's Reports, a trade paper favoring independent exhibitors, the following specific legislative threats to the motion picture industry:

"1. Legislation to divorce production from exhibition
2. Legislation to prevent compulsory block-booking and blind selling
3. Legislation regulating trade practices regarding right to buy product, establishment of new movie houses, clearance zones and the like
4. Federal legislation against alleged monopolistic practices."

Problems that relate to trade practices have presented the industry with many difficulties. Favorable public opinion is valuable in this instance, however, only where national legislation is threatened.

During the period from 1924 to 1940 some forty-four bills, beginning with the Upshaw bill, were introduced in the Congress for the purpose of regulating the motion picture industry. Senator Smith W. Brookhart of Iowa introduced five bills aimed at blind selling and block-booking. Several bills would have created some form of a federal motion picture commission. Congressman Joe Cannon's bills would have prohibited the transportation in interstate commerce of certain crime films and other questionable films. Representative Lankford's bill would have created a department of general welfare to control radio and motion pictures. A bill introduced by Representative Wright Patman in 1934 would have set up a comprehensive system of federal regulation

41 Supra, p. 253
that envisaged federal censorship. Representative Culkin's bill of 1937 would have created a federal commission to obstruct monopolies.

None of these bills ever became law, and few of them ever received any serious consideration. Kenneth G. Crawford says in his vituperative book, in which he lays principal reasons for defeat of legislation proposing to regulate filmdom at the door of Will Hays' organization, "For more than ten years (Hays) has been operating one of the country's most elaborate and most effective lobbies... Until the New Deal came along, he had blocked every effort in Congress to pass legislation regulating the movie trust; he had dealt successfully with extragovernmental attempts to raise the moral tone of the trade; he had made it possible for the movies to defy the antitrust laws with impunity and impertinence..."

Edgar Dale has noted, in connection with Senator Brookhart's anti-block-booking bills, that Brookhart was not returned to the Senate and "there has been a belief in the past in Congress that opposing the motion picture industry was not a healthy thing to do".

The first sweeping federal intervention came as a consequence of the depression. It was the enactment in 1933 of the National Industrial Recovery Act. It required that codes of fair competition, including guarantees of minimum wages, maximum hours, and collective bargaining for labor, and provisions restricting unfair trade practices, be set up for the various industries. An NRA code drawn up for recovery and reform, applied to the motion picture producers and distributors of America and to independents as well, was to prevent block booking and blind buying of films, eliminate advertising reels, prohibit price

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42 The Pressure Boys, p. 91
43 Op cit, p. 256
cutting, regulate the employment of extras, and arrange for the equitable distribution of pictures.

TNEC Monograph No. 43 reported, however, that the motion picture industry was obliged to adjust itself to the restrictions of a code, but the essential framework of the industry remained unchanged. It quotes the Darrow Board report—the formal investigation of the National Recovery Administration—in showing that the code authority was dominated by the affiliated interests of the industry despite an appearance of unbiased character:

"It was indicated that of the 10 members of the code authority, 5 representing affiliated producers, distributors and exhibitors, and 5 representing unaffiliated producers, distributors and exhibitors, that only 2 of them were not connected in some way with the affiliated producers, distributors and exhibitors and could be classified as really independent." 44

The same control was seen in the composition of the thirty-one local grievance boards and thirty-one local clearance and zoning boards set up under the code to adjudicate motion picture disputes of a local nature. Because of government intervention, however, independent exhibitors received under the code a number of concessions from the affiliated interests in the way of trade practice reforms. Many of these reforms were ended, though, when the codes were declared unconstitutional by the Supreme Court on May 27, 1935.

II. LABOR RELATIONS

Government pump-priming kept box office receipts up during the general economic recovery. Following the government's financial retrenchment early in 1938, however, the movies suffered a marked slump along with the rest of the nation's business. The desire to

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44 Op cit, p. 8
tempt the public with "sure hits" increased vicissitudes within the industry and brought new developments in production, exhibition, public relationships and government regulation. Million dollar productions were continued, since high-priced pictures usually got high rentals, and producers continued to employ expensive stars, directors, writers and cameramen because of the assurance that these talents would draw the public and were more likely to turn out a hit.

Studio overhead was cut down, however, as the recession grew worse. "Junior writers" were hired at the reduced wage of $35 to $75 a week to replace the more experienced and higher-priced writers. Corresponding readjustments followed all along the line, with lesser players, publicity departments, extras and utility workers being subjected to economy measures. Skeleton crews carried on production.

Exhibitors introduced give-away contests and games with premiums to keep people going to the movies. A million dollar "Motion Pictures Are Your Best Entertainment" campaign was adjudged a flop. The producers, incidentally, had required the exhibitors to put up a quarter of the sum for this campaign.

In May 1938 the Hollywood Reporter, a film "dope sheet" run by W.R. Wilkerson, carried a red-bordered advertisement signed by the Independent Theater Owners Association of New York condemning many of the highest paid stars as box office poison and advising producers to make good pictures. This ad set off a hubbub among metropolitan newspapers which panicked Hollywood. Sharp-eyed observers who were aware of conditions in the industry believed the noisy publicity had been instigated by the producers themselves as part of a concerted drive to lower wage scales and destroy agreements with the movie guilds.

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45 Jacobs, Lewis, op cit, p. 427
It is significant that a second advertisement of the ITOA a week later, calling for the elimination of double features and "B" pictures, demanding the abolition of "factory-product, run-of-the-mill films turned out quickly and half-baked in order to keep up with double-feature requirement", was little publicized.

Labor unionization in the industry had proceeded rapidly, especially in 1937. Each trade and craft and each of its subdivisions had established locals, some stronger than others. The International Alliance of Theatrical Stage Employees (IATSE), affiliate of the American Federation of Labor, covered almost all workers except actors, who came under the Associated Actors and Artistes of America (AAA) of the Actor's Equity. The Screen Writers Guild of the Authors League of America was designated by studio writers as their bargaining agency after a poll was assented to by the National Labor Relations Board. The producers accepted the Guild as the writers' legitimate bargaining agency in March 1939. Previously they had refused to negotiate and threatened to carry the dispute to the Supreme Court if necessary. Earlier the producers had recognized the Screen Directors Guild.

The IATSE holds a big whip over the industry, controlling almost ten thousand workers in the movie capital under rigid closed shop agreements. It also controls all but an insignificant number of projectionists in theaters throughout the country. This is the outfit once bossed by Willie Bioff and George Browne, who went to prison for extortion. Since 1943 there have been almost continuous jurisdictional wrangles between IATSE and the Conference of Studio Unions. The CSU were locals of IATSE who broke off from them and joined other craft unions of the American Federation of Labor. They have been wooed by the CIO but have shied away from them, wary of Communist influence.

Ibid, p. 428
Principal CIO element among the thirty thousand movie workers is the Industrial Union Council of Los Angeles. There is considerable jealousy among the locals, each accusing the other of selling-out to the producers. Thirty-two hundred extras, who earn a precarious living dependent on the AMPP's Call Bureau, left the Screen Actors Guild late in 1945 to form their own Screen Players Union.

III. THE FUNCTIONS OF THE HAYS OFFICE

The two top men in the MPPDA, Will H. Hays and Carl E. Milliken, are politicians and joiners of the first water. Hays' background in politics began as Republican precinct committeeman in Sullivan County, Indiana, which he still retains as his "home address". From precinct chairman he advanced to acting chairman of the Sullivan County Republican Committee, chairman of the Congressional District Committee, of the Speakers' Bureau, Republican State Committee, of the Republican State Central Committee, and of the Republican National Committee. He attained this last position at the age of 40. Carl E. Milliken, whom Hays hired as secretary of the association, had served as governor of Maine from 1917 through 1921; previously he had been in the Maine House of Representatives and Senate from 1905 through 1914.

The connections of both Hays and Milliken with organized religion served the association in good stead in the continuing battle against legalized censorship. Hays was an elder in the Presbyterian Church, while Milliken had been moderator of the General Assembly of the Baptist Church, and had been president of the American Baptist Foreign Mission Society.

The Community Service Department of MPPDA, which is headed by Milliken, is the original public relations office of the Hays organi-
zation. Its purpose has been to cooperate with civic, welfare and educational agencies, and to build good will between the public and the industry. News releases, magazine articles, pamphlets and *The Motion Picture*, a monthly magazine describing recent progress within the industry, activities of public groups interested in motion pictures, as well as statistics of the industry and opinions expressed by prominent persons regarding motion pictures, emanate from the Community Service Department and Public Information Department.

The Community Service Department is kept busy aiding educational councils in all sections of the country in the preparation of study guides for literary classics which have been filmed. Bookmarks relating guided reading to filmed classics were prepared with the cooperation of the American Library Association.

In anticipation of demands, Hays had suggested institution of what is now the National Advisory Committee on the Use of Motion Pictures in Education. This committee, headed by Dr. Mark A. May (director of the Institute of Human Relations at Yale University), prepared a catalog of films made available by the producing companies adjudged suitable for school classroom use. A nonprofit organization made up of members of the Hays committee, called Teaching Film Custodians, Inc., made short subjects available to schools for use in classrooms during school hours. Assured of a wide library of sixteen-millimeter material, schools began buying projection equipment, and the business of renting sixteen millimeter film equipment boomed three hundred percent in one year.

Newsreels proved to be ambassadors of good will in cooperating

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47 Moley, Raymond, *op cit*, p. 161
with various organizations through covering events of interest to them. The association cooperated with the General Federation of Women's Clubs (in which there is representation of practically all the important organized groups of women) in forming East Coast and West Coast Preview Committees to ferret out objectional features in films before they were released. Although events leading up to the war produced financial retrenchments throughout the industry, the Hays office endeavored at all times to maintain cordial relations with all organizations which published lists recommending pictures.

The association is accused from time to time of buying off reformers and of suppressing information derogatory to it or to the industry. Proof, however, is difficult to present. When the Federal Council of the Churches of Christ in America published a report on an investigation of the movies in 1931, it felt moved to reveal that its own senior secretary had been on the payroll of the MPPDA as a consultant on religious pictures. The Council found that fifty-one persons regarded by the public as disinterested movie reformers had received generous expense allowances from the association to reimburse them for attending meetings. Fees sometimes were paid to these reformers for making speeches. The Council report said that what seems significant from the point of view of public policy is the fact that the resources of the Hays organization have apparently always been available to insure the presence of individuals useful to its program at important meetings of their own organizations or gatherings where they could obtain a hearing. Important hearings have been watched by trained eyes and the methods of skilled diplomacy have been used to promote the interests of the industry among the membership of great national organizations. Much of the time and strength of the Hays organization seems to have been given to culti-
vating persons of influence, gaining the favor of organizations and organization committees, and seeking to clear the road of legislative or other obstacles to its program.

It is only fair to the association, however, to say that the asserted purpose of the MPPDA's Protective Department was to keep informed about all proposals, bills and acts of a legislative nature in cities, states and in Washington; and to resist by legitimate and public means legislative attacks on the industry. The very reason for being a member of any trade association is to maintain contact with agencies whose interests overlap with theirs. The Hays office admitted to payment of expenses of witnesses, employment of lawyers to appear before legislative committees, and the payment of costs of collecting information about current information. For legislative contests on censorship Hays and his general counsel, C.C. Pettijohn (a fellow Indiana politician) sought as witnesses representatives of civic, educational and welfare groups cooperating with the industry. On matters which likely would increase entertainment costs, such as tax bills, company attorneys and theater owners usually represented the industry. Hays worked on the thesis that the best lobbyists were those who had personal concerns involved.

The MPPDA has a legal department which deals with negotiations between exhibitors, distributors and the government. It also keeps in touch with industry committees dealing with legal matters. The activities of the general counsel and the legal department are naturally most suspect among forces opposing the industry in this day of specialized lobbying.

48 Crawford, Kenneth G., op cit, p. 99
49 Moley, Raymond, op cit, p. 49
IV. THE NEELY BILL

On February 27, 1937, Motion Picture Herald headlined, "legis- lators Open Attack on Industry in 13 States". Six of these states proposed the divorcement of production and distribution from exhibition. In Congress the Hobbs Bill proposed an investigation of the Hays organization and various monopoly charges. The Dies Bill, supplementing this, covered questions of monopoly, unfair trade practices, cutthroat competition, wages, and interlocking directorates in exhibition, production, and distribution, recommending investigation to determine whether the interlocking directorates tended to monopoly.

A new bill designed to prohibit the practices of block booking and blind selling of films was introduced in Congress during March 1938. It was sponsored in the Senate by Senator Matthew M. Neely of West Virginia, who was its principal author, and in the lower house by Representative Samuel B. Pettengill of Indiana. The bill was a revised form of the earlier Brookhart Bill. It may be significant that Pettengill suffered the same fate as Brookhart, in that he failed to retain his seat in Congress.

The Senate adopted the Neely measure in 1939. During the spring of 1940 hearings on the bill were held by a subcommittee of the House Interstate Commerce Committee. Among the witnesses called were representatives of the motion picture industry, actors, women's clubs, and churches. Some of the arguments in favor of the Neely bill are cited by J.E. Harley:

"Committees should be entitled to select the type of entertainment shown at local theaters.
"The centralized control of the large film companies through these objectionable trade practices results in adverse effects upon the education of children through the showing of undesirable films."
"The quality of films would be improved by competition.\textsuperscript{50} The practices of block booking and blind selling are 'pillars' of the 'monopoly' held by the major companies".\textsuperscript{50}

Arguments against the Neely bill are that it would

"...increase unemployment; increase the cost of pictures, decrease the number of outstanding films; set up a federal censorship; handicap film production at a time when so large a part of the foreign market has already been lost because of war; create annoying and impracticable restrictions on producers, especially with regard to the requirement that a synopsis of the film be supplied to distributors and exhibitors; suppress freedom of opinion and freedom of speech; place a millstone around the neck of the motion picture industry; permit 'pressure' and 'senszor' groups to interfere with the operation of theaters".\textsuperscript{51}

The Legion of Decency showed a frightening power in boycotting several of Hollywood's most extravagant attractions. Parent-Teacher organizations and various Protestant groups were supporting the bill, mainly because they thought local theater operators would lease more moral pictures if left to their own devices. Politicians were reluctant to oppose such power. Their plight was obvious when they depended upon the movies' newsreels for the privilege of having their faces flashed on the home-town screen to show how well they were doing in Washington. To point up this fact, the motion picture companies had the legislative lobbies swarming with cameramen.

"For weeks moving picture trust opposition lobbyists have overrun Washington as the locusts and lice overrun the land of Egypt in the days of Pharaoh the King," said Neely in demanding right of way for his bill.\textsuperscript{52}

Crawford described the tactics of the MPPDA as follows:

"The Hays group, knowing it was on thin ice, did no stomping around in the Senate...Instead Hays quietly

\textsuperscript{50} Op cit, p. 5
\textsuperscript{51} Ibid, p. 59
\textsuperscript{52} Crawford, K. d., op cit, p. 96
made arrangements to sidetrack the legislation in the House. This was neatly accomplished. The Senate bill was referred to the House Interstate Commerce Committee under the chairmanship of Clarence F. Lea of California, tried and true defender of the motion picture industry on other occasions. Lea saw to it that it never reached the floor. Just to make assurance doubly sure, the Hays organization kept in touch with John O'Connor. Had Lea lost control of his committee, O'Connor would have been counted on to stop it in the Rules Committee. O'Connor was at that time still chairman of Rules and, as President Roosevelt later commented, the most effective obstructionist in Congress."

Senator Neely introduced another bill on April 9, 1940 that would prohibit producers and distributors of films who are engaged in interstate commerce from owning, controlling, managing, operating or having any interest in motion picture theaters in the United States. He managed to jar the bill out of Senate committee and it passed the Senate. As before, action came too late in the session for the House to take up the legislation. This divorceement bill was reintroduced almost yearly in the Senate, the battle being taken up by Harley M. Kilgore, Neely's successor as a senator from West Virginia.

As matters now stand the federal legislation which affects the motion picture industry are chiefly revenue measures. They include the federal amusement tax, portions of the Tariff Act which render all photographic film imported into the United States subject to such censorship as may be imposed by the Secretary of the Treasury, and the tariff on raw film stock. There is also a statute which prohibits the importation and interstate transportation of prize fight films. This law resulted from exhibitions of racial feelings attending the prize fight between Jim Jeffries and Jack Johnson in Utah. This law was strictly enforced for several years, but gradually exhibitors found ways of avoiding the law. A bill was passed in 1940 which divested prize fight films of their character as a subject of interstate or

53 Ibid, p. 97
foreign commerce to the extent that such films may be transported across state lines and be subject to the police power of the various states.

V. THE PAYNE FUND STUDIES AND THE REBUTTAL TO THEM

One of the interesting manifestations of the resentment against the flamboyant movie themes and criticism of the lack of adequate enforcement of the production code were the Payne Fund Studies and a subsequent criticism of them. (Titles of these monographs are listed in the bibliography.

In 1927 the Motion Picture Research Council was established by the Reverend William H. Short - author of a number of articles critical of the movies, one time secretary of the League to Enforce Peace and director of the Non-Partisan Association of the League of Nations. The Council was composed of distinguished people who were sympathetic to its purpose of suggesting improvements in the quality of education and entertainment provided by the movies. Money was secured from the Payne Fund, a research body, to make a study of motion pictures. Results of the research were embodied in thirteen volumes known as the Payne Fund Studies. Eleven of them had been completed by 1933. Wide distribution of these volumes was made among educational, civic and religious institutions.

The authors of the Studies believed that motion pictures are profoundly influential, especially as they affect the immature. These studies maintain that motion pictures affect seriously the ideas, social attitudes, conduct, emotional responses, moral standards, sleep and bodily health of children. Although the findings of the Payne Fund tend to corroborate the vaguely formed opinions of many, they are not universally accepted as valid, especially in their presentation of
exact measurement.

Four years after completion of the Payne Fund Studies a volume entitled *Art and Prudence*, by Mortimer J. Adler of the University of Chicago, appeared. One of the authors of the Payne Fund Studies has noted that the introduction of this book bears the revealing statement that it was written "at the suggestion of representatives of the motion picture industry". Professor Adler sets forth his reasons for a lack of confidence in the Payne Fund Studies. His principal criticisms are that the investigators were too naive in their acceptance of answers to leading questions, especially those of delinquents and criminals, and placed too much reliance on the inadequate numerical evidence at hand.

A summary of the Adler book was made by Raymond Moley under the title *Are We Movie Made?* (The name of the first of the Payne Fund Studies was *Our Movie-Made Children*). The Moley book was given distribution by the MPPDA. Terry Ramsaye, editor of the *Motion Picture Herald*, is reported as saying - after perusing both the Moley book and Adler's lengthy and abstruse work - "The public relations job is a showman's job. Lawyers and academicians win no arguments with the great commonalty".

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54 Laine, E., op cit, p. 2
55 Dale, E., op cit, p. 256
56 Laine, E., op cit, p. 3
57 Dale, E., op cit, p. 257
CHAPTER IV

TRADE PRACTICES AND MONOPOLY PROCEEDINGS

I. EQUITY AND CONSPIRACY

The development of the American film industry has been characterized as a "spiral movement from early monopoly control at a time when the industry, measured by national standards, was but a minor sphere of economic life and when its undreamed-of possibilities of expansion threatened to be stifled by that monopoly hold, through a phase of meteoric expansion coupled with violent competition back again to monopoly control. It is a movement which is never for one moment basically deflected by the unceasing obligato of government anti-trust suit that enliven its progress". 58

For decades the trade practices in the motion picture industry have been a public reproach and the cause of great agitation and unrest. Apparently few opportunities to profit or gain business advantage have been ignored by the men directing the destinies of the corporations that dominate the industry. Independent exhibitors in particular have protested loudly through trade associations and in conventions beginning as early as 1919, but invariably in vain. Groups of public-spirited citizens, recognizing the value of motion pictures in the fields of entertainment and education, have intervened with an effort to improve conditions, but with little success.

Approximately twenty-four years ago the Federal Trade Commission instituted proceedings for the purpose of eliminating block booking

58 Klingender, P.D., and Leff, S., op cit, p. 79
and the acquisition of theaters by producer-distributors with the
intention of monopolizing and restraining trade. Its efforts were
equally ineffectual. In 1927 a trade practices conference was held,
in which producers, distributors and exhibitors participated, with
the ostensible purpose of eliminating objectionable practices. Once
more nothing of lasting benefit was accomplished. For almost a score
of years the government has sought to eradicate specific evils
resulting from apparent conspiracy of the dominant companies, usually
by means of suits in equity or criminal prosecutions in widely
separated sections of the country. The industry itself has been a
hotbed of litigation. But none of the proceedings has been effective;
the abnormal business methods of the dominant corporations have not
been curbed.

Actions under the anti-trust laws are hardly of rare occurrence
in the motion picture industry. The trade papers swarm with litigious
news. All echelons of the ramified film business are generally
familiar with those sections of the Sherman Act which prohibit every
contract, combination and conspiracy in undue restraint of inter-state
commerce or trade, and declare that no person shall monopolize or
attempt to monopolize, or combine or conspire with any other person
to monopolize, any part of such commerce. The interest of the public
in the preservation of competition is the primary purpose. Decisions
in equity based on the Sherman Act are not subject to the running of
the Statute of Limitations; under the Clayton Act such equity decisions
provide prima facie evidence of the violation of law by the defendant.

The present pattern of control of the industry was achieved the
hard way - by trial and error. The trade practices that grew up with

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the industry were effected because they were expeditious - and they worked. The Big Five became so because they could impose these trade practices on all others. Before taking up the principal litigation against them, the issues in question will be described within their immediate contexts.

II. STRUCTURE AND CONTROL OF THE INDUSTRY

The chief advantage of integration among each of the five major companies has been shown to be in the domain of exhibition. The production of films is not the most important activity with respect to the amount of income garnered. Approximately two-thirds of the total capital of the "majors" is invested in the theaters - that is, real estate. Most of the income is derived from theaters. From the standpoint of the producer theater ownership is valuable because they provide first-run exhibition, and they afford a minimum market for films which otherwise might not draw attendance. Hence, the larger the theater chain the narrower the range of risk, if the theaters have been wisely selected.

When the major companies were acquiring theaters at a rapid pace, they frequently found themselves in competition in the exhibition field. This is the period of motion picture history known as "The Battle of the Theaters". When control of the producing companies passed into the hands of the present financial group, it was soon decided that cooperation was more profitable than competition. In time there appeared a marked tendency for one company to emerge as the dominant element in a particular geographical area in acquiring and relinquishing theaters. The "majors" thus have come to complement rather than compete
with each other. They have acquired spheres of controls which fall
into neat patterns of segregation.

The affiliated companies have tended less and less to compete in
the operation of subsequent-run theaters. In some cases affiliated
companies have withdrawn in favor of the dominant element; in other
cases conflicting interests have been resolved by joint operation
agreements whereby one company assumes the responsibility of operation
but both share in the profits.

The five "majors" control over 2,800 theaters throughout the
country. Of 163 first-run houses in the 25 largest cities in the
country, 126 are controlled by one or another of the five "majors"
through either ownership, management contract, or pooling arrangement
with a competing distributor. The first-run theaters are the most

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TNEC Monograph, No. 43, p. 15

The Paramount chain of over 12,000 theaters — by far the largest —
is concentrated in New England, the South and the upper mid-west
(Minnesota, Iowa, Utah, eastern Nebraska, northern Illinois and
the Dakotas). Twentieth Century-Fox (principally its subsidiary
General Amusements Corporation), with over 500 theaters, operates
primarily on the Pacific Coast and in the Mountain states; it is
the sole affiliated exhibitor in Kansas and western Nebraska, and
has the major share in Missouri and Wisconsin. Warners' is quickly
identified with the once-powerful Stanley circuit in Pennsylvania.
The Warner Brothers chain of over 500 theaters are principally
located on the Atlantic coast in New Jersey, New York and Connecticut,
in addition to Pennsylvania; they have also an appreciable number
in most of the other east coast states and in Ohio, Illinois, Wisconsin,
Oklahoma and Kentucky.

Loew's, Incorporated, which has always pursued a very conservative
policy regarding theater acquisitions, has the smallest number of
theaters of any of the affiliated companies, 120-130. More than
half of them make up their neighborhood chain in New York City.
The remainder, scattered throughout the country, are among the best
first-run theaters in the large cities. RKO, with well over a
hundred theaters, tends to be concentrated in New York and New Jersey.
The others are in Ohio, Michigan and about ten other states.

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Huettig, Kae D., op cit, p. 77
important element in the structure because - inasmuch as they receive the bulk of the business - producers receive a large proportion of their total film rentals from first-run showings. It is estimated that the first-run theaters represent about 25 percent of the total seating capacity of all theaters.

The extent to which the "majors" absorbed other than first-run houses in any particular area apparently depended on the local movie-going habits. It is likely that in all but the largest cities of the country the first-run theaters provide well over 50 percent of the total revenue, in some areas as much as 80 percent. In such case, the theater holdings are confined to first-run theaters. In the large decentralized cities where movie-goers tend increasingly to patronize neighborhood houses, the theater interests of the majors are more extensive and include ownership of strategically placed subsequent run theaters.

Screen time of the affiliated theaters is occupied almost entirely with their own product. Inclusion of the Little Three within the structure was made because their films were needed to meet the demand for program changes. Republic Pictures was elected to MPPDA in 1942 because of threatened raw film stock rationing, and a talent shortage; so a non-voluntary curtailment of film production among the majors during the wartime boom. The demand for films is greater than the output of any one major company. No one company produces more than 60 to 65 feature films a year; the usual number is 50 to 55. While giving preference to its own films in all instances, each of the theater-owning majors needs supplementary product from two or more of the other companies.

62 TNEC Monograph No. 43, p. 13
63 Huettig, Mae D., op cit, p. 79
So the rationale behind the operation of the film industry for and in behalf of the integrated firms is shown. The "majors" exhibit their own films and each other's. Exhibition of the films of independent producers is at their sufferance. The forcing of independent producers out of the field was impelled by refusal of exhibitors — before crystallization of the pattern of control — to book films other than those which had had big city openings. So control over first-run became control over all other runs. Without a system of distribution, the independent producer cannot get funds with which to produce motion picture films. Further, he is denied access to the talent under contract to the majors, who "borrow" freely from one another.

As to the methods or practices employed to maintain control, the perishableness of the product is of primary importance. The necessity or desirability of showing a picture to the public while it is still new makes priority in vending the product to the public a most important factor. Although the merits of a finished picture cannot be accurately estimated prior to completion, pictures have generally been sold in advance of their production ("blind selling") and in "blocks" covering all or a large percentage of the contemplated production for the following season.

Theaters have been roughly classified according to their merits as potential producers of revenue (seating capacity, location, "class", et cetera) and allotted "run" of varying grades. Those of higher rank are allowed to exhibit the contracted pictures for a given period, then must pass on the prints of the picture to the theaters holding subsequent runs in their locality for further showing, presumably at reduced admission prices. To protect the economic value of the more expensive prior runs from cut-rate competition a fixed "clearance" period has
been established between successive runs. Such "protection" (a term
dropped by the industry after its use by the Capone gang and other
racketeers in connection with shakedowns) is also achieved by a zoning
procedure by which no two theaters within a given radius are allotted
the same run for the same pictures. Thus by contract, and because of
the limited number of competing theaters which can be economically
operated in any given territory, varying degrees of exclusive exhibition
monopolies have been set up in the local communities.

III. DIVESTITURE AND ANTI-TRUST PROCEEDINGS

The history of the industry as so organized has produced continual
conflict on at least two levels of action. On the one hand there has
been a struggle for position and product among the competing exhibition
interests, particularly between the circuits and their independent
competitors. This is well illustrated in Chicago, where the Balaban
and Katz chain (Paramount) has made it virtually impossible for
independent theaters to get "runs". There have also been frequent
battles between producers and exhibitors, punctuated by periodic
efforts by one of the contesting elements to secure control over the
other either through a process of actual integration, or by enforced
subservience. Such conflicts have resulted in a continual stream of
anti-trust prosecutions inaugurated by both private parties, claiming
to have been injured, or the government.

On June 20, 1928 the Federal government began a proceeding in
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United States v. First National Pictures, Inc. et al, 34 F. (2d) 815
set up to guide arbitration of the Standard Exhibition Contract. There were thirty-two Film Boards of Trade, located in the principal distribution centers and organized under the auspices of the MPPDA. They were largely outgrowth of earlier F.I.L.M. Clubs, which were agencies through which the exchanges pooled their information concerning the credit standing and business practices of their customers. When it had been proved that an exhibitor was addicted to "questionable" business practices, all the members of the local club refused to do business with him. The Film Boards of Trade also included representatives of local distributors.

The Trade Practices Conference of 1927 had been called by the MPPDA to examine outstanding complaints of exhibitors, most of which were directed against the Uniform Exhibition Contract, by which exhibitors agreed to show the distributors' pictures. It included a representative of each of the thirty-two Film Boards of Trade, and representatives of the principal trade associations of the independent and unaffiliated motion picture exhibitors. The principal accomplishment of the conference was the Standard Exhibition Contract. In it was a provision providing for arbitration of disputes among distributors and exhibitors.

When complaints arose under the Standard Exhibition Contract - they mounted into thousands - the local Film Board of Trade appointed three distributor-representatives and the exhibitors appointed three representatives as a board of arbitration. In case of deadlock a seventh arbiter not connected with the motion picture industry was chosen by the arbitration board. The term of office of the arbitration board was one month or until their successors were appointed. In 1928, out of 23,869 claims filed, a seventh arbitrator was necessary in only
28 cases. The cost of maintenance was divided equally between the Film Boards of Trade and the local exhibitors' association.

One of the duties of each Film Board of Trade had been to appoint a Credit Committee whose function it was to report to the Film Board upon the credit standing of the new proprietor of any theater whose ownership had changed hands. Although the equity hearing begun in 1928 was decided in favor of the distributors, the United States Supreme Court decided, in United States v. First National Pictures, Inc., et al., that the arrangement of the credit committees which required exhibitors to file elaborate statements about their business with the Film Boards of Trade was in restraint of trade. The case of United States v. Paramount Famous Lasky Corporation, et al., decided on the same day, held that the method of arbitrating contractual differences was a kangaroo court weighted against the exhibitors and violated the Sherman Act. The Film Boards of Trade became moribund after rendering of these two decisions.

The biggest defeat suffered by the integrated companies - prior to the Consent Decree - was handed to them by the Supreme Court in 1939 in Interstate Circuit v. United States. The decision of the court in this case outlawed distributor agreements with large circuits to set minimum admission prices at which subsequent run independent exhibitors were to show pictures, and to prohibit those independents from showing double features. The independents and the Anti-trust Division of the Department of Justice were still a long way from any

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65 Lewis, Howard T., op cit., p. 268. Lewis' chapter on "Arbitration" (p. 262-298) is the most comprehensive study of the Film Boards of Trade found by this writer.

66 282 U.S. 44
67 282 U.S. 30
68 306 U.S. 208
ultimate victory, for injunctive and penal controls have been greatly
circumscribed by judicial holdings that many of the most pernicious
practices are, in the absence of any conspiracy, legal attributes of
the copyright holder's right to merchandise copyrighted articles as
he determines, and by practical inability to meet the requirements for
proof of conspiracy. Even though the Interstate Circuit case permits
a wholly circumstantial proof of conspiracy, the effectiveness of this
channel of relief is limited by the difficulty of enforcing any award
through the complex mechanism of contempt proceedings. The great
cost of anti-trust proceedings must also be kept in mind.

Nevertheless, on July 20, 1938, Thurman Arnold, chief of the
Department of Justice's anti-trust division, filed proceedings in
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equity in the Federal District Court of Southern New York, charging
the eight largest motion picture producing organizations, twenty-four
of their subsidiaries and 133 individuals among their executives with
violation of the Sherman Anti-trust Act. The original complaint attacked
the large-scale vertical integration of producer and exhibitor as
principal cause of restraint and monopoly in the industry and prayed
for divestiture of production from exhibition as the major form of
relief. The Little Three of Columbia, Universal and United Artists were
not theater owners. They were charged, with the five "majors", with a
monopoly of production through exchange of stars, featured players,
directors and technicians, production sets and other equipment in what
the government called a pooling of assets. All were charged with a
number of unfair trade practices, such as block-booking, forcing of

69 "Legislation By Consent in the Motion Picture Industry", Yale Law
Journal, March 1941, p. 855
70 United States v. Paramount Pictures, et al., Equity No. 87-273
short subjects as conditions for obtaining desired feature films, arbitrary designation of play dates, unreasonable clearance and zoning schedules, acquiescence in overbuying which enabled affiliated exhibitors to withhold films from independent exhibitors, arbitrary and discriminatory film rentals, forcing independents to pay "score charges" (a price for the sound track), and attempting to fix the exhibitors' minimum admission price. In addition, the government accused the defendant firms of giving one another's exhibitor subsidiaries such benefits as shared advertising costs, optional contracts that involved no real obligation to take the pictures contracted for; numerous contract modifications not granted to independent exhibitors, cancellation of short subjects; and move-overs (privilege of moving a picture from one theater to another owned by the same firm for a continued run).

The Department of Justice realized, however, that at least a share of responsibility for any of the abuses alleged to exist was traceable to the undue power of unaffiliated circuits to force discrimination against independent theaters and that divorce could not solve this aspect of the problem. Therefore, concurrent with the major suit, the government brought separate actions to dissolve three of the more important unaffiliated circuits as a step toward complete break-up of exhibition facilities into independently owned and operated theaters.

71 Koley, Raymond, op. cit., p. 208

72 United States v. Griffith Amusement Co., Circuit Action No. 172 (W.D., Okla., 1939)
United States v. Schine Chain Theaters, Circuit Action No. 223 (W.D., N.Y., 1939)
United States v. Crescent Amusement Co., Circuit Action No. 54 (M.D., Tenn., 1939)
IV. THE CONSENT DEGREE

The Anti-trust Division had issued an explanatory statement at the same time the major suit was filed in which it was stated that although the movie business had had general approval from the Department of Justice heretofore, the department felt that court proceedings furnished the only path to constructive achievement. In this statement was a significant phrase which indicated that settlement might be reached by consent decree. A year of legal fencing ensued, during which the defense lawyers threw out all the stumbling blocks and legal delaying tactics they could invent. With the announced intention of avoiding the industrial dislocation necessarily consequent upon the theater holdings of the defendants, and because of a realization that even successful prosecution of the suit might not secure from the court the divestment asked as a remedy, the Anti-trust Division of the Department of Justice revised its action in 1940 while the equity proceeding was still pending, so as to admit a consent decree.

Witnesses were called and the trial formally opened before Judge Henry Goddard of the District Court for Southern New York. Two days later it was recessed and four and a half months later, on November 30, 1940, a consent decree was signed by Paramount, Loew's, RKO, Warner Brothers and Twentieth Century-Fox. It has never been consented to by the three other defendants who do not own theaters. The decree was entered into as an effort to evolve a modus vivendi short of divestment which might sufficiently alleviate the alleged restraints. By compromising on divestment the government was able to insist on introduction

74 Business Week, June 30, 1940, p. 23
into the decree of extra-legal provisions providing primary enforcements of mandates of decree by arbitration, without the necessity of recourse to the difficult contempt procedure. The decree, as finally approved, represented a shift from an emphasis on vertical integration to a theory that the major evils in the motion picture industry stem from an abuse of the chain buying power of the circuits, both affiliated and unaffiliated.

The decree as adopted divided itself roughly into four main divisions. One part was designed to alleviate the evils peculiar to the licensing of pictures — particularly blind selling and block-booking. This was attempted through adoption of mandatory provisions which forbid licensing of pictures until they had been completed and shown for benefit of exhibitors and permitted licensing of them in groups of no more than five pictures. Another division dealt with prevention of chain discrimination in designation of runs and fixing of clearance schedules. This was accomplished by granting aggrieved exhibitors the privilege of arbitrating their claims. Successful exhibitors were awarded an opportunity to compete, theater for theater, for the preferred run, or by having a limit set on maximum clearance allowed holders of prior runs. A third part of the decree was aimed at the problems of affiliations. It permitted wide latitude to distributors in dealing with their affiliated theaters, but in lieu of divorce attempts to restrict further extension of the affiliated circuits. Finally there were the various enforcement and escape clauses, the most important of which was a novel provision for independent arbitration as the primary means for enforcement of most of the decree, with resort to this mechanism delegated solely to the "injured"

75 Yale Law Journal, supra, p. 856
exhibitors. A panel of not less than ten arbitrators was established in the thirty-two exchange centers of the United States. These arbitrators, selected by the American Arbitration Association, have no connection with the motion picture industry. An Appeal Board of three, appointed by the federal court, in which complaint arises, constituted a reviewing forum.

The quid pro quo required from the government in exchange for the concessions offered by the majors apparently was the agreement by the government to refrain from disturbing the theater holdings of the majors. The principal escape clause provided that if the three non-theater owners did not sign, or if the government did not get a verdict against them by June 1, 1942, the five signers would be released on September 1, 1942 from the trade-showing and the block-of-five requirements. The suit against the three producer-distributor companies apparently continued, but the Anti-trust Division took no positive action.

The concessions themselves, although not very substantial, have been enumerated as follows:

"(1) Blind buying was effectively abolished during the period of the decree as far as the five majors are concerned.

"(2) The number of films which can be sold in a block is limited to five.

"(3) It is less likely that an exhibitor operating under the limited system of blocks-of-five need buy more film than he can use.

"(4) The sale of shorts, newsreels, and other types of product formerly forced on independent exhibitors may no longer be made the condition for licensing of features.

"(5) Arbitration procedure is provided for exhibitors complaining of unreasonable clearance".76

Limitations of the gains are seen in that the modification of block-booking and blind buying is so conditioned that it is virtually an

76 Huettig, Mae D., op cit, p. 141
optional concession which may be withdrawn whenever convenient for defendant majors. Further, assuming that blocks-of-five continue as the sales method of the majors, it does not follow that the independent exhibitors benefit. It is explicitly left to the distributor to decide what features to include in each block, and he is not required to offer the same blocks to competing theaters. The independent exhibitors claim that a block-of-five offered to them generally consists of one good picture and four others which they would otherwise not buy. Film rentals are higher under the new system; the majors attribute increases to higher costs of production and selling under the new system.

Louis Nizer criticized the consent decree as follows:

"The Consent Decree illustrates compulsory contract under complex circumstances. The public interest is remote if not entirely absent. It exists only in the sense that government has abandoned procedure by litigation for concessions by decree where the defendants deny liability. The business of the motion picture industry is not such as to confer upon it either the privileges or the burdens of public interest. Yet by means of the Consent Decree, the industry undertook to eliminate and also to adopt trade practices which compelled its members to enter into contracts under certain circumstances. The directives to contract were not specific nor easily executed...As legislators and courts often do when troubled by the problem of definition, the draftsmen of the Decree resorted to generalization. Thus the evil day of decision was postponed". 77

Although from a legalistic view Mr. Nizer's statement may be relevant and indicative of the tentative nature of the decree, it takes an ostrich attitude in denying the larger thesis that the entire history of anti-trust proceedings against the motion picture industry has been predicated not solely upon maladjustment of intra-industry relations, but as a matter of public interest.

77 Ibid, p. 141
78 "Duty to Bargain in the Motion Picture Industry", Columbia Law Review, July 1943, p. 717
The block-of-five and trade-showing sections of the decree technically expired on September 1, 1942, under the escape clause, since the non-theater-owning producer-distributors failed to sign the decree. A meeting of distributors and exhibitors presented the Anti-trust Division with a plan for selling pictures in quarterly blocks, with cancellation privileges according to the exhibitor's yearly rentals. This plan was rejected as a return to blind selling and restricted competition.

As early as November 1942 the highly articulate exhibitors had gone on record in telling the government that the decree was a failure. But the life of the consent decree was extended at the request of the Department of Justice and acquiesced to by the five "majors" insofar as provisions of the escape clause were not negated. At the end of the three-year period in which the decree had been in effect there lapsed the restraint on the government to move for theater divorce-ment and the restraint on the defendants not to engage in theater expansion. The exhibitors, who were not parties to the decree and had no voice in its operation, retained the recourse of filing complaints and suggestions with the Department of Justice — as well as the provision for arbitration.

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Husttig, Moe D., op cit, p. 141

The value of the system of arbitration lay in its powers for handling questions of clearance. Even here, though, the decree was limited, since the decree specifically provided that clearance given theaters in which the distributors have an interest is not subject to arbitration. Further, arbitration of run was provided for under such involved restrictions as to make virtually impossible any substantial modification of the system. Complaints with respect to run could be filed only by exhibitors wholly independent of any circuit of more than five theaters. The effect of this provision to safeguard the prior runs (i.e., the affiliated theaters) since the class of independent exhibitor defined above is usually far too remote from the preferred runs to effect any change in the classification. In short, if any change is made in the runs of a group of theaters, it very likely will take place within the ranks of the independents, i.e., the small independent versus the larger independent; the "majors" will remain substantially untouched in any event.
V. RENEWAL OF LITIGATION AND A NEW CONSENT DEGREE

As the close of the three-year period of the decree approached, the Department of Justice attempted negotiations with the motion picture industry to renew and strengthen the decree. Efforts for modification were unavailing. Attorney General Francis Biddle therefore filed a new petition in equity against the eight principal companies, their subsidiaries and high executives. Complaints of independent producers had not ceased at all with the 1941 consent decree, and the outrages of the independent exhibitors had known only a short respite. Grievances of the independents paralleled the anti-trust charges. A typical complaint was that the big producers demanded a forty percent bite out of the independent exhibitor's box-office dollar, but only thirty-five percent from the downtown theaters. Also, that Grade A films were held back from suburban theaters by a clearance system for so long that the neighborhood houses lost customer goodwill. Among the independent producer plaintiffs were those against affiliated exhibitors that nothing had been done to correct such booking methods as those which schedule a Grade A independent production for Christmas week and Holy Week, when customers flock away from movies, or for Monday and Tuesday instead of Saturday and Sunday.

In a surprise move the Attorney General made affidavit under the Federal Expediting Act. As a necessary consequence a three-judge court consisting of Circuit Court Judge Augustus N. Hand and District Court Judges Henry W. Goddard and John Bright was constituted to try the case. Defense attorneys immediately imputed the moral right of

80 Equity No. 87-273
81 Business Week, June 30, 1945, p. 24 et seq.
Judge Goddard (before whom the original petition had been heard in 1940) to participate in the case, since his wife had an interest in a small theater. No actual proceeding to prevent Judge Goddard from hearing the case was instituted, however.

This special expediting court declared, on June 20, 1946, that the evidence presented established infractions of the Sherman Act in connection with these agreements and practices:

1. Admission price-fixing.
2. Run and clearance.
3. Formula deals, master contract and franchises.
5. Block-booking and blind selling.
6. Pooling of theaters.
7. Operating, buying and booking agencies.
8. Discriminations against independent exhibitors.

At the conclusion of the opinion was an order for a decree, which provided for injunction and other relief against the condemned practices, relating solely to distributors and exhibitors, and for dismissal of suit against the defendants for their acts as producers. An important provision inaugurated a system for bidding on pictures, for both run and clearance, by competing theaters, license to be granted to the highest responsible bidder having an adequate theater.

But the court refused the chief contention of the government: refused its prayer for divestiture of theaters by the defendants, except where two defendants had a joint interest in a pooled theater, and where their interests were pooled with houses of other exhibitors. In such cases where the defendant owned an interest of more than 5 percent and less than 95 percent, it was ordered either to divest itself of its interest or to acquire an outstanding interest in the theater. The decision also prohibited further acquisition of theaters, unless for the purpose of securing complete control of jointly held theaters, and with permission of the court. It made provision, also,
for arbitration of distrutes as to bids, clearances, runs and other subjects appropriate for arbitration.

Without theater divorcement, Department of Justice lawyers made known in court, the only other proviso which would leave the government satisfied with the new decree would be an injunction restraining any of the Big Five from licensing product of other theater-owning defendants in an affiliated theater. This provision was meant, of course, to diminish the economic power of the Big Five and pave the way for successful independent competition in areas under control of the majors.

An official Statutory Court, composed of the same judges as the Expediting Court, approved the findings of the Expediting Court late in December of 1946 and agreed to the new consent decree which had been drawn up by a committee of lawyers representative of both the defendant corporations and the Anti-trust Division of the Department of Justice. Harrison's Reports hailed the decree in this optimistic vein:

"Independent exhibitors and distributors alike, who for decades have dwelt within the shadow of dynastic monopoly, need have no further apprehension. Inexorably, point by point, processes of justice have triumphed. Inevitably the Supreme Court will place the seal of doom upon all unlawful practices and combinations. When the ultimate word in this legislation has been written a new era of progress will begin, under clearly defined law. Independent exhibitors will have opportunity to conduct their business in legitimate way, in a fairly competitive field. Independent producers and distributors will have a wide market in which they may offer their wares upon a footing of equality with the most strongly entrenched organizations. No one can predict heights which may be reached. The major distributors stand on slippery ground under dark skies. If the decision of

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82 Harrison's Reports, August 10, 1946, p. 1
83 Variety, January 8, 1947, p. 8
84 Appendix C contains Variety's enumeration of the salient features of the decree
the Expediting Court is correct, they have entered into many thousands of illegal contracts; they have granted unlawful privileges and they have in many other ways flouted the law... Conceivably, after so many years of apparent immunity, the defendants do not now appreciate their peril. In proceedings before the Statutory Court they have fought vigorously to retain their advantages. They have adopted an attitude that seems to betray a blindness to reality and complete lack of cooperation with the government".85

The new consent decree has already been stayed for sixty days, and it is expected that defense lawyers will ask the Supreme Court for a stay of its provisions until the decision of the Statutory Court is reviewed by the Supreme Court. If such stays are not granted, however, the principal bans under the decree will become effective July 1, 1947. Especially hot court battles have been predicted in regard to disposition of pooled theaters. Paramount apparently will be hardest hit of the five "majors", since an estimated 1100 out of 1500 of its theaters are partner-owned.

At this writing the industry is digging in for battle with the Supreme Court. Columbia Pictures will maintain that the decree is a violation of existing copyright laws since it seeks to limit a person in the licensing of his copyright monopoly. They feel that this is the chink in the decree's armor.

The suits filed by the Anti-trust Division in 1938 against three of the principal unaffiliated exhibitor circuits, the Schine Circuit of upper New York state, the Crescent Amusement Company in the South and the Griffith chain in Oklahoma, were all decided in favor of the government and break-up of the circuits ordered. The suit against the Griffith circuit had been known in the trade as the "granddaddy of

85 November 23, 1946, p. 1
86 Variety, supra, p. 3
87 Ibid, p. 8
them all" since the original anti-trust complaint had been filed by the competing A.B. lomand theaters in 1931. This suit, incidentally, was the last of the three to be finally adjudicated.
CHAPTER V

GOVERNMENT COOPERATION AND DIRECTIVE POWERS

I. MOVIE-MAKING BY GOVERNMENT AGENCIES

As early as 1912 the Civil Service Commission had made a picture, From Through Merit; from then on, various government departments turned out hundreds of films on every conceivable topic, from Culture in Iraq 88 to Suppressing Foot and Mouth Disease. Modest information shorts, they were made with no idea of intruding upon the commercial market or of instructing the public on any except restricted subjects. But in 1935 the Resettlement Administration under Rexford Gue Tugwell secured the services of Pare Lorentz, one of the best authorities on the American documentary film. In The Plow that Broke the Plains Lorentz sought to enlighten the public on the use of land and the tragic consequences of its abuse. Sequels of this film were The River and The Fight for Life. These films have been described as powerful, imaginative productions with popular as well as aesthetic appeal, the best "documentaries" produced in the United States. The River, distributed through Paramount Pictures, was given to exhibitors free of charge and probably obtained widest showing of any "documentary" prior to 1941. The Fight for Life, featuring the problem of maternity in slum districts, was distributed by Columbia Pictures in an arrangement whereby the company paid the government twenty-five percent of the gross receipts collected from the regular theaters for separate showings not subject to block booking.

88 Mayer, Arthur L., "Fact into Film", Public Opinion Quarterly, Summer 1944, p. 107
Of approximately five hundred federal films produced prior to 1941, the Department of Agriculture has produced some three hundred fifty. The War Department and the Department of Interior have produced a number of films relating to the work of these departments. The Department of Commerce has a contract film called Commerce Around the Coffee Cup.

Needless to say, Hollywood viewed with alarm the spectre of government production, particularly production with a marked political bias. Many distributors refused to handle The Plow That Broke the Plains, and one executive declared he would not release any government picture, even if it was Ben Hur. Opposition in Congress, stimulated by the commercial interests, managed to get the United States Film Service abolished in 1940. This Service, which had grown out of the earlier Resettlement Administration, was part of the Federal Security Agency. The United States Office of Education of the Federal Security Agency remained the government office principally connected with the production and distribution of motion pictures, whether government-produced or commercial pictures which were recommended by the Office of Education. Some forty-nine other agencies continued to produce documentary or educational pictures.

That governmental office with which the industry has cooperated whole-heartedly is the Motion Picture Division of the Department of Commerce. This office, under the Division of Foreign and Domestic Commerce, keeps a file called "Trade Follows the Films" which collects data on material and equipment used in films that have been purchased in international commerce. Nathan D. Golden, Chief of the Motion Picture Division, collected his data from the foreign trade reports of

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89 Ibid, p. 108
the Department of Commerce. However, with the transfer of these reports to the State Department by a presidential order of January 1939, Mr. Golden's sources are less certain. Latterly the State Department has named a Motion Picture Specialist for its Telecommunications Division. This office was set up under the reorganization of the State Department in 1944.

The Office of Coordinator for Inter-American Affairs, originally headed by Nelson Rockefeller, initiated an ambitious program of motion picture education in behalf of Pan-Americanism. Various government agencies, the American College of Physicians and Surgeons, the American Dental Association, Foreign Affairs Association and other philanthropic organizations furnished projectors to various Central and South American educational institutions. Under the aegis of the CIAA the Disney studios scheduled a series of animated cartoons to eradicate illiteracy through visual education. First of the Disney pictures was a rambling travelog, South of the Border.

In general, however, motion picture making by the government prior to the second world war was severely restricted by congressional opposition which took a dim view of any activity which even vaguely resembled competition with private industry. This animadversion took the form of picayune appropriations that rendered impossible the production of films of a documentary nature aimed at the public. The films made by government agencies, then, were merely a camera view of industrial processes that were of value only to various industries. Since ending of the war in 1945 the motion picture industry has become increasingly aware of the potentialities of commercial and education films, and has formed even stronger blocks designed to prevent federal encroachment on their self-proclaimed preserves.
II. THE CONTROL OF WAR-TIME PROPAGANDA IN THE FIRST WORLD WAR

American movies produced by the commercial movie makers during the 1914-1917 period of "neutrality" were hardly distinguishable from those made by the British and French as deliberate propaganda. Indeed, some of the most rabid anti-German films were made in America. Films such as The German Side of The War, made up of war negatives accumulated by the Chicago Tribune, and other pro-German movies and newsreel shots were very soon overridden and denied exhibition by pictures such as J. Stuart Blackton's Battle Cry of Peace, which had been based on Hudson Maxim's book Defenseless America, Lest We Forget, Heart of a Frenchwoman, and D.W. Griffith's Hearts of the World (These films were described in Chapter I). Others of this period were The Victoria Cross (the English in India), An Enemy of the King (Henry of Navarre), Birth of Democracy (French Revolution) and Joan the Woman. On the other side of the ledger were the pacifist film Civilization, produced and directed by Thomas Ince, and D.W. Griffith's epoch-making Intolerance.

Among the reasons sometimes given for the large number of pro-Allied films was the growing control of American banking interests whose welfare and profits were directly concerned with the success of the Allied cause. Also to be considered was the desire of these interests and the American industry as a whole to seize the world's film market while the Allies were busy elsewhere.

The United States entered the first world war on April 6, 1917, after three years and more of high-pressure propaganda paid for or incited by financial and political interests profiting by that hoped-

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90 Johnston, Winifred, op cit, p. 25
91 Ibid, p. 25
for participation. Among the films which had helped to whet the appetite of the people for battle had been W.R. Hearst's anti-Japanese, anti-Mexican serial Patria. Hearst had aroused the antipathy of big industrial and financial interests, however, because Japan was an ally, and also because he had not blasphemed against the Germans. Articles began to appear in popular publications discussing various German attempts to stir up anti-Japanese feeling in this country. Britain banned the correspondents of Hearst's International News Service.

The Committee on Public Information was created by an executive order dated April 17, 1917, with George Creel as civilian chairman and the Secretaries of State, War, and Navy as the other members. The CPI Division of Film was set up by presidential order on September 25, 1917. Its director, appointed by Creel, was Charles S. Hart. Hart had been advertising manager of Hearst's Magazine, a fact which industrial interests never forgot nor forgave. The functions of the Film Division were

"1. Cooperation with photographers of the Signal Corps and the Navy in preparing and handling pictures they had taken.  "2. Writing of scenarios and issuance of permits for commercial films about government work.  "3. Production of the documentary films made entirely by the CPI, most of which were finished after the Armistice.  "4. Distribution and promotion of war films whether taken by our own government, the Allies, or private producers.  "5. Cooperation with the Foreign Film Division in the export of pictures to CPI agents abroad."93

The first films issued by the Committee for home consumption were made up from pictures the Signal Corps already had on hand. The next were shorts made by both CPI and Signal Corps cameramen, of the type not

92 Ibid, p. 24
93 Hoek, James R., and Larson, Cedric, Words That Won the War, p. 137
supposed to compete with theatrical productions. Titles of these films showed their propaganda nature: The Spirit of 1917, Ready for the Fight, Army and Navy Sports, Labor's Part in Democracy's War, et cetera. Several feature films were also produced, the best known being Pershing's Crusaders; others were America's Answer, Under Four Flags and Our Bridge of Ships. These movies were shown in picked cities throughout the United States as direct exhibition by the government, with a thoroughgoing exploitation campaign. The films later were made available to local exhibitors on a sale, lease or rental basis. Grudgingly the industry's exchanges accepted the films for distribution.

Antagonism of the industry was hardly allayed by formation of the CPI Film Division's Scenario Department, but the producers agreed to undertake the production of movies for which the scenario department supplied the scenario, list of locations and, most important, permits for filming. Every possible cooperation of the Film Division was furnished free. The finished picture became the sole property of the producer, whose only obligation, after such films were approved by the CPI, was to give it the widest possible circulation. Pictures designed to sell America to the world were taken abroad by the Film Division's Lieutenant John Tuerk for showing in Allied and neutral countries. Control over what was sent abroad was exercised by the War Trade Board, which licensed every export. Creel secured a ruling from the Trade Board chairman that every application for a license by a movie producer must bear the endorsement of the Committee on Public Information.

Domestically, however, the CPI ran into industry-inspired charges of censorship and of faked stories and reports. Much was made of refusal of a CPI license to the film The Yanks Are Coming. This film was suppressed by the Committee because it was shown to be an attempt
by the owner of the Dayton-Wright Aviation Company to advertise their aircraft. President Wilson had been wary of boastful publicity regarding plane production because he feared the reaction of public disillusionment, and Creel was merely protecting administration interests in the prosecution of the war. Two other films which were suppressed because of objections from the British and the French governments were *The Spirit of '76* and *The Caillaux Case*. The former movie was banned under the Espionage Act because its producer, Robert Goldstein, had attempted to secure German-American backing: one scene, concerning the Wyoming Massacre, showed British soldiers killing women and children and carrying off young girls. French protests against *William Fox's The Caillaux Case* led to so much cutting of objectionable features that little story was left. Producers had taken advantage of their domestic freedom to produce such "hate" productions as *The Kaiser, Beast of Berlin, Wolves of Kultur, The Prussian Cur* and *To Hell with the Kaiser.*

Larkin and Larson, authors of *Words That Won the War*, say that it was through the patriotic eagerness of the movie people themselves that the commercial phase of the wartime cinema program was launched with little more than a suggestion from the government. In their own words,

"Trade papers such as Exhibitor's Trade Review helped give encouragement to the movies' enlistment in the patriotic cause, but the industry itself was not slow to act. In response to a request from Secretary of the Treasury LoAdoo, William A. Brady, famous producer and president of the National Association of the Motion Picture Industry, called a meeting of important movie people on May 25, 1917, and a committee was appointed to help arouse public interest in the government borrowing program.

"This group swung into action immediately, and devised plans for theater support in the First Liberty Loan drive. The American Banker's Association, through Mr. Brady's committee, paid for 30,000 Liberty Loan slides to show on the movie screens of America, and each was delivered with a letter from Secretary LoAdoo to the theater manager. Many ingenious publicity plans were concocted, including an early version of "Bank Night," with $700 in Liberty Bonds distributed at certain theaters each week..."
"The most important step (in exploitation of the films themselves for the winning of the war) was taken on July 11, 1917, when William A. Brady and other members of the industry's War Cooperating Committee came to Washington to confer with government officials. Their first appointment was with George Creel, who presented a plan whereby the War Cooperating Committee would assign a delegate to each government department to discover how the motion picture industry might help meet its needs.

"This plan was adopted by the War Cooperating Committee, which included, besides Mr. Brady, such other well known figures as William Fox, D.W. Griffith, Thomas H. Ince, Jesse L. Lasky, Carl Laemmle, Marcus Loew, Joseph K. Schenck, Louis J. Selznick, and Adolph Zukor."94

This encomium occurs in the early part of the account of the Film Division's activities in Words That Won the War. Later sections have no words of praise for the industry, and mentions it only in connection with the opposition met by the Committee on Public Information in getting distribution for its Signal Corps and Film Division movies and in suppressing films such as The Yanks Are Coming.

Any estimate of the over-all effectiveness of the Films Division must be a casual one. The Division did not get underway with its own production program until the summer of 1918; the war was ended in November of that year. While the motion picture was just beginning to enjoy a certain respectability, it was by no means the national institution it was by the time of the second world war. The only mention Wook and Larson made of the movies in the final chapter of their book, in which they visualized a future Committee on Public Information, was a function "to secure the cooperation of the press, the radio, and the film industry".

The publicity barrage of "fighting stuff" fired at the American people encompassed all media of communication. The film contributed its share. The thesis of Winifred Johnston's pamphlet was that the

94 Ibid, p. 134, 135
95 Ibid, p. 343
wartime pictures carried on with the glorification of war and the munitions and equipment used in its prosecution; that they were simply a continuation of the movies inspired by the industrial and financial interests that would profit from war urged on the movie-going public previously. Such thesis can be accepted within certain limits. The motion picture industry was not well-organized during the 1914-1919 period and was therefore susceptible to the blandishments of entrenched interests, without the wariness which comes with a knowledge gained through experience of what they can or cannot get away with. In this latter case the motion picture producers and distributors would and have resisted pressure to screen stories of political significance.

Efforts of the producers and distributors to "get movies by" the CPI, then, appears as a natural consequence of a then competitive industry to make money. Miss Johnston herself cites a revealing instance:

"'Hand your films over to me - you can't trust the other fellows,' was the exchangemen's demand which sent Hart (Films Division Chief) into distributing the films himself..."96

As stated in Chapter I, the movies were willing to cooperate with the government in making and distributing propaganda pictures as long as they returned money to the producers in the industry. But the industry did not believe in building up the government as a competitor. When it appeared that the public was swallowing anti-German, fighting propaganda of the most obvious sort, the movie men hastened to put in the theaters films which outdid by far the necessarily more dignified exhortations of the Committee of Public Information.

96 Op cit, p. 34
III. GOVERNMENT CONTROL OVER MOTION PICTURES IN THE SECOND WORLD WAR

The years that intervened between World Wars I and II witnessed a tremendous growth in the motion picture industry which reached the eminence of a "major industry" in the eyes of the world. The post-war energies of the early 1920's were subsiding when sound hit the screen in 1927. The stock market crash and the depression sobered the people of this country as well as the peoples of the rest of the world. Social and political issues again became predominant and American eyes were directed toward Europe where dictators were espousing totalitarian causes.

The motion picture industry was quick to feel a blow in its pocketbook as the juggernauts of Berlin and Rome got underway. Leo C. Rosten described filmdom's interests as follows in his sociological study of Hollywood:

"Wherever the Nazis and Fascists moved, they cut the arteries of Hollywood's income. American movies became pawns in the gigantic game of power and conquest. Hollywood's product was outlawed in Germany, Italy, Soviet Russia, and in the nations which fell under the heel of conquest.

"Foreign censorship taboos had for two decades familiarized Hollywood with the politics of entertainment (many American movies had been denied admittance to Spain, Poland, Turkey, Hungary, Brazil, Japan), and as the world plunged into war, censorship became more severe and film quotas more oppressive. Hollywood's markets were crippled or obliterated by dictatorial action. Foreign propaganda films were taking over the markets closed to Hollywood by political fiat; and in those markets which remained more or less free - notably the South American countries - German and Italian films, made and used as deliberate instruments of foreign policy, were destroying the trade which Hollywood, in free competition, had enjoyed." 97

The political awakening which had begun in Hollywood with the Spanish Civil War, reflected itself in organizations such as the Hollywood Anti-Nazi League and the Motion Picture Artists Committee. These

97 Hollywood: The Movie Colony; The Movie Makers, p. 161
organizations and numerous screen guilds became embroiled in a Communist scare which resulted, among other things, in a threatened investigation by the Dies Committee on Un-American Activities.

Filmmom had been carried along on the wave of the times, and the motion pictures produced are now recognizable as part of the same cycle of propaganda which took place previous to and during the first world war. The frivolous side of uniformed activities had been the subjects of movies of the middle thirties such as West Point of the Air, The Marines Have Landed, Flirtation Walk, Navy Blue and Gold, Hold 'Em Navy, Men with Wings and Submarine Patrol. By 1939, when Great Britain had entered the war, numerous films of the first world war period had been re-made or re-issued; among them were Goodbye, Mr. Chips, The Story of Irene and Vernon Castle, Nurse Edith Cavell and All Quiet On the Western Front. Pro-British and colonial films were represented by a rash of Dickens stories, Lloyds of London, Suez, Stanley and Livingstone, Gunga Din and Wee Willie Winkie. The earlier Blockade, which had aroused criticism when it was released in 1928 because it favored the Spanish Loyalists, was forgotten by 1939 when Confessions of a Nazi Spy was released to a public unaccustomed to such forthright damning of the Hitler regime. This seemed especially remarkable since MGM previously had shelved Sinclair Lewis' portrayal of Fascism in America, It Can't Happen Here, because it might offend certain business interests.

After Hitler cut off the American market for films in Germany and other countries and the industry's investments in European movie organizations were hushed up (such as MGM's $4,000,000 share in German munitions czar Alfred Hugenberg's Ufa), pictures like Erich Maria Remarque's Three Comrades gave way to The Mortal Storm and The Invaders.
With American entry into the war a horde of army training camp comedies appeared, among them *See Here, Private Margrove* and *Up in Arms*. As the horror and terror of total war gripped the American people, the screen became filled with pictures of the genre of *Wake Island*, *Bataan*, *Watch On the Rhine*, and later, *Quadalcanal Diary*. Ernie Pyle's *Story of GI Joe* cast an understanding light on the plight of the foot soldier.

After Pearl Harbor the government was again empowered to produce and control the distribution of government films. For a period of two years the Office of War Information supplied exhibitors with seventy-three short subjects which were shown in a constantly increasing number of theaters. These films were distributed, together with other pictures, to millions of students, civilian war groups, Chambers of Commerce, granges and trade unions. The narrow, 16-millimeter size was employed to expedite shipments inasmuch as all film transportation soon became dependent on licenses from the Office of Defense Transportation.

Lowell Kellett, one of President Roosevelt's $10,000 a year executive assistants and chief of the Office of Government Reports, was named by the president to be Coordinator of Government Films. In a letter to Mr. Kellett dated December 18, 1941 and published in the *Federal Register*, the president said,

"The American motion picture is one of our most effective media in informing and entertaining our citizens. The motion picture must remain free in so far as national security will permit.

"I want no censorship of the motion picture; I want no restrictions placed thereon which will impair the usefulness of the film other than those very necessary restrictions which the dictates of safety make imperative.

"The motion picture industry, especially as used by the federal government, has a very useful contribution to make during the war emergency. In order that the federal government's efforts in the field of motion picture production and distribution

98 Mayer, Arthur L., *op cit*, p. 112
may serve most effectively and efficiently it is desirable that all activities of federal government be coordinated under the direction of one central office." 99

In conformance with this aim, the president outlined the functions of the post of Coordinator of Government Films:

"1. Act as liaison officer of the federal government with theatrical, educational and industrial producers and distributors in connection with the preparation, production and distribution of films.

"2. Establish a clearance office through which all of the government's civilian films must clear whether they are to be distributed through theaters or through non-theatrical organizations.

"3. Plan, so far as necessary, such government motion picture production and distribution as is deemed necessary to inform and instruct the public during the war-time crisis.

"4. Consult with all government departments in connection with film production and distribution programs and consult with and advise motion picture producers of ways and means in which they can usefully serve in the national effort." 100

The motion picture work of the Office of Government Reports and the erstwhile Office of Emergency Management was soon consolidated under the Motion Picture Bureau of the Office of War Information, which was under the over-all direction of veteran newsman Elmer Davis. Mr. Kellett retained his post as film coordinator; in the course of his duties he was called upon to supervise production of motion pictures, review and approve all proposals for the production and distribution of motion pictures by federal departments and agencies. The bureau produced various movie shorts dealing with wartime problems such as manpower, salvage, and fuel conservation. Its coordination function appeared in the clearance of films made by other government departments.

When Lowell Kellett went to Hollywood to make final arrangements

99 New York Times, Jan. 4, 1942, 38:3
100 Supra, p. 38
with the producers, he said that all major studios had agreed to the proposed review "to provide a standard procedure for transmitting voluntary propaganda requirements to motion picture producers."

Upon his return to Washington, neither he nor the industry would make any comment, but it appeared that no general agreement had been reached and that the issue had opened a major controversy concerning the relation of films to the government. The Hays office raised the cry of censorship. The government had the upper hand, however. Like other industries, the movie industry had to justify itself to get its rations; nothing frightened the producers more than the problems of manpower and materials. The industry could not ignore, then, the relations of the Film Chief to officials in the War Manpower Commission, the War Production Board, and other agencies important to the physical life of the industry. The connection between ideas and materials was illustrated by the review of all fact films by the War Production Board. No civilian fact films, except domestic newsreels, could be made without WPB approval. Mr. Mellett was adviser to WPB on the selection of film facts for which materials would be allowed. The point was, as pointed out in The Nation, that Mellett's office gave him wide collateral powers, creating a psychological hazard that interfered with the producer's freedom of choice. So it is noted, in a syllabus on the activities of the Office of War Information, that "...The Bureau has left the major part of the job of informing the public through films to the industry itself, and has built up only a comparatively small producing organization. By arrangements with various producers, it

101 McDonald, John, "Will Hays' New Rival", The Nation, Apr. 3, 1943, p. 484
102 Supra, p. 484
furnishes its advice and assistance to enable the industry to present the most accurate and effective view of wartime problems."

In 1943 Congress put an end to the OWI motion picture production program for domestic consumption by depriving the Motion Picture Bureau of all except $50,000 of its domestic film budget. Antagonism to the administration, rather than any affection for economy, is the cause generally ascribed for this action; it should never be forgotten, though, that the motion picture industry is ever opposed to any competition from the government.

The activities of OWI Overseas, as differentiated from the OWI domestic program, were not curtailed. According to the organizational chart of OWI Overseas, the Bureau of Overseas Motion Pictures was responsible for all film matters designed for consumption in countries outside the Western hemisphere, as well as for the production and overseas distribution of the bureau's own films. Chief of this bureau was Robert Riskin, formerly a Hollywood producer and writer. Its activities extended to production

"...for dissemination abroad newsreels which include the best features of those made by leading American companies, and preparation of commentaries and synchronizations in a dozen different languages. It also produces short films on specific subjects, both in color and in black and white, requiring not only the use of existing films but also the shooting of new material. It selected and prepared for mobile units the films for use in remote areas."

Work of the Bureau of Overseas Motion Pictures was tied in with the Psychological Warfare Bureau and the Office of Strategic Services.

Counterpart to the War Coordinating Committee of the movie industry

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104 Mayer, Arthur L., op cit, p. 108
in the first world war in this latest war was the War Activities Committee - Motion Picture Industry. When the production of information shorts by OWI’s domestic service was discontinued, the industry - through the WAC, which consisted of two hundred thousand volunteers representing motion picture theaters, producing, distributing and associated agencies - stepped into the breach. It offered to supply annually without charge for theater showing, fifty-two messages from suggestions supplied by government agencies conveyed through the OWI. Needless to say, the offer was snapped up. Twenty-six of these messages were one-reel shorts; the other twenty-six were bulletins consisting of brief messages appended to newsreels. The films were rarely advertised, but exhibitors pledged to play them all, regardless of merit. Reports on audience reaction indicated that fighting pictures such as *With the Marines at Tarawa* or *Day of Battle*, picturing one memorable day in the life of an American aircraft carrier, were far more popular than solemn information shorts with Paul McNutt talking about the need for manpower or Donald Nelson appealing for salvage.

Better known to the public than the War Activities Committee was the Hollywood Victory Committee, formed the day after the United States entered the war. It was a huge talent pool of artists who carried entertainment and inspiration to every war front, to every domestic military installation and to the war financing and great relief campaigns which were launched by the Treasury Department.

The Army and Navy had eluded the wrath of Congress which had been

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107 Mayer, Arthur L., op cit, p. 111
wished on the OWI, and produced numerous outstanding films. Among them were Prelude to War, Battle of Russia, Desert Victory (which won the 1943 award of the Academy of Motion Picture Arts and Sciences for most distinctive feature documentary production), Report from the Aleutians, At the Front in North Africa and the memorable Memphis Belle. Will Hays reported to the MPDA in his twenty-second annual president's report for 1943-1944 that the army had produced 708 training films, and the industry made a non-profit basis; ninety-four per cent of the unprecedented footage from the Walt Disney studio was made for government agencies directly associated with prosecution of the war.

In the year following Pearl Harbor, newsreels presented 4278 different subjects or "clips", of which 78.3 per cent dealt with some phase of the total war effort. Of these 23.2 per cent dealt with scenes of fighting; 27.4 per cent dealt with armed forces at home; 14.6 per cent with war-time Washington and government campaigns; 9 per cent with activities on the war production front; and 4.1 per cent with "Good Neighbor" relations. Also, newsreels got together on a coverage pool comparable to the news services of the press, with fourteen cameramen scattered all over the world collecting picture material for their joint use.

The Army and Navy united in an Industrial Services Division to produce, with the aid of the U.S. Office of Education, over five hundred films aimed to speed up the training of workers in critical manpower shortage areas; they were used in factories and schools. The United States Army Motion Picture Service operated 840 theaters with a seating capacity of 543,576 at army camps in the United States,

Supra, p. 15
Alaska and Caribbean bases; every hospital possessed projection equipment.

From all indications the motion picture industry was indeed giving its all to the war. But then, it might as well; its foreign market was practically gone; transportation difficulties made the shipment of films to those neutral countries which had not set up trade barriers against American movies barely worth the trouble; the industry was beset with manpower and equipment shortages; income and surplus profits tax brackets were so astronomically high that it was hardly worth while making money; so many governmental agencies had their fingers in the movie pie that it was sometimes hard to tell just who was running it; it was giving the bulk of its product, in 16-millimeter form, to the army and navy for the entertainment of the service men and women abroad - only to have the Office of Censorship step in and arrogate to itself the right of approving or not approving any film that was to be exported from the United States under the provisions of the First War Powers Act and the Trading with the Enemy Act.

All was not lost, however. Motion picture attendance was at its all time high from 1942 through 1945; the absence of so many high-priced names in the service eased the pressure on the payroll; producers and actors had discovered the one-picture corporation and were using it to keep their income taxes out of the highest brackets - this in turn cut down on studio production costs; Lend-Lease was manna from heaven to the "majors", for it restored the British market after the freezing of credits in 1940; the controlling financial and industrial interests could parade the wares of war which they had for sale across the silver screen with little fear of restriction from a government which had to keep the war fever of the public at fighting pitch.
Apart from the domestic activities of OWI via the movie medium, industryites had little opportunity to politick. President Roosevelt had pretty much given them a free hand in propagandizing the American people; the administration was rife with dollar-a-year men drafted from the ranks of the film trade who had to be careful not to expose the highly vulnerable movie industry to the damning charge of "war profiteering". Publications, with the exception of such constantly carping critics as the Christian Century, Commonweal, New Republic and The Nation, were remarkably quiet about the moral tone and social tenor of the movie product.

Politically, the prayers of the magnates must have been answered when a projected Senatorial investigation into alleged propaganda in motion pictures was suspended early in 1942, and the special sub-committee of the Interstate Commerce Committee voted not to make a report, citing the war and the need for national unity. A bound volume of newspaper, trade press and magazine stories and picture layouts concerning the "hot" propaganda charges of the period immediately pre-war and shortly after American entry into the war found its way onto the desk of practically every important movie executive. It had been compiled by the Academy of Motion Picture Arts and Sciences under the direction of its executive secretary, Donald Gledhill. In the foreword of the volume, Mr. Gledhill made a timely appeal for the establishment by the industry of a "well-equipped research bureau that would use the tools of sociology, political science and statistics to secure, correlate and make available to the personnel of the industry a better understanding of the social effects of motion pictures and of the constantly changing reactions of all sectors of public opinion".

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New York Times, Jan. 6, 1942, 27:4
In answer, possibly, to Mr. Gledhill's appeal, formation of a public relations committee was effected, composed of studio publicity directors both in New York and Hollywood, to advise on public relations problems.

The New York Times for October 10, 1943 (page 40) reported that Will Hays would ask leaders in the motion picture industry to set up a voluntary propaganda code similar to the morals code, to head off a threatened congressional investigation. The New York Times article stated that Republican members of Congress were complaining of a political bias in motion pictures.

The writer has endeavored to make it apparent that government control over the motion picture industry in the second world war was implemented as much by the vulnerable position which the "trade" occupies in the social and economic structure of the United States, as it was by the mandates of the many and variegated legislative and executive agencies set up to promote — and sometimes confuse — the prosecution of the war. That, and the fact that the Axis powers were putting red ink in the industry's ledgers.
CHAPTER VI

THE INDUSTRY TO DATE AND CONCLUDING REMARKS

I. THE INDUSTRY TO DATE

Independent producers were not very important at the time the Department of Justice's anti-trust suit was filed in 1938, nor at the time of the first Consent Decree in 1940. The change which made them suddenly important came upon them in the war years. When the government inserted sharply graduated surtaxes on high incomes, so much of a producer's salary went to the Internal Revenue Department that there remained little incentive to be an employee. Tax experts pointed out that bona fide capital gains were taxable at 25 per cent, whereas income may be taxed as high as 85 to 90 per cent, depending on the aggregate earnings of the individual. Therefore a reputable producer, usually along with two or three actors who possessed names of established box office value, set up a separate corporation for the production of, say, one picture. No salaries were paid, but stock in the corporation was issued to those concerned. After the picture had been made and released for six months or more, residual and future income from the picture was sold, the corporation dissolved and the profits divided among the participants. Such profits appeared on tax returns as capital gains.

There were no fewer than seventy-one of these independent producers by early 1945. The integrated companies were hard put to it to keep their theaters furnished with pictures and readily accepted

110 Business Week, Aug. 3, 1946, p. 26
the product of these independents for exhibition. The independent product was almost invariably of "A" quality in order to realize high rental fees. In turn, banks were all too willing to lend to the producer who had an assured channel of distribution.

As the end of the war approached, the independent producing corporations which were of a more permanent nature linked themselves together as the Society of Independent Motion Picture Producers. The SIMPP was, in effect, a trade association. Donald M. Nelson, former chairman of the War Production Board, became president of the SIMPP at a salary of $50,000 a year. When anti-trust hearings were again being held in 1945 and 1946, the independent producers furnished information to the Department of Justice and were, for a time, on the point of actively intervening in the case.

When Eric A. Johnston succeeded Will H. Hays as president of the Motion Picture Producers and Distributors Association in September of 1945, the SIMPP had twenty-four member companies, just one less than MPPDA. United Artists had withdrawn from the MPPDA the year before because of disagreement with the Advertising Code Administration over the much-bruited Howard Hughes picture, The Outlaw. The withdrawal was made permanent after formation of the SIMPP, since a majority of the independent producers were releasing through United Artists. The new Johnston Office consolidated its position late in 1945 by merging with the California organization of the integrated companies, the Association of Motion Picture Producers, to become the Motion Picture Association of America, Incorporated (MPAA).

The big "industry" news of 1945-1946, over which the trade personnel were agog, was the storming of the American movie citadel by the English magnate, J. Arthur Rank. Rank had achieved in England, along with Lord Portal, John Alan Maxwell and a very few other industrialists, virtual
monopoly over British cinematography - all done while Westminster and Whitehall were looking the other way. The Rank empire, which extends to Australia and South Africa in addition to interests in cinema concerns in continental Europe, employs a "loose integration" principle of organization. Rank used this formula in the United States.

In a deal with Universal and the International Pictures of Leo Spitz and William Goetz (which had been combined under the redundant title of Universal-International), Rank formed United World Pictures - called a ninth major company by the Film Daily Yearbook. The distributing firm of Eagle-Lion Films was set up in combination with the Pathe interests. Also, mutual production and distribution deals were negotiated with RKO, Selznick and Twentieth Century-Fox. English pictures thereby are making a strong bid for the American market. As if the galaxy of business combinations enumerated did not suffice, Rank negotiated with Bell and Howell for the interchange of film libraries and the manufacture and distribution of motion picture equipment.

The international export problem is today among the serious issues facing the motion picture industry. Before the war Hollywood's export markets accounted for one-third of the industry's annual income, but today American producers are faced with a solid wall of trade barriers in Europe. The most pressing force behind restrictions is fear of a dollar shortage, but almost equally strong is the desire for a national cinema art upon the part of most European countries. Very few American pictures were shown on European screens (with the exception of service performances) during the six years beginning in 1940.

112 Film Daily Yearbook for 1946, p. 37
113 Editorial, Fortune, March 1946, p. 200
Foreign governments hope to establish a market for their national product through exclusion of American films. Nearly half of the foreign rentals come from the British Isles. Not enough time has elapsed to compare the dollar values of the reciprocal arrangements made with J. Arthur Rank.

In order to deal with the recalcitrant foreign governments - where the film industries are national monopolies - the eight "majors" have united in the Motion Picture Export Association, with Eric Johnston as president. The SIMPP has not yet made a like move. Such combination for export of films is sanctioned under the Webb-Pomerene Export Act of 1918, so the industry need not worry about incurring suits by the Federal Trade Commission for violation of the anti-trust laws. Mr. Johnston has asserted that the aim of the Export Association is to increase foreign business by forty per cent. He declared that no governmental interference at home would be accepted in selecting the movies to go abroad; and William Benton, Assistant Secretary of State for Public Affairs, has rejected any idea of censoring them. In addition to pressing for maximum film exports, the group insists on unrestricted distribution facilities abroad, in direct conflict with the government monopolies. Americans will compromise on payments, but credit seems to hold no lure. Therefore, very few current American films are being shown abroad, with the exception of England and France.

Since rescission of restrictions on purchase of raw film stock by the War Production Board after the ending of the war in 1945, the

114 Inglis, Ruth A., "Freedom to See and Hear", Survey Graphic, December 1946, p. 479

115 Fortune, March 1946, supra, p. 200
producers have been free to increase the number of prints made of
their pictures from the wartime 250 to their usual 350-450. Effects
of this increased market product of the integrated firms on the
independent producers have not as yet been noted. It is perhaps a
straw in the wind, however, to see that Samuel Goldwyn, for many
years an independent in spirit although usually affiliated with one
major studio or another, has emitted a loud squawk against discrimi-
natory distribution practices of the majors. Goldwyn went so far as
to rent an auditorium in Reno, Nevada, to exhibit his latest production.
Another leading independent producer of quality pictures, David O.
Selznick, has recently formed his own distributing company, Selznick
Releasing Organization.

II. CONCLUDING REMARKS

The economic motivation is conspicuous in the history of the
American motion picture, which was developed almost entirely by persons
of humble origin who entered the show business in nickelodeon and
penny arcade days with very little capital but a keen instinct for the
exploitation of popular appetites. Technical and financial advances
have given them an opportunity to exhibit the same motivation on a
wider, but hardly a higher, plane of accomplishment. Exceptions,
in the form of truly fine motion pictures, have been all too few.

Whatever has general appeal—apparently a necessity in attracting
the mass audience—has subordinated the specialized or cultivated
interests connected with the private production of movies for theatrical
entertainment. Stereotyped themes such as the unconquerability of
love, the materialistic definition of success, the magical power of

Encyclopedia of Social Sciences, William A. Orton, "The Motion
Picture - Social Implications".
superior individuals as contrasted with the value of teamwork and the
invariable triumph of the good over evil have been adhered to unendingly
on the assumption that the great proportion of the screen product must
appeal to every possible type of audience and offend no one. Specific
political and social themes are seldom given screen time because their
presentation may offend certain groups. The vulnerability of the
movies to organized boycotts and threats of federal regulation has
led the industry to avoid offense to any sizeable group. The wholesale
distribution and exhibition methods adopted by the financial backers
of the cinema reflect instantly the displeasure of offended groups not
only toward a particular film but of later pictures exhibited in terms
of reduced economic value.

Probably more than other single influence, motion pictures sell
genral attitudes and mental sets. The Payne Fund Studies—whether
completely accurate or not—are a living monument to this fact.
Nevertheless, the harnessing of this sensitive medium of communication
to a cross economic system controlled by groups interested almost
solely in financial gain has been allowed to remain intact, without
appreciable restraining influences. The behemoths of finance whose
monopoly methods encroach ever more on individual enterprise have
direct access to the minds of the people through this graphic, readily
accessible medium. Through it special interests can mold and direct
the mores of a people, all done in the guise of entertainment.

Reformers have tried for years to effect separation of production
and exhibition. Their primary objective has been not so much

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117 Survey Graphic, supra, p. 278
118 Johnston, Winifred, Visual "Education"? - The Serious Student's
Guide to Social Misinformation, p. 2
dissolution of powerful economic interests as such, as it has been to
rid the production field of the money-grubbers and permit the making
of motion pictures to reside with artists of conscience and social
understanding. Their labors have not been entirely in vain. The
greater awareness of the American people - because of increased
education and a surfeit of all forms of distortion and dissimulation -
has led many a movie-goer to protest against blatant foisting upon him
of special interest perspectives and rapid handling of vital patterns
of human behavior. Yet for every picture of recognized worth, such as
The Searching Wind, there are twelvefold films embodying distorted
moral concepts; for example, Mr. Ace and Getting Gertie's Garter.

Recapitulation of the points of contact between the government
and the motion picture industry, as well as those between organized
pressure groups and the industry, demonstrates immediately that the
industry heads have relinquished accustomed procedures willingly only
when loss of money and prestige is an imminent danger. Every attempt
to alter the corporate structure of the industry in the public interest
has been fought with all the weapons in the considerable arsenal of
filmdom and its associated financial interests.

Ironically, the interest of the government in the industry was
aroused by members of that business. When the intra-industry contro-
versy revolving around the Motion Picture Patents trust became too
heated, it was through complaint of one of the interested parties that
the government was prevailed upon to intervene. Then as now, however,
the complainant was not the party who stood to lose.

With expansion of theater interests after the first world war and
intensification of competition among rival corporations, there grew
inevitably a system of expediting trade practices. Many of these
practices, as explained earlier in this study, were restrictive in high degree. The Federal Trade Commission and the Department of Justice were obliged to keep the industry under surveillance. Although the Anti-trust Division of the Department of Justice was able to prove the collusive character of the Film Boards of Trade (which led to abandonment of them), practical inability to meet the requirements for proof of conspiracy - enhanced by inadequate appropriations for carrying out the work of the Anti-trust Division - has hamstrung the government time and again. Further, legal counsel for the various corporations of the industry have vigorously defended those attributes of the copyright laws by which the copyright holder has the right to merchandise copyrighted articles as he determines.

Nevertheless the five principal movie firms were sufficiently overawed by the pressure brought to bear in the Justice Department's equity proceeding to sign a consent decree in 1940 which curtailed those trade practices that most flagrantly contradicted the principles of free competition. Indications were, however, that the industry would have taken full advantage of the escape clauses of the decree to return to their old practices had the war years not intervened. The war powers of the government enabled it to exercise control over the motion picture makers through rationing of its basic raw material, where other constitutional and statutory powers had proved inadequate to the challenge.

The greatest degree of cooperation between filmdom and the government took place during the war years 1942-1945. The industry threw itself into the task of inoculating the American people with the

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fighting spirit with a good deal of enthusiasm. But the government paid a price for these services in the form of a tacit agreement that the economic structure of the industry would not be tampered with. This condition was understood when the life of the consent decree was extended in 1943.

The political front organization which the industry instituted to protect both its prestige and economic structure - the Motion Picture Producers and Distributors Association, now the Motion Picture Association of America - succeeded very well in ingratiating itself with the general public in the face of rising sentiment against the shallow, near-morbid and sometimes salacious movie fare issuing from the studios. Its history is coincident with the rebuffs which the government and interested pressure groups have suffered while endeavoring to impose restraints on the industry. Six states had film censorship boards when Will Hays became the movie "czar" in 1922. No similar censoring bodies on a state level have since been authorized. Nor has any federal law regulating motion picture production, distribution or exhibition been passed, despite the strenuous efforts of legislators of such varying political loyalties as Congressmen Upshaw of Georgia and Culkin of New Jersey during the twenties and Senators Brokhart of Iowa and Neely of West Virginia during the thirties. The trade association, in fact, did much to tighten the internal structure of the industry and to departmentalize functions which had previously given rise to conflicts within the industry. Among such accomplishments have been mentioned the advertising code administration, the copyright registration bureau and the legal department's task of negotiation among the vertical components of the industry. Most notable failure of the association prior to the New Deal was the legal negation of the
credit system built up under the Film Boards of Trade. Under the NRA code the Hays Office was enabled to exercise greater positive power over the industry than it had designed to assume previously.

The well-publicized Production Code Administration has been the association's principal exhibit in combating criticism and threatened boycott of the movie product. Cleavage to its principles has been tempered to the degree of activity of the reform elements lobbying for censorship of films, and regulation or actual dismembering of the monopoly. The extensive activities of the Community Service and Public Information departments of the association among the great number of civic, educational and welfare agencies throughout the country has helped greatly in promoting good will toward MPPDA and the movie makers.

When the American public accepted the sound picture, purchase and maintenance prices of equipment necessary for manufacture and dissemination of them became too high for entertainment entrepreneurs. Thereupon the great investment houses of the country extended capital to the producers, distributors and exhibitors; the return on their investment was not only interest and dividends, but control of policy determination. Court decisions awarded control of the patents to motion picture and sound equipment to Western Electric, affiliate of the Morgan financial empire. Financial overextension in the industry and consequent receiverships which occurred during the great depression of the nineteen thirties despite generally good business enabled the guiding geniuses of the twin titans of American finance - the Morgan and Rockefeller groups - to gratify their grim determination to control the policies of the motion picture businesses. The vertical integration of the "Big Five" and the pattern of control of the motion picture industry resulted from the directives initiated by the interlocked directorships of the motion picture corporations. The pattern
of control that obtained during the thirties has not been appreciably altered.

Equity proceedings against the motion picture industry as a monopoly in restraint of trade were adjudicated in June of 1948 after eight years of intermittent prosecution. The court holding fell short of the total divorcement of exhibition from the production and distribution components asked by the Anti-trust Division of the Department of Justice. Nevertheless the malodorous trade practices which enabled the integrated companies to impose their terms upon unaffiliated independent exhibitors were unequivocally condemned. Also, the partial divestiture provisions of the new consent decree ordered by the court heralds a shrinking of the theater holdings of the integrated firms.

Integrated companies still have all rights to exhibit their own pictures in their own theaters - theaters in which they own ninety-five per cent or more of the stock - and it is a certainty that the social and political viewpoints of the cinemas exhibited will not be inimical to the interests that financed production of them. Film moguls have jealously decried the making of documentary films by governmental agencies; they have refused to distribute them in their theaters, implying that the efforts of the government to awaken the public conscience to serious social maladjustment is an unwarranted intrusion on private rights which aims at political indoctrination.

These forthright businessmen need not worry too much about governmental infringement of the Bill of Rights. The thirty-one film exchanges are located in or adjacent to states which have state or municipal censorship boards; it is easily seen, therefore, that three-fourths of the nation's movie-goers view censored pictures. Censorship boards are, by and large, appointed by political bodies of conservative hue,
to whom the presentation of any indictment of the existing order
would be anathema.

Portent of things to come are already noticeable. The wartime
heyday of filmdom when the movies were about the only medium of mass
entertainment available is at an end. Other consumer industries have
reasserted themselves. 1946 receipts for the first part of the year
were higher than ever before, but a downward drop was ascertainable
with the fall season. Taxes, which have borne ever more heavily on
the industry, have not been reduced. Senator William L. Langer of
North Dakota has proposed, during the 1946 Congressional Session, new
legislation which promises free competition of the screen on all levels.

On another front, the American Civil Liberties Union has been reported
to be looking for a test case to prove its position that state censor-
ship be declared unconstitutional. Should such censorship be declared
unconstitutional, the movie makers will be exposed to relentless
pressures from virtually every welfare, educational and civic organi-
zation in the country, to place increasing stress on their roles as
civic and information agencies conscious of the evolving character of
many political and social problems.

If the consent decree now under fire is upheld by the Supreme
Court and, even more important, its provisions are diligently enforced,
it is possible that a wedge may be driven between the integrated
companies. The interdependence of the integrated companies for the
films of each other's producing units, with which they have supplied
their theaters, will then have been destroyed. An era of free competition
may then obtain.

The movie-going public is gradually wakening to the false social
emphases inherent in the preponderant number of Hollywood films.
Producers must become increasingly alert to opportunities to develop
further the screen's artistic and intellectual possibilities. Whether the Korga and Rockefeller groups will be willing to maintain an industry of declining financial worth in order to keep hold of a powerful means of influencing the populace remains to be seen.
APPENDIX A

CODE TO GOVERN THE MAKING OF TALKING, SYNCHRONIZED AND SILENT MOTION PICTURES

Formulated by Association of Motion Picture Producers, Inc., and the Motion Picture Producers and Distributors of America, Inc.

GENERAL PRINCIPLES

1. No picture shall be produced which will lower the moral standards of those who see it. Hence the sympathy of the audience shall never be thrown to the life of crime, wrong-doing, evil or sin.
2. Correct standards of life, subject only to the requirements of drama and entertainment, shall be presented.
3. Law, natural or human, shall not be ridiculed, nor shall sympathy be created for its violation.

PARTICULAR APPLICATIONS

I. Crimes against the law.
   These shall never be presented in such a way as to throw sympathy with the crime as against law and justice or to inspire others with a desire for imitation.
   1. Murder
      a. The technique of murder must be presented in a way that will not inspire imitation.
      b. Brutal killings are not to be presented in detail.
      c. Revenge in modern times shall not be justified.
   2. Methods of crime should not be explicitly presented.
      a. Theft, robbery, safe-cracking, and dynamiting of trains, mines, buildings, etc., should not be detailed in method.
      b. Arson must be subject to the same safeguards.
      c. The use of firearms should be restricted to essentials.
      d. Methods of smuggling should not be presented.
   3. Illegal drug traffic must never be presented.
   4. The use of liquor in American life, when not required by the plot or for proper characterization, will not be shown.

II. Sex.
   The sanctity of the institution of marriage and the home shall be upheld. Pictures shall not infer that low forms of sex relationship are the accepted or common thing.
   1. Adultery, sometimes necessary plot material, must not be explicitly treated or justified, or presented attractively.
   2. Scenes of Passion
      a. They should not be introduced when not essential to the plot.
      b. Excessive and lustful kissing, lustful embraces, suggestive postures and gestures, are not to be shown.
      c. In general passion should be so treated that these scenes do not stimulate the lower and baser element.
3. Seduction or Rape
   a. They should never be more than suggested, and only when essential for the plot, and even then never shown by explicit method.
   b. They are never the proper subject for comedy.
4. Sex perversion or any inference to it is forbidden.
5. White slavery shall not be treated.
6. Miscegenation (sex relationship between the white and black races) is forbidden.
7. Sex hygiene and venereal diseases are not subjects for motion pictures.
8. Scenes of actual child birth, in fact or in silhouette, are never to be presented.
9. Children's sex organs are never to be exposed.

III. Vulgarity.
   The treatment of low, disgusting, unpleasant, though not necessarily evil, subjects should be subject always to the dictate of good taste and a regard for the sensibilities of the audience.

IV. Obscenity
   Obscenity in word, gesture, reference, song, joke, or by suggestion (even when likely to be understood only by part of the audience) is forbidden.

V. Profanity
   Pointed profanity (this includes the words, God, Lord, Jesus, Christ - unless used reverently - Hell, S.O.B., damn, Gawd), or every other profane or vulgar expression however used, is forbidden.

VI. Costume
   1. Complete nudity is never permitted. This includes nudity in fact or in silhouette, or any lecherous or licentious notice thereof by other characters in the picture.
   2. Undressing scenes should be avoided, and never used save where essential to the plot.
   3. Indecent or undue exposure is forbidden.
   4. Dancing costumes intended to permit undue exposure or indecent movements in the dance are forbidden.

VII. Dances
   1. Dances suggesting or representing sexual actions or indecent passion are forbidden.
   2. Dances which emphasize indecent movements are to be regarded as obscene.

VIII. Religion
   1. No film or episode may throw ridicule on any religious faith.
   2. Ministers of religion in their character as ministers of religion should not be used as comic characters or as villains.
   3. Ceremonies of any definite religion should be carefully and respectfully handled.

IX. Locations
   The treatment of bedrooms must be governed by good taste and delicacy.
X. National Feelings
   1. The use of the Flag shall be consistently respectful.
   2. The history, institutions, prominent people and citizenry
      of other nations shall be represented fairly.

XI. Titles
    Salacious, indecent, or obscene titles shall not be used.

XII. Repellent Subjects
    The following subjects must be treated within the careful
    limits of good taste:
    1. Actual hangings or electrocutions as legal punishments
       for crime.
    2. Third Degree methods.
    3. Brutality and possible gruesomeness.
    4. Branding of people or animals.
    5. Apparent cruelty to children or animals.
    6. The sale of women, or a woman selling her virtue.
    7. Surgical operations.
APPENDIX B

Taken from Holey, Raymond, The Hays Office, Bobbs-Merrill Company, Indianapolis, New York, 1945, p. 92

"The actual administrative system of the Production Code Administration office in Hollywood operates as follows:

(1) Preliminary conference between Breen or other members of the staff and the producer for consideration of the basic story before the screen adaptation is written, and, sometimes, before purchase. At this point, the plot as a whole is discussed in its relation to the Code. Whenever it appears that particular care will be required in the treatment of the basic theme, Breen is so informed, and he, in turn, officially warns the studio heads of the company planning the production.

(2) Careful scrutiny of the script submitted by the producing company. The examination is usually made by staff members who report to Breen any violation of Code requirements or any points where particular care is necessary. Breen then communicates again with the producing company, warning it that the completed picture cannot be approved by the Production Code Administration if certain lines, scenes or action appear as planned, and also suggesting the likelihood of censorial action with regard to specific lines, scenes or action.

(3) Scenario conferences with writers and others to effect necessary changes in scripts.

(4) Approval of the script for production in writing by Breen.

(5) Continued conferences during production, so that any changes made in the script, as well as all lyrics, costumes and sets, may be observed and passed upon.

(6) Preview of separate sequences during the course of production, whenever the producer is in doubt about their conformity with the Code. This is done upon the request of the producer. In such cases, the Production Code Administration often recommends that the producer make 'protection shots' of particular scenes. This is done to avoid the expense of retakes in the event that the original sequence should prove to be suggestive or offensive when seen in its context. While the company is assembled and making a picture, 'protection shots' involve little additional cost, whereas the cost of reassembling the company later might easily be prohibitive and, wholly aside from the question of cost, it might simply be impossible to reassemble the company by the time the entire picture is viewed by the Production Code Administration.

(7) Preview of completed picture in the Production Code Administration projection room by the same two staff members who worked on the script and by a third staff member, who comes to the picture with a fresh mind. These three men report to Breen at the full staff meeting held every morning.

(8) Deletion of scenes, sequences, dialogue or action, if the finished picture is in violation of the Code.

(9) The issuance of the certificate of approval, without which a picture cannot be distributed or exhibited by a MPPDA member company or its affiliate."
APPENDIX C

Variety, January 8, 1947

SALIENT FEATURES OF THE NEW FEDERAL DECREE REGULATING THE FILM INDUSTRY

Provisions against the Eight Majors:

1. Restraining the granting of a license in which minimum admission prices are fixed 'either in writing or through a committee or through arbitration' or in any other manner whatsoever.

2. From agreeing with each other or any other persons to maintain a system of clearance. Right to fix clearance is retained by defendants but not between theaters unless in substantial competition. Moreover, clearance must not be in excess of what is reasonably necessary to protect an exhibitor on a run granted. When a clearance provision is attacked as illegal, the burden is on the distributor to sustain its legality.

3. From continuing or making new franchises, formula deals or master agreements.

4. From block booking films. This ban goes into effect July 1, 1947. On any films not tradeshown, an exhibitor has the right to cancel 20%, right being exercisable within 10 days after an opportunity has been afforded to view the film.

5. Laying down the new system for selling films, effective July 1, 1947. The distributor must offer a license on each feature released in any competitive area to every theater operator who desires to play the film on some run selected by the operator. However, run must be under than that of a theater owned by the distributor.

Each license is to be granted solely on the merits and without discrimination in favor of affiliates, old customers or others.

When a run is desired, or is offered, upon terms excluding simultaneous playing by competing houses, distributor must follow this procedure. Distributor must notify all exhibitors in area not less than 30 days in advance of date of bids, offering to license the films on one or more runs. The offer must state price of flat rental as minimum for the license for specified playing time; time when picture will play; and availability and clearance, if any, which will be granted for each run.

Within 15 days of receiving this notice, any exhibitor in the competitive area may bid for the films, and his bid will state what run he desires and what he is willing to pay. Terms may be flat rental, percentage of gross, both, or any other form. Bid will also specify clearance exhibitor is willing to accept; time and days when exhibitor wants film; and any other offers exhibitor may care to make.

Distributor may reject all offers made, but in event of acceptance of any, license must be granted on run bid for to the highest responsible bidder, having a theater of a size, location and equipment adequate to yield a reasonable return. Bid method need not be practiced in non-competitive areas or in competitive ones when no exhibitor makes an offer.

6. From arbitrarily refusing demand of exhibitor, who operates a theater in competition with another theater not owned by defendant, from granting run selected by exhibitor instead of licensing it to his competitor. Demand must be made by registered mail to company h.q.
Provisions against the Big Five:

7. From continuing pooling agreements between two or more exhibitors normally competitors. Ban extends to agreements restricting building of theaters and to leases of defendants' theaters to another defendant or to an operator in the same competitive area.

8. Partial divorce clause: Requiring defendants who own more than 5% of a theater but less than 95% to either buy out their partners, sell to them or dissolve through transfer to a third party. All relationships must be ended within two years. A defendant may buy out its partner provided it first secure judicial approval based on proof that such acquisition will not unduly restrain competition.

Each of Big Five must submit statement within six months detailing extent to which it has complied and manner proposed to comply. Similar reports are to be made quarterly thereafter, until provisions have been fully carried out.

9. Restraining five majors from any theater expansion except that provided in the previous paragraph.

10. Restraining the five from operating, booking or buying features for any of their theaters through any agent who is acting in a similar capacity for another.

General Provisions:

11. Decease is not to be construed in any way which would limit the defendants in their rights to play their own films in their own houses.

12. Film industry's arbitration system, currently administered by the American Arbitration Association, is out. Existing awards and those made under pending proceedings will continue to be enforceable. Nix on system is not to preclude the parties or anyone else from setting up a reasonable system of arbitration.

13. Department of Justice may inspect companies' books and records for purpose of determining whether decree is being complied with. Information so obtained is to be confidential except when used in a legal proceeding.

14. Jurisdiction is retained to permit defendants or others to apply for modifications, constructions or directions.

15. Decease is stayed 60 days, and if appealed, an additional 30 days to permit appellant to move before Supreme Court for further stay.
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