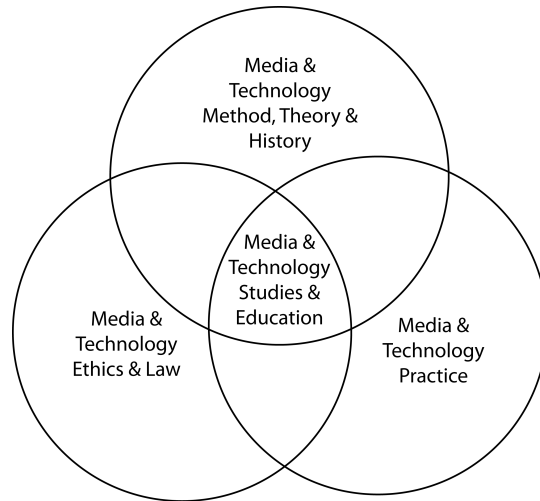




ETEC 531
(Curriculum issues in) Cultural & New Media Studies
EDCP 481
Media Studies (Across the Curriculum)

Lecture Notes
S. Petrina (9 July 2018)



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III. Media & Technology Ethics & Law

Module 4: Regulation of the Citizen and Media Free Speech and Freedom of the Press Free Inquiry & Freedom of Thought Regulatory Codes / Codes of Ethics Privacy and the Right to be Forgotten

Can I Say What I Want?

Can I Investigate and Think What I Want?

Can I Report What I Want?

Can I Record What I Want?

Do I Have a Right to the Deletion or Removal of Things I Said or Did?

8. Regulation of the Citizen and Media

a. Free Speech and Freedom of the Press (Can I Say What I Want?)

- i. Why is Free Expression or Freedom of Expression so Vital to the World?
 1. Democracy
 2. Self-fulfillment
 3. Truth
- ii. United Nations *Universal Declaration of Human Rights* (10 December 1948)
 1. Preamble: “shall strive by **teaching and education** to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance...”
 2. Article 19. Freedom of expression: “this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”
- iii. UNESCO *Convention on the Rights of the Child* (2 September 1990)
 1. Article 13:1. “The child shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of the child's choice.”
 2. Article 13: 2. “The exercise of this right may be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:
 3. (a) For respect of the rights or reputations of others; or
 4. (b) For the protection of national security or of public order (order public), or of public health or morals.”
- iv. *Charter of Rights and Freedoms* <http://laws-lois.justice.gc.ca/eng/Const/page-15.html#h-38>

1. Guarantee of Rights and Freedoms

a. Rights and freedoms in Canada

- i. The Canadian Charter of Rights and Freedoms

guarantees the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

- b. Fundamental Freedoms.
 - i. 2. Everyone has the following fundamental freedoms:
 1. (a) freedom of conscience and religion;
 2. (b) freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication;
 3. (c) freedom of peaceful assembly; and
 4. (d) freedom of association.
 - ii. Article 2(b): “freedom of thought, belief, opinion and expression, including freedom of the press and other media of communication.”
 1. Freedom of Speech (freedom of thought, belief, opinion and expression).
 2. Freedom of the Press
2. Canadian Journalists for Free Expression <https://cjfe.org>
 - a. Bill C-51
- v. Speech Protection
 1. Political Speech in the Classroom
 - a. Cases
 - i. *Education Law Newsletter*
<http://keelcottrelle.com/pubs/newsletter-oct05.php>
 - ii. BCTF
 1. Yertle the Turtle
 2. 2.b. or not 2.b.
 - b. Naomi Klein on G8 / G20 “Global Menace”
<http://readersupportednews.org/off-site-opinion-section/83-83/2409-the-g20-larry-summers-global-menace>
 - c.
 2. Symbolic Speech in the Classroom
 3. Symbolic v Verbal Expression
 - a. Symbology
 - b. Iconography
 - c. Expressive Conduct
 4. Tinker v Des Moines Independent Community School District
<http://supreme.justia.com/us/393/503/case.html>
 5. Journalism and School Press
 - a. Hazelwood
 6. Academic Freedom
- vi. Speech Restriction
 1. Charter Restrictions
 2. Protected Grounds of Human Rights
 3. Academic Freedom cases

4. Censorship
 - a. Film, TV & Video
<http://cw.routledge.com/textbooks/9780415448239/film-censor.asp>
 - b. Cartoons & Images
 - c. Doonesbury example (March 2012)
 - d. Books & Magazines
 - e. History of Censorship in BC
<http://www.bcla.bc.ca/ifc/Censorship%20BC/intro.html>
 - f. Radio & Music
 5. Book and Resource Bans
 - a. Issues & Legacy
 - b. Banned Book Cases <http://teaching-media-literacy.suite101.com/article.cfm/list-of-banned-books-to-discuss-in-the-classroom>
 - c. Surrey Book Ban
 - d. Toronto Book Ban
 - e. Banned Networking Site Cases
- vii. Citizen Media Law <http://www.citmedialaw.org/>
1. BC Civil Liberties Association
 - a. Citizen Handbook <http://www.bccla.org/citizen/chapt1.pdf>
 - b. Recording
 2. Recording
 - a. Rights
 - i. Canada: You can legally record any conversation that you are part of without consent of the other person. You cannot legally record a conversation between two other people as a third party unless you have their consent.
 - ii. Scope of recording rights, e.g., US:
http://www.newmediarights.org/page/field_guide_audio_and_video_recordings#Audio
 - b. Covert (Surreptitious) v Overt Recording
 - i. Media Law & Privacy Law
 1. Criminal Code of Canada
 2. <http://mpcam.com/content/canadian-laws-use-video-surveillance-systems>
 3. Recording Private (Confidential Conversation)
 4. Interception
 - a. BC wiretapping
<http://www.legaltree.ca/print/908>
 - 5.
 - ii. Rights
 - iii. Investigative Journalism
 1. CBC <http://www.cbc.radio-canada.ca/en/reporting-to-canadians/acts-and-policies/programming/journalism/investigative->

- [journalism/](#)
 - 2. Hidden Cameras
 - <http://cironline.org/blog/post/hidden-pitfalls-using-hidden-cameras-268>
 - 3. Lying to Get the Truth
 - <http://ajrarchive.org/article.asp?id=4403>
 - 4.
 - c. School Context
 - <http://www.servicealberta.ca/foip/documents/SchoolPromoVideo.pdf>
 - i. Students Recording Teachers
 - 1. Requa v Kent
 - a. News Report (21 May 2007)
 - <http://www.seattlepi.com/local/article/Free-speech-vs-class-disruption-1238067.php>
 - b. Komo 4 news report (14 February 2007)
 - c. Ms. Mong “Mongzilla” youtube video
 - <http://www.youtube.com/watch?v=aHIJMWrlZy0>
 - d. Court Opinion (Justia.com)
 - ii. Teachers Recording Students
 - d. Consent
 - e. Privacy Protection
 - f. Surveillant Video
 - g. Video Voyeurism
 - h. Recording Devices / Technologies
 - i. Livescribe case
 - ii. Surreptitious Devices
 - 3. Cyberlibel (Fosse 2010)
 - 4. Cyberbullying <http://mediasmarts.ca/backgrounder/cyberbullying-law-fact-sheet>
 - a. Wiresafety <https://www.wiresafety.org>
 - b. There’s No app for that
 - <http://www.unlikecyberbullying.ca/sites/default/files/downloads/cyberbullyingtaskforcereportmarch22.pdf>

b. Free Inquiry and Thought (Can I Investigate and Think What I Want?)

- i. History of Free Inquiry
- ii. Free Thought
- iii. Free Inquiry in the Public Schools
 - 1. Free inquiry is conducive to learning
 - 2. Students should be taught open-mindedness and tolerance
 - 3. Wieman v Updegraff case (952)
 - a. “[i]t is the special task of teachers to foster those habits of open-mindedness and critical inquiry which alone make for responsible citizens Teachers must fulfill their function by

precept and practice, by the very atmosphere which they generate; they must be exemplars of open-mindedness and free inquiry" (Judge Frankfurter in concurrence)

iv. Critical Inquiry

1. **Critical inquiry** is split, partially parceled out to the liberal, neutral notion of critical thinking and partially to critical theory. For example, critical inquiry is often defined as "using various modes of inquiry and interdisciplinary perspectives or methodologies to conceptualize, investigate, and derive meaning. It implies that learners are active learners, self-motivated learners, and learners who understand the ambiguities and uncertainties of achieving absolute knowledge, as well as the implications of various courses of action" (Skidmore College, 2005, <http://www.skidmore.edu/administration/assessment/> *See "Critical Inquiry Report").
2. The journal *Critical Inquiry* was founded in 1974 for authors who "value examination of the assumptions underlying particular discriminations... and insist upon the highest standards of evidence relevant to conclusions drawn in practical criticism... criticism that aspires to be a special kind of 'learning'— not in any sense dispassionate or impersonal but something akin to that fusion of human commitment with objectivity that Michael Polanyi characterizes as 'personal knowledge'... disciplined criticism" (Sacks, 1974, p. iii). Hence, *CI* "aims to be independent of any theoretical bias. It promotes discussion and controversy about current critical trends, as well as reviving debate about more established critical traditions [i.e., critical theory and Kantian philosophy]."
3. In "Critical Pedagogy and the Futures of Critical Theory," Peters (2002) cautions, however, that critical inquiry as merely disciplined inquiry "does seem to rob critical theory of its original critical intent or to tame it, recasting it as a method of inquiry in the service of democracy... it is too easily denatured and stripped of its critical intent and reduced to 'thinking skills,' critical or otherwise."
<http://construct.haifa.ac.il/~ilangz/oslo/peters.htm>

v. Cognitive Liberty

a. Regulation of Media (Can I Record and Report What I Want?)

- i. Framing / Reframing
 1. Selection of Content
 2. Recording and Framing
- ii. **Citizen & Researcher Media Law** <http://www.citmedialaw.org/>
 1. BC Civil Liberties Association
 - a. Citizen Handbook <http://www.bccla.org/citizen/chapt1.pdf>
 - b. Recording
 2. Third Party Data (see EDUC 500 Lecture #2)
 3. Audio & Video Recording
 - a. Rights
 - i. One-party Consent Law v Two-Party Consent Law
 1. Canada: You can legally record any conversation that you are part of without consent of the other person. You cannot legally record a conversation between two other people as a third party unless you have their consent.
 2. Scope of recording rights, e.g., US: http://www.newmediarights.org/page/field_guide_audio_and_video_recordings#Audio
 3. California
 - a. California makes it a crime to record or eavesdrop on any confidential communication, including a private conversation or telephone call, without the consent of all parties to the conversation. See California v. Gibbons, 215 California
 - ii. “If you can see it, you can shoot it:” If you can hear or see it when you are a party to it, you can record it. http://www.andrewkantor.com/legalrights/Legal_Rights_of_Photographers.pdf
 1. You can legally take pictures of anything that is visible to the general public (without special equipment — e.g., a telephoto lens), whether it or you are on public or private property.
 2. That means you can legally take pictures of children, athletes, people on the street, beach bathers, buildings, cars, policemen, accident scenes, government officials, airplanes, airports, trains, and so on.
 3. You can legally take pictures when you are on private property, if that property is open to the public (e.g., a mall or office complex).

iii. Guidelines in Canada

<http://www.langleycameraclub.com/wp-content/uploads/2012/03/Photographers-Rights.pdf>

1. You can make a photograph of [or record] anything and anyone on any public property, (i.e.) streets, sidewalks, town squares, parks, government buildings open to the public, and public places are all OK. Except where a specific law prohibits it — generally a posted sign will advise — lack of sign does not ensure permission to photograph.
2. You may shoot on private property if it is open to the public, but you are obligated to stop if the owner or owner representative (security or manager) requests it. (i.e.) malls, retail stores, restaurants and office building lobbies.
 - a. You may photograph at public festivals and public events whether they are on public or private property, paid admittance or not. The event organizer or their representative (security) have the legal authority to demand that you stop taking pictures – the photographer must comply or typically you will be evicted from the site. Lack of ‘photography not permitted’ signage does not validate your photography.

b. Publishing

http://theme.ndc.gov.tw/tcap/commons.wikimedia.org/wiki/Commons_Photos_of_identifiable_people.html

- i. The subject's consent is usually needed for publishing a photograph of an identifiable individual taken in a **#private place**, and Commons expects this even if local laws do not require it. In many countries (especially English-speaking ones) the subject's consent is not usually needed for publishing a straightforward photograph of an identifiable individual taken in a **#public place**. However, the term published should not be construed to include commercial use, as consent is usually required in these situations.

c. Editing Audio & Video Records

- i. RTNDA Guidelines

https://www.rtdna.org/content/guidelines_for_ethica

1 video and audio editing

- d. Covert (Surreptitious) v Overt Recording
 - i. Media Law & Privacy Law
 - 1. Criminal Code of Canada
 - 2. <http://mpcam.com/content/canadian-laws-use-video-surveillance-systems>
 - 3. Recording Private (Confidential Conversation)
 - 4. Interception
 - a. BC wiretapping
<http://www.legaltree.ca/print/908>
 - b.
 - ii. Rights
 - iii. Investigative Journalism
 - 1. CBC <http://www.cbc.radio-canada.ca/en/reporting-to-canadians/acts-and-policies/programming/journalism/investigative-journalism/>
 - 2. Hidden Cameras
<http://cironline.org/blog/post/hidden-pitfalls-using-hidden-cameras-268>
 - 3. Lying to Get the Truth
<http://ajrarchive.org/article.asp?id=4403>
 - 4.
- e. School Context
<http://www.servicealberta.ca/foip/documents/SchoolPromoVideo.pdf>
 - i. Students Recording Teachers
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<http://www.seattlepi.com/local/article/Free-speech-vs-class-disruption-1238067.php>
 - b. Komo 4 news report (14 February 2007)
 - c. Ms. Mong “Mongzilla” youtube video
<http://www.youtube.com/watch?v=aHIJMWrlZy0>
 - d. Court Opinion (Justia.com)
 - ii. Teachers Recording Students
 - f. Consent
 - g. Privacy Protection
 - h. Surveillant Video
 - i. Video Voyeurism
 - j. Recording Devices / Technologies

1. Smartpen case
 - a. Livescribe
 - b. Who has the right? (Sprankle, 2011)
<http://www.techlearning.com/PrintableArticle.aspx?id=39344>
- i. Surreptitious Devices
 1. Invasive and Non-Invasive Recording
- k. Editing
4. Presenting / Representing
5. Mediating / Remediating
- vi. Media Ethics and Self-Regulatory Codes**
 1. Codes of Ethics
 - a. Consent
 - i. CBC <http://www.cbc.radio-canada.ca/en/reporting-to-canadians/acts-and-policies/programming/journalism/interviews/>
 - ii. BBC
 - b. Illustration & Image Creation
 - i. Association of Illustrators
<http://www.theaoi.com/index.php>
 - ii. Artist's Bill of Rights <http://artists-bill-of-rights.org/>
 - iii. Canadian Association of Professional Image Creators
<http://www.capic.org/> & <http://www.capic.org/code-of-ethics-for-professional-photographers-and-illustrators>
 - iv. Society of Illustrators
<http://www.societyillustrators.org/>
 - c. Journalism
 - i. Society of Professional Journalists
(<http://www.spj.org/pdf/ethicscode.pdf>)
 - ii. Committee of Concerned Journalists
 - iii. Association of Electronic Journalists
 - iv. Independent w/ Press Passes
 1. Independent Federation of New Media
<http://www.ifnm.org/>
 2. Independent Journalism Open Society Foundation
<http://www.opensocietyfoundations.org/about/programs/independent-journalism>
 3. International Association of Press Photographers <http://www.ia-pp.com/en/presspass-credentials.html>
 4. DIY Press Pass
<http://binghamtonpmc.org/bhuston/presspass/>
 - v. National Scholastic Press Association
http://studentpress.org/nsipa/pdf/wheel_modelcodeofethics.pdf
 - d. Photography & Video

- i. International Society of Press Photographers
<http://www.ia-pp.com/en/benefits-of-the-iapp/the-iapp-code-of-ethics.html>
 - ii.
 - e. Broadcasting
 - i. Radio-Television News Directors Association
(<http://www.rtndacanada.com/ABOUT/PDF/RTNDAwelcomebooklet.pdf>)
 - ii. Radio Television Digital News Association
(http://www.rtdna.org/pages/media_items/ethics-resources615.php)
 - iii. NPPA <http://nppa.org/>
 - iv. http://nppa.org/professional_development/business_practices/ethics.html
 - v. Concerned Journalists concernedjournalists.org
 - vi. Canadian Broadcasting Corporation
 1. *Journalistic Standards and Practices* (full code: http://www.sfu.ca/media-lab/archive/2007/326-428/Resources/ethics/final_journalistic_polcies.pdf)
 - vii. British Broadcasting Corporation
 1. *Editorial Guidelines*
(http://downloads.bbc.co.uk/guidelines/editorial_guidelines/Legacy_Guidelines/2005-editorial-guidelines-full.pdf)
 - viii. National Public Radio
 - ix. Sweden Code of Ethics for Press, radio and Television (2001) <http://www.mediawise.org.uk/sweden-code-of-ethics-for-press-radio-and-television-2001/>
 - f. Entertainment
 - g. Music
 2. Codes of Practice
 - a. Canada Code: Canadian Association of Journalists' Statement of Principles for Investigative Journalism
(<http://www.rjionline.org/MAS-Codes-Canada-CAJ#>)
 - b. New Media Rights (<http://www.newmediarights.org/>)
 - c. Independent Streamer Journalists Code of Ethics
 - i. <http://suebasko.blogspot.ca/2013/05/streamer-journalist-code-of-ethics.html>
 - ii.
 - d. CBC
 - e. BBC
 - vii. Press Councils
 1. BC Press Council <http://www.bcpresscouncil.org>
 - a. The BC Press Council is a self-regulatory body governing the newspaper industry in British Columbia. It was established in 1983 with two main aims: to promote ethical practices within

- the BC newspaper community and serve as a forum for complaints against its members.
- b. Code of Practice <http://www.bcprescouncil.org/code.html>
 2. National Ethnic Press and Media Council of Canada
<http://www.nepmcc.ca>
 3. World Association of Press Councils
http://www.wapconline.org/lang_eng/
- viii. Legal Codes
1. Federal Communications Commission (FCC) (<http://www.fcc.gov/>)
 - a. Carlin and Pacifica case
 2. Canadian Radio-television Telecommunications Commission (CRTC)
<http://www.crtc.gc.ca/>
 3. Canadian Association of Broadcasters (CAB) (<http://www.cab-acr.ca/>)
 - a. *Code of Ethics*
 - b. *Equitable Portrayal Code*
 - i. *Replaced Sex-Role Portrayal Code*
 - c. *Violence Code*
 4. Canadian Broadcast Standards Council (CBSC) (<http://www.cbsc.ca/>)
 - a. “Money for Nothing” case
 - i. 1 February 2010 Broadcast on OZ FM
 - ii. 12 January 2011 CBSC decision
 - b. Justin Bieber case
 - i. 20 October 2009 Broadcast
 - ii. 22 June 2010 decision
 5. *Canadian Code of Advertising Standards*
<http://www.normespub.com/en/standards/canCodeOfAdStandards.pdf>
 - a. Advertising Standards Canada
(<http://www.adstandards.com/en/>)
 - b. *Broadcast Code for Advertising to Children* (http://www.cca-kids.ca/responsible_advertising/kids_code.pdf)
 - c. Consumer Complaints
 6. US Communications Decency Act (sect. 203)
- ix. CRTC, FCC and Net Neutrality
- x. Production Codes
1. Entertainment Software Rating Board (<http://www.esrb.org>)
 - a. Video Games Ratings and Descriptions
 - b. Ratings Symbols
 2. Canadian Motion Picture Distributors Association
(<http://www.cmpda.ca/>)
 - a. Code <http://www.mpa-canada.org/?q=content/film-ratings-canad>
 - b. Symbols
 3. BC Code <http://www.consumerprotectionbc.ca/index.php/consumers-film-and-video-homepage/recent-films>
 - a.
 4. Motion Picture Association of America (<http://www.mpa.org/>)
 - a. History of Film Ratings

- i. Hays Code
 - ii. 1968 Reforms, Code and Symbols
 - iii. Process
 - 1. This Film is Not Yet Rated
 - 2. Jamie Babbit interview
 - 3. But I'm a Cheerleader
- 5. Motion Picture Association (MPA) Canada
 - a. Video Rating System <https://www.mpa-canada.org/home-entertainment/>
 - b. Consumer Protection BC Rating System <https://www.consumerprotectionbc.ca/motion-picture-ratings/what-ratings-mean/>
- xi. Can I use an ITS resource with a rating higher than the age group I'm teaching?**
 - 1. Teacher is in *loco parentis*, meaning that films rated PG (Parental Guidance) can be screened with the teacher present.
 - 2. Adult Accompaniment
 - a. If a resource requires accompaniment by an adult to view, the teacher (present in the room) is the adult.
 - b. However, the BBFC, for instance, cautions: We would, however, strongly discourage such a practice unless (a) the children in question are only a year or so below the age stated on the certificate, and (b) there is a serious educational purpose to showing the recording (eg showing well-known works or educational films such as 15-rated Schindler's List to 14-year-old GCSE students). Even in such cases, schools should seek parental consent prior to showing the film. We would also recommend obtaining the approval of the Head Teacher and Governors. It is vital to make sure that any children watching are not likely to suffer any ill effects as a result of seeing the film. <http://www.bbfc.co.uk/education-resources/teacher-guide/teacher-faqs>

1930-1968	Motion Picture Production Code				
1968	G	M		R	X
1970	G	GP		R	X
1972	G	PG		R	X
1984	G	PG	PG-13	R	X
1990-Today	G	PG	PG-13	R	NC-17

What Everyone Should Know About The Movie Rating System.

GENERAL AUDIENCES
G
Nothing that would offend parents for viewing by children.

PARENTAL GUIDANCE SUGGESTED
PG
Parents urged to give "parental guidance." May contain some material parents might not like for their young children.

PARENTS STRONGLY CAUTIONED
PG-13
Parents are urged to be cautious. Some material may be inappropriate for pre-teenagers.

RESTRICTED
R
Contains some adult material. Parents are urged to learn more about the film before taking their young children with them.

NO ONE 17 AND UNDER ADMITTED
NC-17
Patently adult. Children are not admitted.

xii. Gaming Codes

1. Entertainment Software Ratings Board (ESRB)

http://www.esrb.org/ratings/ratings_guide.jsp

Rating Categories



EARLY CHILDHOOD
Content is intended for young children.



EVERYONE
Content is generally suitable for all ages. May contain minimal cartoon, fantasy or mild violence and/or infrequent use of mild language.



EVERYONE 10+
Content is generally suitable for ages 10 and up. May contain more cartoon, fantasy or mild violence, mild language and/or minimal suggestive themes.



TEEN
Content is generally suitable for ages 13 and up. May contain violence, suggestive themes, crude humor, minimal blood, simulated gambling and/or infrequent use of strong language.



MATURE
Content is generally suitable for ages 17 and up. May contain intense violence, blood and gore, sexual content and/or strong language.



ADULTS ONLY
Content suitable only for adults ages 18 and up. May include prolonged scenes of intense violence, graphic sexual content and/or gambling with real currency.



RATING PENDING
Not yet assigned a final ESRB rating. Appears only in advertising, marketing and promotional materials related to a game that is expected to carry an ESRB rating, and should be replaced by a game's rating once it has been assigned.

Motion Picture Association (MPA) Canada's Video Rating System

		Suitable for viewing by all ages.
		Parental guidance advised. Themes or content may not be suitable for children.
		Suitable for people 14 years of age or older. Those under 14 should view with an adult. No rental or purchase by those under 14. Parents cautioned. May contain violence, coarse language and/or sexually suggestive scenes.
		Suitable for people 18 years of age or older. Persons under 18 should view with an adult. No rental or purchase by those under 18. Parents strongly cautioned. Will likely contain: explicit violence; frequent coarse language; sexual activity; and/or horror.
		Restricted to 18 years and over. No rental or purchase by those under 18. Content not suitable for minors. Video contains frequent use of: sexual activity; brutal/graphic violence; intense horror; and/or other disturbing content.
		Exempt. Contains material not subject to classification such as documentaries, nature, travel, music, arts and culture, sports and educational and instructional information.