



How porn escaped R ban

The government has recently announced its intention to prevent R rated movies from screening on Pay TV, in response to the ABA's classification of a Galaxy soft-porn program, *Nightmoves*, as a narrowcasting rather than a broadcasting service. The Broadcasting Services Act prohibits R rated material being transmitted over subscription broadcasting services, but does not contain a similar prohibition for subscription narrowcasting services.

ABA opinion

That differing levels of regulation apply to broadcasting and narrow-casting services is entirely consistent with the objectives of the legislation. Broadcasting services are defined in terms of the generality of their appeal, their capacity to influence the public and the breadth of their coverage. Narrow-casting services are distinguished by having a limited reception, by reason of their appeal to special interest groups or of their limited appeal generally, their geographic or temporal coverage, or for other reasons.

On 28 March 1996, Australia Media applied to the ABA (through a company called Corptrans Pty Ltd) for a section 21 opinion in respect of the proposed *Nightmoves* program. A section 21 opinion constitutes a binding ABA opinion as to the character of a service and, being valid for five years, operates as an insurance policy for the program supplier.

On 13 May 1996, the ABA ruled that *Nightmoves*' classification as a narrowcasting program arose from a combination of two factors:

- the fact that an additional fee was payable for the service, over and above the cost of the basic Galaxy package; and

- the lateness of the hours proposed (11.00 pm - 4.00 am).

Nightmoves commenced broadcasting on 2 August 1996. The 13 May opinion prevents the government from applying pressure to the ABA to change its view on the matter until the opinion's use-by date - although there is nothing to prevent the government from attempting to change the law itself.

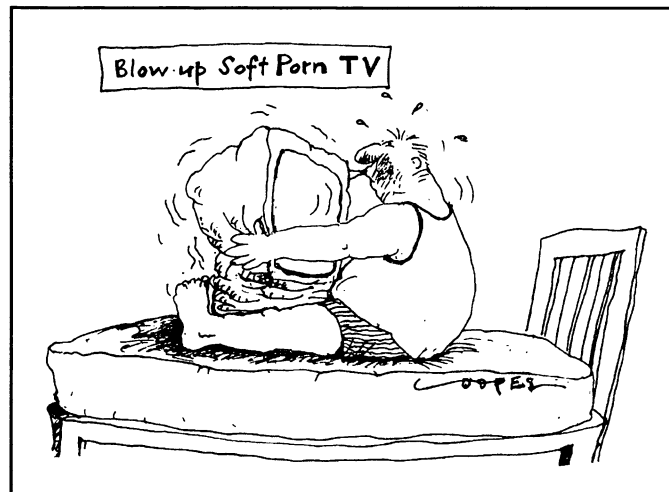
On 3 September, Australis requested the ABA to consider the nature of the service if the start time was brought forward to 10.30 pm. On 21 November, the ABA ruled that the

the Supply of Services Utilising Electronic Technologies, which ultimately recommended the maintenance of the prohibition, was aware that any permission given to pay television operators to broadcast R-rated material could well be conditional on the programs being broadcast late and requiring PIN number access. They knew this because the ABA told them so in its report, *R Classified Programs on Pay TV*.

The Report recommended that 'programs classified as R by the Office of Film and Literature Classification be approved by Parliament for broadcast by subscription television

broadcast licensees'. In doing so, it explicitly drew attention to time controls that could be placed on such transmissions, with '54% of respondents nominat[ing] 11 pm - 6 am as an acceptable time' (Executive summary, p *xiii*). What the Report does not point out, however, is that the imposition of this restriction on a broadcasting service would also double as a good reason why the ABA could cease regarding it as a broadcasting service.

The Senate Committee's loss is the pay television industry's gain, for *Nightmoves* has gained it a foothold in an lucrative seam of programming it dearly wishes to mine. Although the government has been so far successful in its censorship crusades, they have usually tapped into community concerns about depictions of violence. In this field, however, 70% of those surveyed as part of the ABA Report thought that R-rated sexual material should be permitted. Without community support, and against such a formidable opponent as the communications industry, it will be interesting to see whether the government takes up arms. □



earlier time would render it a broadcasting service, having regard to the fact that 'a significantly larger pool of viewers is available at 10.30 pm than at 11.00 pm, a difference of about 61% with regard to free-to-air viewing data'.

Oversight

It would be wrong to regard Australis as having exploited a 'loophole', since it has simply placed restrictions on the program's availability which pushes it into the narrowcasting category. But the present legislation, in not extending the prohibition to narrowcasting services, could be considered a legislative oversight.

The Senate Select Committee into