



# MOTION PICTURE ASSOCIATION

## MOTION PICTURE ASSOCIATION, INC.

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December 6, 2022

The Honorable Warren Hamilton  
State Capitol  
2300 N. Lincoln Blvd., Room 416  
Oklahoma City, OK 73105

Dear Senator Hamilton:

I write on behalf of the Motion Picture Association, Inc. (“MPA”) and its member studios to raise their strong objection to the proposed legislation announced in your press release of Dec. 2, 2022, which would mandate the use of the MPA’s rating system on books in Oklahoma’s public schools and libraries. As detailed below, this proposal would: 1) violate the First and Fourteenth Amendments to the U.S. Constitution, as courts have repeatedly held when striking down laws that seek to incorporate the MPA’s ratings into law; and 2) violate the MPA’s rights in the federally registered trademarks it holds for its ratings symbols (“G,” “PG,” “PG-13,” “R,” etc.). For these reasons, we urge you to reconsider your plans to introduce a bill mandating use of the MPA’s ratings on books.

The MPA is the trade association for the leading producers and distributors of motion pictures, television programs, and streaming productions for exhibition in theaters, on broadcast, pay, cable and satellite television, and on the internet. MPA’s members are Netflix Studios, LLC, Sony Pictures Entertainment Inc., Paramount Pictures Corporation, Universal City Studios LLC, Walt Disney Studios Motion Pictures, and Warner Bros. Entertainment Inc.

The Classification and Rating Administration (“CARA”), a division of MPA, awards the familiar G, PG, PG-13, R or NC-17 ratings to motion pictures. CARA was established in 1968 by the motion picture and theater industries to provide moviegoers and parents with advance information about the content in rated films, to help them determine which motion pictures may be appropriate for their children to see. Having recently celebrated its 50th anniversary, CARA stands as a preeminent example of responsible industry self-regulation, obviating any perceived need for intrusive (not to mention unconstitutional) government censorship.

## **I. Courts Have Consistently Struck Down as Unconstitutional Laws Incorporating the MPA's Ratings into Law.**

The proposed legislation announced in your Dec. 2 press release would establish a rating system mandated by government, as distinguished from the voluntary system established by the motion picture and theater industries. As such, it would violate the First and Fourteenth Amendments. Courts throughout the U.S., *including in Oklahoma*, have reviewed other attempts to codify or incorporate the MPA ratings and have consistently invalidated such laws as unconstitutional. For example:

- The Oklahoma legislature in 1971 enacted an obscenity statute exempting “commercial motion pictures which...have the seal under the Production Code<sup>1</sup> of the Motion Picture Association of America, Inc.” *Potter v. State*, 509 P.2d 933, 934 (Okla. Crim. App. 1973). The court struck down the provision of the statute that incorporated the MPA’s ratings as “an unconstitutional delegation of legislative authority” to a private organization. *Id.* at 935.
- In *Swope v. Lubbers*, 560 F.Supp. 1328 (W.D. Mich. 1983), a publicly funded state college refused to allow college funds to be used for the showing of a motion picture that had been rated “X” (the predecessor to “NC-17”) by CARA. The court held such action to violate the First Amendment: “Films convey ideas, and the right to receive the thoughts of others is a right protected by the First Amendment. Here, by the withholding of funds defendants have effectively ensured that a movie of which they disapprove will not be seen by the students of Grand Valley. The device of stopping funds has kept the film off campus since the fall of 1982 to this day. The label may be ‘funding,’ but the demonstrated effect is censorship.” *Id.* at 1331-32.
- In *Engdahl v. Kenosha*, 317 F. Supp. 1133 (E.D. Wisc. 1970), the court held that an ordinance adopted by the City of Kenosha that prohibited a minor, unaccompanied by a parent or guardian, to be admitted to a motion picture rated “R” or “X” was unconstitutionally “vague, indefinite, incorporates unknown standards, and is an improper prior restraint on the exercise of their rights under the First Amendment to the Constitution.” *Id.* at 1135.
- In *Motion Picture Ass’n of Am., Inc. v. Specter*, 315 F. Supp. 824 (E.D. Pa. 1970), the court held a Pennsylvania statute that incorporated the voluntary CARA ratings into law “infringes upon the plaintiffs’ rights to freedom of expression, as protected by the First and Fourteenth Amendments to the Federal Constitution, as to render it unconstitutional.” *Id.* at 826 (citing *Interstate Circuit v. Dallas*, 390 U.S. 676 (1968)).

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<sup>1</sup> The Production Code was a predecessor to the current CARA system.

Given this precedent, including the *Potter* case from Oklahoma noted above, we are confident that an Oklahoma statute requiring schools and libraries to use the MPA rating system to rate books would similarly be found to be unconstitutional.

## **II. The Use of MPA's Ratings on Books Not Rated by CARA Would Violate MPA's Trademarks.**

The MPA is the owner of all trademarks in the rating symbols and designations used with that system, including RATED G (Reg. No. 1439618), RATED PG (Reg. No. 1439617), RATED PG-13 (Reg. No. 1439619), and RATED R (Reg. No. 1436926) (collectively, the "Rating Marks"). All the MPA Rating Marks are widely known and famous throughout the United States as designating motion pictures rated by CARA. These Rating Marks are incontestable and may only be used by permission and authority of the MPA, and only in connection with motion pictures that have been rated by CARA. The MPA has consistently taken prompt action to prevent unauthorized uses of its rating marks. For example, in 2007, the MPA successfully litigated a case before the Trademark Trial and Appeal Board ("TTAB") in connection with its certification mark RATED R. *Motion Picture Ass'n of Am., Inc. v. Respect Sportswear, Inc.*, 83 U.S.P.Q.2d 1555 (T.T.A.B. Apr. 13, 2007). In that case, the TTAB, among other things, recognized MPA's RATED R mark as famous and found that use of that mark on clothing would likely confuse consumers into believing the clothing originated with, are associated with, or are sponsored by MPA.

The application of the Rating Marks to books not actually rated by CARA, as mandated by your proposed legislation, would constitute a blatant infringement of MPA's trademark rights, leading to widespread confusion among students, parents, as well as library patrons and the public, about whether those books were indeed rated by CARA. *See Two Pesos, Inc. v. Taco Cabana, Inc.*, 505 U.S. 763, 780 (1992) ("[U]nder the Lanham Act [§ 43(a)] [the federal trademark statute], the ultimate test is whether the public is likely to be deceived or confused by the similarity of the marks."). Moreover, the use of the CARA ratings in such a manner would violate the MPA's rights under the Federal Trademark Dilution Act, 15 U.S. § 1125(c), which "protect[s] famous trademarks from subsequent uses that blur the distinctiveness of the mark or tarnish or disparage it, even in the absence of a likelihood of confusion." *Moseley v. V Secret Catalogue, Inc.*, 537 U.S. 418 (2003) (quoting H.R. Rep. No. 104-374, p. 2 (1995)).

Should your proposed legislation be enacted into law, the state of Oklahoma, school districts, and any private entities (e.g., book publishers) that affix the Rating Marks on books not actually rated by CARA would potentially be liable for traditional trademark infringement and dilution, among other things.

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The MPA and our members are sympathetic with your interest in ensuring that children are not exposed to age-inappropriate material. Indeed, that is the very purpose of the rating system that we established over 50 years ago. However, the strength of that system, as well as its legality, flows largely from the fact that it is administered by a private organization, not the

government. Given this background, we respectfully request that you reconsider introducing any legislation that seeks to incorporate MPA's rating system into law.

Please do not hesitate to contact me or the MPA's advocate in Oklahoma, James McSpadden, should you have any questions or wish to discuss this matter further.

Sincerely,

*Kathy Bañuelos*

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cc: MPA Member Studios  
James McSpadden