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ISSUES OF HARM AND OFFENCE:

**The Regulation of Gender and Sexuality  
Portrayals in British Television Advertising**

by

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A thesis submitted in partial fulfilment of the requirements for the degree  
of Doctor of Philosophy in Women and Gender Studies

**University of Warwick**  
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## Declaration

I declare that the contents of this thesis are my own work and that no material contained in this thesis has been submitted for a degree at another university.

The papers listed here have been presented during my time studying for this PhD:

Quigley Berg, J. (2013) 'What Counts as Sexism? Regulating Sexist Offence in UK Television Advertising', paper presented at: CSWG Graduate Seminar Series, University of Warwick, May, 2013, and at 'Advertising and Consumer Culture' Postgraduate Conference, University of Leeds, May 2013

Quigley Berg, J. (2013) 'Unexpected Obstacles & Creative Solutions: A Methodological Discussion on Issues of Archival Access and Managing Disparate Data', presented at 'Chaos, Creativity and Connections in Social Science Research', Postgraduate Conference, University of Sussex, June 2013

Quigley Berg, J. (2014) 'Framing Public Interest: (En)gendering Harm in British Television Advertising', presented at the BSA Annual Conference, April 2014

## Abstract

This thesis has two broad aims: 1) to explore the history and regulatory structure surrounding television advertising, particularly in relation to issues of 'harm and offence'; and 2) to examine the regulatory discourses featured in adjudications responding to complaints of (alleged) offensive and/or harmful gender and sexuality portrayals in television advertising. Advertising has been a primary focus for a feminist criticism since, at least, the 1970s, arguing that it features and promotes sexist portrayals of women. However, little academic attention has been paid to the *regulation* of sexism in advertising, despite its long history. My work seeks to address the lack of research in this area.

Using archival research I explore the historical trajectory of regulatory approaches to issues of harm and offence in British television advertising since the establishment of commercial television to present day. I argue that these have, historically, taken a paternalistic, moral stance, whilst issues of sexism have been largely overlooked or misinterpreted as issues of sexual morality. Moreover, through a discourse analysis of adjudications featuring complaints concerning gender and sexuality portrayals – published between 1990 and 2012 – I examine the regulatory discourses constructed in response to public claims of sexist advertising. Here, I make two separate, albeit interlinked, arguments. Firstly, that the regulatory discourse on the sexualisation of women in advertising lacks critical engagement with the meaning of sexual speech, particularly concerning issues of gender. Secondly, I explore, drawing on speech act

theory, how regulatory discourse contribute to an 'undoing' of sexism, emphasizing a postfeminist reading of sexism as an ironic 'fantasy' of a distant past. In this way, I argue that sexist speech comes to be understood as a 'failed performative', no longer enacting that which it speaks in the wake of feminist success.



## Abbreviations

AAC	Advertising Advisory Committee
ASA	Advertising Standards Authority
Asbof	Advertising Standards Board of Finance
BACC	Broadcast Advertising Clearance Centre
Basbof	Broadcast Advertising Standards Board of Finance
BBC	British Broadcasting Corporation
BCAP	Broadcast Code of Advertising Practice
BCC	Broadcasting Complaints Commission
BRTF	Better Regulation Task Force
BSA	British Sociological Association
BSC	Broadcasting Standards Commission (1988-1997) Broadcasting Standards Council (1997-2003)
CAP	Committee for Advertising Practice
EASA	European Advertising Standards Association
ECHR	European Convention for Human Right
EOC	Equal Opportunities Commission
ERK	Ethical Council Against Sexism in Advertising (Sweden)
FCC	Federal Communications Commission
FOI	Freedom of Information
HFSS	High in Fat, Salt or Sugar
IBA	Independent Broadcasting Authority
ICO	Information Commissioner's Office
IDA	Indecent Displays Act
ILR	Independent Local Radio
IPA	Institute of Practitioners in Advertising
ITA	Independent Television Authority
ITC	Independent Television Commission
ITV	Independent Television
JACC	Joint Advertisement Control Committee
NPG	National Portrait Gallery
NVLA	National Viewer's and Listener's Association
Ofcom	Office of Communications
OPA	Obscene Publications Act
PIT	Public Interest Test
SDA	Sex Discrimination Act

## CHAPTER 1

### Introduction

#### Project Rationale

This thesis explores the regulation of harm and offence in British television advertising, with a specific focus on issues of gender and sexuality portrayals. Its purpose is to examine the institutional structures of British television advertising regulation and the (changing) rationale for ‘public interest’ regulation in relation to issues of harm and offence. Moreover, it provides an insight into the regulatory discourses employed in adjudicating on complaints regarding portrayals of gender and sexuality – a particularly contested area of offence. The project has a historical and a contemporary element, exploring changing institutional structures through a discourse analysis of archival material in the form of organisational documents from 1954 to 2012, as well as providing an in-depth analysis of complaint adjudications, published between 1990 and 2012.

There has been a longstanding interest within academic feminism, to explore the representation of gender and sexuality in visual culture, and advertising in particular, challenging sexist portrayals and structures of meaning since at least the 1970s. In the wake of Judith Williamson’s (1978) influential book, *Decoding Advertisements*, in which she argues that

advertising works in our everyday lives to sell, not only products but, also, gender ideology and discrimination, a rich body of feminist scholarly work on advertising has developed exploring the representation of women in media. Considering how long advertising has been subject for feminist criticism, it is curious how little attention has been paid to the regulation of sexist portrayals in adverts, by academic feminists and activists alike. With only a few notable exceptions (see for example Amy-Chinn 2001, 2006, 2007; Root 1984; Cameron 2006), the field of advertising regulation remains largely unexplored by feminists, sociologists and cultural studies scholars. Moreover, the bulk of existing literature on advertising regulation outside the field of feminist or sociological research feature within the sphere of marketing and has mainly been concerned with the descriptive or prescriptive assessment of the varying levels of efficiency of different regulatory systems (see for example Boddewyn 1985; Miracle and Nevett 1988; Harker 1998, 2000; Harker & Wiggs 2000; Hoffman-Riem 1996). This project seeks to address the apparent lack of feminist and sociological research in this area.

### **Situating the project**

This project is situated exclusively within the area of television advertising. There are two main reasons for this selective approach, including the unique history of British television advertising regulation, as well as it being a practical approach to narrowing the scope of an otherwise vast research field. Furthermore, focusing on issues of harmful

and/or offensive gender and sexuality portrayals also needs clarification, beyond a lack of research, as mentioned above. I outline two main reasons for this approach: the status of 'sexist' speech as a 'challenger' to the arbitrary distinction between 'harm' and 'offence'; and the history of criticism towards media portrayals of gender (and of women, in particular), often directly aimed at advertising.

### *Television Advertising*

Television advertising has been regulated by statute since the establishment of commercial television in 1955, to present day. Initially regulation formed part of a deep held, paternalistic concern about uncontrolled (Americanised) commercialism and the 'dangerous' effects of television on the viewer (Seymore-Ure 1996; Crissel 2002). Television advertising regulations' statutory role is defined by its legal commitment to 'public interest' regulation. Although non-broadcast advertisements have been regulated by the Advertising Standards Authority (ASA) since 1962,<sup>1</sup> television advertising regulation evolved in conjunction with British 'public service' broadcasting, sharing with it a commitment to high quality and standards of 'good taste and decency'. Television advertising regulation therefore provides a particularly interesting space for studying the regulation of harm and offence, guided as it is by (contested) statutory

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<sup>1</sup> The ASA regulates both broadcast and non-broadcast advertising since 2004.

principles of ‘public interest’.<sup>2</sup> In terms of practical reasons, a focus on one particular media type narrows down the scope of a project otherwise too vast for the purposes of this thesis. Furthermore, television advertising is regularly accessed by a wide population and remains the most complained about media, even in the face of online advertising.<sup>3</sup>

### *Gender and Sexuality Portrayals*

I use the regulation of gender and sexuality portrayals in advertising as a ‘case study’ of speech that challenges the regulatory distinction between harm and offence. Its ambivalent status in advertising regulation will be explored further in Chapter 6, 7 and 8. I have deliberately avoided categorising sexist advertising speech as either ‘harmful’ or ‘offensive’ in this thesis as the reason for its relevance to this project is precisely its status as neither, or both ‘harm’ and ‘offence’. Secondly, the portrayal of gender and sexuality in advertising has been a central topic of concern within and outside feminism for several decades. Amy-Chinn (2007) notes, for example, that the representation of women has been a main cause for advertising complaints since at least the 1970s.

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<sup>2</sup> There was a shift from ‘public interest’ to ‘citizen-consumer’ interest with the Communications Act 2003. I discuss this shift and its meanings for the regulatory system in greater detail in Chapter 5.

<sup>3</sup> In the most recent report from the ASA, advertising complaints received for television amounted to 13,179, whilst complaints received for online advertising only reached 9,988 (ASA 2013).

### *Advertising as 'Speech'*

The term 'advertising speech' is used throughout this thesis and refers to the advertisement as a whole, including visual, textual and audial aspects. Since this project is partly situated within the field of regulation and censorship, it was considered appropriate to use the legal term 'speech' in order to denote its status as subject to judiciary action. Whereas much research on advertising has focused on advertising *content*, this project focuses on what advertising can be thought of as 'doing' in order to provoke regulatory intervention. I suggest, drawing on speech act theory, that claiming that an advertisement offends or harms is a claim that it *speaks* in an injurious way.

### **Aims, Objectives and Research Questions**

My research draws, broadly speaking, on two fields of academic work:

- 1) debates on regulation, censorship and freedom of expression; and
- 2) feminist media theory, including, specifically, theories of the 'male gaze', objectification, sexualisation and postfeminism. Situated within these academic fields, this thesis has two main objectives and a number of interrelated issues/themes for investigation:

- 1) To explore the regulatory history and structure surrounding television advertising, particularly in relation to issues of 'taste and decency', and 'harm and offence', including:

- Exploring the notion of 'public interest' regulation and how it functions as a 'guiding principle' when regulating against unstable categories such as, in particular, 'offence' or 'taste and decency'.
- Examining the discursive shift from 'taste and decency' to 'harm and offence'. Exploring how this shift has affected regulatory approaches in this area (if at all).
- Exploring the discursive construction of 'harm' and 'offence', and how the two may function differently, especially in relation to issues of 'harmful' or 'offensive' gender and sexuality portrayals in advertising.

2) To examine the regulatory discourses featured in adjudications responding to complaints regarding (alleged) offensive and/or harmful gender and sexuality portrayals in advertising, including:

- Examining the discursive strategies employed in accepting/dismissing complaints about sexism, what features in content and context might make regulatory intervention possible or inevitable.
- Examining the convergence/divergence in discourses on sexualisation and sexism; how these may overlap and how distinctions are made between 'morality' and 'equality' issues in advertising complaints.
- Exploring the history of anti-sexist criticism in television advertising; examining how complainants' concerns have been

raised and dealt with in regulatory discourse and its place within evolving gender debates.

### *Research Questions*

The research questions for this project are a re-formulation of these aims, which have been central in guiding this project. These questions have a contemporary as well as historical element:

- How has television advertising regulation been shaped by its history as a statutory regulator, with a commitment to the 'public interest'? How has this 'public interest' been defined and changed over time? How is 'public interest' defined in relation to sexist advertising?
- How can we understand 'harm' and 'offence' as categories for 'measuring' (un)acceptability? How are harm and offence different from notions of taste and decency? How can we understand harm and offence in relation to claims of sexism?
- In what ways has British television advertising regulation responded to changes in ongoing debates on gender and sexuality?
- How are discourses of sexualisation understood and negotiated in advertising regulation?
- What 'counts' as sexism, or how are claims of sexism defined/dismissed/legitimised in regulatory discourse?



## Methodological Approach

For this research, a range of documentary data<sup>4</sup> was collected and analysed from the five main statutory regulators active at different times since 1954 until present day: the ITA (later IBA), BSC, ITC, Ofcom, and the ASA<sup>5</sup>. This data forms a rich basis for exploring the complex history of television advertising regulation and the changing status of commercial speech *vis a vis* the 'public interest'. Moreover, published complaint adjudications from 1990 to 2012 and the advertising films that these concerned were analysed using discourse analysis, forming the basis for an exploration into the 'everyday' regulation of (alleged) sexist offence and/or harm.

## Theoretical Framework

The theoretical framework for this project draws on theories of regulation and censorship, providing a discussion on various conceptualisations of 'harm', 'offence' and 'public interest'. I also discuss speech act theory here and as part of my literature review, since it represents a 'point of convergence', or 'overlap', for issues of harm, offence, sexual speech and sexism. Lastly, I give a brief overview of the concepts based within

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<sup>4</sup> This included, but is not exclusive to, annual reports, published speeches, meeting minutes, internal correspondence, external correspondence, published research reports, published information material, website-pages etc.

<sup>5</sup> The structure of television advertising regulation has been subject to a number of changes in organisation, which complicated the collection of data somewhat (this is discussed at length in the methodology chapter of this thesis).

feminist theory that have informed my work, including the 'male gaze', sexualisation, postfeminism and contemporary debates on sexism.

### *Theories on Regulation and Censorship*

I explore the rationale for the regulation of harm and offence in television advertising by drawing on a range of theories on regulation and censorship. I explore the shifting understandings of 'public interest', and theoretical attempts to conceptualise 'harm' and 'offence'. Furthermore, I also address the contested notion of 'moral regulation' and debates on the regulation of 'obscene' or 'indecent' material in public space. As the debate on the regulation of 'sexually explicit' media content features, almost exclusively, within the terrain of pornography and obscenity, this discussion necessarily paints the theoretical context for moral regulation with broad strokes, to be nuanced further in the data analysis chapters.

### *Speech Act Theory*

Drawing on J.L. Austin's (1975) speech act theory allows a way to explore the performative nature of harm and offence. Austin's distinction between *illocutionary* and *perlocutionary* speech, and the 'felicity' conditions that necessitate their success provides a nuanced understanding of how sexism in advertising can be seen as present, but without 'effect', or as a 'failed performative'. I explore this notion further in Chapter 8 of this thesis.

### *Feminist Theory*

A central element of this project is its exploration of regulatory discourses around sexism in relation to British television advertising. Drawing on theories of sexual objectification, male gaze theory postfeminism and contemporary debates on sexism, I unpack the entanglement of feminist and anti-feminist discourses in advertising regulation, suggesting that advertising regulators consistently misinterpret claims of sexist offence and/or harm.

## **Chapter Structure**

What follows is a brief description of the remaining chapters that constitute this thesis:

Chapter 2 is divided into two parts, Part I and Part II:

- The first part explores the main theoretical approaches to the regulation/censorship of harm and offence, drawing on Mill's (1859) notion of freedom of speech and the 'harm condition', 'public interest' regulation, and challenges presented to conceptualisations of harm and offence by sexually explicit material in public space.
- The second part examines J.L. Austin's (1975) speech act theory, as utilised in debates on censorship of harm, using the feminist pro-/anti-pornography debate as a case in point. This section aims to demonstrate the instability of the seemingly rigid category of 'harm'.

Chapter 3 examines the academic field of feminist theory, exploring some key themes related to my research, including debates on sexual objectification, the 'male gaze', postfeminism, 'lad culture', sexualisation debates and contemporary debates on the status of 'sexism'. This chapter sets the context for subsequent analytical chapters 6, 7 and 8 and serves to situate the project within a feminist framework.

Chapter 4 provides an insight into how the methodological approach for the project and the rationale for making certain methodological choices, as well as providing a discussion of methodological issues and how these were handled. I discuss in particular my issues with access to data and how this shaped the current project.

Chapter 5 sets out the complex history of television advertising regulation from 1954 to present day. This chapter examines the institutional structures surrounding the regulation of television advertising and its commitment to the 'public interest' in the wake of technological, political economic and cultural transformations within broadcast media. In this chapter I argue that there is some tension in the regulatory field as to how the concept of 'public interest' should be interpreted, becoming particularly pertinent with the shift to self-regulation by the industry body, the ASA, in 2004.

Chapter 6 sets out, in greater detail, the history of the category of 'offence' in relation to sexualised advertising speech in the 1960s, 70s and 80s – a

time of significant cultural change in British debates on public morality and growing feminist and gay liberation movements. Based on documentary data this chapter serves primarily as a preamble for Chapter 7 (and to some extent Chapter 8), but also suggests that, historically, complaints about sexism have been considered outside the scope of 'offence', categorised instead as a form of 'personal affront' or annoyance.

Chapter 7 draws on a discourse analysis of published adjudications from 1990 to 2011 in order to explore the discursive (de)construction of sexualised images of women. I argue that the regulatory discourse on *sexualisation* (as opposed to sexism) lacks engagement with issues of gender. I suggest that the regulators fail to address complainant's concerns properly, foregrounding a reading that takes issue with sexual 'explicitness' and 'exposure', rather than sexism.

Chapter 8 is similarly based around a discourse analysis of adjudications, published between 1990 and 2011. However, here I examine adjudications where sexism *has* been addressed (albeit dismissed). Using speech act theory I explore how regulators come to understand sexism, not as absent from the advert, but as a 'failed performative'; as present but ineffective as it is portrayed as 'unrealistic', or 'ironic' in a postfeminist sense. Furthermore, I argue that regulators endorse and perpetuate a postfeminist reading of sexism as a 'past' concept.

Chapter 9 is the concluding chapter of this thesis, where I re-state the aims and research questions set out in the introduction and summarise the main arguments made in response to these. In this chapter I also discuss my contributions to knowledge and some suggestions for further research.

## CHAPTER 2

### Part I

# Theorising Harm and Offence: Perspectives on Media Regulation

*“Any discussion of media regulation raises issues of freedom and responsibility. It raises questions about whose freedom and whose responsibility” – Burton 2005, p.21*

## Introduction

In this chapter I explore key debates and theoretical perspectives on the regulation of harmful and offensive media content. The chapter is divided into two parts; the first is a literature review of the field of media regulation, with a specific focus on various conceptualizations of ‘harm’ and ‘offence’ for regulatory purposes. The second part draws on speech act theory in order to explore the feminist anti-pornography movement’s challenge to the conceptualisation of ‘harm’ and ‘offence’<sup>6</sup>. Furthermore, this chapter seeks to situate the theoretical framework for exploring ‘failed performatives’, as discussed in detail in the analysis in Chapter 8.

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<sup>6</sup> There is a distinct lack of work in the regulatory field of controversial speech that does not fall under the more extreme definitions of pornography or obscenity. Although advertising speech cannot be equated with pornography (at least not within the tightly regulated space of broadcasting), I suggest that this work provides a valuable insight into the nature of and regulatory justifications for ‘transgressive’ speech.

I begin this chapter by outlining a liberal perspective on regulation and censorship, which has heavily influenced regulatory approaches in many Western countries, including Britain. I then move on to consider more specifically the case of commercial speech and broadcast regulation in the UK, outlining and problematizing the British 'public interest' approach to regulation. In the final section of Part I of this chapter, I consider the regulation of sexually explicit media content, examining issues of moral regulation and the 'zoning' of sexual advertising speech.

This thesis focuses upon what Boddewyn has termed 'soft' issues: that is, media and advertising content that is seen as breaching cultural boundaries of acceptability, related to, for example, sex and decency (Boddewyn 1991). Gender stereotyping and other forms of sexist portrayals would also belong to this category of 'soft' matters, although the way in which this is classified is deeply contested, as will be discussed further in Part II of this chapter. Boddewyn argues that 'soft' matters are often difficult to regulate since they are inevitably based around subjectively, temporally, and culturally specific values. This is in contrast to 'hard' matters, which include for example issues of misleadingness and dishonest advertising claims (ibid). The regulation of 'soft' issues, then, requires some kind of value judgment that is not present to the same degree in regulating against 'hard' matters.



This chapter will not explore the large and thorny area of media effects and consumer research, as this goes beyond the scope of this thesis.<sup>7</sup> Whilst the *potential* effects of advertising messages on consumers is always present in regulatory discourse, as well as in wider debates on regulation and censorship, the focus of this thesis lies in the *discursive constructions* of harm and offence as a basis for regulation.

This literature review is necessarily selective in scope but seeks to establish a framework for understanding the historical and contemporary debates surrounding controversial advertising speech, providing a rich context for the subsequent analytical chapters.

### **Philosophical and Practical Approaches to Media Regulation**

The regulation of media content comes in different forms. Although media messages may have ideological motives (explored further in the next chapter), media regulation is *itself* ideological in nature, based around idea(l)s of ‘taste and decency’, harm and offence and cultural un/acceptability. However, there are different ways of understanding the relationship between media and society, which affects the way the media is, and has been regulated. British television advertising regulation has,

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<sup>7</sup> ‘Media effects’ is a contested area of research as establishing a causal relationship between media exposure to certain materials and behaviour has continuously provided inconclusive evidence (I will briefly touch upon this in the section discussing the regulation of pornography). People are likely affected by the media in a multitude of ways and even social scientist proponents of media effects do not see it as the only, or even most significant factor in determining behaviour (Heins 2006).

generally speaking, been subject to much more severe restrictions than present in other media carrying advertising. This is based on an understanding of television advertising as particularly intrusive and influential, and a conception of the television audience (originating in early debates on commercial television) as particularly vulnerable and impressionable to advertising messages broadcast on television, much due to its audio-visual nature and television's place within the home (Dickason 2000; Seaton 2003b).

### *A Liberal Perspective on Regulation and Censorship*<sup>8</sup>

Liberalism has played a great part in debates on morality and regulation in western countries in the late twentieth century, supporting liberty from state interference, especially in economic matters, whilst simultaneously promoting equal opportunities, freedom of speech and freedom of choice (Bocock 1997). British philosopher John Stuart Mill was one of the major intellectual influences on liberal thinking in the 19<sup>th</sup> Century. In *On Liberty* (1859), he lays down the foundational principles for freedom of expression in liberal democracies, arguing against state censorship and restrictions on speech, even in cases when speech is untruthful or misleading. Following

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<sup>8</sup> 'Regulation' is not necessarily the same as 'censorship', although the difference between the two sometimes seems to be little more than a semantic difference. Burton makes an attempt at distinguishing 'regulation' from 'censorship', arguing that censorship is inflexible whilst "[r]egulation [...] has a temporal dimension in respect of norms and of ideology" (Burton 2005, p. 25). Moreover, he states that censorship refers to material being removed secretly or without public knowledge. Although Burton's comments are relevant here, especially in relation to broadcast regulation, which mostly deal with *post-transmission* regulation, it should be noted that the distinction is not always clear-cut. Indeed, Burton himself expresses some ambivalence in relation to the concept of censorship, questioning where the line should be drawn between 'censoring' and 'regulating' material considered, for example, morally dubious.

Mill's argument, citizens are to be considered rational beings who are entitled to receive information and communicate ideas and opinions without state interference. As such, restrictions on, or censorship of speech, whether such speech is true or false, constitute "an attack on the autonomy of the state's citizens" (Kieran 1999, p. 130). However, there is an exemption to this rule according to Mill; that is, when speech constitutes *harm* that directly "constrain[s] the life of others" (ibid, p. 136). Kieran explains this notion from a liberal legal perspective:

"The foundation of any liberal conception of the law is the presumption that the mere immorality of a particular act, whatever it is, cannot justify any legal proscription against it, for the point and purpose of the liberal state is to maintain the rights and just conditions required for individuals to lead their lives as they freely choose. This includes the right to act immorally as long as such acts do not harm or infringe the rights of others" (Kieran 1999, p. 129).

Indeed, as Cram (2006) argues, any 'viewpoint-based' restrictions go against the principles of liberal thought, as they would constitute an infringement of freedom of expression. However, this often gives rise to contradictions in regulation, where a belief in free markets and freedom of information may clash with our beliefs in social morality and ideology (Burton 2005). Mill argues that some speech or actions may not cause direct harm, but would still be considered deeply offensive. These acts, to which Mill ascribes, for example, offence against decency, may be

prohibited in certain circumstances but should not be subject for legal restrictions:

“there are many acts which, being directly injurious only to the agents themselves, ought not to be legally interdicted, but which, if done publicly, are a violation of good manners, and coming thus within the category of offences against others, may rightfully be prohibited” (Mill 1859 p. 176)

‘Harm’ is not necessarily an objective measure with a strong consensus, but a contingent category subject to interpretation. What ‘counts’ as harm and how we are to make the distinction between ‘harm’ and ‘offence’ is often a case of contestation, and the distinctions between the two are often unclear. For example, exemptions allowing for censorship and regulatory intervention are applied across liberal democracies on speech that is seen to constitute ‘harm’ to the ‘public interest’. However, harm to the ‘public interest’ may be conceptualised in ways that do not automatically qualify as, or to some degree contest the notion of ‘harm’ in Mill’s terms. Consider, for example, racist speech – does racism constitute harm in the sense Mill suggests – can it be considered to ‘constrain the life of others’? Does it contribute to a wider social harm in its perpetuation of inequality? Should racist speech be classified as ‘harmful’ as it unfairly discriminates against some people, leading to various exclusions from public life? Or, is

it to be considered an ('offensive') expression of opinion?<sup>9</sup> Furthermore, if we accept that racism should be considered as 'harm', does it have to be perceived as harmful by all people subject to it? Critical race theorist Mari Matsuda (1993) argues, in an American context, that racist hate speech needs to be considered as a form of direct 'harm'. She proposes legal restrictions on racist hate speech on the basis that it is an infringement on racial equality, because, as Matsuda argues, by *not* restricting such speech, the state is (indirectly) promoting it. She writes: "racist hate messages is real harm to real people. When the legal system offers no redress for that real harm, it perpetuates racism" (ibid, p. 50). MacKinnon (1993) makes a similar claim in relation to pornography, which will be discussed further in Part II of this chapter. Mill, however, warns his readers of the 'slippery slope' of state censorship and emphasizes individual liberty and autonomy, free from state intervention (Mill 1859).

Drawing on Mill's 'harm principle', Kieran attempts to delineate between 'harm' and 'offence', where the former qualifies for regulatory restriction whilst the latter does not (Kieran 1999). Kieran considers restrictions on speech to be highly problematic in cases that do not constitute *direct* harm. However, his attempt at delineating between harm and offence really functions to highlight the complexities in seeking to demarcate between the two. Kieran argues that 'offence' does not normally constitute grounds

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<sup>9</sup> In expressing an opinion, it is presumed that a conscious decision is made, foregrounding one truth in favour of another in the 'marketplace of ideas'. However, as Lawrence argues, if the opinion is the product of, for example, unconscious or 'normalised' racial prejudice, it forms part of a distortion in the marketplace of ideas, where opposing views, or non-racist truths are silenced and ignored (Lawrence 1993).

for regulatory intervention as it is in a sense, simply a form of 'annoyance' based on moral values (ibid). He writes: "the frustration of desires concerning what others ought to see and do cannot constitute harm. Feelings, no matter how unpleasant, cannot count as harmful if they are, in essence, the expression of a moral view" (Kieran 1999, p. 139). Kieran seeks to construct harm as something that is done to someone without his or her consent or ability to avoid it, whilst arguing that offence remains an annoyance, which can be avoided if need be, (like a television programme that can be switched off). Yet, there are instances where Kieran argues that 'offence' may indeed be considered a legitimate basis for censorious action. Kieran argues, for example, that the "moral disgust and outrage" (ibid, p. 138) that obscenity may cause, is a more substantial type of offence than being simply a form of 'annoyance'. Offence, in this instance, is seen to go beyond personal affront, "not reducible to whether actual feelings of disgust or repulsion are felt; rather, something is deemed to be offensive in this sense because there is something fundamentally morally offensive or repugnant about the image or program concerned. So we can claim that something is obscene without ourselves actually experiencing any feeling of disgust, repulsion, or loathing" (Kieran 1999, p. 138). However, Kieran remains ultimately sceptical towards censorship as a solution to the problem of offence since there may always be those who enjoy feelings of 'disgust and repulsion', or who may find certain obscene material pleasurable. He argues in relation to television and visual media that, "as long as we have a choice of whether or not to see the images and programs that disgust some people but delight others, there can be no law

prohibiting them consistent with the harm condition" (Kieran 1999, p. 139).

However, Kieran argues that even when offensive speech cannot reasonably be avoided, it still does not provide grounds for censorship in a liberal democracy. Evoking censorship in this instance could be with the aim "to protect the public from opinions, images, and programs that can justifiably be regarded as an unreasonable nuisance" (ibid, p. 140). Yet, Kieran argues that what should and should not be relegated to the private sphere is still a moral judgement. Sexually explicit imagery provides a case in point here, exemplifying a form of speech that may be censored from view based on 'unreasonable nuisance'. Although such restrictions on speech in the public domain may be justifiable, they are still informed by a moral stance, which sees sexuality as a distinctly private matter.

Kieran challenges Mill's notion of direct harm on one point, arguing that "offense, where we have good grounds to believe that it will constitute a significant *indirect* harm, can and does provide grounds for censorship" (ibid, p. 144, my emphasis). The notion of 'indirect' harm includes, for example speech and images that may affect negatively the people represented, stereotyping based on sex, race or sexuality, being typical examples.<sup>10</sup> No moral judgement needs to be made here, argues Kieran, since the issue lies not with the value of the kind of speech *per se* but in the

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<sup>10</sup> At a first glance, it would seem that Matsuda's notion of racist hate speech as harm would fit in to this category. However, Matsuda sees racist hate speech as a form of *direct* harm, not an *indirect consequence* of racism (Matsuda 1993). I will explore this important distinction further using speech act theory in the second part of this chapter.

harmful *effects* such speech may have on the social standing and equal treatment of people – also a central principle of liberal thought that is here seen to be compromised by freedom of expression. As Kieran writes:

“[The] right to freedom of expression is underwritten by the general liberal commitment to protect the conditions of stability, tolerance, and freedom from harm which enable people to lead their lives as they freely choose. So where protection of the right to freedom of expression threatens those very conditions, then it must give way” (Kieran 1999, p. 150).

Nevertheless, the issue of censorship is still far from clear cut – contextual factors need to be taken into account concerning the potential ‘artistic merit’ of the speech in question, in what context such speech is uttered, how ‘racism’ and ‘sexism’, for example, are to be defined, and whether such speech *necessarily* and *consistently* leads to harm (ibid). Perhaps sometimes, Kieran concludes, even when speech causes indirect harm, “this may be a cost worth paying” (ibid, p. 150). These are issues that regulators of television advertising face and which will be explored in greater detail in the following analytical chapters.

### *The Status of Commercial Speech*

Whereas the liberal approach to regulation and censorship provides an insight into the wider, contemporary debates on harmful and offensive speech, the *commercial* nature of advertising needs to be considered



properly in order to understand the premise upon which such speech is regulated. Commercial speech is defined in the European Convention of Human Rights (ECHR) as speech "whose main objective is the proposal of a commercial transaction" (Tambini et al. 2008, p. 404). Cram similarly defines commercial speech as "expression that is intended to further the economic interests of the speaker" (Cram 2006 p. 173). In this sense, no matter the content of such speech, its main purpose is deemed to be in some way driven by financial gains for the speaker. It is therefore not surprising that, under Article 10 in the ECHR, commercial speech is considered of less value than other types of speech, such as political or artistic expression. Indeed, the ECHR grant a great deal of autonomy to national authorities like the British self-regulatory body, the ASA, "to restrict commercial speech, especially on the grounds of promoting market competition and regulating advertising standards" (Caddell 2005, p. 274), as well as if it is perceived to be in contradiction to wider social goals of retaining and promoting public health.

The regulation of commercial speech is fairly uncontroversial in the European context, as opposed to in the United States where there have been arguments in favour of protecting commercial speech under the 'free speech' doctrine in the First Amendment (Barendt 2005). The reasoning behind such arguments emphasizes the value of commercial speech as *information*, crucial for consumers to make rational and well-informed purchasing decisions (ibid). The idea of restricting such speech, then, would infringe on the rights of consumers to have access to information

about products available on the market (Ramsey 1996). In this context, the “regulation of advertising based on concerns about exploitation of emotions, stereotyping of particular groups, or offensiveness to social values, are criticised as involving either state paternalism or censorship” (ibid, p. 4).

However, Piety (2009) completely rejects the view of commercial speech as a ‘valuable’ source for information. She argues that “the most casual review of advertising reveals that very little of what is offered in advertising is, strictly speaking, informational. Instead, what it typically offers consumers is something like classical conditioning, that is, a stimulus intended to influence them at a pre-conscious level” (ibid, p. 61). Even in cases where commercial speech may communicate a social or political message, to regulate advertising, is to regulate commerce, not information or the right to free speech (ibid). Because commercial speech is not only of lesser value, argues Piety, but it also originates in a ‘moral vacuum’ (ibid). Restricting such speech does not mean silencing a repressed viewpoint (indeed, Piety argues that the economic incentive behind advertising will likely ensure that such speech will be produced elsewhere), but a commercial message designed to sell a product, coming from a non-human, profit-driven (for the most part) business. It is the commercial nature of advertising, then, that makes it distinctly different from Mill’s notion of ‘free speech’:

"Protection for freedom of speech of human beings protects an essential aspect of what it means to be human. A part of being human and of self-actualization is self-expression. Neither a brand nor a corporation has a corporeal existence, a self to be actualized, or an opinion to be expressed" (ibid, p. 85).

As Piety suggests, even the people behind an advertisement (film-makers, copy writers, etc.), despite perhaps having good intentions, are inevitably there to promote the meta-message to buy a specific product.

Speaking from a feminist perspective, Piety argues that commercial speech should not be protected at the level of artistic or political speech, as this would paralyse any attempts at regulating against commercial speech that is harmful to women. Cohen-Eliya and Hammer argue along the same lines, stating that "[i]n light of the lesser value of commercial speech, there is room to consider limiting it when this is necessary for realizing important social interests. The prevention of racial and gender discrimination is certainly a legitimate social interest in a liberal democracy" (Cohen-Eliya and Hammer 2004, p. 175). Piety claims that "commercial speakers are perhaps the most powerful shapers of [...] culture" (Piety 2009, p. 84), and that it therefore seems entirely appropriate that such speech is afforded less protection. Nevertheless, as I explore further in Chapters 6, 7 and 8, the regulation of sexist advertising speech remains a contested issue.

### *Regulation in the 'Public Interest'*

British broadcast advertising regulation is guided by commitment to balance liberal principles of the advertiser's right to freedom of expression, yet its status as 'commercial speech' puts a limit on this 'freedom'. Notions of 'offence' (classified in contemporary regulatory discourse as 'serious' and/or 'widespread'), as well as 'harm' can provide legitimate reason for regulatory intervention and, in serious cases, a post-transmission ban. Here it becomes useful to explore the concept of 'public interest' as a foundational principle for British advertising regulation and a "justification for intervening in the market for social or cultural rather than economic reasons" (Lunt and Livingstone 2012, p. 36).

Advertising regulators seek to encourage 'socially responsible' advertising (without acting as 'social engineers'), with a statutory commitment to serving the 'public interest'.<sup>11</sup> However, 'public interest' is a concept imbued with ambiguity and has been defined and interpreted in a number of ways at different times in broadcasting history. In an attempt at definition, McQuail (1992) contrasts 'public' with 'private' interest, centring around profit and competition, which in this case would suggest that the public interest is inherently different from the interests of (profit-driven) advertisers. He describes 'public interest' as "the complex of supposed informational, cultural and social benefits to the wider society

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<sup>11</sup> The notion of public interest was redefined with the introduction of the Communications Act 2003. Having constituted 'viewers' or 'users' of broadcast services since the beginning of commercial television, now the 'public' was to be redefined as 'citizens' and 'consumers'. Livingstone and Lunt are critical of this development, arguing that the interests of the consumer and the citizen are not always compatible (Livingstone and Lunt 2007). I discuss this problematic distinction between citizen and consumer interests further in Chapter 5.

which go beyond the immediate, particular and individual interests of those who participate in public communication, whether as senders or receivers" (McQuail 1992, p. 3). However, what might be considered socially and culturally 'beneficial' remains uncertain and left open for interpretation.

The notion of 'public interest' rests on the "idea of a 'public' as a more or less unified group of citizens that belong to a well-defined nation state" (van Zoonen et al. 1998, p. 3). However, as van Zoonen et al. argue, this "has never been in concord with social reality and has lost its relevance completely under contemporary western conditions of migration, statelessness and multiculturalism" (ibid, p. 3). The 'public', then, is not an unproblematic unity of people, but is fragmented – indeed, 'public interests' may be a more appropriate term for debating media responsibility and regulation (ibid). Feintuck and Varney also hint at the ambiguousness of the term, arguing that any attempt at definition "is certainly not coterminous with what the public, or certain sectors of it, might be interested in" (Feintuck and Varney 2006, p. 75).

Drawing on Held's (1970) typology, McQuail attempts to shed some light on the contested understanding of 'public interest'. Held suggests three different ways of understanding the 'public interest' concept: 1) Preponderance theory, that is, public interest defined as "the *sum of individual interests*" (McQuail 1992, p. 22), or what a majority of the people want. This can obviously be difficult to identify through other means than

extensive research or a national vote; 2) Common interest theory, which *presumes* that a group of people share the same interests, persuasively promoting certain objectives but without necessarily demonstrating the need for such an approach; and 3) Unitary theory, which assumes some "absolute normative principle, usually deriving from some larger social theory or ideology" (McQuail 1992, p. 23), not really taking into account what the public might want. McQuail argues that it is the common interest theory – the notion of public interest as a presumed set of communal values – that forms the basis for media communications regulation in Britain as the preponderance theory and the unitary theory are simply too impractical in establishing a public interest approach in broadcasting. However, the common interest theory still allows for a range of contested interpretations of 'common good' and 'public interest' – a debate that has been continuously reinvigorated throughout broadcasting history. Furthermore, as Blumler notes,

"[w]e should not be naive about this notion of collective good. In concrete terms, the public interest can never be definitely pinned down. It is pursued rather than known, and democracy entitles all with a point of view on it to take part in the search [...] Neither are notions of 'the public interest' ever finally settled; they are a moveable feast because circumstances, needs and perceptions of societal requirements continually change" (Blumler 1998, p. 54).

## **Obscenity and Indecency: Debates on the Regulation of Sexually Explicit Media Content**

Mill's liberalist approach to speech has been met with a more conservative political philosophy present in British television content regulation, where *moral* regulation based on a sense of shared cultural values is legitimised.

Annette Kuhn writes:

"While a corollary of the liberal view is that, as long as the harm condition is met, morality is a matter of individual choice, the conservative argument would more likely be that shared morality is the cement of society. This makes morality a public matter, which in turn makes matters of morality susceptible to regulation on the grounds that a breach of the moral code constitutes a social harm, an offence against society as a whole" (Kuhn 1984, p. 57-58).

In this section I seek to explore the challenges posed to conceptions of harm and offence by an understanding of 'public interest' as based on a sense of 'shared morality', focusing specifically on the contested area of sex and nudity.

### ***Obscenity and Indecency***

Obscenity and indecency are concepts regulated by legal statute with a specific commitment to the 'public good'. The revision of the Obscene Publications Act 1959 (OPA) introduced the measure of 'public good' in order to distinguish between 'valuable' and 'valueless' obscene speech.

Essentially, any speech could be considered 'valuable' if it could be said to have "artistic, scientific or some other kind of merit which distinguished the meritorious from the exploitative" (Hunt 1998, p. 21). However, as Hunt (1998) notes, more controversial forms of obscene speech such as pornography, could also be argued to have some sort of 'value': "pornography, too, could be interpreted as being for the 'public good' by an astute counsel, as a series of therapeutic masturbation defences proved" (ibid, p. 21). Annette Kuhn (1984) has emphasised the distinction between pornography, obscenity and indecency, as conceptualised within the British legal system<sup>12</sup>. She points out that pornography in the UK is not illegal *per se*, but "becomes so only to the extent that it is held *ex post facto* in law to be obscene and/or indecent" (ibid, p. 54). Obscenity, as governed by the Obscene Publications Act, states that a publication is obscene "if its effect [...] is, if taken as a whole, such as to tend to deprave and corrupt persons who are likely, in all the circumstances, to read, see, or hear the matter contained or embodied in it" (Obscene Publications Act 1959, p. 1). Catherine Itzin (1992) has argued that, "in obscenity law's concern about morality, women are rendered entirely invisible" (p. 410) and that the Obscene Publications Act 1959 that governs obscene materials in the UK has failed to properly address pornography. The manner in which obscenity is seen to 'deprave and corrupt' is a question of definition on the part of jurors on a case-by-case basis. However, Millwood Hargrave and Livingstone state that, "it is clear that some kind of change in mental or behavioural orientation is implied. It is not enough merely to have

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<sup>12</sup> It should be noted here that although obscenity and indecency are defined in British law, pornography is not.



offended people, even in large numbers" (Millwood Hargrave and Livingstone 2009, p. 32). Advertising speech in the UK fall under the protection of the Obscene Publications Act 1959; however, as Petley argues, "although television was brought under the Obscene Publications Act in 1990, this was largely an act of spite by the Thatcher government, since television, before and since, has always been so tightly regulated by its own codes that nothing remotely obscene has ever been broadcast – at least on the mainstream terrestrial channels" (Petley 2011, p. 262).

Non-broadcast advertising is also accountable to the Indecent Displays (Control) Act 1981 (IDA), prohibiting the display of indecent material: "If any indecent matter is publicly displayed the person making the display and any person causing or permitting the display to be made shall be guilty of an offence" (Indecent Displays Act 1981, p. 1). Whilst this does not cover the area of broadcast advertising, it does provide an insight into the conceptualisation and operationalization of 'indecent' as a type of public offence. Kuhn explains that "[t]he offence of indecency turns on the nuisance that certain representations might cause, particularly to people who do not choose to come into contact with them. The test of indecency is usually one of offence (in the sense of affront) rather than, as in the case of obscenity, moral corruption" (Kuhn 1984, pp. 59-60). Here, an arbitrary distinction is made between harm (moral corruption) and offence (affront). Kuhn further adds that "[a]n indecent representation may be one that offends a person's sense of propriety" (ibid, p. 61), suggesting that 'indecent' may be defined as anything that may shock and disgust the

'ordinary citizen' (ibid). However, as Millwood Hargrave and Livingstone note, 'indecent' remains largely undefined by the Act, although it is positioned "at the lower end of the scale and obscene at the upper end" (Millwood Hargrave and Livingstone 2009, p. 282).

Kuhn notes that there is a propensity in society to want to regulate sexual material, which requires law or regulation to define 'unacceptability' (and, as such, 'acceptability' is also determined). Yet, she points out the problems in this process of 'naming and shaming' stating that, "there is space for disagreement over what exactly constitutes sex and sexuality, over what constitutes their representation, and consequently over what is held at any one time or place to be pornographic, obscene or indecent" (Kuhn 1984, p. 54).

### *Corrupting Children*

Kuhn argues that the construction of obscenity and indecency is based on a discursive delineation of 'public' and 'private'. Whereas obscene or indecent material may be regulated as it features in the public domain, any legal restrictions affecting private consumption is considered an infringement on individual autonomy and choice. However, there have been legal attempts at redefining or extending the concept of public space in some instances, particularly concerning children and 'vulnerable' groups. As Kuhn writes:

"privacy loses some of its inviolability as soon as persons who [...] are 'specially vulnerable' are involved, either as consumers of those representations, or as participants in their production. The vulnerable are defined as persons who can be particularly easily exploited or corrupted. Consequently, where the law aims to protect such persons, it re-enters a field of morality defined under other circumstances as private. Young people are seen to require special protection because the state of adulthood is considered a necessary precondition of the exercise of free choice and informed consent" (ibid, p. 64).

Bocock argues that sexual images and representations in the media are often seen as particularly harmful and 'corrupting' for young audiences and so attract public complaints on the basis of material seen to be inappropriate for a presumed impressionable child audience (Bocock 1997). In broadcasting, the '9 o'clock watershed' was established to mark the time when more 'explicit' material could be shown, in an attempt at 'protecting' younger viewers<sup>13</sup>. Furthermore, the status of children as irrational and impressionable can, and does reframe 'offensive' sexual speech as 'harmful' and may be restricted from broadcast at certain times of day. The notion of pre- and post-9pm viewing can therefore be said to reflect Kuhn's delineation of public/private, where pre-9pm viewing time is considered for the indiscriminate public, whereas post-9pm viewers are

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<sup>13</sup> This also includes television advertising.

presumed to be actively aware that their television consumption no longer guarantees an adherence to notions of cultural/moral 'propriety'.<sup>14</sup>

### *'Zoning' – Regulating Pornographic Speech Based on 'Content-Neutrality'*

'Zoning' is used in relation to the restriction of pornographic speech in the US, where pornography is generally protected under the First Amendment as a form of 'free speech'. Nevertheless, so called 'adult' or 'sex entertainment' establishments (meaning sex shops, lap dancing clubs, etc.) are regulated to a degree ('zoned') under the free speech doctrine's 'content-neutrality' principle<sup>15</sup> (Mills Eckert 2003). 'Zoning' sexual speech under the content-neutrality principle means that there is recognition of 'harm', albeit not in a 'primary' (direct) sense. Instead, zoning allows jurors to 'ban' adult establishments based on its (indirect) harmful effects on community, property, crime, etc. As such, they sidestep the issue of censoring free speech.

However, Mills Eckert has some reservations towards zoning, arguing that "even though the Court reaches the right outcome in the zoning cases, the arguments fall short, neglecting the more profound gender-based

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<sup>14</sup> Amy-Chinn argues that complainants who disapprove of 'offensive' advertising content often attempt to reframe their concerns, from being seen as a *moral* objection, to one which concerns the welfare and suitability for child viewers (Amy-Chinn 2007). Hill has similarly noted how respondents in a study on offensive advertising content often framed issues of offence in terms of children's viewing, and that such issues were often thought better dealt with through parental intervention, rather than making an official complaint (Hill 2000).

<sup>15</sup> There is a similar way of regulating 'sex entertainment' establishments in the UK. These need to be licensed under the Local Government (Miscellaneous Provisions) Act 1982, which allow local authorities to deny such premises license if it considers the location inappropriate (e.g. too close to schools), or if the number of 'sex entertainment' establishments equals or exceeds that which the local council considers appropriate.

harms to women" (ibid, p. 865). In regulating based on the content-neutrality principle, the law fails to address the "differential impact on women or that the ordinances regulate a particularly controversial forms of speech, namely, the male, heterosexual variant of pornography" (ibid, p. 868). Mills Eckert claims that pornography produces a form of 'gender-based harm', which is implicit in zoning cases but never made *obvious*, arguing that such harms should be explicitly considered in zoning-cases and weighed against free speech interests.

In Chapter 7 I discuss the regulation of sexually explicit material in advertising based on perceived 'harm' to child viewers using the American-legal concept of 'zoning'. I argue that this type of regulation presents a problematic 'solution' to the issue of sexualised advertising speech as it simply removes or re-situates such speech from general 'public' viewing times (pre-9pm, or in extreme cases, pre-11pm), failing to address potential problems with advertising *content*.

### *Sex, Harm and Offence in the British Media*

Contemporary advertising regulation allows for restrictions on advertising speech on the basis of 'serious' and/or 'widespread' offence. Millwood Hargrave and Livingstone note that there was a move from regulating against 'taste and decency' to the regulation of 'harm and offence' in the early 2000s, arguing that the latter constitute less ambiguity than the former: "In content regulation, the [Communications] Act [...] supports a move away from the more subjective approach of the past,

based on assessment of taste and decency in television and radio programmes, to a more objective analysis of the extent of harm and offence to audiences" (Millwood Hargrave and Livingstone 2009, p. 27). However, in Chapter 5, I question whether harm and offence can be seen as more 'objective' measures than taste and decency, arguing that both categories are still imbued with a sense of moral judgement regarding (un)acceptable broadcast content. Indeed, in a statement, seemingly contradictory to the one above, Millwood Hargrave and Livingstone argue that "[w]hile norms of taste and decency can be tracked, with some reliability, through standard opinion measurement techniques, methods for assessing harm, especially are much more contested and difficult" (ibid, p. 25). Petley has further contested the notion of harm as 'value-neutral', arguing that there is a distinct lack in consensus over what constitutes 'harm' and that, in the context of regulating sexually explicit material, "the notion of harm [...] is no more objective than are the notions of taste and decency" (Petley 2011, p. 247). Furthermore, Petley argues that 'offence' is also inherently ambiguous, lacking in a socially cohesive understanding. He states that "the idea that offensiveness can be defined in terms of breaching 'generally accepted standards' simply denies the basic fact that what is regarded as offensive is a highly subjective matter, particularly in a society as diverse and heterogeneous as the contemporary United Kingdom" (Petley 2011, p. 260).

Following this same logic, Amy-Chinn argues that the category of 'offence' is simply too vague and ill defined to be a useful category upon

which to regulate advertising speech (Amy-Chinn 2007). She goes so far as to argue that the Advertising Standards Authority's work on regulating against offence is "ineffectual and should be abandoned" (ibid 2007, p. 1036).<sup>16</sup> Amy-Chinn claims that the subjective nature of the category 'offence', as opposed to 'misleadingness' or 'harm', provides unstable grounds for regulation, as it is not an empirical measurement but is necessarily subject to interpretation. With a specific concern with sexist offence in advertising, Amy-Chinn argues that regulation neither prevents nor offers remedy to the problem of such offence; that the inability of regulation to 'un-do' offence renders it redundant and a largely pointless exercise. Indeed, Amy-Chinn suggests that regulating offensive advertising may have the direct *opposite* effect of restricting offence by giving attention to it, making it a news item. This, she claims, is sometimes a deliberate tactic on behalf of advertisers who aim to shock or upset the audience in order for an advertisement to go 'viral'. Furthermore, she points out that many advertising campaigns have finished or are close to finishing, by the time a regulatory decision has been made. Speaking specifically about the self-regulatory approach (at a time when it only covered non-broadcast advertising)<sup>17</sup>, Amy-Chinn states, in a rather gloomy conclusion, that: "all the evidence indicates that over 40 years of

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<sup>16</sup> Almost two decades earlier, Dickey and Chester called attention to the ASA's failures in regulating offensive advertising speech in relation to sexism, referring to the ASA as "toothless, internally self-defensive" and "of little practical use to women" (Dickey and Chester 1988, p. 7).

<sup>17</sup> The self-regulatory advertising body, the ASA, currently also regulate broadcast advertising. However, at the time Amy-Chinn's research was conducted broadcast advertising was the responsibility of the legacy regulator, the ITC. Nevertheless, the history of regulating sexist offence in broadcast and non-broadcast regulation is similarly non-existent, as I will discuss further in Chapter 6 of this thesis.

self-regulation by the industry has done *nothing* to stem the tide of images of women that many find sexist and demeaning” (ibid, p. 1037).

However, in her critique of the regulatory classifications, pitting ‘offence’ against ‘harm’ and ‘misleadingness’, Amy-Chinn fails to recognize that ‘harm’ is in itself an unstable category. She attempts to differentiate between harm and offence as two distinctly different categories, suggesting that they have some ‘fixed’ meanings that can easily be distinguished: “if we remain clear about the distinction between harm and offence – i.e. between effect and affront – it is clear that the former is a substantive issue of social concern, for which regulation may be appropriate, while this is not true of the latter” (ibid, p. 1043). Yet, the contrasting distinction between ‘effect’ and ‘affront’ is not as clear-cut as Amy-Chinn suggests. For example, using her own representative case of the regulation of sexism, Amy-Chinn fails to address the crucial question of whether sexism is, indeed, a type of ‘offence’, or whether it could not also be thought of as a type of ‘harm’. The ASA seem to have similar issues with this distinction, since, until the most recent revision of the (broadcast) advertising code in 2009, discriminatory gender portrayals could be considered both under the clause ‘offence’, as well as under the heading ‘harmful or negative stereotypes’<sup>18</sup> (BCAP 2005).

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<sup>18</sup> In the newest revision of the code, the clause on harmful stereotyping is not explicitly present. It is, however, implied under the umbrella-term ‘offence’, despite the decision to drop the term ‘harmful’ in the revision process.



Amy-Chinn's call for the ASA to abandon the regulation of 'offensive' advertising really highlights her frustration with a regulatory body that, in her own words, works "as a charter for the perpetuation of the sexual objectification of women" (Amy-Chinn 2006, p. 158). Indeed, in her earlier work on the regulation of sexualised lingerie advertising, Amy-Chinn has dismissed the ASA's regulatory role, not as ineffectual, but as 'out of touch', arguing that the ASA's conception of 'offence' in relation to sexual imagery feature within a heteronormative framework, offering an out-dated, moralistic view of female sexuality (ibid). Deborah Cameron has similarly argued, after conducting a study on a sample of non-broadcast adjudications between 2000 and 2004, that the ASA's interpretation of 'offence' reflects "a conservative social and sexual agenda whose values are heteronormative, patriarchal and phallogentric" (Cameron 2006, p. 42). Cameron concludes, in a similarly dispirited way to Amy-Chinn that, "three-and-a-half decades of feminist analysis and protest have had very little impact on the mainstream understandings the Authority's judgments are intended to reflect" (Cameron 2006, p. 42).

In Part II of this chapter, I seek to further complicate the notion of 'harm' and 'offence'. By exploring feminist and critical race theorists' appropriation of speech act theory, I will examine how sexist and racist 'offence' may be reconstructed as 'harm', challenging an unproblematic conception of Mill's notion of the 'harm condition'.

## CHAPTER 2

### Part II

## Speech Act Theory and Media Sexism

### Introduction

In Part I of this chapter I sought to contextualize the debates around notions of harm and offence in media regulation. In this second part I explore feminist anti-pornography proponents' use of speech act theory to (re)define pornographic speech as *harm* and as a direct enactment of discrimination. In examining these debates on the status and regulation of pornography, I discuss the work of Catherine MacKinnon and Andrea Dworkin (and, more importantly, Langton's theoretical contribution to their ideas), which proposes legal redress for pornographic speech on the grounds that it constitutes the subordination and silencing of women (Dworkin and MacKinnon 1988).

I should note that I am not attempting to make a case either for or against the regulation of pornography. Rather, I am addressing these debates on the construction of pornographic speech as 'harm' in order to stake out a space for the exploration and understanding of how (alleged) sexist speech in television advertising can be understood, or *reimagined* as a *performative utterance*. In Chapter 8 of this thesis I argue, drawing on speech act theory, that sexist speech is dismissed in regulatory discourse,

not because it is deemed *absent*, but because it is considered a 'failed performative'.

This section begins by examining Austin's (1975) notion of the 'speech act' and looks at some significant concepts within this theory, including illocutionary and perlocutionary speech, and the notion of 'felicity' conditions. I then give a brief outline of the pro- and anti-pornography debate highlighting some of the key issues. Finally, I address the appropriation of speech act theory by anti-pornography feminists, and the work of their critics.

### **J.L. Austin on Speech Act Theory**

Speech act theory was originally developed by philosopher J.L. Austin (1975) in *How To Do Things With Words*, where he argued that language is used, not only to communicate ideas or to make assertions, but to *do* or achieve things, to perform certain *acts*, such as promising, asking, insulting, advising, warning, etc. A *performative utterance*, or *speech act* is speech which performs that which it articulates; it changes, rather than

simply describes reality,<sup>19</sup> a typical example being ‘I now pronounce you man and wife’ as declared in a wedding ceremony, or ‘I sentence you to 10 years in prison’, spoken in a court room. Austin further differentiates between two types of performatives: *perlocutionary* and *illocutionary*. A *perlocutionary* speech act is the consequence brought about from the utterance; it is the (intentional or unintentional) ‘follow-on’ effect from the speech act. An *illocutionary* speech act, on the other hand, constitutes the act itself. As Langton more succinctly puts it: “An illocutionary act is the action performed simply *in* saying something. A perlocutionary act is the action performed *by* saying something” (Langton 1993, p. 300). As an example, Langton continues the analogy of marriage in order to demonstrate the distinction between illocutionary and perlocutionary speech: *In* saying ‘I do’ the person in question marries; *by* saying ‘I do’ the person in question distresses his/her mother (ibid, p. 300), and, thus, “[s]aying ‘I do’ in the right context counts as, or *constitutes* marrying: that is the illocutionary act performed. It does not count as distressing [the] mother, even if it has that effect: that is the perlocutionary act performed” (ibid, p. 300). Whereas the illocutionary act, then, constitutes that which it states, the perlocutionary act is a (intentional or unintentional) *consequence* of that statement.

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<sup>19</sup> Austin makes a distinction between ‘performatives’ and ‘constatives’, where the latter is to ascertain, or make statements, whereas the former is the speech act, which seeks to achieve something through its utterance. This distinction is, however, not completely clear-cut. Austin’s contribution to linguistics, and his distinction between constatives and performatives “needs to be understood, in part, in relationship to the previous history of language philosophy and its particular relationship to formal logic (and logical positivism) with its focus on truth conditions” (Pennycook 2004, p. 9). Austin’s theory of language as performative challenged many contemporaneous understandings of language as statements or assertions with certain amounts of truth-value.

Austin paid a lot of attention to the illocutionary act as a distinctive type of performative where the force of the utterance "is something more than the semantic content of the sentence uttered – the locution – and something other than the effects achieved by the utterance – the perlocution" (Langton 1993, p. 300-301). However, Austin is careful to note that performative utterances sometimes 'fail' to act as a speech act is in need of certain 'felicity conditions', including context, convention and intention, for it to be successful. As Pennycook writes: "the significance of performatives was that they were not bound by truth conditions but rather could succeed or not succeed (felicitous or unfelicitous [sic] rather than true or false), their success depending on contextual factors such as following the conventional procedure, the right words being uttered by the right people in the right circumstances, and the whole having the right effect" (Pennycook 2004, p. 9). Speech acts, then (as any other type of act), can misfire if certain felicity conditions are not met. Consider, for example, if the above example of the performative 'I now pronounce you man and wife' was to be uttered outside the context of a wedding ceremony, by a non-authorized marriage officiate, or to an under aged couple. In all these conditions the speech act would fail to do what it set out to do and the utterance would be considered an *infelicitous performative* (or a 'failed' performative/speech act). As Schwartzman notes, speech acts "are tied to the conventions of a society, since they will not be felicitous unless certain conventions hold" (Schwartzman 2002, p. 423).

## **The Pro-/Anti-Pornography Debate**

The 1980s became the defining decade for the feminist debate on pornography and censorship, specifically prominent in the US and Canada, but also in the UK (Bocock 1997; Segal 1992; Cram 2006). Attwood argues that, in the 1980s, pornography became "emblematic of women's oppression under patriarchy at a moment when sexual abuse, harassment, and violence appeared as the most urgent political issues for many Western second-wave feminists" (Attwood 2004, p. 9). The debate was broadly divided between pro- and anti-pornography feminists, with great tensions between the pro-pornography movement's emphasis on freedom of expression and sexual pleasure (Ciclitira 2004; Sonnet 1999), and the anti-pornography movement's conception of pornographic speech as 'harmful', calling for regulation and censorship. Despite this split within the feminist movement, the anti-pornography stance has come to define the 'feminist position' for many as "their prominence has generally served to mask the variety of feminist discourse on sexual representation" (Attwood 2004, p. 8).

### ***Introducing Dworkin and MacKinnon***

Dworkin and MacKinnon, along with other anti-pornography feminists, sought to define pornography as a form of violence, seeking legal redress

to its harmful effects on women<sup>20</sup> (Dworkin and MacKinnon 1988). Dworkin and MacKinnon's definition of pornography extends far beyond the notion of 'sexually explicit' or 'obscene' material; for them 'pornography' is "the graphic sexually explicit subordination of women through pictures and/or words" (ibid, p. 36). Their contention was that the (male) consumption of pornography infringes women's equality, both as an influence in cases of sexual violence, but also as *itself* a form of 'harm', actively subordinating and silencing women's voices. Dworkin and MacKinnon's anti-pornography stance met much resistance, especially from pro-pornography feminists who argued against censorship of violent and sexist pornographic speech. Strossen (2000) refers to Dworkin and MacKinnon's pitting of equality and freedom of speech against each other as "pernicious and wrongheaded" (2000, p. 30), arguing that freedom of speech is essential to women's rights and liberty, "since women traditionally have been straitjacketed precisely in the sexual domain" (p. 30). Lumby (1997) suggests, along similar lines, that "[f]or feminists who believe the women's movement should be focused on *producing* speaking positions for women, this extraordinary concern with *suppressing* speech is more than disturbing – it's a betrayal of feminist ideals" (ibid, p. xvi).

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<sup>20</sup> In 1983, Dworkin and MacKinnon put forward a civil rights ordinance, or a draft bill, for Minneapolis city council, proposing an understanding of pornography as an infringement on equal rights. They believed that the free speech doctrine in the US and the First Amendment concerning the legal protection of speech was an infringement of citizen's institutional right to equality.

Judith Butler (2004) has also argued fiercely against censorship of pornographic speech on the basis that it does not allow for pleasurable, multiple, and potentially subversive (feminist) readings of, and identifications with a text:

"The fixed subject-position of 'women' functions within the feminist discourse in favour of censorship as a phantasm that suppresses multiple and open possibilities for identification, a phantasm, in other words, that refuses its own possibilities as fantasy through its self-stabilization as the real. Feminist theory and politics cannot regulate the representation of 'women' without producing the very 'representation'; and if that is in some sense a discursive inevitability of representational politics, then the task must be to safeguard the open productivity of those categories, whatever the risk" (Butler 2004, p. 199).

Strossen (2000) argues that the feminist anti-pornography campaign's focus on sexual expression as the locus for inequality has led to a 'sex panic' where all kinds of sexual expression are seen as dangerous. She further notes that this "misguided emphasis on sexually oriented expression has diverted the attention of policy makers from *sexist conduct* to *sexual speech*, and has shifted their focus from gender-based discrimination to sexual expression" (ibid, p. 121). Furthermore, as Attwood argues, the feminist anti-pornography movement has often failed "to define 'objectification' or 'pornography' very clearly, or to



substantiate the impact and significance of sexual representation” (Attwood 2004, p. 8). Nevertheless, Attwood contends that the feminist anti-pornography movement’s contributions to the debate on sexual speech “remains important for the way it highlights the need to investigate imagery which constructs sex and gender in ways that may be hostile to women” (ibid, p. 8).

### **Pornography as Speech Act**

In seeing pornography as *performative* “rather than as merely referential or connotative” (MacKinnon 1993, p. 21), MacKinnon, implicitly, draws on Austin’s notion of speech act theory. However, as MacKinnon herself notes: “Austin is less an authority for my particular development of ‘doing things with words’ and more a foundational exploration of the view in language theory that some speech can be action” (ibid, p. 121, n. 31). Nevertheless, Rae Langton has sought to use Austin to illuminate MacKinnon’s argument regarding pornography as harm, arguing that Austin and MacKinnon can be seen “as close, if unlikely cousins” (Langton 1993, p. 297). Langton’s (re)formulation of MacKinnon situates her arguments more firmly within speech act theory.<sup>21</sup> She addresses the two central claims in MacKinnon’s thesis: that pornography *subordinates* (that is, demean or denigrate women), and *silences* women. In the first

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<sup>21</sup> MacKinnon later expressed an acknowledgement of Langton’s contributions in formulating the theoretical framework for what MacKinnon argued had been a suggestion of legal redress to a very real and tangible problem of subordination and violence against women (see MacKinnon 2012).

instance, Langton notes that there is a wide consensus that much pornography *depicts* the subordination of women (ibid). Furthermore, she claims that many would also agree that pornography might, in a perlocutionary sense, through depicting it, *perpetuate* the subordination of women in society (ibid). But MacKinnon means something more when she states that pornography *is* subordination, argues Langton, as she applies Austin's notion of illocutionary speech to MacKinnon's formulation of pornography as 'harm'. As Langton explains: "pornography can have the illocutionary force of subordination, and not simply have subordination as its locutionary content, or as its perlocutionary effect: *in* depicting subordination, pornographers subordinate" (Langton 1993, p. 302).

Langton identifies the possibility (although not inevitability) of seeing pornography as an illocutionary speech act – an act of sexism. In explaining her reasoning, she illustrates her reasoning by asking her readers to consider the utterance 'Whites only':

"It [...] is a locutionary act: by 'Whites' it refers to whites. It has some important perlocutionary effects: it keeps blacks away from white areas, ensures that only whites go there, and perpetuates racism. It is – one might say – a perlocutionary act of subordination. But it is also an illocutionary act: it orders blacks away, welcomes whites, permits whites to act in a discriminatory way towards blacks. It subordinates blacks" (ibid, p. 302-303).

Langton argues that the utterance 'Whites only' can be considered as illocutionary speech, enacting discrimination in three interrelated ways: 1) it *ranks* black people as being of inferior worth; 2) it *legitimizes* discriminatory behaviour (towards black people, by white people);<sup>22</sup> and 3) it *deprives* black people of certain rights and powers (ibid, p. 303). We can see pornographic speech in a similar way, argues Langton, as subordinating, as having illocutionary force that ranks women as inferior (as 'mere' objects) and legitimizes discrimination and sexual violence. However, this presupposes that pornography speaks from a position of authority, which Langton suggests many anti-censorship proponents would disagree with. Green, for example, has argued that pornography is not so much 'authorized' or 'condoned' by prevailing patriarchal norms as much as 'tolerated' by them, "permitted but disapproved" (Green 1998, p. 297). Green argues that whereas (some) pornography may speak the subordination of women (to men), there are competing social texts that say other things about women too (ibid).

### *Power, Authority and Resistance*

Judith Butler (1997) argues that MacKinnon (and Langton's) arguments are compelling, yet problematic. Butler is critical toward seeing pornographic speech as not just having injurious consequences, but as injurious *action* and she takes issue with both MacKinnon's and Langton's

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<sup>22</sup> Here, Langton adds, "the illocutionary act of legitimating something is to be distinguished from the perlocutionary act of making people believe that something is legitimate. Certainly one effect of legitimating something is that people believe it is legitimate. But they believe it is legitimate because it has been legitimated, not vice versa" (1993, p. 303).

accounts of pornography as illocutionary speech. Taking a Foucauldian view of power as relational and productive, Butler argues, in a similar way to Green's statement above, that MacKinnon's and Langton's notion of pornography's illocutionary force bestows an unfair amount of 'sovereign power' to such speech, suggesting that it *inevitably* injures women (Butler 1997). Seeking legal redress for pornography, as a type of hate speech, argues Butler, presumes that such speech necessarily has an effect and that it works in predictable ways – that women are inescapably subordinated and silenced by pornography, leaving no space for alternate interpretations (ibid). Drawing on Austin's notion of illocutionary speech and the felicity conditions that enables such speech to act, Butler argues that there is a 'gap' between speech and effect where there is a possibility of *resignifying* speech – to change its meaning. Whereas censorship functions to censor not only the intended performative, but also any resignification of meaning that might occur at the margins of power,<sup>23</sup> to *not* censor is essential in fostering social and political change (ibid). The 'uncontrollability' of speech, argues Butler, enables 'reverse discourse', multiple readings and cross-identification, whereas censorship and legal statutes are inflexible, relying on certain speech or representations (or figures) to be, always, considered 'unacceptable' (Butler 1997; 2004).

However, Schwartzman offers a critical counter-reading of Butler, arguing that she misinterprets Austin's (as well as MacKinnon's and Langton's)

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<sup>23</sup> Since censorship is inflexible and only allows for one, single interpretation of that which it seeks to censor, it fails to differentiate between the meaning of the performative and the resignification (Butler 1997; 2004)

meaning of 'illocutionary speech', "wrongly suggest[ing] that illocution is a matter of focusing on the *words* that are spoken, rather than on the broader *speech act* itself" (Schwartzman 2002, p. 424). As Austin himself states: "the uttering of the sentence is, or is part of, the doing of an action" (1975, p. 5). In failing to distinguish between injurious words/language and the injurious *act* of speaking those words, Schwartzman (2002) argues that Butler's understanding of illocutionary speech is flawed and incomplete. Furthermore, Schwartzman argues that Butler misconstrues MacKinnon and Langton's claims of pornography as illocutionary speech, by stating, falsely, that they suggest that speech acts are *inevitably* successful (ibid). What MacKinnon and Langton *do* suggest is that the illocutionary speech act is *likely* to 'succeed' as it is spoken from a position of authority. This is *not* a position of *sovereign* authority, as Butler suggests – indeed, the social power relations that enable the sexist and racist social structures in which hate speech and pornography operate allow such speech to act with authority, without suggesting that this authority is 'sovereign' or absolute (Schwartzman 2002). Speech acts are not inevitably successful – they may fail when certain felicity conditions are not met. Similarly, the meaning of speech acts does not remain static, but different social or historical contexts are likely to affect how it is understood (ibid).

Schwartzman also addresses Butler's notion of 'resignification', arguing that this does not happen 'randomly' in the 'gaps' between speech and effect, as Butler seems to suggest. Rather "speech is resignified when social conditions are such that the acts of resistance resound with other

attempts to challenge hierarchy – either in the context of an organized movement against some form of oppression or in the context of some other, less clearly defined political struggle” (Schwartzman 2002, p. 437).

Whilst Schwartzman’s criticism of Butler is justified in this context, it is important to note that Butler is speaking from a perspective against censorship and legal redress. Butler’s discussion of MacKinnon’s claims about pornography is a cautious warning about the case for censorship preventing the very *possibility* of subversive interpretations, resignification and resistance (Butler 1997; 2004). However, neither Schwartzman nor Langton explicitly endorses censorship as a solution to the ‘problem’ of pornography. Indeed, the notion of the illocutionary speech act does not automatically justify censorship.

Dworkin and MacKinnon’s conception of pornography as illocutionary speech opens up for an exploration of other forms of sexist speech as performative, as enactments of discrimination. This is not to say that sexist speech is inevitably ‘harmful’ or that it should be censored. However, speech act theory opens up for an understanding of how sexist speech ‘works’ (or sometimes fail to work). This, I argue in Chapter 8, is central to advertising regulation where (allegedly) sexist speech is considered to either ‘succeed’ or ‘fail’ to enact what it speaks – to be harmful or *harmless* (subject to felicity conditions), where only the former leads to regulatory intervention.

Gill (2011) has expressed a concern that in the wake of a renewed popular and policy interest in 'sexualisation' (as opposed to a concern for how *sexism* may operate in different ways *through* sexualisation), the 'sex wars' of the 1980s could be reinvigorated, "with their familiar polarisations and discomfiting alliances between pro-censorship feminists and right-wing religious organisations" (Gill 2011, p. 65). It is therefore important to note that my suggestion for how speech act theory may be useful in the analysis of sexism is *not* as a way to justify some sort of censorship. However, I argue that speech act theory may help us better understand *how* sexism operates and can be seen to *fail* as an act of discrimination within a postfeminist media culture, which has a tendency to render sexism's practices invisible – as present, yet absent.

## CHAPTER 3

# Feminist Theory and Gender Portrayals in Advertising

### Introduction

A central element of this project is its exploration of regulatory discourses around sexism in British television advertising. Drawing on theories of sexual objectification, male gaze theory and postfeminism, my research examines the ways in which advertising regulation take into account and respond to complaints concerning (alleged) sexist television adverts. This literature review outlines the central debates in feminist theory on media and advertising. The chapter begins with a brief account of debates surrounding the power of the media in transmitting values and (gender) ideology, emphasising the general shift from more deterministic models of the media as 'imposing' dominant ideology onto the viewing/listening subject, to a more interactive model, where viewers/listeners are considered as active meaning-makers of encoded media messages. However, as will become apparent throughout this and the following chapter, some tensions remain within feminism as to how (sexist) media messages may affect society, and women in particular. I will then move on to discuss some central themes within feminism – this discussion is structured thematically but also functions, in part, chronologically, from second wave feminism's primary concern with sexual stereotyping and objectification, to more current debates concerning postfeminism, lad



culture and issues of sexualisation. Finally, I give an overview of where the academic, feminist discussion on sexism is currently at, in order to situate my project as a contribution to these debates.

### **Values and Ideology in Advertising**

Modern advertising may be financing most of our general communication system, yet it is widely recognised that advertising has more than an economic effect on society. There is a well established understanding of advertising as not only reflecting society, but also shaping it, drawing on, reproducing and at times even challenging cultural norms and hegemonic social structures (Ramsey 1996). Indeed, the power of advertising has come to be understood not only in terms of its persuasive power to sell products and services, but also in selling values and ideology. Renowned academic and cultural critic Raymond Williams has famously described advertising as a 'magic system', identified as "a highly organized and professional system of magical inducements and satisfactions, functionally very similar to magical systems in simpler societies, but rather strangely coexistent with a highly developed scientific technology" (Williams 2009, p. 705). This 'magic system', argues Williams, sells not only material objects (products), but values, desires and emotions. Consumption is inherently unsatisfying – if people were materialistic beings, the products would not need this elaborate system of advertising – yet consumption is essential for maintaining the capitalist economic system (ibid). It is advertising that creates the 'magic' of consumption, imbuing products

with values beyond their immediate use (ibid). Jhally has argued along similar lines, that advertising sells 'happiness', and that it has replaced other cultural institutions, such as the "family, community, ethnicity, and religion" (Jhally 1995, p. 78), from which cultural values were derived in pre-industrialised societies. Jhally further notes the tendency for advertising to play on, and continuously refer back to, those values and desires already persistent in our culture, drawing, in particular, on our cultural perceptions of gender, as a distinctly salient part of our identity (ibid). This, argues Jhally, is an effective method for advertisers who quickly need to create a sense of 'familiarity', as gender has become a foundational marker of difference/similarity in western cultures, striking "at the core of individual identity" (ibid, p. 81) and is easily "communicated at a glance" (ibid, p. 81).

### *The Power of Advertising and the Media*

The power of mass media has been widely discussed by scholars, some arguing, at one end of the spectrum, that it is highly manipulative, devious and detrimental to society, whilst others have illustrated how mass media is negotiated by audiences who (de)construct meaning, leaving scope for resisting dominant ideologies.<sup>24</sup> Ramsey (1996) contests the notion that the 'power' on behalf of advertisers would in some way be

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<sup>24</sup> Horkheimer and Adorno (1997) are perhaps the most cited critics of the power of mass media, or the 'culture industry', which is the term they used in order to illustrate the way in which they saw the commercialised production of homogenized cultural products (texts) being *imposed* on audiences/consumers. Horkheimer and Adorno argued, albeit with a lack of empirical evidence, that the 'masses' were manipulated by the culture industry, functioning as a 'distraction', keeping audiences passive, docile and uncritical of the media and its ideological underpinnings in capitalism.

'absolute', arguing that the idea of the advertising industry's manipulatory authority is too simplistic in its conception. Drawing on Foucault,<sup>25</sup> Ramsey argues that cultural power is not a 'top-down' process or easily found within only one particular institution, but is "something which circulates throughout private and social relations" (Ramsey 1996, p. 47). These contrasting perspectives on media power can be said to be somewhat 'linear' to the extent that a less 'deterministic' understanding of media power has become widely established over time.

Media scholar and critic John Fiske (1996) has contested the idea of the audience as a definable entity upon which mass media has some sort of unyielding control (as suggested by, for example, Horkheimer and Adorno), suggesting the possibility that audiences interpret media messages differently. However, this is not to say that the media does not operate on the basis of 'ideological codes', in which the reader of the media text becomes implicated (Fiske 1987). Fiske explains how, in making sense of media texts "we are indulging in an ideological practice [where] we are maintaining and legitimating the dominant ideology, and our reward for this is the easy pleasure of the recognition of the familiar and of its adequacy" (Fiske 1987, p. 9).

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<sup>25</sup> Foucault's (1980) notion of power is more complex than as a repressive force from above (although he does not deny that there are forms of more or less repressive power present in society). According to Foucault, power resides in everyday communications and interactions, continuously (re)produced through social relations. It is *productive* rather than repressive and exercised rather than possessed, always leaving scope for resistance.

Stuart Hall's (1980) model of encoding/decoding helps explain how audiences, as active meaning-makers, interpret and *misinterpret* media messages. Hall argues that meaning is *encoded* at a production/institutional level and *decoded* at the audience/receiver level. However, as the encoding/decoding model suggests, the construction of meaning in media texts is not, necessarily, easily translated between producer and receiver. Hall explains that the production of meaning on an institutional/production level (encoding) does not have to be symmetrical to the process of (de)constructing meaning on the part of the audience/receiver (decoding). How meaning is understood and encoded/decoded depends on the framework of knowledge and cultural understanding available to the producer and receiver and it is here that 'distortions' or 'misunderstandings' may arise. In this way, the media may have "the power of the production of meaning" (Burton 2005, p. 29) at one level, yet they are not in complete control over the interpretation of media texts at audience level, suggesting that the power of the media's influence has some limitations. Nevertheless, Hall recognizes that some codes produce meaning that are seemingly 'inevitable' since they are so well-established within culture, producing very little scope for 'misunderstanding' (Hall 1980). As Hall writes: "Certain codes may, of course, be so widely distributed in a specific language community or culture, and be learned at so early an age that they appear not to be constructed – the effect of an articulation between sign and referent – but to be 'naturally' given" (ibid, p. 121). So, although the reader's meaning-making activity may be *independent*, it is not necessarily *undirected*

(Cameron 2006, p. 42). Indeed, as van Zoonen notes in relation to advertising messages: "Advertisements and commercials need to convey meaning within limited space and time and will therefore exploit symbols that are relevant and salient to society as a whole" (van Zoonen 1994, p. 67), and gender provides an excellent code or 'symbol' in this context.

### *Producing Gender Ideology*

Feminist theory has sought to demonstrate how codes of gender are 'naturalised', or 'normalised' in the way Hall describes and how "powerful normalising discourses, such as those reflected in advertising, [are] continually inviting women to 'buy in' to oppressive images of femininity and beauty practices" (Ramsey 1996, p. 8). David Gauntlett argues that, with media's central place in everyday social life "containing so many images of women and men, and messages about men, women and sexuality [...] it is highly unlikely that these ideas would have no impact on our own sense of identity" (Gauntlett 2002, p. 1). Feminist thinkers and activists have, since second wave feminism put the representation of women in advertising on the agenda, drawing on the notion of advertising as 'selling' (hegemonic) cultural values and gender ideology. Judith Williamson's (1978) seminal text *Decoding Advertising* was one of the first of its kind to critically explore the values and ideology communicated through advertising, emphasising advertising's pervasive role in everyday life. Williamson contends that advertisements play an important role in transmitting and (re)producing cultural values, arguing that gender ideology and discrimination are reproduced, or 'sold',

through commercial advertising (Williamson 1978). In a detailed semiotic reading of a wide range of advertisements, she demonstrates how they build on existing cultural values and notions of 'common sense', guiding the reader in making connections and creating meaning. As Williamson explains: "the work for the advertisement is not to invent meaning [...] but to *translate* meaning for it by means of a sign system we already know" (ibid, p. 25, my emphasis). Advertising functions as a semiotic system, where connections are made between object and value, signifier and signified; they do not *impose* meaning upon its audiences, instead the viewer/listener has to actively (de)construct meaning, and in the process end up reproducing dominant norms and values (Ramsey 1996, p. 48). Erving Goffman (1979) published another semiotic study of gender in advertisements, around the same time as Williamson, similarly noting how adverts produce and *normalise* hegemonic gender ideology through the persistent use of certain semiotic codes. Based on his semiotic work, Goffman argued, for example, that women are infantilised in advertisements through being shown as smaller in size than men and in need of their help and protection, and that femininity is conveyed as delicate and sensuous, through depictions of women's 'gentle touch' (of objects and of themselves), whereas masculinity is denoted through functional and purposeful gripping and physical contact with objects (Goffman 1979).

### *Constructing Gendered Identities*

Having noted the way in which hegemonic ideologies and gender norms may be transmitted (and resisted) through media discourse, I shall briefly outline how these discourses may also be seen to contribute to the construction of gendered identities. Sunderland and Litosseliti write that "discourse in a social practice sense is not only representational but also *constitutive*" (Sunderland and Litosseliti 2002, p. 13). By this they mean that it not only produces knowledge, values and ideology, but "more powerfully, [is] a potential and arguably actual agent of social construction" (ibid, p. 13). Or, in Foucault's words: "[discourses are] practices that systematically form the objects of which they speak" (Foucault, cited in Sunderland and Litosseliti 2002, p. 13). This suggests that media discourse may have a part in not only (re)producing gender norms, but in constructing gendered identities.

Judith Butler argues, in relation to her work on performativity and gender identity, that the gendered subject is interpellated through a reiterative performance of gender, informed by cultural ideology and gender norms. As she explains: "Being called a 'girl' from the inception of existence is a way in which the girl becomes transitively 'girlled' over time" (Butler 1999, p. 120). In this way, hegemonic gender ideology, as transmitted, in part, through advertising and the media, may be thought of as taking part in the process of (re)producing normative gendered subjects.

## A Feminist Critique of the Media

Since second wave feminism brought attention to the representation of women in mass media, feminist work has sought to establish and challenge the sexist ways in which media and advertising operate. Content analysis quickly became a popular method for highlighting stereotypical media portrayals of women, or, alternatively, the *lack* of female representation on screen and in print. Images of women were seen as limiting and unrepresentative of reality, portraying women either as sex objects or housewives (van Zoonen 1994). For example, Belkaoui and Belkaoui's (1976) comparative analysis of the portrayal of women in (non-specialist) print magazine advertisements in the US, from 1958 to 1972, provides such an early example. They argued that advertising images of women (of which there were generally fewer than that of men) showed them largely in stereotypical roles, in domestic settings, or as 'decorative items' – the latter, in particular, they argued, had become more prominent over the years (ibid). Similarly, Hicks Ferguson et al. (1990) devised a study of print advertisements in the feminist magazine *Ms.* between 1973-1987. They contended that, despite the magazine's feminist affiliations and the rise and presumed influence of the women's movement during the time of circulation, 'sexist' advertising imagery had been consistently present from the magazine's inception<sup>26</sup>.

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<sup>26</sup> There are some obvious issues with coding for 'sexism' using content analysis. The concept of what is deemed to be 'sexist' may be temporally, culturally, and even subjectively specific. This is something Hicks Ferguson et al. do recognise and attempt to deal with within their methodology. Their coding scheme measured manifest and latent content, featured on a 'scale of sexism', developed by Pingree et al. (1976). Nevertheless, it is vital to remain critical about content analysis based on codes that are subjectively defined.



Much early feminist criticism centred around the premise that the media somehow failed to represent the reality of women's lives and the progress of women's social status. As van Zoonen notes, "representation has always been an important battleground for contemporary feminism. The women's movement is not only engaged in a material struggle about equal rights and opportunities for women, but also in a symbolic conflict about definitions of femininity" (van Zoonen 1994, p. 12). However, in more recent years, an analysis of gender and media representation has shifted from a transmission model of communication, where "media are thought to produce symbols of reality" (van Zoonen 1994, p. 28), to a greater focus on a constructivist model, where the media is seen to produce "symbols *for* reality, (re)constructing reality while simultaneously representing it" (ibid, p. 68, my emphasis). The emphasis here is less on whether the representation reflects reality, and more about the "ability to unravel structures of meaning" (ibid, p. 74). As Jhally writes:

"For too long the debate on gender has been focused on the extent to which advertising images are true or false. Advertisement images are neither false nor true reflections of social reality because they are in fact a part of social reality [...] As such advertisements are part of the whole context within which we attempt to understand and define our own gender relations. They are part of the process by which we learn about gender" (Jhally 1990, p. 135)

### *Perspectives on Sexual Objectification*

The idea of 'objectification' has provided a focal point for "feminist critiques of sexual representation that examine how woman functions as a sign for patriarchy as its other, its spectacle and its subordinate thing" (Attwood 2004, p. 7). It has allowed a feminist criticism to draw connections between issues of sexualisation and sexism, exploring how women's bodies (frequently) become reduced to objects and decorative items on display in public space. Sexual objectification is not an issue of sex or nudity, but the treatment of another as an object for sexual desire, rather than as a person (Kieran 1999). Jhally (1995) states that advertising culture is 'obsessed' with gender and sexuality, which van Zoonen (1994) puts down to the 'signifying power' of gender, or its ability to quickly and easily convey a sense of identity and recognitions. Jhally further argues that, in advertising, women's gender identity "is defined almost exclusively along the lines of sexuality" (Jhally 1995, p. 82).

For some, sexual objectification is the central feature that defines women's existence, within and outside the media. For example, MacKinnon claims that "[a]ll women live in sexual objectification the way fish live in water (1989, p. 149), interpreted by Nussbaum (1995) as suggesting that objectification, and specifically *sexual* objectification, pervades women's lives daily; that it is inescapable but also so much part of women's

existence that they have, in some way, become dependent on it.<sup>27</sup> On a more contemporary note, Lauren Rosewarne (2005; 2007) argues that sexualised images of women in outdoor advertising is a kind of 'symbolic violence' towards women, contributing to a masculinised public space where women are constantly in fear of encountering various forms of sexual violence and harassment. She argues that sexualised advertising images of women in outdoor advertising themselves constitute a form of sexual harassment, in the same way a calendar of 'pin-up' girls does in a mixed-gender workplace (Rosewarne 2007). Rosewarne notes how advertising images of (sexualised) women far outnumber men in public space, arguing that this contributes to the 'gendering of public space':

"When women are relegated to the background – as artifice, as decoration – it is evident that the masculine nature of public space has placed limitations on their inclusion. The negative, disempowering effect of this kind of objectification extends beyond the 'ornamented surface' and can be interpreted as having harmful ramifications on the mental and physical safety and prosperity of all women in public space" (Rosewarne 2005, p. 70).

Rosewarne's argument suffers from some flaws in its uncritical conflation of *sexualised* and *sexist* images of women, a conflation that Nussbaum

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<sup>27</sup> This forms part of MacKinnon's claim that objectification is harmful (discussed in greater detail in the preceding chapter). Through linking sexual objectification with the sustenance of an unequal division of sexual power, MacKinnon argues that women internalise sexual objectification as a coping strategy, learning their sexuality through objectification and seeking to conform to the 'male standard' (MacKinnon 1989).

(1995) treats with caution. Nussbaum argues that the way in which 'sexual objectification' has come to represent the very core of feminist politics has problematically been interpreted by some as synonymous with 'sexism'. However, she notes that objectification does not have to be a negative experience. Indeed, Nussbaum argues that objectification can even be pleasurable and "can coexist with an intense regard for [a] person's individuality" (ibid, p. 276). Having said that, Nussbaum's focus on pleasure through objectification requires it to be a momentary state of being and is not developed in order to undermine the notion of objectification as a feminist analytical tool, merely problematize it as a possible source for enjoyment.

Myers (1995) also offers a critical account of the concept of 'objectification' through comparing the distinction between pornographic and erotic imagery. She argues that it is not the "act of representation of objectification itself which degrades women, reducing them to the status of objects to be 'visually' or 'literally' consumed" (Myers 1995, p. 263). This assumption, she contends, is problematic and misleading, as it can easily overlook the issue of female sexual pleasure (ibid, p. 263). Myers takes issue with those who seek to equate objectification with exploitation (such as Dworkin and MacKinnon mentioned above). Representations are symbols, and symbols have no fixed meaning, suggesting that there is always scope for a resistant (feminist) reading. An analysis of sexual representation "which focuses purely on its content is in danger of falling into a kind of 'reductive essentialism', e.g. the notion that exploitation

resides in the representation of female sexuality *per se*, rather than in its contextualisation: the conditions of its production and consumption; the ways in which meanings are created, etc.” (Myers 1995, p. 263)

According to Attwood, objectification is a useful concept in mapping the framework for analysis, but tells us very little about the significance and struggles over meaning present within the image (Attwood 2004). Attwood brings Myers argument to the fore in her analysis of Yves Saint Laurent’s controversial Opium press and poster campaign in 2000, featuring model Sophie Dahl. The picture of Dahl sees her from the side, lying naked on her back (bar some expensive looking jewellery and high heels), cupping one of her breasts. Her eyes are closed, mouth open, her legs are splayed and her back is arched – a display of a body that is experiencing pleasure, or possibly even ecstasy. Attwood (2004) argues that the controversy surrounding this advertising image arose from the uncertain status of the image as simultaneously artistic, erotic and pornographic. The advertisement was banned from poster display by the ASA, due to its ‘sexually suggestive’ nature (Amy-Chinn 2001), however, it was not banned from press material, such as women’s fashion magazines. By drawing on visual codes from pornography, art and fashion, the advertisement received mixed criticism, depending on within which framework it was interpreted. Some argued that it was simply pornographic and called for its ban, whilst other saw it as an image of a ‘strong’ woman breaking sexual boundaries and taboos, and others yet considered it an allusion to art (Attwood 2004). As Attwood argues:

"The range of sex and gender meanings that the Opium advert was able to generate demonstrates that the significance of sexual representations is always relational; the advert was read in relation to pre-existing artistic, pornographic, and fashion conventions, and derived its meaning in relation to a variety of discourses including those around body image, celebrity, feminist politics, and the sexualisation of mainstream culture" (ibid, p. 15).

However, Amy-Chinn argues that the context in which the image needs to be understood is the commercial context from which it arose: "although advertising might sometimes look like gallery art, it isn't. It is designed to sell, to persuade, to strengthen brand image, and needs to be analysed as such" (Amy-Chinn 2001, p. 166).

### *The 'Male Gaze'*

Film theorist Laura Mulvey's (1975) essay, 'Visual Pleasure and Narrative Cinema', has been especially influential in exploring the notion of objectification and the way in which the pleasure of 'looking' is a gendered practice. She explains: "As an advanced representation system, the cinema poses questions of the ways the unconscious (formed by the dominant order) structures ways of seeing and pleasure in looking" (Mulvey 1975, p. 7). Mulvey draws on psychoanalytic theory in order to examine the gendered visual pleasures in Hollywood Cinema, although her work has been used extensively and applied to a wide range of

research situated in visual culture. The concept of the male gaze forms part of this project as an analytical tool to understand the discursive construction or *deconstruction* of the 'sexualised object' in regulatory discourse.

Mulvey argues that women in film are (inescapably) objects for the 'male gaze', passive, decorative, 'to-be-looked-at'; she is the object that signifies male desire, the "bearer of meaning, not maker of meaning" (ibid, p. 7). By contrast, the onlooker is cast as male, the active holder of the gaze. The woman's object-status offers both voyeuristic and identificatory pleasures: she is the object of desire for the male protagonist, and she is, simultaneously, the object of desire for the audience, or 'spectator'. Whereas the male spectator may identify with the male protagonist in his scopophilic pleasures – with the help of camera angles and editing (the third 'looking party') ensuring a male perspective – the female spectator becomes uncomfortably implicated in the 'male gaze', looking at the woman (representing herself) through *his* eyes. She is denied identification with the male protagonist and, hence, *internalises* the male gaze. In this way, the spectator, whether male or female, is "interpellated into a masculine position of gazing" (Benwell 2002, p. 160). Berger famously explains the notion of the 'internalised' male gaze in the following way:

"men act and women appear. Men look at women. Women watch themselves being looked at. This determines not only most relations between men and women but also the relation of women to

themselves. The surveyor of woman in herself is male: the surveyed female. Thus she turns herself into an object – and most particularly an object of vision: a sight” (Berger 2003, p. 38)

Mulvey’s theory of the gaze was developed in the 1970s as “part of a political project aimed at destroying the gendered pleasures of mainstream Hollywood cinema” (van Zoonen 1994, p. 90). To Mulvey, the gaze is necessarily male and only women are ever its erotic objects. However, this claim has been widely criticised and problematized since Mulvey’s original essay was published. It has been suggested that both a female and a (male) homoerotic gaze is possible, based on the male body as the object of desire. However, when the male body is on display in visual culture, it has been noted that it is often portrayed as ‘resisting’ objectified status through, for example, gazing back at the viewer – sometimes even in a hostile manner (Benwell 2002), or through being portrayed as *active* (Dyer 2002) – a refusal of being a *passive* object of desire, implying instead that he just ‘happens’ to be looked at whilst having a different (real) purpose. By contrast, the female object’s purpose is to be an object of desire. As van Zoonen (1994) writes:

“In a society which has defined masculinity as strong, active, in possession of the gaze, and femininity as weak, passive and to be looked at, it is of course utterly problematic if not impossible for the male body to submit itself to the control of the gaze – by definition masculine” (van Zoonen 1994, p. 98).



A male object of the gaze always leaves possible a homoerotic reading, since the activity of looking is a distinctly masculine activity. Even when the male object is presented for a female gaze, the 'threat' of homoeroticism remains present (Gill 2009a). However, as Gill notes, these anxieties can be alleviated through, for example, the use of humour (ibid), itself, I would argue, a technique for resisting objectification. There has, however, been a shift in the past couple of decades in the representation and objectification of both male and female bodies in visual culture – men's bodies are increasingly objectified and women's status as *passive* objects have come into question with a an emerging, postfeminist discourse on *self*-objectification. I will explore this shift in greater detail in the coming sections.

### **A Postfeminist Moment**

The concept of postfeminism is fraught with competing definitions and understandings. The 1990s saw 'postfeminism' rise as a "discursive phenomenon and as a buzzword" (Tasker and Negra 2007, p. 8) in the US and the UK; it has commonly been referred to as a 'backlash' (Faludi 1991) to the feminist efforts of previous decades, or as a stage in a historical progression of feminism. These understandings of postfeminism have, however, been contested by a range of scholars as too simplistic to account for contemporary changes in the relationship between feminism and

popular media culture (cf. McRobbie 2004; Gill 2007b; Tasker and Negra 2007; Braithwaite 2004; Negra 2009).

For this project I am drawing on a notion of 'postfeminism', as outlined by Rosalind Gill, who argues that "postfeminism is best understood as a distinctive sensibility" (Gill 2007b, p. 148), that incorporates a range of themes, including:

"the notion that femininity is a bodily property; the shift from objectification to subjectification; an emphasis upon self surveillance, monitoring and self-discipline; a focus on individualism, choice and empowerment; the dominance of a makeover paradigm; and a resurgence of ideas about natural sexual difference" (ibid, p. 147).

This section will not cover all these extensive and dispersed themes of 'postfeminism', but will focus, for the purposes of this thesis, on three main areas of interest: 1) the changing representations of women, from sexual *object* to *subject*; 2) the notion of 'irony' in postfeminist discourse (explored here in relation to 'lad culture'); and 3) the status of 'sexism' in postfeminist media culture.

### *Postfeminism as 'Backlash'?*

Faludi's (1991) claim that feminism experienced a 'backlash' in the 1980s and early 90s, amongst a growing mistrust in feminism and equality as the

key to women's happiness has, since it was published in 1991, met its fair share of criticism. Through witnessing the complex relationship between feminism and popular culture develop in the 1990s and onwards, feminist scholars have sought to develop a more nuanced understanding of what has come to be known as 'postfeminist culture'. As perhaps one of the most well-known critics of Faludi's claims, Angela McRobbie argues that the notion of a 'backlash' fails to account for the ways in which popular culture simultaneously rejects and incorporates feminism – gender equality is taken for granted and feminism considered redundant in the wake of its own 'success' (McRobbie 2004). Similarly, Tasker and Negra argue that postfeminism does not represent a case of "achievements won and subsequently lost" (Tasker and Negra 2007, p. 1), but that it is tainted with ambivalence; "feminism is 'written in' precisely so it can be 'written out'; it is included and excluded, acknowledged and paid tribute to, and accepted and refuted, all at the same time" (Braithwaite 2004, p. 25). This is what McRobbie (2004) refers to as the 'double entanglement' of postfeminism – simultaneously being excluded and taken for granted.

Gill argues that postfeminist media culture is defined by these contradictions – an entanglement of feminist and anti-feminist discourse (Gill 2007b). She states that feminism is often mis-, or selectively re-interpreted and used in anti-feminist ways in postfeminist media culture (ibid). Negra argues along the same line, stating that: "By caricaturing, distorting, and (often wilfully) misunderstanding the political and social goals of feminism, postfeminism trades on a notion of feminism as rigid,

serious, anti-sex and romance, difficult and extremist” (Negra 2009, p. 2). Yet, postfeminism is deeply reliant on being able to position itself in relation to the ‘imaginary feminist’ in an effort to establish itself as the ‘happy’ alternative, where the pleasures of femininity can be re-discovered (ibid). In ‘othering’ feminism, postfeminism classifies it as ‘extreme’, as taking things ‘too far’ and subsequently vilifies and rejects it (Tasker and Negra 2007; Vint 2007). Whereas feminism emphasises political change and collective action, postfeminism represents individual choice and consumption (or, indeed, the freedom of choice *through* consumption) – the political becomes the personal (Braithwaite 2004). The emphasis on *choice*, is central to postfeminist thinking – the choice to get married, be a stay-at-home-mum, a sex object, wear high heels, or whatever feminine pleasures have been denied the postfeminist subject under the ‘reign of feminism’<sup>28</sup> (Gill 2007b). However, in foregrounding ‘choice’ and individuality, postfeminist discourse problematically “present women as autonomous agents no longer constrained by any inequalities or power imbalances” (ibid, p. 153). In this way, postfeminism fails to account for “how socially constructed ideals of beauty are internalized and made our own” (Gill 2008, p. 44). Indeed, an analysis of power structures is distinctly absent from postfeminism, where female (sexual) empowerment has already been actualised (Banet-Weiser and Portwood-Stacer 2006, p. 257).

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<sup>28</sup> It should be noted here that postfeminist culture privileges visibility, almost exclusively, for young, white and middle-class women. The notion of ‘choice’, then, is for those privileged few who fit into the narrow definition of postfeminist female subjecthood (Negra 2009).

### *'Hello Boys' – Postfeminist Constructions of Female Sexuality*

Forming part of the postfeminist discourse on 'choice' and empowerment, one of the main features of postfeminist culture is the change in representations of female sexuality, from being portrayed as a sexual *object* to sexual *subject*. As Gill explains:

"Where once sexualized representations of women in advertising presented them as passive, mute objects of an assumed male gaze, today women are presented as active, desiring, sexual subjects who choose to present themselves in a seemingly objectified manner because it suits their (implicitly liberated) interests to do so (Gill 2009a, p. 148)

Writers on postfeminism have often symbolically represented this shift with the notorious 1994 'Hello Boys' Wonderbra advertising campaign (see, for example, Winship 2000; Amy-Chinn 2006; Attwood 2004; Gill 2008; McRobbie 2004). This campaign featured model Eva Herzigova in a black bra, looking down at her cleavage, with a flirty caption addressed to the (male) viewer stating: 'Hello Boys'.<sup>29</sup> The significance of this campaign and its status as a 'game changer' in the way women's sexuality was portrayed, was in the way it positioned Herzigova as a sexual *subject*, actively inviting a male gaze through directly addressing the (male) audience. As Gill writes: "This was no passive, objectified sex object, but a

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<sup>29</sup> There were other captions featured in the advertisements in this poster campaign, however, the 'Hello Boys' slogan is arguably the one that has enjoyed the most attention.

woman who was knowingly playing with her sexual power” (Gill 2008, p. 42). Winship argues that the way in which the Wonderbra campaign (and other adverts at the time) made use of women’s sexual mockery of men (or in some instances, made symbolic references to sexual violence towards men), was in an effort to appeal to the consumer group of young women who, with their increased consumer power, were tired of old (sexist) advertising techniques that did not reflect their new social status (Winship 2000). Winship further argues that these ads provide a dialogue between women, where women watching the ad can relish in the portrayed victory (over men).

However, Gill expresses some reservations about the postfeminist sexual subject. In her analysis of the figure of the sexually agentic ‘midriff’,<sup>30</sup> she argues that this shift from sexual object to subject also “involves a shift in the way that power operates: it entails a move from an external male-judging gaze to a self-policing narcissistic one” (Gill 2008, p. 45). Rather than the postfeminist sexual subject being ‘empowered’ through individual choice and consumption practices as postfeminism suggests, women remain objectified (whether a ‘choice’ or not) “but through sexual subjectification in midriff advertising *they must also now understand their own objectification as pleasurable and self-chosen*” (ibid, p. 45). As such, another ‘layer of oppression’ is added to the sexual representation of

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<sup>30</sup> The figure of the ‘midriff’ is a recurring construction of female sexual subjectivity in postfeminist culture, visually prominent in advertising from the mid-90s to mid-2000s. The ‘midriff’ embodies four main themes in postfeminist representations of women: 1) body emphasis; 2) a move from sexual object to subject; 3) choice and autonomy; 4) emphasis on (female) empowerment (Gill 2008, 2007a, 2009a).

women (ibid). The 'self-chosen' objectification of the postfeminist subject makes a critique of sexism very difficult as power and oppression reside, not externally, but *internally*. It is possible to draw parallels here between postfeminism and neoliberal ideology, in their shared emphasis on choice, autonomy, self-monitoring and self-regulation. This, Gill argues, suggests "that postfeminism is not simply a response to feminism but also a sensibility that is at least partly constituted through the pervasiveness of neoliberal ideas" (Gill 2007b, p. 164)

However, it is not just in terms of the problematic notion of 'self-objectification' that Gill takes issue with the postfeminist sexual subject – she also notes how this identity is highly exclusionary, where women who do not 'fit' this pervasive figure of the 'midriff' – black women, older women, non-able bodied women, for example – are denied sexual subjectivity in postfeminist culture (Gill 2008). Furthermore, she makes the crucial point that a postfeminist construction of sexual subjectification does not take *pleasure* into account – instead, "it is the power of *sexual attractiveness* that is important" (ibid, p. 44). She writes: "What is on offer in all these adverts is a specific kind of power – the sexual power to bring men to their knees. Empowerment is tied to possession of a slim and alluring young body, whose power is the ability to attract male attention" (Gill 2009a, p. 149). The body here becomes the primary source for (sexual) power and pinned as the location of feminine identity (Gill 2008, 2007b). Indeed, in postfeminist discourse there is no clear difference between

female empowerment and the ability to attract male attention (Amy-Chinn 2006).

Amy-Chinn also remains unconvinced by the image of the sexually agentic woman in postfeminist media culture. Drawing on her work on the regulation of (non-broadcast) lingerie advertising, she seeks to challenge the heteronormative framework surrounding the (postfeminist) construction of female sexuality, arguing that heterosexuality is deeply embedded within these discourses on sexual agency (Amy-Chinn 2006). Amy-Chinn states that even when a man is visually absent, his presence is implied in the way the advertisement is addressed (e.g. 'Hello Boys'). As inescapably defined through a heteronormative discourse, to what extent, asks Amy-Chinn, can "the representation of women [...] be detached from the male gaze *whatever* the intention"? (ibid, p. 164).<sup>31</sup> The possibility for women to exploit their sexuality at the expense of men, wielding some sort of 'sexual power', is widely diminished, according to Amy-Chinn, by "the extent to which discourses around heterosexuality are still grounded in assumptions of patriarchal privilege" (ibid, p. 156). Moreover, through her research on the regulation surrounding controversial lingerie advertising, Amy-Chinn shows how advertising regulators perpetuate this discourse on female sexuality as defined in relation to the male gaze. She argues that, in cases when advertisers have tried to break with the norm,

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<sup>31</sup> Gill has discussed the notion of 'Queer chic' or the 'lipstick lesbian' as an emerging figure in postfeminist culture. However, she argues this is largely a 'stylized' identity, often produced for the male gaze (2007a).



through textual<sup>32</sup> allusions to masturbation, lesbian sexual activity or non-penetrative sex, advertisements have often been subject for regulation. On this basis Amy-Chinn argues that:

“the regulation of underwear advertising restricts and undermines attempts to renegotiate the discourse that surrounds the representation of semi-clad women. It encourages advertisers to ‘play safe’ and reproduce the type of scopophilic images that feminists have argued are demeaning to women, by presenting them as nothing more than objects for the male gaze on the spurious grounds that such images are no longer synonymous with male privilege” (Amy-Chinn 2006, p. 172)

In a not too dissimilar way, Winship writes about the regulation of a range of “raunchy, assertive and intentionally shocking” (Winship 2000, p. 42) advertisements targeting young women in the mid- to late 1990s, noting that, what they all had in common was their un-traditional associations with femininity “with allegedly masculine modes of behaviour, such as swearing, fighting and adopting an upfront, casual approach to sex and men” (ibid, p. 42). In Chapter 7 and 8 of this thesis, I explore this ‘privilege of interpretation’ that regulators are granted, examining (in particular in Chapter 8) how a postfeminist discourse features in this process.

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<sup>32</sup> ‘Textual’ here refers to actual text, as Amy-Chinn contends that the visual image of a woman in lingerie is inescapably seen through the male gaze (Amy-Chinn 2006). Accompanying text can, however, challenge and re-frame such a reading, encouraging non-heteronormative and/or feminist readings (ibid).

### *Postfeminist Masculinity: From 'New Man' to 'New Lad'*

For the purposes of this thesis, the following discussion will focus mainly on the construction of the 'new lad', as an emerging postfeminist masculine identity in the 1990s. I will briefly also explore the figure<sup>33</sup> of the 'new man' – the 'softer' type of masculinity emerging in the 1980s in the wake of the women's and gay liberation movements – as playing part in the subsequent construction of the 'new lad'. Gill argues that these two figures of masculinity "are not fixed identity positions or essences but are [...] best thought of as discourses or cultural repertoires" (Gill 2003, p. 39). Furthermore, they bear some important cultural significance in "their ability to capture or speak to changes in the landscape of gender" (ibid, p. 36-37). In Chapter 8 of this thesis, I explore the importance of the figure of the 'new lad' in regulatory discourse in rendering the objectification of women 'ironic'.

The discursive construction of the 'new man' was pervasive in the 1980s, although, his presence did not 'replace' traditional, hegemonic construction of masculinity, but 'co-existed' alongside 'traditional' forms of representations (Gill 2003). The 'new man' can be characterized as "sensitive, emotionally aware, respectful of women, and egalitarian in outlook – and, in some accounts, as narcissistic and highly invested in his physical appearance" (ibid, p. 37). Benwell argues that the construction of

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<sup>33</sup> Borrowing this term from Gill (2003; 2007a; 2008; 2009a; 2009b), I use it to imply the construction of a prominent cultural character, without assuming that s/he features as a 'real', inhabited identity.

the 'new man' was, to an extent, a 'commercial invention' (Benwell 2002), forming part of the growing industry of fashion and beauty-products for men. However, Gill (2003) argues that the emergence and cultural significance of the 'new man' must also be understood in relation to the feminist and gay liberation movements, where hegemonic masculinity had been criticised for being "distant, uninvolved, unemotional and uncommunicative" (Gill 2003, p. 42). Furthermore, the greater visibility of gay male identities in popular culture inevitably came to challenge the portrayal of hegemonic male representations, presenting the possibility for breaking away from the "traditional, binary notions of gender" (Benwell 2002, p. 150). The representation of the 'new man' was caring, nurturing and seen to take on a much more 'feminized' role, both within the domestic sphere and as disrupting the heteronormative politics of 'looking', offering a homoerotic gaze through the sexualised representation of the male body in visual culture (ibid). However, in the 1990s the 'new' man came to be challenged by the emergence of the 'new lad', "seen to re-embrace very rigid, conformist and conservative models of masculinity, including an adherence to misogyny and homophobia" (ibid, p. 151). Again, it should be noted that one did not 'replace' the other; rather they co-exist in popular culture as two competing versions of masculine identity. Moreover, it should be noted that the construction of the 'new man' and the 'new lad' emerged largely from media culture (Gill 2003), and that most of the work on both 'new man' and 'new lad' identities has featured around their discursive construction in men's

lifestyle magazines and 'lads mags' (cf. Attwood 2005; Benwell 2002, 2003; Jordan and Fleming 2008; Mooney 2008).

The emergence of the 'new lad' has been explained in a number of ways; as a result of a 'crisis' in masculinity and a rejection of the 'new man', as a reaction to feminism, or as a new consumer identity (Attwood 2005; Benwell 2002, 2003, 2004; Jordan and Fleming 2008; Gill 2003). In its construction as a rejection of the 'new man', the 'new lad' refused to be feminised, expressing his heterosexuality through the blatant objectification of women and a dismissal of femininity. As Gill writes:

"the rise of the new lad in the 1990s was widely reported as an assertion of freedom against the stranglehold of feminism and -- crucially -- as the unashamed celebration of true or authentic masculinity, liberated from the shackles of 'political correctness'. New lad championed and reasserted a version of masculinity as libidinous, powerful and, crucially, as different from femininity" (Gill 2007b, p. 158)

Whereas the figure of the 'new man' was shaped by some form of narcissism (e.g. attending to his looks and style) manifest in men's lifestyle magazine culture, the 'new lad' was distinctly averse to the preoccupation with fashion, beauty and male grooming (Benwell 2003). The 'new lad' was perhaps better associated with a kind of 'working-class machismo' (Attwood 2005), his identity being characterised by a love of football, beer,

sexual hedonism, and a sense of British bawdiness (Attwood 2005; Gill 2009b; Benwell 2002). In this way, the 'new lad' was also seen as a more 'real' or 'authentic' construction than that of the 'new man' (Benwell 2002).

### *'Lad Culture', Irony and Sexism*

The way in which sexism is expressed within 'lad culture' has been a feature of analytic interest for academics in this field (cf. Benwell 2002; Gill 2003, 2009b; Jordan and Fleming 2008; Mooney 2008), although perhaps more so as part of the exploration of 'lad identity', than as an analytical interest in sexism *per se*. Nevertheless, one recurring feature of the 'lads mag', a central feature of 'lad culture', is its attention to women as sexual objects. Benwell argues that women are represented in these magazines in two ways: as the idealised sexual object, usually a presentation of a 'fantasy' (perhaps symbolised as 'unattainable' by using images of celebrities); or as the 'real' woman, almost exclusively depicted in a negative light since "real women are [seen as] difficult, different, impossible to understand and sometimes threatening and to be avoided" (Benwell 2002, p. 167). Attwood has further argued that 'lad culture' presents "a preoccupation with pornography, women's bodies and the mechanics of sex, alongside a disengagement from the emotional and ethical aspects of sexual relationships" (Attwood 2005, p. 96).

The 'new lad' is marked by an ironic 'knowingness' that works to fend off (feminist) criticism of his transgressions, including the display of sexist behaviour and a celebration of political incorrectness (Gill 2009b, Benwell

2002). It is this 'knowingness' that marks him as different from older forms of misogynistic masculinity (Gill 2009b). The sexism expressed through 'lad culture', is knowingly and *intentionally* offensive, claiming that it is all 'just a laugh' and a bit of 'harmless fun' (ibid). This ironic stance allows the 'new lad' "to articulate an anti-feminist sentiment, whilst explicitly distancing himself from it, and thus disclaiming responsibility from or even authentic authorship of it" (Benwell 2002, p. 152). Or, as Mooney writes:

"without claiming irony, the representations of women would be indefensible. At a time in which equality between the sexes is at least theoretically and legislatively well established, in the Western world it is simply not permissible to hold the view that women are only sex objects. Such a "politically incorrect" objectification of women needs to be carefully managed. Thus, if one wants to treat women as sex objects (and not be classed in a special publishing category, that is, not be placed on the top shelf with "proper" pornography) a disclaimer has to be attempted" (Mooney 2008, p. 257)

It has also been argued that the 'new lad' can be seen as a reaction to an 'adult', or possibly feminist authority (Benwell 2003; Attwood 2005; Gill 2009b). Gill has noted a tendency for portraying the lad as infantile and not wanting to grow up in her work on the emerging genre of 'lad lit' (Gill 2009b). Gill also notes elsewhere that the 'new lad' should be understood

as rejecting, or escaping from the authoritative role of the 'breadwinner', seeking "refuge from the constraints and demands of marriage and [the] nuclear family" (Gill 2003, p. 47). Instead, the 'new lad' is 'anti-aspirational', representing "fun, consumption and sexual freedom [...] unfettered by traditional adult male responsibilities" (ibid, p. 47). Indeed, the 'new lad' is often constructed in opposition to a traditional form of masculinity, as in some way 'failing' to live up to his responsibilities, albeit in a "good-humouredly self-deprecating" way (Benwell 2003, p. 157). Benwell describes this oppositional identity as 'anti-heroism', "associated with ordinariness, weakness and self-reflexiveness and [...] arguably a phenomenon particularly associated with a British sensibility" (ibid, p. 157).

Ultimately, the 'new lad' does not want to be taken seriously; he is a 'figure of fun' with an ironic outlook on life, a construction which has found bearing across British culture, outside the confined discourse community of 'lads mags'. For example, Jordan and Fleming note how the ASA, in response to complaints about sexism in two *Nuts* and *Zoo* advertisements (two of the major 'lad's mags' at the time), accepted the defence presented by the two magazines as they claimed to have been ironic and humorous in their use of sexism (Jordan and Fleming 2008, p. 346). This notion of sexism as irony will be explored as one of the central themes of my analysis in Chapter 8, where I argue that the cultural currency of 'lad culture' is firmly present in regulatory discourse.

## **Sexualisation of Culture and Contemporary Debates on Sexism**

In this section I discuss two contemporary debates on sexism and sexualisation. These debates are particularly relevant to advertising regulation as recent policy initiatives (e.g. Bailey 2011) have come to have an effect on advertising regulation – at least in terms of making themselves known to parents through a range of initiatives. However, as I discuss in Chapter 7, efforts to address concerns about sexualisation by the ASA and the legacy regulators, have made very little effort in exploring how this may be connected with concerns for *sexism*.<sup>34</sup> Here I explore a feminist ‘reading’ of the sexualisation of culture debate and how it renders sexism ‘invisible’. I then move on to discuss, what I consider the beginnings of a feminist ‘return’ to sexism.

### ***The ‘Sexualisation of Culture’ Debate***

The term ‘sexualisation of culture’ is used to signify a shift in representations of sexuality and a proliferation of sexualised imagery in public life, sometimes also referred to as a ‘pornification’ (McNair 2002) of culture. It is a concept that has provoked a great deal of public and policy concern in contemporary Britain, particularly concerning the area of media and advertising.

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<sup>34</sup> I attended an ASA event on the sexualisation of childhood in December 2011 where it became clear that the concerns from the audience were very much centred not only on the sexualisation of children (or, more appropriately, girls), but also on the infantilisation of adult women and concerns for an increasingly *sexist*, as well as sexualised media culture.



Attwood describes the notion of 'sexualisation of culture' in the following way:

"[It is] a rather clumsy phrase used to indicate a number of things; a contemporary preoccupation with sexual values, practices and identities; the public shift to more permissive sexual attitudes; the proliferation of sexual texts; the emergence of new forms of sexual experience; the apparent breakdown of rules, categories and regulations designed to keep the obscene at bay; our fondness for scandals, controversies and panics around sex" (Attwood 2006, p. 78).

The term itself is often considered too general and difficult use in an analytical way (Gill 2011), but broadly speaking, a discussion on the 'sexualisation of culture' tend to include the proliferation of discourses around sex in popular culture, and the "increasingly frequent erotic presentation of girls', women's and (to a lesser extent) men's bodies in public spaces" (Gill 2007b, p. 150). Although current debates on 'sexualisation' have distinctly contemporaneous concerns, such as, for example, children's access to internet pornography or sexually explicit material on 'on demand'-services (Bailey 2011), the concerns over 'sexualisation' and 'pornification' are not 'new'. Indeed, as Hunt (1998) writes, the 1970s saw a similar proliferation and mainstreaming of

sexuality in popular culture accompanied by debates on sexual liberation and notions of a breakdown in public morality.

Kilbourne argues, in relation to sexualised imagery in advertising, that too much attention has been paid to the way in which it can be seen as *morally* problematic, as opposed to focusing on issues of how sex is trivialised and commercialised in contemporary culture (Kilbourne 2003). She contends that the debate should not be about banning or regulating the erotic, or even be a question of the status of objectification, but of claiming it back from the claws of commercialisation, which she considers seriously de-values and undermines the notion of sexuality (ibid). The commercial 'alienation' or disconnect between sex and sexuality is here painted as the main issue of disconnect needing to be addressed. Levy's work on the rise of 'raunch culture' explores this commercialisation of sexuality, making a similar observation to Kilbourne when she states that: "[r]aunch culture is not essentially progressive, it is essentially commercial" (Levy 2005, p. 29). Levy's definition of 'raunch culture' is not completely synonymous with the idea of the 'sexualisation of culture' since it focuses exclusively on the notion of *women's* increasingly (self-)exploited sexualities in the light of a 'feminism that failed'. Levy's emphasis is on how women, in particular, have come to embrace a certain kind of misogynistic status quo where a hypersexualised version of female sexuality is normalised and 'fun'. Levy's version of 'sexualisation', then, draws explicitly on the notion of a postfeminist ironic stance towards sexism and the sexual objectification of women, as explored in the previous section.

Attwood (2006) argues that postfeminism plays an important part in debates on sexualisation. The way in which women 'speak sex' in advertising and popular culture is deeply informed by postfeminist sentiments, using a "playful and knowing tone", differentiated from both a medical discourse on sex, as well as existing traditions "of bawdy or smutty talk" (Attwood 2006, p. 84). Furthermore, she argues that the way in which contemporary forms of sexualisation are made visible is through the postfeminist, ironic sexism established through the 'new lad' (ibid).

In stark contrast to Levy, McNair argues that the proliferation of sexual representations provides the possibility for a 'democratization of desire' (McNair 2002).<sup>35</sup> However, Attwood is critical towards this claim, arguing that a proliferation of, and changes in sexual representations does not necessarily mean that people participate on equal terms (Attwood 2004). Gill similarly notes that the term 'sexualisation' renders invisible the fact that people are sexualised in different ways and on different conditions; indeed, it "does not operate outside of processes of gendering, racialization, and classing, and works within a visual economy that remains profoundly ageist, (dis)ablist and heteronormative" (Gill 2011, p. 65). Men and women's bodies, for example, are not 'equally' sexualised, but deeply marked by difference in the way they are represented and likely to be read in contemporary visual culture, contingent on "long,

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<sup>35</sup> Levy argues that this notion of a 'proliferation of sexual representations' is a myth. Instead, the same version of female sexuality - a "tawdry, tarty, cartoonlike version" (Levy 2005, p. 5) - can be found across popular culture.

distinct histories of gender representations and the politics of looking.” (Gill 2008, p. 143). Both Gill (2011, 2008) and Attwood (2004) call for a more nuanced account of ‘sexualisation’ and the way it interacts with processes of objectification and commodification.

The ‘public morality’ approach to ‘sexualisation’ concerns the extent and explicitness of sexual imagery in public space, making few distinctions between ‘types’ of sexual representation or the different power relations at work (Gill 2009a). As Gill notes, the term ‘sexualisation’ or ‘pornification’ of culture “mystify the real situation by occluding the gender, race, class, and age relations at work in ‘sexualized’ visual culture” (ibid, p. 141). Instead, these terms encourage a moral reading of the proliferation of sexual representations, concerned more with *proliferation* than with issues of *representation* (Gill 2011). This (moralistic) interpretation of the notion of ‘sexualisation’ is particularly prominent within advertising regulatory discourse, where, as I argue further in Chapter 7, controversial advertisements (by which, in this instance, I mean advertisements that have received complaints for offensive sexual and/or sexist content) are often considered exclusively on the basis of their ‘explicitness’ and potential exposure to child viewers, as opposed to seeking to problematize the sexualised image on the basis of its representation of gender.

Gill argues that we should be making *sexism* the critical object of our concern rather than sexualisation, which remains blind to the dynamics of power and intersecting identities (Gill 2011). She emphasises that to take a

critical stance towards the notion of 'sexualisation' does not have to mean to take a critical stance to sex itself – although, the position of 'the prude' is the only alternative offered by a postfeminist culture to those not accepting the terms of sexualisation (Gill 2007b).

### *The Sexualisation of Children*

Outside feminist work, issues of gender representation remain largely uninvestigated in debates on 'sexualisation'. For example, in recent years there have been several policy-related reports published on the commercialisation and sexualisation of children<sup>36</sup> (cf. Bailey 2011, Papadopolous 2010, Buckingham and Bragg 2003, Byron 2010), forming part of a growing concern for the 'sexualisation of culture' more generally. These reports have mostly centred on children's exposure to sexualised imagery, or the sexualisation of children in the media (as 'adultified' models) and as subjects for sexualised product marketing (for example, the marketing of bras to young girls). However, many of the policy reports and initiatives that have been produced in the past decade have failed to adequately address issues of gender and seem to foreground a conservative moralistic approach implied in the suggested restrictions and regulations (Barker and Duschinsky 2012). Barker and Duschinsky (2012), in their study of the Bailey Review 'Letting Children Be Children' argue that issues of gender stereotyping and sexual objectification become 'folded into' issues of 'sexualisation' in a way to make the object of

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<sup>36</sup> Note here, similarly to the concept of 'sexualisation of culture', the phrase 'sexualisation of children' is distinctly gender neutral, although, as I will discuss here, gender is deeply implicated in this concept as most of the policy initiatives' focus on white, middle-class girls (cf. Gill 2011).

concern, not about sexism, but about the sexualities of young women and girls. They argue that, in the Bailey Review's construction of 'sexualisation', "gendered relations of power are not only hidden from view, but buttress a narrative in which young women are situated as children, and their sexuality and desire rendered pathological and morally unacceptable as judged by a conservative standard of decency" (Barker and Duschinsky 2012, p. 303).

As a result, not only are the sexist underpinnings of 'sexualisation' hidden from view, but this paternalistic discourse also denies young women their sexual agency, rendering the notion of 'sexuality' something to be equated with 'adulthood' (Barker and Duschinsky 2012; Duits and van Zoonen 2011; Duschinsky 2013). Duschinsky (2013) argues that the feminist objective to put sexualisation on the agenda has backfired as discourses on sexualisation have tacitly (re)affirmed the sexist division of 'pure'/'impure' in relation to young women's sexuality. This has resulted in a focus on notions of 'propriety', whilst leaving sexism largely unexplored (Barker and Duschinsky 2012; Duschinsky 2013).

### *A Feminist Return to Sexism?*

Gill (2011) argues that, in the wake of a postfeminist shift in the representation of women as self-objectifying sexual subjects, and contemporary debates on 'sexualisation' as an issue primarily concerned with the proliferation and explicitness of sexual representation, the term 'sexism' has fallen into disuse. Yet, sexism has not disappeared, leading

Gill to exclaim that it is time for feminists “to get angry again” (ibid, p. 68). Gill notes that sexism is a practice that can be ‘done’ in multiple ways to incorporate and “take on board feminist arguments and to anticipate and rebut potential accusations of sexism” (ibid, p. 62). In a similar way, I argue in Chapter 8 of this thesis, that sexism should be considered an ‘act’, or a *performative utterance* that can be seen to ‘succeed’ or ‘fail’ depending on the contextual factors, to which the advertising regulator has the ‘privilege of interpretation’.

Within postfeminist culture society is portrayed to have moved ‘beyond’ feminism to a time and place where women are free to choose for themselves (McRobbie 2004). McRobbie argues that a feminist critique of sexism is ‘silenced’ in a postfeminist culture as (young) women are only offered the ‘full enjoyment’ of their postfeminist freedom on the premise of dismissing and rejecting feminist politics, or, as McRobbie writes: “the new female subject is, despite her freedom, called upon to be silent, to withhold critique, to count as a modern sophisticated girl, or indeed this withholding of critique is a condition of her freedom” (ibid, p. 260). Postfeminism’s ironic and ‘knowing’ tone, allows feminist objections to be easily dismissed, the feminist challenger rendered ‘humourless’ and not ‘in on the joke’: “Objection is pre-empted with irony” (ibid, p. 259). McRobbie uses advertising as an example of self-consciously sexist media, arguing that advertisers are often deliberately evoking a feminist critique in its portrayal of women, whilst positing that this does not constitute exploitation in a naïve sense. As it is implied that the woman portrayed

has a choice to be objectified or not, it is once again 'ok' to look at women (McRobbie 2004). Similarly, Gill claims that the "potency of sexism lies in its very unspeakability" (Gill 2011, p. 63). She writes: "contemporary sexism is changing to take on knowing and ironic forms – forms in which the hatred of women can easily be disavowed (if challenged), and the finger pointed accusingly at the 'uptight', or 'humourless' feminist challenger" (Gill 2007a, p. 82). In a postfeminist climate, where inequality is (falsely) rendered 'obsolete', sexism does not 'disappear' but it becomes more 'subtle' – it is done in new ways (Gill 2011, 2007b).

In the past couple of decades, several feminist scholars have sought to find new ways to account for these more 'subtle' forms of sexism. Judith Williamson and Imelda Whelehan both noted a trend in the early 2000s, of the nostalgic 'revival' of sexism in popular culture, shrouded in an ironic narrative of 'pastness' symbolised through 'retro' styling (Williamson 2003; Whelehan 2000). 'Retro-sexism' implies a certain 'knowingness', a self-awareness, "even [something] kitsch: as if that somehow changed the crudeness of the actual content" (Williamson 2003, para. 6). Sexism can then be present whilst claiming not to be sexism at all, but a humorous commentary on a sexist past.

Mills argues that there is a contemporary complexity surrounding notions of sexism, anti-sexism and 'political correctness' – they are difficult to 'pin down', have a range of different meanings for different people, and there is some uncertainty regarding when and how to use these concepts,



resulting from a perceived “confusion or overlap that many people seem to feel that there is between anti-sexism and ‘political correctness’” (Mills 2003, p. 89). Mills therefore seeks to nuance the notion of ‘sexism’, introducing the terms *overt* and *indirect* sexism. Overt sexism refers to instances “where there is clear and unequivocal evidence of sexism” (Mills 2008, p. 149),<sup>37</sup> whereas indirect sexism refers to “sexism which manifests itself at the level of presupposition, and also through innuendo, irony and humour” (ibid, p. 90). Mills argues that for many feminists offended by ‘indirect sexism’ in the media, there is no way of contesting this without the ‘fear’ of being labelled ‘puritanical’ (which I read here as very similar to McRobbie’s notion of the ‘humourless feminist’). As a result sexism goes unchallenged and remains present in popular culture (Mills 2003). However, people practicing sexism should be held accountable, argue Mills and Mullany (2011), because the sexist utterance is ultimately a choice made by the individual.

The notion of ‘ambivalent sexism’ adds further to the nuancing of sexism in contemporary culture. Originally developed in the 1990s, the notion of ambivalent sexism suggests that sexism has two components: *hostile sexism*, which includes ‘overt’ forms of discrimination and hostility towards women, and *benevolent sexism*, defined by its view of women in

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<sup>37</sup> Interestingly, Mills exemplifies ‘overt sexism’ as something that might be found in a 1950’s ‘guide to be a good wife’-type of publication – the kind of scenario that Williamson and Whelehan might argue, in a contemporary context, belongs to a ‘retro-sexist’ discourse; that is, a humorous, yet nostalgic reference to a ‘simpler time’ (Williamson 2003). Indeed, as Mills and Mullany (2011) argue, ‘indirect’ and ‘overt’ sexism are culturally and temporally contingent categories, so that what may be read as ‘common sense’ at one time (in the example presented here, it might be assumed that the 1950s housewife reads the guide in this way) and as ‘nostalgic’ or ‘retro’ at another.

positive, yet essentialist terms – for example as inherently better at cooking, or ‘weak’ and in need of paternalistic protection (Glick and Fiske 1996). Within the notion of ambivalent sexism then, lies the coexistence of feelings of negativity and positivity towards women, that both contribute to a non-egalitarian view of the sexes. What is particularly interesting with this distinction, however, is how it allows for forms of sexism that uses a ‘positive’ expression to be defined and analysed.

In the 1990s – a “moment of feminist reflexivity” (McRobbie 2004, p. 256) – the feminist focus on the representation of women came under scrutiny for its unproblematic and exclusionary use of the term ‘woman’, as representing a unified group of (white, middle-class) people (Thornham 2007). The concept of ‘woman’, argues Thornham, assumes a commonality of experience; however, in its focus on the (mis)representation of women in culture, the feminist movement had failed to consider the experiences, vast underrepresentation or invisibility of, for example, black women, older women, working class women or disabled women – women who were regularly excluded from the small, privileged group that enjoyed any representation *at all* (even if problematic), and whose experience of discrimination was more complex than ‘simply’ a form of gender oppression. Despite this crucial and justified criticism of the feminist movement and its exclusionary practices, Valentine et al. argue, from a contemporary perspective, that this “rejection of the unified category ‘woman’ has meant that the importance and understanding of systematic gender inequalities and patriarchy as an issue of power has diminished as

the right to make group claims and act on the basis of shared experience has been lost" (Valentine et al. 2014, p. 401). As such, contemporary sexism has become a "forgotten form of prejudice" (ibid, p. 402), obscured and "only to be 'seen' – and even then in spurious and paradoxical ways – when it affords the instantiation of other forms of prejudice, such as Islamophobia and class prejudice" (ibid, p. 411). Similarly, Gill argues that sexism has fallen into disuse in Western cultures, as the perpetuation of the view of 'egalitarianism', leads to a "systematic *displacement* of the need for feminism onto 'Others' in need of 'rescue'" (Gill 2011, p. 67). As a result, sexism as an oppressive structure is not forgotten, but not considered relevant *right here, right now* (ibid).

Valentine et al. (2014) argue that the more subtle, everyday practices of sexism remain and have become normalised. They write: "patriarchy as a power structure which systematically (re)produces gender inequalities, is obscured by its ordinariness" (ibid, p. 411). Gill argues along similar lines that we should understand sexism as ideology, or a "discourse that is constitutive of common sense and of our most taken for granted ways of thinking, feeling, and being in the world" (Gill 2011, p. 66); not as a fixed practice, but as changing through time and place. Moreover, this ideology affects, not only the way we think, but also the way we *feel*, playing a crucial part in our sense of shame and disgust around gendered sexual expression (ibid). In the light of this, Gill argues that we need to put sexism back on the agenda:

“For is it not striking how the term sexism has quite literally disappeared from much feminist academic writing, as well as from everyday parlance. It sounds [...] too dated, but also too crude, too “clunky,” and, yes, “unsophisticated.” Yet if we think about sexism not as a single, unchanging “thing” (e.g., a set of relatively stable stereotypes), but instead reconceptualise it as an agile, dynamic, changing and diverse set of malleable representations and practices of power, how could it be anything less than urgent to have this term in our critical vocabulary?” (Gill 2011, p. 62)

Attenborough (2012) extends Gill’s argument that there is a need for renewed attention to sexism in the media, arguing that not only do we need to explore how sexism operates within the media, but also how (alleged) sexism is invoked and discussed as part of media discourse. Feminist academics may have given up on sexism, states Attenborough, but the media have not, and the complaints culture surrounding various media remains intact (ibid, p. 3). Attenborough recognises that there is scope for feminist academics to explore mediated representations, but argue that more attention should also be focused on how sexism, as already invoked in the media, is discussed and (de)legitimised – a turn to exploring what *counts* as sexism in popular discourse. What Attenborough is articulating here is very much the premise of this thesis – its central core. My research has been guided by this notion of what ‘counts’ as sexist offence or harm in advertising, attempting to understand the context and history of regulation in this area.

Rather than focusing on how sexism is reported or manifest in media content, Attenborough suggests that feminist scholars should start paying attention to how it is talked about. Attenborough analyses how complaints made about an incident featuring sexist remarks made by two football commentators,<sup>38</sup> were subsequently discussed and delegitimised (by being ‘recontextualised’ in various ways) in the media following the incident. He writes:

“Because people regularly present their actions and opinions such that they may be defended, now or in the future, from any accusation of sexism, the very notion of sexism is rendered ‘negotiable and up for grabs’. In this way, one person’s sexism may be described as someone else’s ‘simple fact about women’, ‘just a bit of fun’ or whatever” (Attenborough 2014, p. 138).

Attenborough argues that the notion of ‘intentionality’ is of importance here as transgressions may happen, but to *deliberately* transgress is seen as particularly offensive (ibid).<sup>39</sup> However, through recontextualisation any perceived intention to act sexist may be alleviated. However, what we might want to consider in this instance is how much ‘room for mistake’

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<sup>38</sup> This incident featured football commentators Andy Gray and Richard Keys, making the comment, about female football referee Sian Massey, that someone should ‘explain the offside rule to her’, followed by further sexist remarks about female referees.

<sup>39</sup> This discussion on intentionality is useful in developing our understanding of postfeminist irony, as joking, too, implies *intent*, although “[u]nlike the act of ‘ridicule’, it may not imply any intent to be deliberately hurtful to, or about, some other person(s)” (Attenborough 2014, p. 143)

should be given to official figures (to which Gray and Keys can be said to belong), or, in relation to my own research, to advertisers and statutory regulators?

Attenborough refers to sexism as an 'action' performed by the football commentators, analysing the way in which these 'sexist actions' came to be "downgraded, mitigated or even deleted" (Attenborough 2014, p. 137) in the ensuing media debate. In a similar vein, I discuss in Chapter 8 of this thesis, the way in which sexism as a speech act, invoked by complainants, comes to be mitigated and delegitimised by regulators as 'failing' to enact discrimination. Attenborough notes how sexism comes to be 'recontextualised' in its relocation from incident to media discourse. As will be clear from my analysis, a similar process is also apparent in advertising regulation, where regulators seek to establish a 'preferred' or 'dominant' reading of, often polysemic, texts. In this way the context in which the (alleged) sexist act occurs is (re)interpreted so as to render the speech act of sexism a 'failed performative' (for example, through positioning it as an ironic commentary on a sexist past).

## CHAPTER 4

# Methods and Methodology

*"Research agendas are shaped by random events and external constraints, as much as or in spite of our own devising" – King 2012, p. 19*

### Introduction

This chapter provides an outline of the methods used, my methodological approach, and methodological issues encountered in this project. The chapter is broadly divided into three parts;

Part I outlines the original intentions of the project and the methodological constrictions that have shaped the current project.

Part II gives a brief description of the data collection process, including the selection of data and a rationale for the material used, as well as providing a discussion of the analytical tools.

Part III considers various aspects regarding issues of access to material, which have featured prominently in this particular research, and how these issues have contributed in shaping the content and methodological approach to the project.

## Part I

### Original Project Design

In its early stages, this project set out to explore the 'complaints culture' surrounding television advertising by analysing in detail the complaints made to television advertising regulators, exploring themes in complaints regarding gender portrayals in particular. Since television advertising is, and has always been regulated on a statutory basis, the assumption on my part, was that the regulation (or censorship) of images in a public medium, by a public body, based on public complaints would be available for scrutiny, but this was not the case. I was soon made aware, through my initial contact with the Office for Communications (Ofcom) and the Advertising Standards Authority (ASA), that gaining access to this kind of material was not going to be possible, due to Data Protection issues in the release of public complaints. It is understandable that information making it a possibility to identify complainants would not be made available to the public, yet it seems it would be of public interest to make anonymised complaints available, as they often provide the basis for further investigation, and ultimately, in some cases, censorship.<sup>40</sup>

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<sup>40</sup> Later on in the data collection process I came across some complaints (from 1955 to 1990), in their original form with addressees' names intact, amongst some archive material held at Bournemouth University. In the wake of this discovery, the decision made by Ofcom to not disclose this information to me was particularly curious. It awakened questions such as: did Ofcom know that this material was kept at the ITA/IBA archives in Bournemouth? If so, why did they not direct me there? And, if they did not know about this material, what implications does this have on (a) data protection; (b) the status of my initial freedom of information request asking for this material; and (c) Ofcom's role as archivists working in the interest of the British public?



As a result of constrained access to complaints data, the project proposal was reworked and research focus shifted from complaints culture, to the regulation of television advertising more broadly, initially also including the professional role of the regulator. Documentary data collection and discourse analysis were intended as the main ways to explore the field, from a historical as well as contemporary perspective, alongside semi-structured interviews with advertising regulators, with the intent to explore the (contemporary) role of the regulator and the professional culture surrounding television advertising. Apart from providing an insight into the professional culture of regulators, the use of interviews would also have enabled me to incorporate in to the project the regulatory role of the current television advertising pre-vetting agency, Clearcast, in to the analysis.

However, the problems in accessing interviewees proved much more difficult than anticipated. Firstly, there was no way of establishing direct contact with any of the regulators, either from the ASA or from the Copy Clearance team at Clearcast. I communicated with the ASA and Clearcast via 'gatekeepers' (secretaries, press officers and administrative staff, mainly) and was never put in direct contact with potential interviewees. This meant that communication was slow and an affirmative response from both organisations was only received in the late summer of 2012 (the initial request was sent out at the beginning of the summer with the aim to conduct interviews in the summer months of August and September 2012). Despite the drawn out process in accessing interviewees, I had only

been granted three interviews: one with a Clearcast employee working with Copy Clearance, one with the ASA and one with CAP (Committee for Advertising Practice, concerned with non-broadcast advertising). Moreover, the two latter interviewees did not work directly with the regulation of television advertising as specified in the interview information sheet I had attached in my initial request. Moreover, neither the ASA nor Clearcast were willing to allow additional interviews, citing limited time and staff availability in the autumn/winter of 2012. After several cancellations and changes of interview dates, the three interviews I had been granted were conducted in October and November 2012. However, as the number of interviews were so few (and only one was with an actual regulator), and as timing was becoming an issue, I decided that the interviews, and with that, the added perspective of the role of the regulator, had to be omitted from the thesis.

## **Part II**

### **Methods**

For this research, a range of documentary data was collected and analysed from the five main statutory regulators active at various points in time since 1954 until present day. This data forms a rich basis for exploring the complex history of television advertising regulation and the changing status of advertising speech. Moreover, published complaint adjudications<sup>41</sup> from 1990 to 2012 were analysed using discourse analysis, forming the basis for exploring the practicalities and discursive challenges in regulating against (alleged) sexist offence and/or harm. Advertisements identified in the adjudications were located, where possible, and analysed (as ‘texts’) using discourse analysis.

#### ***Data Collection***

This section explains what type of data was collected and from where. The big timespan of this project means that material from several different (defunct and current) organisations had to be collected. Material was collected via email conversations and file transfers with administrative staff at Ofcom and the ASA,<sup>42</sup> published online material from their respective websites, and through several visits to the ITA/IBA/Cable Authority Archive, held at Bournemouth University. The data was

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<sup>41</sup> Published complaint adjudications feature a summary of the complaint(s) along with the adjudication itself. They do not publish names of complainants.

<sup>42</sup> This was not a straightforward process but several issues arose. These will be discussed further in Part III of this chapter.

collected between 2011 and 2013. I also worked with some film material in analysing advertisements, which will be discussed further below.

The data collection focused around the five main statutory regulators active at different times from the inception of commercial television in 1954 until present day: (1) The Independent Television Authority (ITA), later to become the Independent Broadcasting Authority (IBA); (2) the Independent Television Commission (ITC); (3) the Broadcasting Standards Council (BSC), later to become the Broadcasting Standards Commission (BSC); (4) Office of Communications (Ofcom); and the current television advertising regulator (5) the Advertising Standards Authority (ASA). These organisations were all established by statute, or sub-contracted by a statutory body (in the case of the ASA), to control and regulate misleading, offensive and harmful television advertising<sup>43</sup>. I collected documentary data relevant to organisational structures and advertising regulation of harm and offence from each regulatory body, with a specific focus on material related to the regulation of offensive and/or harmful portrayals of gender, sexuality, sex and nudity. This data included: annual reports (1954-2012), published speeches and notes, meeting minutes, internal correspondence, external correspondence, published research reports and published information material. Table 4.1 provides a breakdown of the documents obtained, where these documents were obtained from, and the date ranges for collected materials. Furthermore,

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<sup>43</sup> For a chronological outline of the advertising regulatory bodies, from 1954 to present, see Table 5.1 in Chapter 5.

Table 4.2 refers to documents requested but that I was refused access to (see Part III for a more extensive discussion on this).

**Table 4.1 Documents obtained**

Type of document	Date range	Obtained from
Annual Reports (from ITA/IBA, BSC, ITC, Ofcom and ASA/BCAP)	1954-2012	ITA/IBA archives, Ofcom (website and via email request) and ASA website
Codes of Practice (from ITA/IBA, BSC, ITC and BCAP)	1955-2010 (various editions)	Ofcom (via email request) and CAP/BCAP website
ITA/IBA Meeting Minutes and Papers	1954-1990	ITA/IBA archives
ITA/IBA Notes and Speeches	1963-1974	Ofcom (via email request)
Copy Committee Meeting Minutes	1969-1972	ITA/IBA archives
AAC Meeting Minutes and Papers	1955-1990	ITA/IBA archives
JACC Meeting Minutes and Papers	1964-1987	ITA/IBA archives
IBA Advertising Complaint Summaries	1972-1990	ITA/IBA archives and Ofcom (via email request)
Internal and external correspondence	1954-1990	ITA/IBA archives
Research and Reports (from ITA/IBA, ITC, ASA/BCAP)	1960-2012	ITA/IBA archives and ASA website
ITC Bulletins	1999-2001	Ofcom website
ITC Notes	(n.d.)	Ofcom website
Other structural/informational documents, legal acts and agreements	1954-2012	ITA/IBA archives, Ofcom (website and via email request), ASA website, CAP/BCAP website, legislation.gov.uk, British Library
ITC Complaints Reports	1991-2003	Ofcom (website and via email request)
Ofcom Advertising	2004 (Feb-Nov)	Ofcom (via email

Adjudications		request)
ASA Broadcast Adjudications	2004-2012	ASA website and ASA (via email request)
BSC Complaint Bulletins	1991-2003	Ofcom (via email request)
Advertising films	1991-2012	Arrows Archive (managed by HAT) and YouTube – both online.

**Table 4.2 Documents requested but refused access to**

Type of Document	Date Range
ITC Meeting Minutes and Papers	1991-2003
ASA Meeting Minutes and Papers	2004-2012
AAC Meeting Minutes and Papers	1991-2012
BACC and Clearcast information on pre-vetted advertisements	1994-2012
Original complaints from the public	1954-2012

Moreover, I collected all complaint adjudications published from 1991 to 2012.<sup>44</sup> These documents were variously located in digital and physical archives held by current communications and advertising regulators, Ofcom and the ASA. In the analysis of these adjudications (after coding and narrowing down the vast selection, discussed in greater detail below), I also attempted to locate the advertisement that was the subject for complaint for analysis. This was not always successful since the

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<sup>44</sup> There are a few minor gaps in the collected adjudications. These gaps concern a handful of monthly reports on adjudications of complaints from the legacy regulator, ITC (between 1990 and 2003). Administrative staff at Ofcom told me that these reports were missing from their own files, which is why they are also absent from my data sample.

adjudications often give little indication of the advertisement in question.<sup>45</sup> Filmed advertisements were searched for online and primarily found via the video-sharing website, youtube.com, and the History of Advertising Trust's (HAT) online advertising archive, arrowsarchive.com.

The documentary data was collected from three different locations: Ofcom, which keep all records of commercial broadcast regulation from legacy regulators, including television advertising, up until 2003;<sup>46</sup> the ASA, current regulators who have been regulating television advertising since 2004; and the ITA/IBA Archives held at Bournemouth University, which hold material on commercial broadcasting regulation from 1954-1990.<sup>47</sup>

I established initial contact with Ofcom and the ASA via email. Both organisations invite any enquiries to be made to them through a contact form on their respective websites; however, once contact has been established in this way it is possible to continue to have an email conversation with only one person, through their professional email address. This enabled a kind of gatekeeper/researcher relationship to

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<sup>45</sup> Some adjudications, especially those produced by the ASA and ITC offer more detailed descriptions of the advertisement in question, making it much easier to find, providing that it was available online, which not all of them were.

<sup>46</sup> Ofcom hold records of all statutory regulatory bodies from 1954-2003: the ITA, the IBA and the ITC, as well as records from the BSC.

<sup>47</sup> This archive forms part of Ofcom's data management and is a semi-open archive, available for researchers and broadcasters. Some, but far from all files held by the ITA/IBA archives are also digitalised and can be requested through Ofcom.

develop between myself and administrative staff from both organisations over time.

I had originally hoped to be able to visit the archives held by Ofcom and the ASA but both organisations declined visits to their archives, referring to issues of access to confidential material. Instead they invited me to request material via email. Without quite knowing what material would be available to me I started off requesting annual reports, complaint summaries and complaint bulletins from the ITA, IBA and ITC via Ofcom, as well as downloading available annual reports and complaint adjudications from the ASA website.<sup>48</sup> Further, I requested any documentary material related to the regulation of, or policy decisions regarding gender, sexuality, sex and nudity in television advertising through both Ofcom and the ASA.

Most television advertising is pre-vetted before broadcast to assure that the final advert adheres to the advertising rules. This has been done by two main organisations: the Broadcast Advertising Clearance Centre (BACC), active from 1994 to 2007, and Clearcast, active since 2008 onwards. Unfortunately, the BACC and Clearcast's work with advertisers and advertising agencies is based on closed and confidential consultations with their clients, meaning that any insight into their operation is not possible. Any data from these pre-vetting organisations was therefore unavailable. This obviously awakens concerns about public censorship

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<sup>48</sup> The ASA keeps a backlog, five years back in time, of their adjudications accessible via their website.



done by contracted private organisations (albeit following statutorily approved Codes).

### *Using Documentary Data*

This section presents the advantages and disadvantages of using documentary data in doing research on organisations and as part of a project seeking to create a historical narrative. I use the term 'documentary data' throughout this thesis as an all-inclusive term to refer to the material collected as part of this project. This includes physical documents, as well as pages taken from websites and other electronic documents. Not all of this material was used in the analysis; however, it formed a rich archive of data for the purpose of this research.

Since data was collected across 48 years and from five different regulatory organisations operating during this long time span, the data is not consistent. Although all the regulatory bodies served the same function in terms of television advertising regulation, they were structured somewhat differently, with slightly varying duties and responsibilities (a further discussion of this will be provided in Chapter 5). As a result, each organisation has had slightly different ways of recording decisions concerning television advertising. For example, decisions on the regulation of advertising based on public complaints were not always published, either publicly or internally; and it was not until the ITC became the regulatory body in 1990 that these decisions were recorded in any greater detail (previously only short summaries had been produced).

Even a fairly standardised product, such as Annual Reports, have changed format over time and across organisations.

Due to data being collected from different sources and locations, in different ways, and across a wide time-span, my data came to be defined by its 'messiness'. I had vast volumes of data from the years between 1954 and 1990, as this material was more easily accessible to me through the ITA/IBA archives in Bournemouth, which I was able to visit myself. Material from 1990 onwards was much more difficult to get hold of since it was kept in digitalised archives only accessible to me through making requests via Ofcom and the ASA. Therefore the data collected from the post-1990 regulators, the ITC and the ASA, is much more sparse than material collected from the ITA and the IBA. I discuss issues with access further in Part III of this chapter.

Although archival research and the use of documentary data have traditionally belonged to the historical sciences, these methods have a clear bearing in sociology as well. Indeed, the 'proper study of man' according to sociologist C. Wright Mills, rests on the intersections of biography, history and social structures (Wright Mills 2000). This research is concerned with the development of a very particular social milieu (i.e. television advertising regulation) and how this has been shaped by social and cultural change over time. This historical perspective meant that an archival research approach was not only a preferred method of data collection, but also a necessity. Furthermore, as a *statutory* regulator in a

public medium, television advertising regulators are obliged to record and archive their work, which amounts to a very rich source of documentary data in this particular field. In the light of this, it felt appropriate and natural to turn to the archive as a source for information.

Lindsay Prior (2003) discusses how documents can bring organisations into existence, using the example of how the Charter comes to 'constitute' the University. His example obviously refers to a document with some legal status that, in a way, *enacts* that which it 'speaks', much like the utterance that receives illocutionary force in speech act theory (Austin 1975), as discussed in Part II of Chapter 2. Borrowing the idea that the document can 'summon' something into being, I suggest that an organisation, like that of a television advertising regulator, is in a way constituted by its documents, bringing its duties and responsibilities into existence through legal acts, codes, objectives and guidelines, and their operations and legacy through adjudications, reports and meeting minutes. Furthermore, documents constitute the workings of organisations such as a statutory regulator as it is publically accountable for the decisions it makes. Documents in the realm of organisational work, then, very much bring problems, discussions and solutions into being – the very workings of the organisation. For example, a 'problem' is only recognised as such once it has been documented and distributed to relevant people or sections of the organisation. This could be in the form of a letter of complaint, request or query, a meeting paper or a memo. Then there are other documents whose function it is to track and

emphasise progress, produced, mainly, to bring attention to the 'good work' done by the organisation in order to justify its importance and, hence, existence. Annual reports, published speeches and lectures, and promotional material, would, for example, belong to this category. Other documents record on-going discussions or procedures (often in relation to solving the problems set out by memos and meeting papers), such as meeting minutes, for example. Some documents constitute guidelines for operation, such as advertising codes and guidelines. Additionally, there are 'presentational' documents, such as a company/organisation website, made mainly for the consumption of the consumer/viewer. These categories are by no means exhaustive or exclusive; in fact, a document often has many functions<sup>49</sup>. Nevertheless, it is important to emphasise here that 'documentary data' is a broad term for a range of material constantly produced as part of the workings of an organisation.

Archival research is time-consuming, frustrating and exhilarating, all at the same time. It was an overwhelming task and I generated a vast number of documents. At the time, the approach felt 'messy' – I kept collecting more and more data, much of which seemed unrelated to the project I had set out to do. However, Rapley suggests that this 'generation of an archive' is necessary for this type of research:

"Rather than just think about 'generating data', in any narrow sense, you need to think about generating or producing an archive

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<sup>49</sup> It should be noted that some of these documents are produced for public consumption and some are internal to the organisation.

– a diverse collection of materials that enable you to engage with and think about the specific research problem or questions. On a practical level, this means collecting and managing an array of different materials” (Rapley 2007, p. 10).

When I speak of ‘messy’ data, I refer to the vast amount of dispersed documents that formed the basis for generating my data archive. Initially these documents seemed to form no historical narrative at all. As a social scientist, not a historian, I was unfamiliar with this type of research and was overwhelmed by it. L'Eplattenier writes about archival research as a type of ‘collage’; that the way to understand the past “is similar to collages of photos that make up a larger photo. Using small images, we are able to create a much larger image. We see small pictures – individuals or groups or specific moments in time – and then, stepping back and looking at many small pictures we can see a larger picture – trends, movements, ideologies” (L'Eplattenier 2009, p. 75). Similarly, Savage (2011) argues that the historical narrative is not simply ‘out there’ for the researcher to discover, but that it is through the collected documents that the researcher *creates* this narrative, unifying the “huge array of possible sources into some kind of ‘historical account’” (Savage 2011, p. 170).

The collection process of data for this project was therefore *necessarily* ‘messy’. The vast amount of data helped form a bigger picture of the workings of the organisations researched, despite the irregular data ‘sets’ it produced. King writes that we should not attempt to force the archives

to 'bend to our will', but instead approach them with "attentive curiosity and humility, fully recognising that our forays into the archives, no matter how meticulous and exhaustive, only ever yield partial understandings" (King 2012, p. 20). Similarly, Carolyn Steedman reminds us that, "nothing starts in the Archive, nothing, ever at all, though things certainly end up there. You find nothing in the Archive but stories caught halfway through: the middle of things, discontinuities" (Carolyn Steedman cited in King 2012, pp. 20-21). As such, in order to make sense of my data it became very important to see the material in its historical, social and cultural context; to see the data separately and as a whole, how documents interacted with each other, and how it all fitted together to form a bigger picture of television advertising regulation.

The generation of an archive needs to be understood as an act of history-making itself – the researcher/archivist<sup>50</sup> becomes a 'co-creator' of history (Kaplan 2002). Indeed, documents may 'constitute' the organisation, as argued by Prior (2003) and discussed above, however, it should be noted that they can only be understood through the researcher's 'meaning-making'. Documents (like the archive within which they are contained) should not be thought of as 'objective' and unproblematic. As Cook (2001) points out, documents are not the "passive products of human or administrative activity [but] active agents [...] in the formation of human and organizational memory" (Cook 2001, p. 4). The researcher has both power and responsibility towards the material s/he works with, not to

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<sup>50</sup> I refer to myself here as an archivist as well as researcher since the first stage of research was to generate an archive, or selection of materials.

treat it as unproblematic 'truth' but to question the intent, truth and context of a document (Rapley 2007, May 2011, Bryman 2004).

Despite having a lot of seemingly disparate pieces of data, I found that the historical trajectory of the project allowed the data sets to come together and form a larger picture of the changes and consistencies of regulation of harm and offence, of gender and sexual portrayals, cultural values affecting such regulation, and regulatory discourses around 'public interest'. It is important to note that 'messy' data does not mean 'bad' data. It does however, require the researcher to spend a lot of time organising and reorganising the material, rejecting that which is not directly relevant to the project, and piloting many coding schemes.

### *Managing Diverse Data Sets: Coding and Organising*

Having such diverse 'data sets'<sup>51</sup> I was faced with how to manage, code and analyse it all. I was concerned that the data was too 'spread out' to make sense as a whole. This is a common feature in using archival material since any archive, open or closed, is not an unproblematic source of data. As discussed above, the archive holds 'scraps' of material and the process of deciding what is to be archived in the first place is in no way objective or positioned outside relations of power (Kaplan 2002).

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<sup>51</sup> I use this term carefully as a 'set' could be anything from a small sub-section of the data to the whole range of data. When I refer to 'data sets' in this project I refer to more or less consistent sub-sections of the whole data archive that deal with specific issues or that come in a standardised format. For example, Annual Reports would be one 'data set'. Complaints adjudications and bulletins would also constitute a 'data set'; although they technically cross over several different organisations, they do deal with the same types of issues in a very similar manner.

The practical and methodological implications of working with documentary data are rarely discussed in academic literature (see L'Eplattenier, 2009, for a wider discussion on this issue). I find this 'gap' in the literature particularly curious since it is easy to imagine, when doing any kind of archival research and/or dealing with a wide range of documentary data, that the process of coding is not straightforward.

In approaching the data, including documentary data, adjudications and filmed advertisements (treated as 'text') analysed using discourse analysis, I followed the process described by Braun and Clarke (2006), who offer practical steps in the coding and analysis of inductive, thematic research<sup>52</sup>, starting by reading and re-reading the material I had generated. Throughout this process I was making further data requests to Ofcom and the ASA, since what was missing only became apparent through familiarising myself with the data.

For the documentary material, excluding the adjudications, I organised it chronologically and sub-divided into folders for each different regulator to be able to gauge, or 'map' the data, seeing how the different data sets

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<sup>52</sup> Braun and Clarke (2006) suggest a step-by-step approach to coding and analysing data suitable for many projects using some form of thematic-based analysis. Their approach can be summarised in the following way: (1) familiarising oneself with the data, including reading and rereading the material; (2) generating initial codes, that is noting down the features of the data and what is interesting about it (semantic or latent) – essentially a process of organising the data; (3) searching for themes, involving going back to thinking broadly about the data and organising the codes into larger categories, or themes; (4) reviewing themes, including reviewing and refining existing themes; and finally, (5) defining and naming themes. It should be noted, however, that this is not necessarily a linear process as suggested here, but a process of going back and forth between these steps may be necessary.



interacted with, or were kept distinct from each other. It had been very clear since visiting the ITA/IBA archive in Bournemouth that I was going to have an overrepresentation of documentary material from 1954-1990, since this was more accessible (an issue discussed further in Part III). Furthermore, and as mentioned previously, this data was distinctly different from the material I was able to collect from 1990 onwards. Despite this 'unevenness' of the data I was still able to discern two broad but relatively distinct 'sets' running through: (1) 'structural' documents. That is, documents that relate to the organisational structure of the regulators, their duties and responsibilities; (2) sex and gender policies and decisions (case study). These documents concern policies and the practical regulation of harm and offence in relation to gender and sexuality, including complaints bulletins and adjudications. Although these two data 'sets' are somewhat overlapping and not necessarily uniform between different organisations, this distinction allowed me to explore the historical development of regulation on a structural level.

For the adjudications a similar process ensued. To start with, I selected for coding only those adjudications that were based on 'harm' or 'offence'. The category of 'misleading' advertising is distinctly different from issues of harm and offence and deals with misleading and unsubstantiated claims made in advertisements. I noted some interesting potential categories and did a further selection of material where I narrowed it down to include categories that were in some way connected to complaints issues regarding sex, sexuality, gender portrayals and sexism.

From this selection I then re-worked my way through Braun and Clarke's (2006) steps as outlined above (n.52). During this process I was also locating the relevant advertising films in order to contextualise the adjudications at hand. Table 4.3 below provides an overview of the adjudications obtained and analysed, whereas Table 4.4 shows my classification, based on type of complaints, of adjudications concerning sex, sexuality, gender portrayals and sexism. It is these adjudications that form the basis for data analysis chapters 7 and 8.

**Table 4.3 Number of adjudications obtained**

	<b>ITC 1991- 2004</b>	<b>BSC 1991- 2004</b>	<b>Ofcom 2004</b>	<b>ASA 2004 (Dec) – 2013</b>	<b>Total</b>
Total number of adjudications obtained (television only)	1572	297	94	1378	3352
Number of adjudications obtained, excluding issues of misleadingness (television only)	690	297*	27	371	1385
Number of adjudications dealing with issues of sex, sexuality, gender portrayals and sexism	109	106	5	80	300

\* Note that the BSC had a different remit than the overlapping regulatory organisation, the ITC. This remit did not cover misleading advertising.

**Table 4.4 My classification of the 300 adjudications concerning sex, sexuality, gender portrayals and sexism**

Classification (based on complaints)	Number of adjudications 1991-2012*	Number of upheld complaints 1991-2012
(Hetero)sexual activity and/or nudity	51	<ul style="list-style-type: none"> <li>• banned based on strength of adverse response (2)</li> <li>• breach of scheduling restrictions (10)</li> <li>• new imposed scheduling restrictions (5)</li> </ul>
Casual sex & promiscuity	11	<ul style="list-style-type: none"> <li>• banned based on condoning promiscuity (1)</li> <li>• breach of scheduling restrictions (1)</li> </ul>
Gendered/sexual violence, abuse & harassment**	8	<ul style="list-style-type: none"> <li>• banned based on playing on fear and violence against women (1)</li> <li>• breach of scheduling restrictions (1)</li> </ul>
Homosexuality – inclusion of offensive portrayal/word, or offended by inclusion of/ allusion to homosexuality***	22	<ul style="list-style-type: none"> <li>• banned based on harmful stereotyping (3, including one instance of insensitive scheduling)</li> <li>• breach of scheduling restrictions (4)</li> </ul>
Sado-masochism	9	<ul style="list-style-type: none"> <li>• new imposed scheduling restrictions (2)</li> </ul>
Sexism (women)**	58	<ul style="list-style-type: none"> <li>• banned based on ad going 'beyond acceptable boundaries' (1)</li> <li>• banned based on strength of</li> </ul>

		adverse response (1) • banned based on use of term 'slag' (2)
Sexism (men)	9	None
Sexual innuendo / reference / symbolism	57	• banned based on use of term 'slag' (1) • breach of scheduling restriction (11) • new imposed scheduling restriction (5)
Sexual theme / suggestive (general offence)	51	• banned based on lack of product relevance (1) • banned based on inclusion of obscenity (1) • breach of scheduling restriction (11) • new imposed scheduling restriction (5)
Sexualised female body / ies**	50	• breach of scheduling restrictions (8) • new scheduling restrictions (7)
Sexualised male body / ies	7	None
Sexualising children	12	• banned for sexualising children (3) • breach of scheduling restrictions (1)
Teen sex	13	• banned for causing harm to children (1) • breach of scheduling restrictions (1) • new scheduling restrictions (5)
Transgender / sex & cross-dressing – inclusion of offensive portrayal / word, or offended by	7	• banned for using harmful stereotypes (2)

inclusion of/ allusion to transgender/ sex people***		• breach of scheduling restrictions (1)
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\* Note that adjudications often deal with more than one type of complaint. Therefore, the total number of adjudications represented here do not correspond exactly to the total number of selected adjudications selected for analysis, as can be seen in Table 4.3.

\*\* These categories are discussed in detail in data analysis chapters 7 and 8. However, it should be noted that there are many overlaps in terms of complaints featured in the adjudications, particularly between issues of sex and issues of sexism (see Chapter 7 for an extensive discussion on this).

\*\*\* Complaints concerning offensive portrayals or inclusions of homosexuality, transgender/sexual people or cross-dressers exist, however, these complaints raised substantially different issues than were developed in the main body of the analysis. Due to the limited scope of this thesis, I do not discuss these adjudications in greater detail here.

The data very much demanded to be coded in an inductive way – having data that spans, not only across time, but also across organisations, the only way of gaining an understanding of the data, both as separate pieces of the puzzle, as well as forming part of a larger trajectory of advertising regulation over time, was to approach the material in an inductive manner. The research questions guided the coding process but the coding frame was derived from themes identified through the data. However, it is important to note, as Braun and Clarke do that, “researchers cannot free themselves of their theoretical and epistemological commitments, and data are not coded in an epistemological vacuum” (Braun and Clarke 2006, p. 84).

The coding was conducted in two different ways. I conducted a kind of ‘historical trajectory’ coding, where organisational structure, public and state accountability, roles and responsibilities, definitions and discussions of ‘offensive’ and ‘harmful’ advertising speech, and any general issues relating to the regulation of gender and sexuality were coded throughout the whole data set. However, the adjudications and filmed advertisements

were treated slightly differently. Here, the discourses around *specific* issues of harm and offence were recorded in much greater detail, as this material forms part of an understanding of the direct, everyday and hands-on regulation of adverts, based on public complaints. Whereas the former type of document can tell us about the (un)acceptability of allegedly offensive and harmful of advertising speech in principle, this latter type of data can tell us much more about how regulation actually works in practice, what type of offensive and harmful speech 'counts' and what does not.

I chose to code most of the data using the computer software Nvivo. Nvivo allows you to organise and categorise the data in an effective manner, which was of particular value to me as my data set was vast and unstructured. It further enabled me to easily draw connections between codes, something that proved very useful when drawing out themes between different data sets. However, Nvivo's functions seem primarily tailored to interview transcripts and deals less well with large amounts of heavy pdf files, which was the format most of my data was in. For very large files, such as research reports, for example, I decided to do coding by hand.

### ***Discourse Analysis***

This project employs discourse analysis to explore and contextualise the regulatory discourses around gender and sexuality-based offence and perceived harm in advertising, examining the performative function and

ideological underpinnings of such regulatory discourse. Discourse analysis offers a way of analysing documents beyond their content, to consider, in tandem, the documents as products of their time, produced under certain circumstances, and with a certain purpose/function.

Discourse analysis has suffered a kind of 'terminological confusion' as a result of being developed simultaneously across a number of disciplines using slightly different theoretical perspectives (Potter and Wetherell 1994, p. 6). Drawing on Potter and Wetherell (1994) and Gill (2000), I am using a discourse analytic approach which has developed with the social sciences, drawing on theories of speech act theory, social semiotics and poststructuralism.

Discourse analysis is an approach to the analysis of language in use, seeing discourse itself as a kind of social practice, offering a particular way of seeing the world (Sunderland and Litosseliti 2002). Yet, language not only represents ways of thinking, but also constructs social reality (ibid). Macdonald (1995), drawing on Foucault, argues that "'discourse' suggests that language and social practices are intertwined and intermeshed; not something that we use but something we perform" (Macdonald 1995, p. 47). People seek to accomplish things through language and written text. This is particularly applicable to this kind of work with organisations where documents are produced to record processes of decision-making and change. Here, discourse analysis offers strategies for unravelling the functional and performative aspects of language (Bryman 2004). Gill

summarises the themes of discourse analysis in the following manner: (1) discourse itself as the topic of study; (2) language seen as constructed, but also constructive; (3) discourse as a 'social practice'; and (4) discourse as performing a function; that it is rhetorically organised to be persuasive (Gill 2000, p. 59).

Moreover, discourse analysis offers an analysis of language that incorporates the social, historical and cultural context in which language occurs (Paltridge 2006). As Thwaites et al point out: "discourse is a matter of the way in which things said are embedded in the social world. Even before it is concerned with what is said, it may be concerned with where things are said, by whom, and in what relationships of power" (Thwaites et al 2002, p. 141). In this way, "discourse analysis offers a new way of understanding ideology. It sees ideological discourse not as a fixed subset of all discourse which works in standard recurrent ways and is defined by its content or style, but rather *as a way of accounting*" (Gill 1993, p. 91). This aspect of discourse analysis proves particularly important for this project as it allows for connections to be made between gender ideology and the way regulatory discourse acts in accepting or rejecting claims of gender and/or sexuality-based offence and/or harm.



### **Part III**

#### **Methodological Issues**

This project has been greatly shaped by issues of access to data on several levels in the data collection process. This section explains how these issues were resolved on a practical level, as well as how the restricted access to material affected the methodological approach and informed the analysis of data.

The data collection for this project was not straightforward, mostly as a result of constrained access to material, in one way or another. These constraints manifested themselves in slightly different ways depending on whether access issues concerned a digitalised or a physical archive. I will go through each issue in turn. However, it is worth initially to note that there was an overall lack of knowledge of material kept in the archives by gatekeepers. This constrained and slowed down the data collection from the very outset.

In the case of this particular project, the gatekeeper role was taken up by administrative/'first point of contact' staff (in some cases, people 'higher up' on the employment scale within the organisations were consulted with on my behalf). During my time collecting data from the ITA/IBA archives at Bournemouth University, the gatekeeper position was taken up by library staff liaising between the archive (which was located outside the university library) and researcher.

I had very little control over the data collection process for this project, as most of the material was kept in archives to which I had no direct access. The data collection, mediated through gatekeepers, therefore proved slow and I was constantly frustrated over my lack of agency and authority in the process. Much of the time I could do little more than gently remind the gatekeepers about my requests for data, and not rarely had my request been forgotten or de-prioritised as their workload had increased or holidays had come in between. Many times it felt like the data collection process was completely out of my hands, not only because of the mediating role of the gatekeepers, but also since I was mostly unaware of the types of documents that existed in the archives and so was fumbling blindly through the process, requesting information based on topic, rather than specific documents.

There are some obvious issues with collecting data held by organisations to which the researcher has no immediate access. Gatekeeper relationships need to be established and maintained, and access to data is often a constant negotiation, especially if the initial knowledge of the data is allusive, at best. Even when data and information is publicly available on request, the researcher still needs to have a sense of what kind of data he or she would wish to collect. Moreover, there has to be a certain degree of trust in the 'gatekeeper' by the researcher to be able to search the archive

in an appropriate manner and that they are giving out all the relevant material requested.<sup>53</sup>

The more material I received, the better my sense became of what material was useful in relation to my research questions. I was also able, through reading documents I had already gained access to, to discern other specific material might be of interest. In this way I slowly generated an archive of material to work with.

#### *Access Issues: ITA/IBA Archives*

The ITA/IBA archives are located in Bournemouth, accessible through Bournemouth University Library, which keeps the collection on behalf of Ofcom. The archive holds material from the two earliest regulators of commercial broadcasting, the ITA (1954-1972) and the IBA (1972-1990). The collection is vast, yet poorly catalogued. Users/visitors of the archive are not allowed to explore the material on an *ad hoc* basis; rather, material has to be requested prior to visiting and crates with material are then delivered to the library, which is the location for exploring the material, but not actually where it is kept. The requests are done on the basis of a cryptic spreadsheet, listing each box by reference number and name,

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<sup>53</sup> Interesting to note here is what the future has to hold for researchers using archives. As, increasingly, archives are digitalised the assumption seems to be that they will therefore also be more easily accessible. However, as in the case of my research, what was once an existing physical archive that could be visited (held on the premises of the regulatory organisation), with digitalisation this material has now become hidden from public view. One wonders, then, if the future for researchers working with archives is to negotiate access to material they know nothing about via administrative staff that do not have the specialised skills of an archivist, or, perhaps, even any knowledge at all of the archival material kept by an organisation.

which alludes to its content, but is by no means self-explanatory. The system for cataloguing the boxes was not made clear in the request-process.

As the material had to be transported between the location of the archive and the location of the library each day I visited, there was a restriction on the volume of material that could be requested at any one time. Four crates of material per day was the allowed maximum amount that was delivered to the library per day. However, due to the sheer volume of material I wanted to go through I came to an agreement with the library staff, allowing me to have two deliveries (i.e. eight boxes) delivered per day during my time visiting. In practice, this was only realised on a few occasions, and some days I was left with no material being delivered at all, delaying my research and requiring further visits. Moreover, other visitors delayed my trips to the archive as the staff could only accommodate one visitor at a time.<sup>54</sup>

The records kept at the ITA/IBA archives were unorganised and often in quite poor condition. Several documents (especially old carbon copies of letters) were simply unreadable. Moreover, several boxes of material I had requested were reported 'missing', something that evokes concerns about Ofcom's (as a public authority) archiving practices. As the Information Commissioner's Office (ICO) write:

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<sup>54</sup> It became problematic having more than one person visiting at once, due to the system of transporting material between locations

"The section 46 code of practice covers good records management practice and the obligations of public authorities under the Public Records Acts to maintain their records in an ordered and managed way, so that they can readily retrieve information when it is needed. These codes of practice are not directly legally binding but failure to follow them is likely to lead to breaches of the Act" (ICO 2013, p. 8).

#### *Access Issues: OFCOM/ASA Archives*

Ofcom and the ASA do not share archives, despite being in a 'co-regulatory' relationship, an issue that is explored in greater detail below. Since Ofcom is a public authority, any request for information from their archive (which holds material from all previous broadcast regulators) is considered under the Freedom of Information Act 2000 and they are legally bound to search for and provide this information for the requester within 20 working days. The ASA, however, is not a public authority, but a self-regulatory body independent of the government and is therefore not obliged to supply requested information from the public.<sup>55</sup> Therefore, the requests for material I made to Ofcom and the ASA were treated somewhat differently; where Ofcom were legally obliged to make an effort in retrieving requested material, and if denying a request, clearly explain on what grounds, the ASA had the opportunity to refuse requests without much further explanation. This happened on a few occasions, including

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<sup>55</sup> They are, however, encouraged to do so and have a policy of 'openness' in order to maintain its own credibility as a self-regulatory organisation.

for requests for meeting minutes from decisions made on controversial adverts, and when asking for information on complained about adverts deemed not worthy of investigation.<sup>56</sup>

The ICO write in their 'Guide to Freedom of Information': "The Freedom of Information Act 2000 provides public access to information held by public authorities. It does this in two ways: public authorities are obliged to publish certain information about their activities; and members of the public are entitled to request information from public authorities" (ICO 2013, p. 3). The ICO further state that: "Access to information helps the public make public authorities accountable for their actions and allows public debate to be better informed and more productive" (ICO 2013, p.3). However, gaining access to material from Ofcom's archives was not a straightforward process either, despite its legal commitment to public accessibility.

### *Freedom of Information (FOI)*

Through requesting data from Ofcom I became aware of some inconsistencies in Ofcom's interpretation of the Freedom of Information Act, and its inevitable consequences for public accountability and transparency. I consider this important to mention here, as it is both an issue in its own right, as well as having serious implications for my methodological decisions.

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<sup>56</sup> Eventually I was able to retrieve some of the information I wanted on non-investigated ads for a fee of £150. This fee was set based on the hours of work the request was calculated to take for the ASA's IT personnel to search and retrieve the material from their old (pre-2006) database.

During the data collection process I made a request for the meeting minutes and papers from the ITC and the Advertising Advisory Committee (AAC) that served as an advisory body in advertising matters to the ITC (1991-2003). I had already managed to get hold of the AAC meeting minutes and papers from 1954-1990, which were available in the ITA/IBA archives in Bournemouth. However, despite being archived material from over a decade ago (and backdating even further) my FOI request was initially denied based on time, staff and money constraints on behalf of Ofcom. Ofcom were concerned with the potentially confidential content of this material and felt the need to go through all meeting minutes and papers in deciding whether the information could be released and this would cost more than what is set out in the FOI Act as 'reasonable', that is £450 per request. They were therefore enabled to deny the request.

Ofcom wrote this in an email to me on the 20th March 2013:

*"As I'm sure you're aware Ofcom and its predecessor bodies, deal with a wide range of confidential information – business analysis, personal information, sensitive discussions etc all of which will be present to a greater or lesser degree in the information you have requested. If we were to allow you to view the information, we would have to assign members of staff to go through all these documents*

*(with a lawyer) to decide whether the information in them needed to be kept confidential."*

I found this reasoning particularly perplexing as meeting minutes and papers from the predecessor advisory body (AAC as it was constituted under the IBA) were available to access via the ITA/IBA archives. For these particular documents that I had already got access to, there was no business analysis or personal information present. The only thing that might be of concern to Ofcom, in releasing these particular documents, would be the presence of sensitive discussions. Yet, even so, these would most likely be discussions concerning what type of advertising or advertising content should and should not be allowed in the public medium of television. This, in turn, would very much be information that could be argued should be available in the public interest (especially when it is concerning archived material from over a decade ago).

Moreover, the ICO states that: "The Freedom of Information Act requires every public authority to have a publication scheme, approved by the Information Commissioner's Office (ICO), and to publish information covered by the scheme. The scheme must set out your commitment to make certain classes of information routinely available, such as policies and procedures, *minutes of meetings*, annual reports and financial information" (ICO 2013, p. 12, my emphasis). Ofcom state on their website that they have "applied the principles of the model publication scheme for non-departmental public bodies" (Ofcom, n.d.), which further states that it



is to be expected that "management board minutes and the minutes of similar meetings where decisions are made about the provision of services, excluding material that is properly considered to be private, to be readily available to the public" (ICO 2008, p. 4). Archived material is, however, exempt from the publication scheme. It may be assumed however, that if meeting minutes of senior level meetings belong to the information that is required by Ofcom to be proactively produced under the FOI Act, archived meeting minutes regarding decisions relating to the regulation of speech and imagery in a public medium – certainly a public interest issue – would be accessible through a FOI request. Based on this, I found it highly unlikely that any information contained in the AAC meeting minutes and papers between 1991 and 2003 could be legally kept from public view. So I pursued the case further.

I was invited to refine my request to incorporate less material and, hence, taking up less time and money on behalf of Ofcom. After several refined requests frustratingly being denied on the same grounds as before I suggested that Ofcom only give me as much information (starting with AAC meeting minutes and papers from 1991 that they were willing to, based on the previously stated £450 limit. This was agreed with Ofcom, yet for the following months, despite regular reminders about the request, nothing was done about this and eventually I was forced to cancel the request based on timing restrictions.

Furthermore, it is worth noting that the cost of £450, quoted by Ofcom as being, in part, for having a lawyer present discerning whether the material was appropriate for public view, was most likely against the principles of the FOI Act. Indeed, the ICO clearly state that: "When estimating the cost of compliance, you can only take into account the cost of the following activities: determining whether you hold the information; finding the requested information, or records containing the information; retrieving the information or records; and extracting the requested information from records" (ICO 2013, p. 29). They explain further that: "You cannot take into account the time you are likely to need to decide whether exemptions apply, to redact (edit out) exempt information, or to carry out the public interest test." (ICO 2013, p. 30).<sup>57</sup> In hindsight, then, it could be argued that Ofcom's handling of my request goes against the principles laid out in the Freedom of Information Act, and hence against their legal commitment to accountability and transparency.

### *Accountability and Transparency*

Throughout the data collection process I encountered problems with accessing material, something I had not anticipated, assuming that any regulatory decisions regarding content in a public medium would be accountable for in the interest of the public. I accepted that complaints data was not going to be available under the FOI Act since the Data

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<sup>57</sup> A 'public interest test' (PIT) is essentially a test for deciding whether or not to disclose information or not, based on whether it is considered to be in the public interest to do so. The ICO writes: "The Act requires you to disclose information unless there is good reason not to, so the exemption can only be maintained (upheld) if the public interest in doing so outweighs the public interest in disclosure" (ICO 2013, p. 34)

Protection Act of 1998 takes precedence in cases where a disclosure of personal information is involved and that the redaction of names and other identifying information would be a drain on the resources of the organisations keeping this material. What I could not understand, however, was why the complaints were not made available in the first place. I expected that complaints would and *should* be matter of public record, especially when they are concerned with regulating content featuring in a public medium. Recently, we saw the case of the American independent communications regulator the Federal Communications Commission (FCC) release complaints received in the wake of teenage pop-star Miley Cyrus' VMA performance, which caused a considerable amount of controversy, both concerning racism and the sexual nature of the performance. The complaints were anonymised and formed the basis for a very interesting media debate around media offence, a debate that is distinctly lacking in the British field of advertising – a result of the public not being aware of what our media complaints culture actually looks like. Even in complaints summaries, bulletins and adjudications published from the 1970s onwards, complaints are shortened, summarised and, since 1991, some are also left out completely since they are not considered to raise a 'significant' issue by the regulators, leaving the reader with only a slight sense of how the complaint was actually constructed (for a further discussion on this, see Chapter 7).

When information regarding the decisions to regulate or not regulate specific content in a public medium is not available on request, this has

huge implications for public accountability and transparency. As the ICO writes: "Access to information helps the public make public authorities accountable for their actions and allows public debate to be better informed and more productive" (ICO 2013, p.3). As discussed in this section, the methodological journey I have been on in trying to gain access to the field of television advertising regulation has opened up serious questions regarding this vexed terrain and has played a large part in shaping this project.

### *Ethical Considerations*

Working with historical and documentary material, most of which has already been published in some form or another limits the scope for ethical mishaps. However, it should be noted that all not previously published data cited in this thesis has been given permission to be published as part of this work by the relevant people.

All data collected was kept safe in locked storage and names printed on any non-published correspondence cited here have been redacted in line with the ethical guidelines published by the British Sociological Association (BSA): "Appropriate measures should be taken to store research data in a secure manner. Members should have regard to their obligations under the Data Protection Acts. Where appropriate and practicable, methods for preserving anonymity should be used including the removal of identifiers" (BSA 2002, p. 5).

## CHAPTER 5

# Institutional Structures – Advertising Regulation in the Public Interest

### Introduction

This chapter explores the regulatory structure of television advertising regulation from the inception of commercial television in 1954 until present day. The chapter examines the status of advertising speech to be regulated in the public and/or consumer interest and will function as a contextualising framework for the ensuing analytical chapters. I look specifically at how the main regulatory bodies, statutorily assigned to monitor and regulate advertising, have been structured and re-structured in response to social, cultural, political and technological change, as well as changing conceptions of the viewing public and notions of public interest. Table 5.1 lists the main organisations for the regulation of television advertising in chronological order, from the inception of commercial television to present day. Some regulatory organisations have overlapped in their operation, as shown in the table. The table also clarifies the organisations' formal status.

**Table 5.1 Television advertising regulatory bodies, 1954 to present**

<b>Date of operation</b>	<b>Name of organisation</b>	<b>Formal Status</b>
1954 (4 <sup>th</sup> August) - 1972	Independent Television Authority (ITA)	<u>Statutory body</u> (established by the Television Act 1954)
1972 (July) - 1990	Independent Broadcast Authority (IBA)	<u>Statutory body</u> . The ITA was re-named the IBA under the Sound Broadcasting Act 1972 to reflect the IBA's increased responsibility for regulating commercial radio transmissions.
1988 (May) - 1997	Broadcasting Standards Council (BSC)	<u>Statutory body</u> (established by the Broadcasting Act 1990 but set up on a pre-statutory basis in 1988)
1991 (1 <sup>st</sup> January) – 2003 (28 <sup>th</sup> December)	Independent Television Commission (ITC)	<u>Statutory body</u> (established by the Broadcasting Act 1990).
1997 (April) - 2003	Broadcasting Standards Commission (BSC)	<u>Statutory body</u> . A merger of the Broadcasting Standards Council (BSC) and the Broadcasting Complaints Commission (BCC) under the Broadcasting Act 1996.
2003 (December 29 <sup>th</sup> ) - present	Office of Communications (Ofcom)	<u>Statutory body</u> (established by the Communications Act 2003 combining the pre-existing communications regulators the ITC, the BSC, the Radio Authority, the Offices of Telecommunications and of Radiocommunications).
2004 (1 <sup>st</sup> November) - present	Advertising Standards Authority (ASA)	<u>Independent/Self-regulatory body</u> (broadcast advertising remains a statutory requirement under the

		Communications Act 2003). Sub-contracted under the Deregulation and Contracting Out Act 1994 by Ofcom to regulate broadcast advertising from 2004 onwards. However, the ASA was originally established in 1962 as an independent adjudicator for non-broadcast advertising.
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Using primary data from archival research,<sup>58</sup> making connections to previous academic work on the history of British broadcasting, I explore the historical shift in public interest regulation and public accountability, from a version of Reithian paternalism built on public service values of television as a medium for information, education and entertainment (although, notably, Reith himself was not an advocate of commercial television), to neoliberal concerns for consumer choice, where *consumer*, rather than *public* interest, becomes the focus in a converging and deregulated media landscape. The historical discussion on advertising in this chapter is informed by primary data sources, unless otherwise indicated.

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<sup>58</sup> The data for this chapter is primarily drawing on what I refer to as 'structural' documents in Chapter 4. This includes documents that relate to the organisational structure of the regulators, their duties and responsibilities. For this particular chapter, this notably, but not exclusively, means: annual reports, advertising codes, published notes and speeches, published information material (for consumers) and consultation documents (on code changes). The material covers the time span from 1954 to 2012.

Brants et al. (1998) argue that what constitutes 'public interest' has been, and continues to be, "the fundamental question underlying all media debate" (ibid, p. 3). Yet, this question becomes particularly contentious in relation to the regulation of offensive and distasteful speech, speech that is often subjectively felt to be morally, culturally or socially unacceptable in a public medium. Furthermore, commercial speech has traditionally been afforded less freedom than other forms of speech, due in large part to its lack of greater social purpose and artistic value.

The organisations discussed here all had/have regulatory responsibilities beyond that of television advertising.<sup>59</sup> However, the discussion in this chapter is related particularly to the structural organisation of television advertising regulation, and more specifically the regulation of 'soft' advertising issues (Boddewyn 1991), such as offence, taste and decency, and some instances of harm.<sup>60</sup> Furthermore, it should be noted that television advertising has always been subject to pre-vetting or copy clearance, checking that claims and presentation-style are in line with the advertising codes prior to transmission; however the focus here is on the regulation of *post*-transmission advertising for reasons with access to data as outlined in Chapter 4.

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<sup>59</sup> The ITA, IBA and ITC were regulators of all commercial television output; the ASA is the current regulator of broadcast and non-broadcast advertising, sub-contracted by the communications regulator, Ofcom.

<sup>60</sup> The scope of this chapter does not include the regulation of other contentious advertising speech, such as political/opinion, charity, misleadingness etc.



## **The Independent Television Authority (ITA), 1954-1972**

This section explores the first 18 years of television advertising regulation – a time of significant cultural change, as can be seen through the themes discussed here. I begin by situating television advertising regulation within the British broadcast context as a whole, drawing links between the regulators' adherence to British values of public service television and an aversion to American-style commercialism (arguably a form of cultural elitism). I then discuss how television itself, in terms of its status as a part private, part public medium, has had an impact on the regulation of advertising. During the 1960s there was an increasing focus on issues of 'permissiveness' in regulatory discourse, which is discussed here in terms of the regulators' difficulty in defining their own role, as not too restrictive, yet not too permissive. The last theme explores 'taste and decency' as the category entered the advertising rules in 1964.

### ***Public Service Principles and Notions of 'Britishness'***

The Independent Television Authority (ITA) was established in 1954, as a governing body for Britain's first commercial television channel, Independent Television (ITV).<sup>61</sup> The British commercial broadcasting system was modelled on public service values as established through the British Broadcasting Corporation (BBC), requiring all programme output

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<sup>61</sup> Although the ITA was established in 1954, ITV first began broadcasts in 1955.

to 'inform, educate and entertain' (Scannell 1999). Reith's<sup>62</sup> vision of public service broadcasting was "as a cultural, moral, and educative force for the improvement of knowledge, taste and manners, and this has become one of the main ways in which the concept is understood" (ibid, p. 122). Commercial television was guided by a strong sense of these Reithian values to become "an extension of public service broadcasting, not an alternative" (ibid, p. 126).

The ITA was set up in response to concerns about commercial interests dictating programme content and, as a result, compromising editorial independence and principles of public service broadcasting (Hoffman-Riem 1996). It was to be a public body with members appointed by the government, independent from commercial and organisational interests (Crissel 2002; Hoffman-Riem 1996). The ITA gained statutory power with the Television Act 1954, that bestowed upon it the duty and responsibility to regulate commercial television in the public interest, and the statutory power to enforce its regulatory decisions.

As Scannell (1999) notes, the attempt at combining private enterprise and a commercially funded system with public service values was an untested approach and the restrictive framework of commercial television regulation was borne out of concerns for keeping commercial speech from infiltrating public service principled programming and a commitment to

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<sup>62</sup> John Reith was the Managing Director, and later Director-General of the BBC (1923-1938).

keep television as a medium contributing to the 'greater good' of society.<sup>63</sup> Thus, there were strict rules governing all broadcast output, ensuring that programming and advertising were distinctly separate from each other and that advertising was contained and properly understood as having a commercial purpose. Advertising was a 'necessary ill' in establishing a second television service to serve in the interest of the public and was therefore to be contained and controlled.

'Spot-advertising', of a maximum and average of six minutes in one hour was originally adopted, as the 'American experience' had indicated that over 10% advertising in one hour was objectionable to the audience.<sup>64</sup> Furthermore, the ITA concluded that spot-advertising would allow the complete separation of advertising and programming (as opposed to, for example, sponsoring, which was only introduced in Britain in 1988). It was a balancing act of not fixing the amount of advertising so low as to jeopardise the commercial financing model, whilst at the same time avoiding alienating audiences from the channel as a result of excessive amounts of advertising.

However, the statutory powers bestowed upon the ITA in its first decade of operation did not cover the daily acceptance and rejection of

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<sup>63</sup> As Scannell (1999) notes, the notion of (public) 'service' was a Victorian middle-class concept surviving and influencing coming generations: "The Victorian reforming ideal of service was animated by a sense of moral purpose and of social duty on behalf of the community, aimed particularly at those most in need of reform – the lower classes" (ibid, p. 129).

<sup>64</sup> 'Advertising magazines', featuring the promotion of a range of products in a 15-minute slot was another form of advertising available at this point in time, but the format was banned in 1963 (Crissel, 2002).

advertisements (although their advertising control staff did monitor broadcast advertisements to a certain degree). Matters of presentation were largely left to the programme companies who were concerned with the day-to-day acceptance of advertising scripts and films. This mainly consisted of checking statistical and scientific claims, and other issues of honesty, misleadingness, and a presentational adherence to taste and decency. If any questions of principle were not agreed upon or made unclear, the matter was referred to the Advertising Advisory Committee<sup>65</sup> (AAC). The AAC was an advisory body to the ITA, also established through the Television Act 1954, with the remit of drawing up an advertising code, discussing matters of advertising control and advising the ITA on recommended regulatory measures. Ironically, and as a result of a legal mishap that was rectified with the Television Act 1964, the ITA were statutorily bound to follow the recommendations of its own advisory body, despite carrying the ultimate responsibility for advertisements reaching the screen.

As several broadcasting historians have noted (cf. Seymore-Ure 1996; Crissel 2002), commercial television's interpretation of public service television – a concept associated with high standards and quality of broadcasting – was contrasted with other broadcasting systems, such as

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<sup>65</sup> The AAC was initially established as a 'consumer protection body' in response to a concern over medical advertising, including members with a professional interest in the standards of medical advertising, the advertising industry, two members from the ITA's Scottish and Ulster Advisory Committees, and one from the Retail Trading-Standards Association. The Television Act 1964 required a slight restructuring of the AAC's membership, to include a proportion of members representative of the general interest of consumers, as opposed to only having consumer representation for medical advertising issues.

that of the United States, where commercialism (mainly in the form of sponsorship) was seen to be compromising programme output to the detriment of American broadcasting culture and the American population. Indeed, this aversion to commercialism can be seen also in early, published material from the ITA:

"Section 4 (6) of the Television Act prohibits not only the open provision or adoption of a programme by an advertiser but even the giving of an impression that any part of a programme which is not an advertisement has been supplied or suggested by an advertiser or has been included in return for payment or other valuable consideration. During the year the freedom of programme content from advertising control was maintained, and there can now be few people familiar with independent television who are in any doubt that sponsorship, in fact or by impression, has no place in this country"

*ITA Annual Report, 1956-57, p. 10*

"The whole finance of independent television depends on advertising revenue, and it will stand or fall by its ability to attract advertisers to the new medium. On the other hand Parliament had been determined that the advertising element should not be allowed to colour the programs themselves, and had endeavoured to devise in the Act a system of watertight compartments. It cannot be stressed too often, in view of the amount of misunderstanding

which has existed on this subject, that the system brought into being by the Television Act makes impossible the "sponsoring" of programs by advertisers as practiced in the U.S.A. and elsewhere, whereby a programme is adopted or provided by one or more individual advertisers, and is usually announced as being broadcast "by courtesy of" the firms concerned. The British system is to be entirely different"

*ITA Annual Report, 1954-55, p. 8*

The above quotes also demonstrate how discourses around public service television are tied up with notions of 'Britishness'. The early regulatory organisations (the ITA and IBA) were very concerned, in response to public criticism and scepticism of commercial broadcasting, with distancing themselves from discourses of commercial profit, aligning themselves instead with the purpose of serving the nation and its citizens in offering greater choice and quality through competition with the BBC. By contrasting British public service with the American broadcasting system, an 'us' and 'them' were created, enforcing a sense of 'cultural superiority' and national identity based on paternalistic ideals of fairness, morality and 'doing good' for the British nation and its citizens. The following quote from a speech by the (then) Director General of the IBA, Brian Young, published in 1973, illustrates this further:

"I once, when in the United States, had a lecture from the owner of a small local television station on various successes which he had

achieved in the last year. In my simple, perhaps rather English, way I asked him at the end of his recital, 'Yes, but are you doing good?'. I got the answer which no doubt I deserved. 'Doing good?' he replied, 'Yes sir. I'm doing very good. I made half a million last year'"

*IBA Notes No. 24, 1973, p. 7*

### *A Public Medium in the Private Sphere*

The first television advertising code, *Principles of Television Advertising*, setting out the rules of conduct and advertising standards in the field of television, was first published in 1955. This Code covers issues of misleadingness and rules minimising the risk of harm. They set the governing framework for advertising standards, with particularly detailed sections regarding advertising around children's programmes, medical advertising, and prohibited classes of advertising and advertising methods. Moreover, advertisers were bound to adhere to a sense of social and moral responsibility beyond that which was explicitly stated in the code:

"The detailed principles set out below are intended to be applied in the spirit as well as the letter and should be taken as laying down the minimum standards to be observed"

*Principles for Television Advertising (ITA), 1955, p. 4*

In the preamble of the *Principles*, the status of television as a *public* medium infiltrating the *private* sphere is provided as the dominant rationale for keeping rules regarding television advertising more restrictive than in other media:

“The general principle which will govern all television advertising is that it should be legal, clean, honest and truthful. It is recognised that this principle is not peculiar to the television medium, but is one that applies to all reputable advertising in other media in this country. Nevertheless, television, because of its greater intimacy within the home, gives rise to problems which do not necessarily occur in other media and it is essential to maintain a consistently high quality of television advertising”

*Principles for Television Advertising (ITA), 1955, p. 4*

Television has, since its existence been accredited with a particular sense of power, stemming from its compelling use of both moving imagery and sound, its ubiquity and wide range of audiences, and its place within the (family) home. Crissel (2002) notes how broadcasting brings the audience to the outside world, whilst it simultaneously brings the outside world into the home. This kind of ‘intrusion’ into the domestic sphere, coupled with the persuasive audio-visual nature of television laid the groundwork for the rationale of strict regulation, particularly for speech with a commercial purpose. Television was seen as ‘imposing’ itself on the audience, coming into their home and claiming their attention.



Furthermore, the regulatory responsibilities were considered greater in the case of television advertising than in other media since advertisements were (presumably) not what that the audience 'chose' to watch, adding to the notion of (commercial) intrusion in the domestic sphere. It is assumed that, due to television's place within the privacy of the home, the audience should be able to expect higher standards in both programming and advertising in the television medium than in other media:

"The television set is in the home. Bought or rented, it is as personal a piece of furniture as any there is in the room, as the carpet, or the sideboard, or the trinket on the mantelpiece. It is expected to behave in that living room the way that other people behave in that living room."

*ITA Notes 14, 1968, p. 6-7*

"A television advertisement appears without warning, in relation to many different kinds of programmes, in all parts of the country, and it may be repeated over a period of weeks or months. Whereas viewers can avoid a programme which might offend them, or switch it off, they do not have the means of escape from an individual advertisement"

*ITA Annual Report, 1970-71, p. 48*

Furthermore, the place of the television in the home, often being viewed by entire families and audiences of varying ages, resulted in rules offering

special protection of child viewers, which continue to guide advertising regulation to this day. The early advertising rules define children as particularly vulnerable and impressionable:

“No product or service may be advertised and no method of advertising may be used, in association with a programme intended for children or which large numbers of children are likely to see, which might result in harm to them physically, mentally or morally, and no method of advertising may be employed which takes advantage of the natural credulity and sense of loyalty of children”

*Principles for Television Advertising (ITA), 1955, p. 5*

As a measure of protection offered for the preservation of the ‘innocence’ of children (and avoiding embarrassment for parents) the 6pm to 9pm slot on television became known as ‘family viewing time’, during which time advertisements as well as programming came to be particularly scrutinised in regards to taste and decency.

### ***Balancing between ‘Prudish’ and ‘Permissive’***

Television was an attractive medium for advertisers due to its audio-visual nature and domestic setting and by 1958 the ITV’s total advertising revenue had surpassed that of the press (Crissel 2002). However, several media theorists have claimed that the public had ambivalent feelings

toward television advertising, some seeing it as healthy competition, and others considering it dangerously persuasive (cf. Seaton 2003a; Crissel 2002). As Crissel notes, “by 1960 [ITV] was winning the ratings war, but losing the battle for the support of the nation’s opinion-formers – the Members of Parliament and the press, those in academia and the arts. In these circles there was anxiety about cultural standards, the erosion of ‘British civilization’, and the lack of a public service ethos on ITV” (Crissel 2002, p. 108).

The powers and responsibilities of the ITA were strengthened through the Television Act 1964, that gave the Authority more direct, day-to-day powers of control over programme and advertising output. The ITA now received copies of scripts and films that had to be approved by the ITA’s advertising control staff before being accepted for broadcast.<sup>66</sup> The AAC still worked with the same remit as before, but the ITA was now empowered to override the AAC’s recommendations if it was considered necessary and appropriate (in practice this rarely happened).

The 1960s saw the emergence of a more ‘permissive’ British society, and television was seen as a major actor in this development (Bocock 1997). This was a time when taste and decency in broadcasting, and society more generally, had become an issue of some public concern (Bocock 1997). It is worth noting that during the 1960s, *Lady Chatterley’s Lover*, by D.H. Lawrence (1928) was tried for its sexual morals under the Obscene

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<sup>66</sup> This was the case for all advertisements apart from very simple ones, such as short announcements for local shops and the like.

Publications Act 1959, although ultimately, it was not banned. Similarly, this decade also saw the abolishment of censorship on the stage, following the Theatres Act 1968. But this was also the decade when Mrs Mary Whitehouse founded the National Viewers and Listeners Association (NVLA),<sup>67</sup> a pressure group founded in 1965 working to maintain taste and decency in media, with a specific concern for portrayals of sex and violence in broadcasting output (Mediawatch-UK 2014).

The advertising rules established in the first decade of commercial television had proved quite effective in the separation of programming and advertising and in establishing rules for the prevention of misleadingness, especially in the field of medical advertising. However, there was a growing public concern for programme and advertising content, especially in terms of taste and decency. The increasingly liberal social and media climate and the growing 'backlash' to this development, was certainly felt by Parliament and the ITA. Indeed, Bocock (1997) argues, that the ITA's newly strengthened powers, being afforded more direct control of advertising and programming, could be read as a reaction to this cultural climate of permissiveness and a growing concern for the 'moral decline' of the nation. The ITA was set with the difficult task of controlling taste and decency whilst simultaneously fostering freedom of expression, balancing regulation somewhere between 'prudishness' and 'permissiveness'.

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<sup>67</sup> Currently campaigning against harmful media content under the name 'Mediawatch-UK'.

### *Taste and Decency in Advertising Regulation*

In conjunction with the Television Act 1964, the *Principles* changed name to the *Independent Television Code of Advertising Standards and Practice* but retained much of its old structure. However, there is a noteworthy change, perhaps in response to the liberal advances in the social climate at the time, with the inclusion of a new clause on 'good taste' in advertising in the revised codes:

"No advertisement should offend against good taste or decency or be offensive to public feeling"

*The Independent Code of Advertising Practice (ITA), 1964, p. 5*

Dickason (2000) writes that "the regulations [around television advertising] were initially drawn up in such a way as to correspond to and to inculcate a certain vision of 'Britishness', both in the apparently indirect way in which the control was to be exercised, by a government-nominated body rather than by a ministry, and by the reference to such socially – and culturally – defined concepts as good taste and decency" (Dickason 2000, p. 7). Commercial broadcasters had to follow the principles and "values of 'public service broadcasting' by ensuring that, while viewers were entertained, standards of taste and decency were both set and maintained" (ibid, p. 14). These principles accounted for both programming and advertising.

In relation to advertising, there were a few controversial issues that brought taste and decency to the fore during the 1960s; for example, the ban on the advertising of 'girlie' magazines<sup>68</sup> (in the early 1970s) and 'sensational sex articles' in the press advertised on television, as well as the beginnings of a long discussion on the (un)acceptability of sanitary protection advertising,<sup>69</sup> and advertising for officially sponsored family planning services.<sup>70</sup> During this time, a few advertisements in particular received attention from the public, through complaints, for being in 'bad taste', such as OMO biological washing powder, which made references to 'understains', leading some people (including Mrs. Mary Whitehouse) to think of stains caused by menstrual blood. Furthermore, there was a growing concern for sexual symbolism in television advertising, exemplified by two chocolate advertisements (Rowntree's and Cadbury's), which received a great deal of attention in the form of letters to the regulator. It is clear from documentary sources from these early days of commercial television that any breach of the cultural standards of taste and decency were considered particularly concerning, as this could feed the critics of commercial television, potentially jeopardising the whole commercial broadcasting system. At the same time, television advertising,

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<sup>68</sup> This type of magazine advertising was never accepted for the television medium. The ban occurred in relation to a request by an advertiser for advertising space and so no such advertising was ever broadcast.

<sup>69</sup> After a number of experimental advertising campaigns, sanitary protection advertising became accepted, but with restrictions in presentation and scheduling, in 1988.

<sup>70</sup> Serious considerations of this type of advertising emerged in the wake of the National Health Service (Family Planning) Act 1967, which gave local authorities the power and duty to distribute family planning advice, such as contraceptive methods for family limitation. Advertising for officially sponsored family planning advisory services became permitted in 1970, albeit with strict rules regarding presentation.

as an audio-visual medium, lent itself well to polysemic readings, which often allowed regulators to meet any complaints with an alternative, and preferred, reading of the advertisement in question.<sup>71</sup>

Taste and decency are particularly pertinent issues in a medium that is seen to penetrate the private sphere. A disregard of good taste and decency in a perceived 'intrusive' medium, placed within in the home and often viewed by several family members simultaneously, was considered leading, not only to offence in terms of anger or affront, but also to shame and embarrassment:

"There is this difference between advertising in the press or magazines and advertising in television: in our medium the commercials are not usually seen by individuals but by small groups of people, and that can lead to its own embarrassments"

*ITA Notes 22, 1971, p.11*

This is an issue that is distinctly applicable to advertising that uses, for example, nudity, sexual imagery or innuendo, but also a topic of concern for advertising of certain products, such as, for example, contraceptives and sanitary protection mentioned above.

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<sup>71</sup> This was the case for the two chocolate advertisements mentioned above, where internal correspondence within the ITA shows that the regulators knowingly 'blamed' the complainants for their sexual associations.

Despite the changing social and cultural climate of the 1960s and the challenge to established boundaries of acceptability, television, as a public and a family medium catering for a wide range of audiences, continued along more conservative lines than much of its sister arts, such as the cinema and other more 'targeted' media. And they did so with a sense of conservative pride in upholding social and cultural values of morality:

"The world of television commercials is still a world of middle-of-the-road conventions. It has scarcely heard of the goings-on in the new permissive society. The girl who sets up house in a television commercial is never without her wedding ring. Have a close look, and see!"

*ITA Notes 22, 1971, p. 12*

### **The Independent Broadcasting Authority (IBA), 1972-1990**

This section accounts for two major developments in television advertising regulation during the IBA-years: the move away from paternalism to forms of greater public accountability, and an emerging neoliberal, de-regulated market in the 1980s, coupled with re-regulatory measures, on the Conservative party's initiative, in the cultural sphere, including television broadcast advertising.



### *From Paternalism to Public Accountability*

In 1972, the ITA was renamed the Independent Broadcasting Authority (IBA), a name reflecting its extended responsibilities in setting up and regulating Independent Local Radio (ILR), established through the Sound Broadcasting Act 1972.<sup>72</sup> Apart from this added responsibility and change in name, there were no drastic changes in the structure of the organisation surrounding advertising control, including its advertising advisory body, the AAC.

McQuail (1992) states that the IBA spans two decades of significant technological and political upheaval, where, in the media sector, we see a move away from the prescriptive, Reithian values of public service television, to a more liberal media environment – a shift in the relationship between state authority and media freedom.

In the 1970s, an era of political unrest, economic crisis and a widespread mistrust in authority and ‘traditional’ values, the IBA came to (re)negotiate its position as a media regulator and the very concept of its public service ethos. There is indeed a notable shift in the 1970s, from Reithian paternalism to a more transparent and accountable system of public interest regulation. In 1977, the Annan Committee’s Report on the future of British broadcasting offered a reinterpretation of the traditional vision of public service television and argued that, “broadcasting should cater for the full range and interests in society, rather than seek to offer

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<sup>72</sup> A consolidation of this Act and the Television Act 1964 received Royal assent in 1973 - the Independent Broadcasting Authority Act 1973 - to give the IBA a single constitutional document.

moral leadership” (Seaton, 2003b, p. 365). As Feintuck and Varney (2006) note, the Annan Report “is generally considered a landmark, tending to favour a more restricted, less interventionist role for public bodies such as the IBA” (ibid 2006, p. 77). The Annan Report promoted ‘liberal pluralism’ in the broadcasting field, which later opened up for developments in cable and satellite broadcasting.

Moreover, the social and political climate during the 1970s and 80s posed some interesting challenges to the regulation of advertising offence. From a growing concern regarding issues of taste and decency in the 1960s, the 1970s and 80s saw an increasing public concern for issues relating to equality and discriminatory advertising practices. The anti-racism movement and the Race Relations Act 1976 problematized racial stereotyping in the media. The second wave feminist movement and the Sex Discriminations Act 1975 brought sexism and sex role stereotyping in advertising to the public agenda, reflected also in a growing number of related complaints to the IBA. A more detailed historical outline of the regulatory response to feminist concerns at this time can be found in Chapter 6.

Despite the changing cultural climate, in many respects the IBA retained an authoritarian regulatory role, similar to that of the ITA, with only minimal structural changes within the organisation in relation to advertising regulation. However, there was a growing emphasis on public accountability, such as, for example, public opinion research and schemes

for the IBA to publicise its role more widely, actively inviting public criticism.

*Emerging Neoliberal Ideology, (Market) De-regulation and (Moral) Re-regulation*

The 1980s saw some major changes in both the political and televisual landscape of Britain. The Conservative Party, led by Margaret Thatcher came to power in 1979, bringing with it a political agenda rooted in neoliberal ideologies of individual choice, deregulation and free market competition. The political climate of deregulation was felt in the field of broadcasting and the 1980s saw, amongst other things, the relaxation of sponsorship rules and the first transmissions by cable and satellite providers, enabling cross-frontier broadcasting for the first time in the United Kingdom.

However, the political drive for economic deregulation and market competition was coupled with a push for moral re-regulation in the cultural sphere. Hall (1997) explains this apparent contradiction between de- and re-regulation in the following way: “freeing cultural life and making it more subject to individual choice, in one respect, may have had consequences in weakening the bonds of social authority and moral consensus in another, and it is this latter erosion which [was] powering the drive towards moral re-regulation” (ibid p. 230). Thompson (1997) similarly states that, with the move to de-regulate markets in the 1980s-90s followed a concern of compromising British national culture. He writes:

"Economic de-regulation in the newly-privatised public utilities in Britain gave rise to so much controversy that new forms of regulation had to be developed, with a proliferation of regulatory bodies to protect the interest of customers" (ibid, p. 1).

In 1988, in response to a concern for the perceived moral degradation of the broadcast media, following efforts to de-regulate the broadcast market, the Broadcasting Standards Council (BSC) was established. Petley (2011) notes that the BSC was created in response to the perceived failing standards of broadcasting output in the area of taste and decency, specifically around issues of violence and sex. He states that, "the Broadcasting Standards Council [was] created by the Thatcher government to ensure that its 'deregulation' of British television did not extend to matters of content" (Petley, 2011, p. 263). Rosenbaum (1994), described the BSC in a similar way in 1994: "The BSC is a Thatcherite creation. The proposal to establish it was included in the 1987 Conservative manifesto at Margaret Thatcher's insistence and was aimed at stemming what she saw as the rising tide of sex and violence on television" (ibid, para. 12).

The remit of the BSC is somewhat confusing, covering complaints handling (although this did not become reality until the BSC was granted statutory recognition in 1990),<sup>73</sup> monitoring, research commitments and drawing up and revising a code on the standards of violence, sex and taste

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<sup>73</sup> Although established by the Home Secretary in 1988, the BSC received statutory recognition with the Broadcasting Act 1990.

and decency in programming and advertising across all broadcasting services (including cable and satellite services). The BSC shares overlapping responsibilities with the IBA in the area of content regulation, a concern strongly voiced by the IBA worrying about regulatory clashes. This fragmentation of regulatory responsibilities in the broadcasting sector was framed by the IBA as a detriment to the public interest, as it might come to undermine the authority of the IBA and create confusion as to who carried the main regulatory responsibility.

### **The Independent Television Commission (ITC), 1991-2003**

During the ITC-years a lot of the provisions that still dominate the field of advertising regulation were implemented, such as attempting to simplify regulation to meet an increasingly diverse market, emerging discourses of the 'citizen-consumer' interest, in place of the 'public interest', and a shift from regulating based on taste and decency ('public offence'), to that of harm and offence.

#### ***Simplifying regulation in a growing broadcasting field***

The Broadcasting Act 1990 established the Independent Television Commission to replace the IBA and the Cable Authority in an effort to streamline regulation in the new multi-channel society; an amalgamation of the regulatory and licensing responsibilities for cable, satellite and commercial terrestrial television. Unlike the IBA, the ITC was not a

broadcaster of programmes; this instead became the domain of the ITC's licensees.<sup>74</sup>

The BSC, which had previously operated on a non-statutory basis, pending legislation, received statutory status with the Broadcasting Act 1990 and became an independent statutory complaints body. However, in 1997, following the Broadcasting Act 1996, the BSC and the Broadcasting Complaints Commission (BCC)<sup>75</sup> merged to form the Broadcasting Standards Commission, combining the remits of the two organisations into one. It should be noted that the BSC was not a 'regulator' in the same sense as the ITC; their statutory role did not include the power to enforce sanctions or require a programme or advertisement to be discontinued. The BSC would instead publish their findings and sometimes require a broadcaster to issue an apology.

The AAC remained the main forum for debates on advertising standards and code reviews, although it was no longer a statutory requirement. In its reincarnated form it now had representatives from both terrestrial and satellite broadcasters, and its remit included the consideration of both advertising and sponsorship issues. The majority of AAC members had no connection with advertising industry interests.

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<sup>74</sup> However, the ITC continued as broadcaster of ITV until the end of its contract in December 1992.

<sup>75</sup> The BCC was a statutory body (1981-1997) handling complaints regarding unjust or unfair treatment, and issues of infringement of privacy by broadcasters.

The ITC did not have a remit to pre-vet advertisements but required the television companies to ensure that material complied with the advertising code. The broadcaster carried the ultimate responsibility for what was broadcast. The Broadcast Advertising Clearance Centre (BACC) was established in 1994; a pre-vetting organisation handling script and film clearance for advertisements broadcast on the main commercial television channels.<sup>76</sup> The ITC did, however, offer guidance on code interpretation and exercised advertising control through imposing scheduling restrictions, monitoring and complaints investigation (which could lead to intervention and sanctions, including the advertisement being taken off air).

### *Accountability and the Emergence of the 'Consumer-Citizen'*

McQuail (1992) argues that statutory control of public media output can only be justified in a liberal state if it operates in the public interest – that is, if it in some way contributes to the social and cultural benefits of society, going “beyond the immediate, particular and individual interests of those who communicate in public communication, whether as senders or receivers” (ibid 1992, p. 3). As a statutory body operating in the public interest and regulating speech in a public medium, the ITC emphasised their commitment to furthering transparency and accountability to the public in their decision-making. This commitment can be seen through the greater effort in publishing, for the first time, summaries of adjudications

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<sup>76</sup> Those broadcasters who did not subscribe to this service were still obliged to have an operation in place for checking compliance with the advertising code.

of 'complaints of substance', expanding research agendas on viewer experience and opinion, and a greater emphasis on publicising the role of the ITC as a complaints body:

"As a body continually making decisions about the UK population's prime leisure activity, it is imperative that the ITC is fully aware of public tastes and expectations. Equally important, the ITC aims to be accessible to viewers who wish to comment or complain and as transparent in its decision-making as possible, subject to commercial confidentiality in relation to its licensees"

*ITC Annual Report, 1993, p. 10*

However, regulating in a more consumerist media environment, where neoliberal values of consumer choice prevailed, the discourse around 'public interest' regulation became less dominant in favour of discourses around regulation in the interest of *viewers* and *consumers*, and in the early 2000s, also as *citizens*:

"The ITC exists to promote and safeguard the interest of all viewers of commercially funded television, while fostering a dynamic and innovative market place"

*ITC Annual Report, 1999, [no page no.]*



“The ITC [...] plays a critical role in setting boundaries designed to allow advertisers the maximum commercial and creative freedom that is consistent with the protection of viewers and consumers”

*ITC Annual Report, 2002, p. 46*

“At the heart of ITC’s vision for the future of the communications industry is a commitment to the protection of both citizens and consumers. Citizens’ rights are a key element of a democratic society, while the protection of consumers’ interests is vital if a competition-driven communications sector is to flourish”

*ITC Annual Report, 2002, p. 44*

What does this ‘fragmentation’ in the conception of the public mean? Brants et al. (1998) argue that “the idea of a ‘public’ as a more or less unified group of citizens that belong to a well-defined nation state which forms the anchor-point of much writing on media and the public interest has never been in concord with social reality and has lost its relevance completely under contemporary western conditions of migration, statelessness and multiculturalism” (ibid 1998, p. 3). In the light of this, it could be argued that the approach to the audience as simultaneously viewer, consumer and citizen was a necessary development at a time when the ‘public’ and ‘public interest’ had lost some of its meaning in the wake of deregulated media markets. This would suggest that the ITC was attempting to differentiate between the interests of viewers, consumers and citizens, to expand upon, or redefine the concept of ‘public interest’

regulation. However, it remains unclear how the ITC conceptualises the public as viewers, consumers and citizens in relation to advertising. The definitions are used interchangeably throughout its years of operation, perhaps mirroring the confusing fragmentation of the 'public' and the ITC's uneasy position as a statutory regulator in an increasingly liberalised media economy.

### *From 'Taste and Decency' to 'Harm and Offence'*

Like previous advertising codes, the ITC's rules and restrictions on advertising offence continued to be vague and open for interpretation. The first ITC advertising code, published in 1991, expanded the section previously entitled 'good taste', (re-named 'Taste and Decency' in this edition of the code), to include guidance notes on how this definition should be interpreted:

"No advertisement may offend against good taste or decency or be offensive to public feeling and no advertisement should prejudice respect for human dignity.

#### *NOTES:*

*On matters of taste, where individual reactions can differ considerably, the Commission expects its licensees to exercise responsible judgements and to take account of the sensitivities of all sections of their audience when deciding on the acceptability or scheduling of advertisements. Particular care should be taken to avoid treatments which, through the unthinking*

*use of stereotyped imagery, could be hurtful to certain sections of the audience e.g. people with disabilities.*

*An advertisement does not necessarily become unacceptable simply because a given number of complaints are received. The Commission will take into account all relevant considerations in making determinations under this rule"*

*The ITC Code of Advertising Standards and Practice, 1991, p. 5*

Although taste and decency were still employed as markers in the moral regulation of advertising content within both the ITC and the BSC throughout the 1990s, the concepts had become contested. The BSC wrote the following in their *Codes of Guidance* in 1998, addressing the problem of the ambiguous nature of 'taste and decency': "A distinction has to be made between attitudes which are subject to rapid changes of fashion, such as style of dress or mode of address, and those which reflect more enduring views of right and wrong. Matters of taste are ephemeral, while matters of decency, such as the dignity to be accorded to the dead and bereaved, reflect ideals that acknowledge our shared values" (BSC, cited in Millwood Hargrave and Livingstone 2009, p. 26).

Furthermore, issues of various forms of discrimination in advertising had become increasingly debated, within and outside the regulatory organisations in the 1980s and 1990s. The European Commission's (EC) broadcasting directive, 'Television Without Frontiers' (1991), offering

directives on programming and advertising standards across Europe, came to have an effect on the British advertising regulatory system at this time. The EC directive presented a relatively detailed understanding of the type of offence that should be accounted for in the advertising codes. Article 12 of the EC directive stated the following:

"Television advertising shall not:

- (a) prejudice respect for human dignity;
- (b) include any discrimination on grounds of race, sex or nationality;
- (c) be offensive to religious or political beliefs;
- (d) encourage behaviour prejudicial to health or safety;
- (e) encourage behaviour prejudicial to the protection of the environment"

*EC Directive 'Television Without Frontiers', 1991, p. 6*

The British regulatory rule on 'Good Taste' had remained unchanged since 1964 but, in 1991, in line with these rules developed to harmonise European advertising standards, a new section was added to the advertising codes, entitled 'Discrimination', stating that:

"Advertisements must comply with all relevant aspects of UK and European Community legislation relating to discrimination including the Race Relations Act 1976 and the Sex Discrimination Acts 1975 and 1986"

*The ITC Code of Advertising Standards and Practice, 1991, p. 5*

Although this rule represents an important step in the recognition of discrimination in advertising, it is also just a formality, stating nothing more than that advertising has to adhere to existing legislation in this area.

However, in 2002, only shortly before a new regulatory reform was to take place, a revised advertising code was introduced, which Millwood Hargrave and Livingstone (2009) argue represented a step away from the 'subjective' regulatory measures of good taste and decency "to a more 'objective' analysis of harm and offence with greater prominence given to issues of the extent of harm and offence to audiences" (ibid, p. 27).<sup>77</sup> 'Harm and Offence' here becomes an umbrella term covering a number of concerns, including, for example, discrimination, stereotyping and violence, as well as issues of taste and decency. The principles for the section on 'Harm and Offence' are described in the following way:

"The rules in this Section [...] are intended to prevent advertising leading to harm. They are also to prevent advertising causing

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<sup>77</sup> Note that Millwood Hargrave and Livingstone (2009) here refer to changes made in television advertising following the Communications Act 2003. However, the 2002 ITC code was adopted by the ASA in 2004 with only minor amendments.

offence to viewers generally or to particular groups in society (for example by causing significant distress, disgust or insult, or by offending against widespread public feeling).

The ITC will not act [...] where advertising is simply criticised for not being in 'good taste' unless the material also offends against generally accepted moral, social or cultural standards. Apart from freedom of speech considerations, there are often large and sometimes contradictory differences in views about what constitutes 'bad taste' or what should be deplored"

*The ITC Advertising Standards Code, 2002, p. 22*

Under the sub-heading 'offence', the 2002 ITC Advertising Code states:

"Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards, or offend against public feeling"

*The ITC Advertising Standards Code, 2002, p. 22*

"(1) Although no list can be exhaustive, and values evolve over time, society has shared standards in areas such as:

- (a) the portrayal of death, injury, violence (particularly sexual violence), cruelty or misfortune
- (b) respect for the interests and dignity of minorities
- (c) respect for spiritual beliefs, rites, sacred images etc

(d) sex and nudity, and the use of offensive language”

*The ITC Advertising Standards Code, 2002, p. 22*

Furthermore, an additional clause on ‘Harmful or Negative Stereotypes’ was added to the code, stating that:

“Advertisements must not prejudice respect for human dignity or humiliate, stigmatise or undermine the standing of identifiable groups of people”

*The ITC Advertising Standards Code, 2002, p. 24*

Although this clause may seem progressive in that it recognises stereotyping as part of discrimination, it is largely a re-wording of the ‘Taste and Decency’ statement in the previous edition of the code<sup>78</sup>.

I argue, that the change from a focus on ‘taste and decency’ to ‘harm and offence’ represents a *re-framing* of taste and decency, rather than, as suggested by Millwood Hargrave and Livingstone (2009), a move away from this kind of ‘subjective’ and moralising regulation. As we can see, the Code still leaves a lot of scope for interpretation by regulators, allowing them to judge each advertisement in the context in which it appears and based on the ‘social, moral and cultural standards’ which they deem to be generally accepted at the time of adjudication. As Petley notes, albeit in

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<sup>78</sup> It should be noted that this clause on ‘Harmful or Negative Stereotyping’ does not specifically mention stereotyping based on gender or sexuality. It does, however, refer to the ITC’s (2001) research report on public attitudes to stereotyping, ‘Boxed In: Offence from negative stereotyping in TV advertising’, which I discuss further in Chapter 7 of this thesis.

relation to programming principles: “the notion of harm, in this context, is no more objective than are the notions of taste and decency” (Petley, 2011, p. 247). This argument also applies, I argue, to the notion of harm and offence in television advertising.

### **The Advertising Standards Authority (ASA), 2004-present**

In this final section I discuss some concerns with contracting out advertising regulation to the industry regulator, the ASA, including, the increased focus on the ‘consumer’, as opposed to the ‘public’ and issues of accessibility and accountability. I will be drawing on, and expanding upon some of the issues I encountered throughout my own methodological journey, as discussed in Chapter 4. This section also returns to examine the concepts of harm and offence in the light of the BCAP code revision in 2009.

#### ***De-regulation and Contracting Out Regulatory Responsibilities***

The Communications Act 2003 established the Office of Communications (Ofcom), which merged several regulatory organisations in the communications sector, including the ITC, into one single regulatory body.<sup>79</sup> As Lunt and Livingstone (2012) state, the Act was a product of the New Labour regime (1997-2010) and reflected neoliberal political ideals of

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<sup>79</sup> The previous separate bodies coming together under Ofcom were The Independent Television Commission, The Radio Authority, the Broadcasting Standards Council and Office of telecommunications.



deregulation and a drive for regulatory consistency in an increasingly digitalised and converging media communications sector.

Ofcom has a principal duty “to further the interests of citizens in communications matters” (Communications Act 2003, p. 3) and that of consumers in promoting market competition.<sup>80</sup> Central to Ofcom’s remit is the Better Regulation Task Force’s (BRTF) principles of good regulation,<sup>81</sup> including encouraging regulation that is proportionate, accountable, consistent, transparent and targeted (Bartle and Vass, 2007, p. 898). These principles “are connected to a public interest perspective on regulation and the regulatory state” (ibid, p. 898). Harvey (2006), however, describes Ofcom as “the product of an uneasy mix of earlier traditions along with newer commitments to neoliberal and deregulatory principles and values” (ibid, p. 94).

In the spirit of neoliberalism, the Communications Act actively encouraged Ofcom to diminish ‘unnecessary’ regulatory burdens, to promote self-regulation and to contract out some of its regulatory duties.<sup>82</sup> Consequently, Ofcom contracted out the regulation of broadcast

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<sup>80</sup> I covered briefly the conception of the audience as citizens and consumer in the previous section and much has been written about the structure of Ofcom and the concept of the citizen-consumer elsewhere (cf. Lunt and Livingstone, 2012; Livingstone and Lunt 2007; Lunt, Livingstone and Miller, 2007a, 2007b; Harvey, 2006; Feintuck and Varney, 2006). However, here I am merely using the structural organization of Ofcom to contextualize the move to self-/co-regulation in the advertising field and will not be analysing Ofcom’s remit in greater detail.

<sup>81</sup> The BRTF was established by the New Labour government in 1997 to give advice on alternatives to state-regulation.

<sup>82</sup> Self-regulation is encouraged across Europe through the European Advertising Standards Association (EASA), of which the ASA is a member.

advertising to the self-regulatory organisation the Advertising Standards Authority (ASA) in 2004, under the De-regulation and Contracting Out Act 1994.<sup>83</sup> The ASA, established in 1962, already had a long, successful history of advertising self-regulation in non-broadcast media and an extension of its remit to include broadcast advertising was therefore considered appropriate. However, in line with the statutory commitment to 'public interest'-focused regulation Ofcom retained its statutory 'backstop powers', such as a veto on code changes, the right to insist on code changes, the right to ban ads for certain products, the right to insist that the ASA take account of certain public policy or government directives, and providing sanctions in cases where compliance is not met by the broadcaster (such as a formal reprimand, a fine, a warning of licence revoked, or termination of licence). Moreover, Ofcom retained responsibility in some areas relating to advertising, such as rules governing political advertising, sponsorship rules, and restrictions on the amount and distribution of advertising (all considered areas where 'public service'-principles might otherwise be seriously compromised). These legal 'backstop' powers are constructed as a safeguard of the public interest, in that it gives Ofcom the right to interfere with, and ultimately cease the ASA's regulation of advertising if the system was to fail to serve the public interest. However, on a day-to-day basis, Ofcom and the ASA operate in different terrains and regulatory interference by Ofcom in the ASA's regulatory work is discouraged unless strictly necessary (in line

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<sup>83</sup> The ASA was sub-contracted after an extended stakeholder consultation.

with Ofcom's commitment to light-touch regulation and bias against intervention).

Ofcom contracted out the regulation of broadcast advertising regulation on the premise that the ASA would provide a cost-effective and simplified approach to regulation, funded at 'arms length' by a levy on advertising space and airtime costs, collected by the Broadcast Advertising Standards Board of Finance (Basbof).<sup>84</sup> As a tried and tested regulator, the ASA were seen as the key to effective advertising regulation at a time of increasing media convergence, and consistency in regulatory measures came to be considered a benefit for both consumers and the advertising industry. The ASA Council, the jurors on advertising complaints, adjudicate on advertisements thought to have breached the advertising code, through complaints received or through their own monitoring practices. The Council currently consists of 13 members (reduced from 15 in 2011), and two thirds of these members are independent from advertising interests. Broadcast and non-broadcast adverts are judged separately due to the slightly different codes and regulatory remits.

The Broadcast Committee of Advertising Practice (BCAP) was established alongside the broadcast branch of the ASA. BCAP is a semi-separate body, also involved in the co-regulatory relationship with ASA, Ofcom, and

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<sup>84</sup> The non-broadcast section of the ASA is funded separately by the Advertising Standards Board of Finance (Asbof).

Basbof.<sup>85</sup> BCAP work alongside the ASA with the responsibility of setting, reviewing and revising the broadcast advertising code and give advice and training for the industry on code interpretation. BCAP's members are representatives of advertisers, agencies and media owners. However, BCAP is also required to take account of consumer interests when revising and making changes to the code. The AAC was therefore retained as an independent consumer panel, to represent the consumer and citizen voice in setting and reviewing the broadcast advertising Code.

The AAC was (re)constituted under BCAP as a 'safeguard' for consumer interests, an independent advisory committee ensuring that BCAP listens to the interests of consumers and citizens. When contracting out the responsibility for broadcast advertising to a non-statutory body, Ofcom re-established the AAC in response to concerns over public accountability in having the advertising code adopted by the very industry whose activities it was trying to regulate. Both BCAP and the ASA are accountable to Ofcom for the effectiveness of broadcast advertising regulation and report to them quarterly "on compliance, policy initiatives and proposed code changes and rule reviews" (ASA 2004, p. 40).

The ASA and BCAP, like the ITC, do not pre-vet advertisements, but broadcasters are required by Ofcom to ensure that the advertisements they broadcast comply with the BCAP advertising code. The BACC continued

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<sup>85</sup> A 'Memorandum of Understanding' was created between Ofcom, ASA (Broadcast), BCAP and Basbof in 2004, clarifying the responsibilities for each organisation in relation to the new system of broadcast advertising control.

to pre-vet advertisements on behalf of most British broadcasters before Clearcast, established in 2008 and jointly owned by eight of the largest commercial broadcasters in Britain, took over responsibilities (Clearcast 2014).

There were some concerns raised in Ofcom's consultation process preceding the contracting out of broadcast advertising regulation to a self-regulatory body, yet little criticism has ensued in the wake of this decision. An explanation for this might be found in the aforementioned legal 'backstop' powers that remained with Ofcom. Moreover, Ramsey (2006) argues: "Given the current structure and role of the ASA, it would be misleading to describe it as 'industry self-regulation'. The existence of judicial review, oversight mechanisms such as an independent reviewer of its adjudications, and an independent consumer panel to provide advice on the development of the advertising codes suggest that it is more similar to 'mandated self-regulation'" (ibid, p. 21), meaning self-regulation with a framework specified by government (Bartle and Vass 2007). Ramsey further argues that this kind of de-regulation has not meant *less* regulation but more a "'retreat' of the state" (Ramsey, 2006, p. 11). Indeed, advertising has not been de-regulated, as such, but the responsibility has been 'de-centred' and delegated to a self-regulatory body, with the understanding that they will be better able to regulate based on their industry expertise (ibid).

### *In Who's Interest? Public and Commercial Interests in Self-regulation*

The ASA was sub-contracted upon the premise of meeting certain standards of citizen-consumer interest, including public accountability, transparency and efficiency. Ofcom explain their stance on co-regulation with the ASA in the following way, emphasising the consumer-citizen benefits:

“We believe that the result of this process is a robust, effective and modern system of co-regulation which will result in

- clear benefits for consumers and citizens in terms of accessibility and clarity of purpose
- a system that will offer consumers and citizens no less protection or accessibility than the current statutory regulatory system
- a self-regulatory approach to the regulation of broadcast advertising, but one that will sit comfortably within the statutory framework that defines television and radio broadcasting in its move to the digital age
- the most effective means of handling issues of convergence between media which is so much a feature of today's advertising landscape”

*‘Ofcom’s decision on the future regulation of broadcast advertising’, 2004, p. 6*

As previously discussed, the conceptualisation of the public as simultaneously ‘citizens’ and ‘consumers’ originated in New Labour

political discourse in the late 1990s and was brought into the development and re-structuring of the communications sector in the early 2000s. The distinction between the 'consumer' and 'citizen', I would argue, reflects the uneasy relationship between a neoliberal conception of the audience as consumers, exercising consumer choice, and a more traditional, idealistic view of British broadcasting as serving its citizens, fostering civic engagement through public service television. I will not be lingering on the distinction between the 'consumer' and 'citizen', however, partly, because the audience as 'citizen' is a concept that disappears somewhat in the transfer from Ofcom to the ASA, and partly because, as Lunt and Livingstone point out: "[a]rguably, the public interest includes both the citizen and the consumer interest" (Lunt and Livingstone, 2012, p. viii).

Indeed, the ASA themselves, deliberately or not, do not employ discourses of citizenship in the regulation of advertising, instead discourses centre mainly on the audience as consumers.<sup>86</sup> From being considered a threat to civic engagement in the 1950s and 60s, commercialism and discourses of consumer, rather than public interest have taken centre stage in the field of broadcast advertising regulation, as it has become the responsibility of a body representing the advertising industry itself. However, it is not clear in what capacity the audience are consumers; are they consumers of the advertisements themselves, or are they (potential) consumers of the products advertised? In much of the regulatory discourse within the ASA,

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<sup>86</sup> There is one area where discourses of citizenship are still relevant and that is within the AAC, whose remit includes acting as the voice for both consumers and citizens.

the concept of 'consumer interest' (and 'consumer protection') is not much more nuanced than the contested concept of 'public interest'.

The ASA are in a particularly difficult position as mediators between advertising and consumer interests, potentially more so than previous regulators on account of their position as a self-regulatory body. However, potential conflicts between the interests of consumers and advertisers are absent from the regulatory discourse. Indeed, the interests of the two are instead conflated and constructed as interchangeable. For example, the regulation of offence, taste and decency are issues that can lead to customer alienation and a public mistrust of the advertising profession as a whole, leading to loss of revenue and defamation of the brand. It would therefore be in both advertisers' and consumers' interest to avoid causing offence to the audience. This perspective is not necessarily a new one. Indeed, already in the early 1970s it was argued that offence was 'self-regulated' to a certain degree, since the advertiser's interest was to not alienate their consumers through causing offence. However, this view neglects the profitable advertising revenues stemming from using shock-tactics and adverse adjudications as publicity tools (Amy-Chinn 2007).

Nevertheless, there are measures in place designed to ensure the ASA's independence from the advertising industry. I have already mentioned the various 'backstop' powers that remain with Ofcom in the contracting out process and the (re-)establishment of the AAC as a 'consumer voice' in setting and reviewing the advertising code (although, it is worth noting



that they do not have any regulatory ‘power’ as such, but exist only in an advisory capacity). Additionally to these ‘consumer interest’ measures, the ASA also offer an ‘Independent Review’ service, where requests for reviews of adjudications can be made and considered by an independent reviewer. The Independent Reviewer cannot change adjudications or override decisions made by the ASA Council, but if a specific adjudication is considered unreasonable or if new information has come to light that might change the original decision, the Independent Reviewer is able to make the adjudicators reconsider their findings. Furthermore, it should be noted that the Independent Review process could be used both by complainants, as well as advertisers.

Although the ASA persistently emphasise their independence from the advertising industry and the impartiality and objectivity with which they adjudicate, it should be noted that discourses of advertising interest are prominent, and the advertising industry is (inevitably) very visible as a stakeholder in regulatory discourse. This is not to say, however, that they have a greater influence on the regulatory apparatus. Indeed, the ASA do show ‘teeth’ in adjudicating against the very industry it represents, living up to its remit of efficiency and accountability, producing performance figures in areas such as transparency, accessibility and responsiveness.

### *Harm, Offence and Social Responsibility*

In the ASA take-over, BCAP originally adopted the existing ITC Codes (revised and reviewed only two years previously), with some minor

amendments to reflect the changes in the regulatory structure. The BCAP Code was revised in 2010 when, after a two-year review and a full public consultation, the Codes governing radio and television advertising amalgamated into one.<sup>87</sup> Like the ITC before them, BCAP and the ASA are required, when drafting and revising the code, to take into account the European Communities Directive on broadcast advertising.

The main principle guiding rules on harm and offence in the revised code reads:

“Advertisements must not be harmful or offensive. Advertisements must take account of generally accepted standards to minimise the risk of causing harm or serious or widespread offence. The context in which an advertisement is likely to be broadcast must be taken into account to avoid unsuitable scheduling”

*The UK Code of Broadcast Advertising (BCAP), 2010, p. 28*

There are some minor changes to the rules regarding ‘Harm and Offence’ in the revised advertising code, most notably the omission of the clause on harmful stereotyping. However, generally speaking, these rules continue to be open for interpretation:

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<sup>87</sup> BCAP’s work earned them a Best Practice Gold Award from the EASA.

"Advertisements must not condone or encourage harmful discriminatory behaviour or treatment. Advertisements must not prejudice respect for human dignity"

"Advertisements must not distress the audience without justifiable reason. Advertisements must not exploit the audience's fears or superstitions"

*The UK Code of Broadcast Advertising (BCAP), 2010, p. 29*

As with the previous advertising codes, the rationale governing the control of 'soft' issues in advertising, such as offence, (moral) harm, and taste and decency, continues to be deliberately vague, for the purpose of being malleable to a society in flux. More than anything else, the rules governing harm and offence awaken questions around interpretation. What are 'generally accepted standards'? How do the regulators gauge the extent of 'serious or widespread offence'?

As I have demonstrated in this chapter, regulators, since the beginning of commercial television, have sought to enforce rules that would require advertisers to uphold certain exemplary standards of moral and social conduct in relation to 'taste and decency'. Justifications in censoring this particular type of speech have centred on the public nature of the television medium and its central position in the private/domestic sphere. Moreover, by its nature as commercial speech, distastefulness in advertising has been afforded less protection, in terms of its right to

freedom of expression, creative expression and social purpose, since its dominant narrative has always been considered to sell products. However, as has been discussed, the regulatory structure changed significantly in response to technological developments, a growing broadcasting sector, and neoliberal market practices. I would therefore emphasise the oddity in how *little* the advertising codes around harm and offence have changed, despite the structural, social and cultural changes that have happened over the past fifty years.

Harm and offence are contentious areas of speech regulation, seen to be particularly subjective in how they are 'felt' and interpreted by individuals, resulting in rules that have allowed regulators to consider all contextual aspects of contentious adverts. The rules themselves are designed not to offend anyone by not leaving anyone out, whilst at the same time not explicitly including any specific details on what might constitute harm and offence in television advertising. Indeed, Amy-Chinn (2007), following an extensive discussion on the ASA's failure to adjudicate against sexism in (non-broadcast) advertising, argues that 'offence' should not even be subject for regulation since offence can never be 'un-done'. However, Amy-Chinn makes a distinction between affect (harm) and affront (offence), where the former, in its (potential) capacity to 'act' negatively upon the audience in some way continues to be legitimately regulated against. This too, is a problematic distinction, as discussed further in Chapter 2.

Harm does, indeed, have a slightly different status than offence in regulatory discourse, despite being joined with offence under the umbrella term 'Harm and Offence' in the current advertising codes. This is particularly pertinent in relation to the protection of child audiences. Discourses around harm centre mainly on the protection of children from physical, mental or moral harm:

"Advertisements must contain nothing that could cause physical, mental, moral or social harm to persons under the age of 18"

*The UK Code of Broadcast Advertising (BCAP), 2010, p. 28*

Whereas adults are considered to be fairly media literate and rational consumers/audiences, the regulatory discourse constructs them as 'offended' by commercial speech. Children, on the other hand, are not considered as rational beings or 'consumers' (Harvey 2006) and are therefore left out of the consumer interest discourse that inflicts so much of the self-regulatory system. Millwood Hargrave and Livingstone (2009) write: "Since adults are generally considered advertising literate, research on adults is more concerned with offence than harm, while for children the reverse is the case" (ibid, p. 214). Indeed, a concern for harm to children and young adults informs much of the current policy-driven regulatory concerns in areas such as gambling, alcohol, sexualisation of children and HFSS (High in Fat, Salt or Sugar) foods.

### *Accessibility and Accountability: Some Concerns with Self-Regulation*

Finally, I would like to make a comment on the issue of accountability in contemporary advertising regulation based on my own issues with data access. In the move to contract out the regulation of broadcast advertising to the self-regulatory body, the ASA, a great emphasis was made on the new regulatory body being accountable, in terms of efficiency in regulating across convergent media and in handling complaints, as well as accessibility for the public (to be able to complain), and transparency, in making their decisions, the decision-making process, policy and research clear to the public. Additionally, the ASA have themselves an outspoken commitment to transparency and accountability. Nevertheless, the ASA are a self-regulatory body, made up from advertising industry interests, regulating speech in a public medium on a statutory basis – some complications will inevitably arise. During my data collection process, one such legal complexity became particularly apparent.

As discussed in Chapter 4, all public authorities in the United Kingdom, including Ofcom, are accountable to the public through the Freedom of Information (FOI) Act, which requires public authorities to “publish certain information about their activities” (ICO, 2014) and enables members of the public to request information. However, in contracting out its duties to the ASA, a body not covered by the FOI Act, a situation arises where a non-public body is regulating (commercial) speech in a public medium, in the interest of the public, but which is not legally bound to be accountable to that public. The ASA show a commitment to public

accountability, since it is heavily dependent on public trust in the self-regulatory system, in order to continue its work as a regulator. Nevertheless, they are able to refuse access to information, such as meeting minutes, archived materials, etc., that might otherwise have been requested under the FOI principles had Ofcom been the regulator in charge.<sup>88</sup> This proposes a serious flaw in the framework for contracting out a public authority's duty to regulate speech in the interest of the public.

## Conclusions

In this chapter I have outlined the complex history of television advertising regulation, contextualising it with primary as well as secondary sources. I have sought to combine the two to create a concise account of television advertising regulation's organisational history in relation to the 'public interest' and the regulation of 'soft' issues, such as taste and decency, or harm and offence.

Furthermore, I have traced a major historical and organisational shift in public interest regulation and public accountability, from a version of Reithian paternalism building on public service values of television as a medium for information, education and entertainment, to neoliberal concerns for consumer choice, where *consumer*, rather than *public* interest becomes the focus in a converging and deregulated media landscape. Yet,

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<sup>88</sup> It should be noted further that I was informed by Ofcom that it is not possible to make a FOI request via Ofcom on material held by the ASA.

as I have noted here, little has changed in the advertising codes around harm and offence, despite the structural, social and cultural changes in past fifty years.

I have also argued that the shift in 'public interest' regulation to a focus on the viewer as 'consumer', following the move to a neoliberal regulation system of contracting out statutory duties to organisations practicing self-governance by industry, has some serious consequences for the legal framework of public accountability. Despite its commitment to accountable regulation, the ASA are not covered by the FOI Act, which is inevitably a concern since it is a non-public body regulating (commercial) speech in a public medium, in the interest of the public/consumer. The following chapters turn to explore the regulation of gender and sexuality portrayals with a specific focus on sexism in advertising.



## CHAPTER 6

# **A Historical Outlook on Offensive Advertising Speech and the Emergence of Complaints Culture**

- The Case of Sex and Gender Portrayals -

Before entering into the next two chapters, which are based on the analysis of complaint adjudications from 1991 to 2012, concerned specifically with issues of gender and sexuality, I will briefly outline the history of regulating against sexist offence in this particular area. This chapter draws on archival material from 1960 to 1990 to contextualise the following two chapters by exploring the patterns in an emerging complaints culture around issues of offence and a growing concern for offensive or harmful gender and sexuality portrayals in the 1960s, 70s and 80s. I argue, in this short 'preamble chapter', that, from a historical perspective, regulators have failed to consider complaints about sexism and offensive gender-portrayals as 'offence'<sup>89</sup> (based on the notion of cultural norms, or a cultural consensus on what constitutes (un)acceptable speech in a public medium), and instead understood these issues as arising from a subjective, or personal annoyance on behalf of the audience. This, I argue reflects C. Wright Mills' (2000) distinction between 'public issues' and 'personal problems', as regulators have continuously failed (or perhaps refused) to see the role of advertising in (re)producing structural inequality.

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<sup>89</sup> 'Offence' here, includes issues of 'taste and decency', defined in early advertising codes as a form of 'public offence'.

The chapter outlines some key themes in the construction of offence and the dismissal of sexism as belonging to this category. It begins by considering the definition of 'offence' before moving on to explore discourses around sexism and sexualisation in the 1960s, 70s and 80s. The chapter finishes with an illustration of changes in complaint statistics from 1976 to 2012, demonstrating a rise in complaints about 'offence' over time.

### **Defining 'offence'**

The previous chapter attempted to provide a definition of harm and offence in regulatory discourse. This section revisits some of these ideas, with a focus on the development of offence in relation to gender and sexuality portrayals, since this has posed its own challenges to the regulatory system.

As discussed in Chapter 5, offensive advertising speech has been subject for regulation since the establishment of commercial television in 1954. It is a deliberately vague concept in order to give regulators the ability to (re)negotiate offence in the light of social and cultural change. Furthermore, public offence, that is, offence based on a shared set of communal (cultural) values, is differentiated from personal offence, which is not subject to regulation. Since 1964 the television advertising rules have included a definition that deliberately conceives of offence as having an implied communal or cultural consensus:

"No advertisement should offend against good taste or decency or be offensive to public feeling"

*The Independent Television Code of Advertising Standards and Practice (ITA), 1964, p.5*

The successive regulatory body, the ITC, defined offence in much the same way as the previous regulators:

"Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards, or offend against public feeling"

*The ITC Advertising Standards Code (ITC), 2002, p. 22*

And, similarly, the ASA and BCAP refer to 'serious or widespread offence' in an attempt to differentiate subjective feelings of offence from offence that is constituted, either as very serious for a minority of people, or as a widespread feeling amongst the population:

"Advertisements must not be harmful or offensive. Advertisements must take account of generally accepted standards to minimise the risk of causing harm or serious or widespread offence"

*The UK Code of Broadcast Advertising (BCAP), 2010, p. 28*

As Davies and Johnson (1995) argue, it is important to note that the regulator's duty "is not to decide whether its own members find an advertisement complained against distasteful or offensive but to assess how the majority of readers of that advertisement will regard it or whether a minority of readers will have taken grave offence" (ibid, p. 18). To ban or restrict an advertisement based on offence needs to be done on the premise of protecting the public interest<sup>90</sup> Offence therefore continues to be an ambiguous category, continuously (and necessarily) redefined in regulatory discourse as cultural notions of acceptability change over time (this is discussed further in Chapter 5).

### **Mapping complaints concerning sex and gender**

Complaints surrounding issues of sex and nudity can differ quite significantly. Complaints may feature around 'explicit'<sup>91</sup> or sexual imagery as well as sexually 'suggestive' imagery, sexual references (for example, allusions to sexual acts or body parts in conversation), or sexual innuendo. These complaints are often framed as issues of morality and/or a concern

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<sup>90</sup> Such has been the case for, for example, contraceptives and sanitary protection advertising in the past. Both product categories were considered offensive to public feeling if advertised on television – contraceptives as a disturbance to public morals around sexuality, and sanitary protection products as intrusive and embarrassing for a 'significant minority' of viewers (particularly women watching with men and children). This was confirmed by several research reports conducted or commissioned by regulators in the 1960s, 70s and 80s. After several experimental periods, contraceptive advertising (branded condom advertising) was finally allowed on television in the wake of the AIDS epidemic and concerns for public health in 1987. Sanitary product advertising followed suit and was allowed advertising space in 1988. Both remained strictly controlled in terms of visual presentation.

<sup>91</sup> 'Explicit' imagery is related to nudity or levels of undress, combined with sexual positioning and/or context.

to protect children from seeing sexualised material – the advertising speech in question becoming the locus in a debate on cultural and moral boundaries of acceptability.

There are also other, more specific issues of maintaining moral boundaries that are brought to the regulators' attention. These issues often centre on maintaining moral decorum in the face of sexual 'deviance', as defined by the complainants. This includes, for example, (implied) sadomasochism, homosexuality, promiscuity, casual sexual encounters and allusions to teenage sexual behaviour. These complaints often draw on discourses of the moral degradation of society as whole.

However, concerns regarding moral corruption are not the only type of complaints that feature in the area of sex and nudity. The issue of the sexual exploitation of women's bodies, as well as concerns for offensive or harmful gender stereotyping have been regular features of advertising complaints since at least the 1970s. Complainants in this area are often concerned with the discriminatory effects of such advertising speech.

Although the degradation of moral boundaries and the exploitation of women's bodies highlight very different concerns when it comes to sexualised advertising speech, the two complaint categories are not mutually exclusive – indeed, complainants often voice these concerns in relation to the same speech or imagery (locating the source of the problem

in the sexual representation, for example), and they both seek regulatory intervention to address the issue, whether on moral or sexist grounds.

### **1960s to 1990s: Some Challenges to the Category of 'Offence'**

During the first ten to fifteen years of commercial television, public complaints were not a major feature in the regulation apparatus. Complaints were not actively encouraged and not systematically evaluated and acted upon.<sup>92</sup> Furthermore, commercials likely instigated little public reaction in terms of offence, given, as media historian Renée Dickason (2000) has noted, the use of simplistic sales pitches and visual manifestations that defined television advertising at this time. Dickason explains that a typical television advertisement during this time would "use photographs to illustrate the spoken word" (ibid, p. 40) and that "the narrative structure was very much in its infancy" (ibid, p. 40). When complaints regarding offence are referred to by regulators during this time, it is brief, inexplicit, and often to point out how *few* complaints are received – a way of confirming the regulator's work as satisfactory and in keeping with 'public taste'.

The concern for offensive advertising content was largely a non-issue in regulatory discourse until the mid-1960s and 1970s, when the use of nudity and sexual symbolism in advertising stirred some controversy, and cultural boundaries of acceptability were in flux across British society (see

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<sup>92</sup> However, all complaints received a personal response.

discussion in previous chapter). Commercials changed from providing explicit messages about products and services, to more complex and creative approaches, including the use of polysemy and double-meaning, inviting the audience to actively engage with and interpret commercial messages. Dickason writes:

"It was increasingly realised that the message, at a time when direct product claims were becoming less significant, could be conveyed in indirect ways such as visual and sound techniques, that humour could play a role and that the polysemic effects of symbolism were not a hindrance to communication, but a way of heightening the impact or leaving ambiguity for the viewer himself [sic] to interpret when the commercial was retransmitted" (Dickason 2000, p. 55).

The use of double-meaning, especially in relation to sexual symbolism or innuendo, posed a new challenge for advertising regulators in terms of offence, as they were put in the position of judging the acceptability of sexual subtext.

A development of advertising techniques, geared towards a more 'sophisticated' audience, in conjunction with cultural changes in sexual politics and challenges to cultural boundaries of acceptability in the 1960s and 70s, opened the doors for a more sexually liberal (visual) culture. As Weeks argues: "By the 1960s there was undoubtedly an increasing eroticisation of social life, from the increasing sexual explicitness of

advertising [...] to the squalor and exploitativeness of pornography in major cities" (Weeks 1989, p. 324). These social and cultural changes in sexual politics posed some serious challenges to the boundaries of 'offence' in advertising speech. The following extract highlights some of the tensions felt in the regulatory field at this time. It is taken from a published speech by the ITA chairman Lord Aylestone (Chairman of the ITA between 1967 and 1975), entitled 'Television and Public Taste', held at the annual National Council Meeting of the National Union of Townswomen's Guild, at the Royal Albert Hall in May 1971. Published in the midst of this cultural shift in British sexual morals, relations and representations, it speaks a language of social anxieties around the increasingly unstable boundaries of public and private, the commercial exploitation of nudity, and the role of television regulation as a guardian of morality and sensibility. However, even as it is condemning the exploitation of nudity (and its mostly inevitable signifier: sex), it revels in, what today would be considered a rather sexist nostalgia of 'pin-up' girls and women as scantily clad, decorative objects:

"[O]ur feeling is that we should not accept nudity in advertising, however discreetly it may be the advertiser's intention to present it, if nudity has no relevance to the advertised product or service. We are not necessarily averse to a bikini-clad 'pin-up' girl. She has become a convention. We see a degree of undress as natural and wholly acceptable to our audiences in the advertising of toiletries, underwear and other things. These lovely girls in their baths have



been in and out of the commercials since the beginning of Independent Television and we are in no mind to stop them. But they have been selling soap – not typewriters! The dragging-in of nakedness for its own sake has not been, and will not become, a feature of advertising in television. So, as a general rule, in this area we rest on the proposition that, by reason of their unannounced, random and repetitive appearances – and by reason of the very power that makes them valuable to the advertiser – the commercials should be produced with due regard to the sensitivities of the vast majority of ordinary families in our audience – should be U-certificate, if you like”

*ITA Notes No. 22, 1971, p. 12*

This extract further highlights the very premise upon which offence has come to be regulated, pointing to the ‘power’ of advertisements – a persuasive power to sell products and services, but also to sell values and ideology. It is by this logic – the degradation of morals/society/television – that ‘nakedness for its own sake’ is here publicly denounced as an acceptable advertising technique. However, there are some serious contradictions within this statement. A ‘pin-up’ girl, for example, is surely by definition an object to be looked at *for its own sake*, rather than a necessary element in some product demonstration. It is a word that literally means a picture to be ‘pinned up’, to be looked at – a fetishized image of a woman’s body for the gratification of (male) viewers. During this time of sexual revolution and a burgeoning second wave feminist

sexual politics an unidentified sexism can be seen to legitimise, rather than problematize sexual portrayals. The 'pin-up' girl here has some kind of cultural/popular appeal, some kind of aesthetic capital – she is the entertainment. Instead, nudity is framed as offensive only in situations where it is incongruous with the product being sold and when crossing boundaries of what is vaguely constituted as 'family entertainment'.<sup>93</sup>

Indeed, the 'permissive' culture of the 1960s and 70s complicated the regulatory approaches to 'offensive' advertising material, and the advertising regulators of the time awkwardly tried to position themselves as mediators between conservative and liberal views in this matter; they positioned themselves in opposition to what they did *not* want to be, including pandering to the stifled views of moralists, or, for that matter, leading a revolution of permissiveness:

"There is a small group of extreme liberals, sincere and serious minded people, who really do believe that society will be a healthier place when all the barriers are down: when there are no more inhibitions or social conventions about sex or morality or language: who see every restraint as a real blot on the body politic. I don't agree with them: I don't accept their views. But I respect them.

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<sup>93</sup> More recently, the current regulators, the ASA have recognised the gendered offence that nudity can provoke. Nevertheless, the ambiguous condemnation/acceptance of nudity in advertising that can be seen in the 1970s continue to feature in contemporary regulatory discourse, particularly prominent in adjudications relating to offence in this area (see Chapter 7 for a more detailed discussion on this).

And over against them is another group who really, sincerely and honestly, abhor the way our society is going and believe that broadcasting is reinforcing and speeding up the downhill rush. Again, I cannot agree with them. They seem almost to be saying that to alter the image of a society would be altering the society itself. But they too have a point of view"

*ITA Notes No. 14, 1968, p. 11-12*

However, social changes in sexual politics and a more liberal attitude to sex and nudity in the media were complicated by the growing feminist movement, which called out the advertising industry's use of gender stereotypes and sexual objectification in advertisements. Second wave feminism sought to liberalise sexual politics, whilst simultaneously criticising the use of women as sexual objects and as confined to domestic stereotypes in the media and in advertising in particular (van Zoonen 1994). Yet, the advertising regulators' response to this criticism was to attempt to re-emphasise their role as moral guardians in relation to the use of sexual imagery, whilst the concept of sexism remained undefined in regulatory discourse; sexuality continued to feature as a subject for regulation, but sexism was notably absent from this conversation. The following quote is taken from a paper on the role of women in advertising, published in 1979 and created in response to growing public concerns with sexist portrayals in advertising:

“The Authority [IBA] believes, with the Advertising Standards Authority, that representations of attractive women in advertisements, is not offensive neither is it tantamount to offering a promise of sexual gratification. The Authority is not prepared to accept irrelevant nudity in television commercials but accepts that in advertising of certain products such as soaps or bath oils, a degree of discreet nudity, sensitively portrayed, is acceptable to the vast majority of viewers. However, the Authority will continue to reject treatments which have insufficient regard to a degree of modesty expected in advertising coming within the family home on those who portray women in a salacious manner”

*‘The Role of Women in Advertising’ (IBA), 1979*

However, whilst the UK Women’s Liberation Movement progressed quite unnoticed by the advertising regulators in the 1960s and early 70s, the Sex Discrimination Act of 1975 caused a stir in the regulatory apparatus, which was now forced to turn its focus onto issues of gender stereotyping as a possible source of discrimination in advertisements. The Equal Opportunities Commission (EOC) was set up in conjunction with the Act and, in spite of not having any real powers to intervene, they lobbied against gender stereotyping in the advertising world. However, the Act itself had very little impact on the regulatory structure since it was concerned mainly with job advertisements and did not address offensive

images of women in advertising more generally.<sup>94</sup> Nevertheless, archival materials indicate that this was a time when the regulators became acutely aware of the potential offence caused by gender stereotyping, including both domestic and sexualised stereotypes, although they seem, perhaps, overall more concerned with a rise in complaints of this kind rather than the actual subject for complaint. In an internal memo dated 1975, the then regulator, IBA, said this about the Act and its (lack of) effect on advertising regulation:

"To sum up, recruitment and training advertisements must be non-sexually orientated. This will perhaps pose difficulties for the radio companies but few, if any, for television. A letter to both pointing out the need for care might be considered necessary. A vigilant eye at script stage may help to recognise and then negotiate out some of the worse examples of women apparently being typecast and sexually exploited (thus reducing the likelihood of abusive letters from lib groups); but the I.P.A. [Institute of Practitioners in

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<sup>94</sup> Liberty's guide to human rights explain what is and is not covered by the Sex Discrimination Act 1975 in relation to advertising: "It is unlawful under the Sex Discrimination Act 1975 ('SDA') to publish an advertisement which states or implies an intention to discriminate on grounds of sex or marital / civil-partnership status. This includes job adverts, which specify applications from a particular sex or an offer to provide goods, facilities or services for a particular sex (e.g. free admission to women to a nightclub where men have to pay). Of course it will not be unlawful to publish a sex specific advertisement if it falls within one of the exceptions to the act under the relevant provisions. Further the publisher of an advert may have a defence if he or she reasonably relied on a statement by the advertiser that the advertisement was lawful" (Liberty 2008)

Advertising] is correct in that no-one has any right to insist on any change”<sup>95</sup>

*Non-published archival material from the IBA, 1975*

The comment here about the IPA refers to a set of guidelines issued in which they observed that the EOC was ‘toothless’ beyond matters of recruitment and training. So, the Sex Discrimination Act may have had little actual bearing on advertising regulation as such. However, its existence did call attention to the growing concern for gender and sexuality portrayals in advertising.

### *The Personal is (not) Political*

Complaints about offensive gender portrayals became a regular feature of advertising complaints culture during the 1970s and 80s,<sup>96</sup> although the regulatory response remained steadfast in its conviction that ‘offence’ in this area was particularly ‘personal’ rather than generally offensive to public feeling, as stipulated in the Television Act and the advertising code. The IBA did not see it as their role to intervene in the matter of gender

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<sup>95</sup> On the same memo there are scribbles added after the document was typed, presumably by the recipient of the memo that states: “Oh hell, we’ll have the libbers complaining about washing powder ads”. A further scribble, similar in style to the one mentioned, but on a different memo, also from 1975, discussing the implications of the Sex Discrimination Act on advertising regulation states, in response to the memo author’s suggestion that the IBA should ask the AAC on their opinion on the matter of gender stereotyping: “Yes, I think we’ll have to, if only to clear the decks for LIBBER attacks later”.

<sup>96</sup> The first ‘official’ recognition of this can be seen in the IBA’s Annual Report from 1979/80, which, under the heading ‘Portrayal of Women in Broadcast Advertising’, refers to this growing category of complaints as ‘occasional correspondence’. They argue that existing regulation is sufficient in dealing with such complaints, and they further point out that there was no cause for intervention in the cases complained about.

stereotyping – their self-perceived role was not to instigate social change or to educate the public in these matters (distancing themselves from a kind of paternalism that laid the foundations for the regulatory system 20 years earlier). Gender equality was firmly framed as a political project, which was used to justify the IBA's 'neutral' stance and lack of active engagement with this issue. Their role was self-identified as to *maintain* cultural boundaries of offence, not to challenge them. Furthermore, the existing rules on offence were considered sufficient in dealing with any issues of this nature, should they arise. As the IBA stated in their Annual Report from 1989/90:

“the IBA is not able to extend its regulatory action beyond the avoidance of offence into the area of social engineering”

*IBA Annual Report, 1989/90, p. 31*

'Offence', therefore, continued to be a category where complaints about sexism could be found, but were continuously dismissed. In some instances there was even reluctance from the regulator to describe complaints concerning gender stereotyping in advertising as a type of 'offence'. Rather than being constructed as responses to a social/cultural issue of inequality, protests of this kind were considered to be overreactions and matters of opinion. The following two extracts are from an AAC Paper from 1979, considering the issue of including rules on gender stereotyping in the advertising code:

“[I]t can readily be appreciated that there are cases when it is galling for those who feel strongly that women are constantly depicted as having a subservient role in society to see the advertisements which on this subject are tactless, negative or one sided. But this is not to say that such *annoyance* justifies the establishment of a separate specialized category of ‘offensiveness to women’”

*Non-published archival material from the IBA, 1979, my emphasis*

“Advertisers and agencies are aware that there are some *strong opinions* on this subject and are giving thought to these and unless some new requirements were seen by the Authority to be desirable, there seems little point in making general pronouncements publicly or privately”

*Non-published archival material from the IBA, 1979, my emphasis*

Nearly ten years later, in 1988, these ideas of complaints regarding gender portrayals as something ‘other’ than offence lingers. The following quote is from internal communication within the IBA, following a discussion on the role of regulation in response to complaints of this sort:

“You or I may well see, very probably do see, many things in programs and advertisements which we do not like or of which we may not, as *individuals*, approve. But that is not to say that we are offended by these things. Offence is a fairly strong reaction”



*Non-published archival material from the IBA, 1988, my emphasis*

The IBA continued to steer clear of pressures to formulate specific rules or guidelines in the area of sexism. As noted in the previous chapter, it was not until the takeover of the ITC in 1991 that a category entitled 'Discrimination' entered the advertising rules, although without any guidelines for interpretation and application beyond what was already stipulated in the Sex Discrimination and Race Relations Acts. Furthermore, the notion of gender and sexuality-based offence continues to be explicitly absent from the advertising codes in the 1990s and 2000s, despite continuing complaints. In the following two chapters I explore the contemporary regulation of gender and sexuality portrayals in advertising, from 1991 until the end of 2012.

### **The Emergence of Complaints Culture**

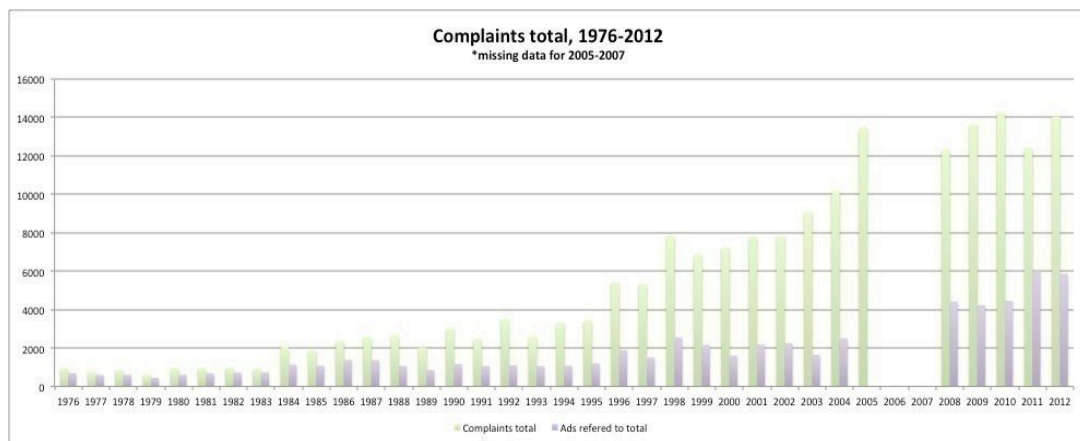
Despite a lack of complaint statistics from the 1950s and 60s, available records show a fairly constant level of television advertising complaints received since 1976,<sup>97</sup> with two instances of a more elevated increase in complaints: one around the mid-1980s and one in the mid- to late-1990s

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<sup>97</sup> This is the first year from which I was able to find monthly complaint summaries from the IBA, containing some reliable statistics.

(see Figure 6.1).<sup>98</sup> This increase in complaints in the mid-1980s could be explained by a range of factors, including the proliferation of commercial television channels and expanding broadcasting hours. It is also feasible that a greater effort by regulators to publicize their role as complaints bodies might have played a part in the increase in complaints during the 1980s, 90s and 2000s. It is notable from this data that the increase in complaints received far exceeds the increase in complained about advertisements, suggesting that advertisements, in general, have become subject for a greater number of complaints from the public, representing a shift in complaints culture and/or advertising techniques, rather than a proliferation of (offensive, harmful or misleading) advertisements.

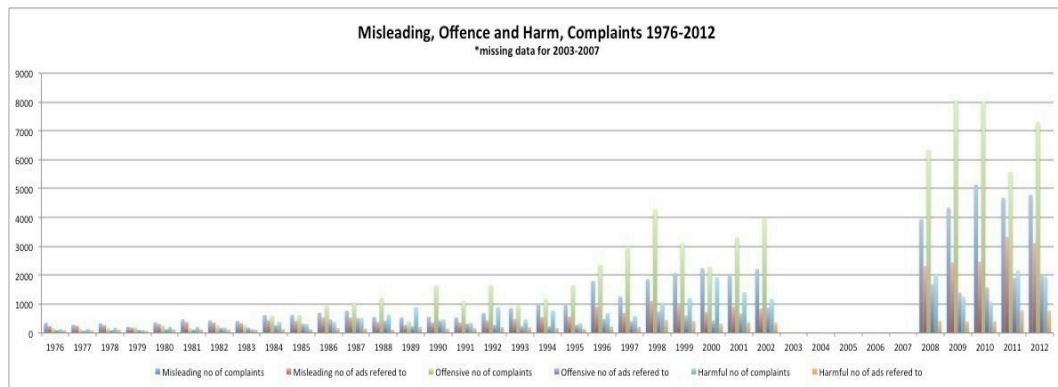
**Figure 6.1 Total number of complaints 1976-2012**



<sup>98</sup> The data shown here is illustrated as a yearly progression. However, it should be noted that some data is missing (for example, I was unable to find complaint statistics for some months). The tables here should therefore not be interpreted literally, but are included to demonstrate a trend, which would have been visible even including the missing data.

Complaints about offence largely follow the pattern of the increase in the total number of complaints over the same time period (Figure 6.2), with a slow but steady increase in complaints in the 1980s and a more radical increase in the 1990s and beyond.<sup>99</sup> Furthermore, it becomes clear that complaints regarding offence have been on the rise since the mid-1980s and that they, since then, have pulled away significantly from the other complaint categories of misleadingness and harm.

**Figure 6.2 Number of complaints categorised as misleading, harmful and offensive 1976-2012**



The causes for this quite drastic increase in offence-related complaints are difficult to pin down and are likely to have a range of explanations. Offence is a wide-ranging category encompassing a broad collection of complaint issues. Television advertising continues to cause controversy and is still the most complained about media in this field. Moreover, 'offence' prevails as the most complained about category and advertisements featuring complaints about sex and/or gender portrayals

<sup>99</sup> The ITC noted a rise in complaints about offence, specifically, in the mid- to late-1990s but were not sure whether to attribute this trend to new advertising techniques in the rapidly changing media environment, or to a more critical consumer culture.

regularly feature in the top 10 most complained about advertisements presented annually by the ASA. Sex and gender issues provide an interesting case study for exploring the category of offence, drawing complaints both from audiences with a conservative/moralistic as well as feminist agenda. The following chapters do not purport to provide an explanation for the numbers presented above. Nevertheless, they do provide an insight into the regulation of such a precarious category as 'offence' and how cultural and social change has challenged regulatory boundaries of acceptability.

## **Conclusion**

In this chapter I have considered the regulatory definition of 'offence' at a time of significant cultural change in British social life. I have explored the historical treatment of issues concerning sexism and gender-based offence in regulatory discourse, arguing that regulators have continuously failed to appropriately consider these concerns by complainants. Indeed, as I have shown here, the category of 'offence' was not interpreted so as to include this type of complaint at all, understood to be arising from subjective, or personal annoyance on behalf of the audience. I have also briefly considered the emergence of complaints culture, showing the growing number of concerns relating to issues of offence. This chapter has provided a social, cultural and historical context for the following two chapters, in which I turn to explore, in greater depth, the regulation of

issues concerning gender and sexuality, based on my analysis of published complaint adjudications in this area.

## CHAPTER 7

# **(De)constructing Sex(ism) – Sexual versus Sexist Speech**

### **Introduction**

This chapter features adjudications from the Independent Television Commission (ITC), the Broadcasting Standards Council (BSC)<sup>100</sup> and the Advertising Standards Authority,<sup>101</sup> collected and analysed from 1991 to 2012, in order to explore the regulatory (de)construction of sexualised images of women. In this chapter I discuss, in particular, complaints concerning sexualised female body/ies, which amount to 50 adjudications out of a selection of 300 (see Table 4.4 in Chapter 4), and explore how issues of sexualisation and sexism diverge and intersect in regulatory discourse. The adjudications featured here respond to complaints of offence relating both to issues of sexualisation as an issue of decency, as well as taking issue with sexism located within sexual portrayals of women. Although these complaints both situate the offence as arising from the gratuitous display of the sexualised (female) body,<sup>102</sup> the motivations behind such complaints are epistemologically different.

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<sup>100</sup> Later re-named the Broadcasting Standards Commission.

<sup>101</sup> This also includes some adjudications from Ofcom, as they regulated television advertising for a few months in the interim between the ITC and the sub-contracting of the ASA.

<sup>102</sup> There are complaints concerning the sexualisation of the male body in advertising as well. However, such complaints are significantly less common. Furthermore, as Gill argues "these patterns of 'sexualisation' have different determinants, employ different modes of representation, and are likely to be read in radically different ways because of long, distinct histories of gender representations and the politics of looking" (Gill 2009a, p. 143)

Whereas issues about the *sexual* in sexualisation bring concerns about moralism to the table, complainants offended by *sexism* locate the offence within the *gendered* portrayal of the sexualised body, as contributing to a culture in which women's bodies are perpetually objectified and exploited. In this chapter I argue that television advertising regulators often failed to recognise this distinction, foregrounding a reading (note: not necessarily a *condemnation*) of offence as located within moral concerns of 'explicitness' and 'exposure' to something *sexual*. As a consequence, sexist offence and the gendered dimensions of nudity are left largely unexplored in regulatory discourse.

This chapter does not wish to reiterate or re-essentialise a reading of women's bodies as simply passive, submissive and objects for the male gaze. Nor do I necessarily seek to advocate for stricter regulation in the area of sexism. Rather, what I am arguing here is that in regulatory discourse, a gendered reading of the sexualised female body is often lost in favour of a more conservative, moralistic understanding of sexuality as caught in the bind between decency and indecency. Instead of exploring the connections between complaints of sexual imagery and sexism, regulators tend to separate these two issues and foregrounding the issue of sexual imagery, void of critical engagement with issues of gender resulting in a one-dimensional reading of the sexualised body.

The chapter begins with a brief outline of debates on 'sexualisation' in order to contextualise the discussion of data. It then moves on to consider

the 'dialogic' relationship between complainant and regulator, arguing that it is an uneven relationship where the complainant is largely invisible. Following this, a brief outline of the slight differences between adjudications produced by different regulators is provided. The chapter then looks at some key research reports produced by regulators, from 1995 to 2012, looking at how these have framed issues of sexualisation *vis a vis* sexism, before developing an analysis of adjudications (published between 1990 and 2012) where concerns over sexualisation and sexism converge, exploring how issues of sex and nudity, rather than issues of gender portrayals, are foregrounded in these assessments.

### *Sexualisation Debates*

The 'sexualisation of culture' thesis has proliferated in social, political and academic discourse in the last few decades, often traced back to the 1990s and shifts in the popular representation of gender in the wake of second wave feminism and the gay liberation movement (Gill 2009b, McNair 2013, Plummer 1995). This 'sexualisation of culture' debate has often centred on the negative effects of the proliferation of sexualised bodies (of both men and women) in visual culture.<sup>103</sup> Advertising is frequently pinpointed as one of the main offenders and continues to feature at the heart of social, political and policy discourse, as contributing to the sexualised 'wallpaper' of contemporary social life (Bailey 2011).

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<sup>103</sup> However, the sexualisation debate has also taken a more optimistic tone, being hailed as fostering a more relaxed attitude towards sexuality through the relocation of sex from the private to the public realm, as well as what McNair (2002; 2013) has referred to as the 'democratisation of desire' through the mainstreaming of pornography and increased sexual exhibitionism in the popular media.



These concerns have not escaped the advertising regulators. In the 1990s the ITC produced a research report on attitudes to nudity in television advertising (ITC 1995) and the BSC released a report on sex and sensibility on television, which stated that 37% of respondents thought there was ‘too much sex’ in television advertising (Millwood Hargrave 1999). More recently, sexualisation debates have come to centre on the sexualisation of children, with political implications for advertising regulation<sup>104</sup> (Bailey 2011, Papadopolous 2010, Buckingham and Bragg 2003, Byron 2010). However, as some critics have pointed out, gender is often curiously absent in discussions on the sexualisation of culture and the sexualisation of children, reinforcing an understanding of sexualisation as a question of moral concern (Gill 2009a, Barker and Duschinsky 2012, Duschinsky 2013). As Duschinsky notes in relation to psychologist Papadopolous (2010) review *Sexualisation of Young People*, “discussions of ‘sexualisation’ in the UK have risked inadvertently problematizing not sexism but propriety” (Duschinsky 2013, p. 351). Indeed, there has been little academic attention paid to the struggle over the meaning of sexualisation between moralist and feminist voices in British culture, despite the fact that there are several areas where these voices meet, converge, and clash. Apart from advertising, moralist and feminist concerns over sexualised imagery have

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<sup>104</sup> In response to the Bailey review, ‘Letting Children Be Children’ (Bailey 2011), the ASA tightened their controls of sexualised imagery in outdoor advertising (television advertising was already considered sufficiently restricted), launched Ad:Check, a media literacy project for schools, as well as having teamed up with other media regulators to create ParentPort, a website with information for parents concerned with this issue.

been present in (on-going) debates on 'Page 3-girls' and pornography, for example.

### **The Dialogical Relationship between Complainant and Regulator**

Before venturing into the analysis, I give a brief outline of the adjudication's purpose and structure. Moreover, this section examines the dialogical relationship between the (offended) complainant and regulator, seeking to establish a framework for understanding the regulatory assessment process.

#### ***Complaint adjudications***

Complaints bulletins and adjudications have been actively produced for press and public consumption since the establishment of the ITC in 1991. Prior to this summaries of complaints were available on request, since at least the mid-1970s, but they were not produced as part of a 'public accountability'-agenda. Before this, in the 1950s and 60s, complaints did not exist in a summarised or collected form, reflecting perhaps the more paternalistic regulatory system as a 'top-down' process, discussed further in the previous chapter.

The 'complaint' in the history of television advertising regulation has gone from 'supplemental', or as positing a 'commentary' position, without a specific effect on the regulatory process, to what is now most often the

basis for investigation<sup>105</sup> and an actively encouraged public monitoring of advertising standards that features so strongly in the contemporary, neoliberal governing system of commercials. The ASA is a self-regulatory body, but a complaints body first and foremost – a very different structure to the initial, paternalistic regulatory structure of commercial television and television advertising.

Complaint adjudications (also referred to as summaries or bulletins – the name changes depending on the organisation that produces them) were originally published monthly but later, in the early 2000s came to be published more frequently (about twice a month) until the ASA assumed responsibility for the regulatory operation; they publish their adjudications weekly. Complaint summaries for the ITC and ASA are divided into three main categories: ‘misleading’, ‘harm’ and ‘offence’ (the ITC also have a ‘miscellaneous’ category). It is under ‘offence’ that complaints about sex and gender are most often found, even in instances where complaints frame the advertising content as ‘harmful’ (e.g. harmful stereotyping). The BSC, however, organised complaints differently since their remit was specifically focused on particular issues of offence: sex, violence and issues of taste and decency. Issues of offence are then categorised accordingly, although it is interesting to note that complaints of sexism are most often found under the rubric ‘taste and decency’ – a somewhat uncomfortable fit.

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<sup>105</sup> Regulators themselves can also instigate an investigation of an advert. However, this rarely happens in relation to issues of offence.

A complaint is either ‘upheld’ or ‘not upheld’. If a complaint is ‘upheld’ there are a range of implications for the advertiser and/or broadcaster, from the cessation of an advert, to amendments, or a stricter scheduling restriction. These restrictions range from: ‘ex-kids’ restriction, which prevents an advertisement from being broadcast in or around programmes designed specifically for children; 7.30pm restriction, which is implemented to avoid younger children seeing inappropriate material without adult supervision; 9pm or post-Watershed restriction, which is generally considered sufficient for more explicit material; and 11pm restriction for more ‘risqué’ content. However, the boundaries of ‘explicitness’ and ‘appropriateness’ are not straightforward, as will be explored further in this chapter.

There are some differences between complaint summaries (ITC), bulletins (BSC) and adjudications (ASA) that need to be discussed further before progressing with an analysis of these.<sup>106</sup> I outline these differences in detail below.

### *ITC 1991-2003 and BSC 1989-2003*<sup>107</sup>

In 1991, with the establishment of the ITC, advertising complaint summaries started being produced and published as part of their

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<sup>106</sup> I should note here that the IBA (1972-1990) also produced complaint summaries. However, these complaint summaries were never produced for public consumption, although they could be obtained from the IBA per request. The summaries were produced for staff to quickly be able to gauge the monthly complaint trends and responses. They are very brief and lacking in detail both of complaint and assessment and were therefore not included in the analysis.

<sup>107</sup> The BSC here refers to the Broadcasting Standards Council, as well as the Broadcasting Standards Commission, which it was later renamed (see Chapter 5)

regulatory work. As noted in the previous chapter, the ITC had a more outspoken agenda of public accountability than previous regulators, who had not actively produced such summaries for press or public consumption. At the same time the BSC also produced their own complaint bulletins, although these bulletins covered both programming and advertising complaints. As discussed in the Chapter 5, the ITC and BSC were two regulatory organisations with overlapping remits, meaning that there is a great deal of overlap also in their adjudications. For heavily criticised campaigns in particular you can expect to find separate adjudications from both organisations, since they both actively encouraged a public complaints culture in the area of television (and radio) advertising.

Neither the ITC nor the BSC published any complaints in full, but summarised or paraphrased the complaints as part of the adjudication. A short description of the advert in question was also often provided. However, unlike the BSC, the ITC did not publish adjudications on all complaints received (presumably the reason the BSC did is because they received fewer complaints overall). The ITC considered all complaints, but only 'complaints of substance' were selected for investigation and published as part of the complaint summaries (although there is also a cumulative breakdown of all complaints received published in accompaniment to the adjudications). It remains unclear what criteria the ITC used to define a 'complaint of substance' – they merely state the following in the preface to the complaint summaries:

“The ITC considers all complaints which it receives about advertising and, where an investigation is necessary, requires the television companies to submit background material to it promptly so that an assessment may be made with a minimum of delay. All complainants receive a personal reply to their complaint”

Responses to complaints varied from a few sentences to page-long assessments for more complex cases of complaints. However, the adjudications provided by the BSC are generally shorter and provide less of an explanation for their decision than does the ITC (for example, you would expect an explanation to the statement ‘we do not agree with the complaint’, something which the BSC often fail to provide).

### *Ofcom 2004 and ASA 2004-2012*

In the organisational restructuring to a self-regulatory system, broadcast advertising adjudications were appropriated to the already established format of non-broadcast adjudications. These are very similar to the ITC’s published adjudications, but there are a few minor differences that should be noted.

Similarly to the ITC, the ASA only publish adjudications based on complaints deemed worth investigating. This means that a number of complaints are resolved informally and many complaints are dismissed. Indeed, most complaints received by the ASA do not lead to a formal

adjudication. Complaints are not investigated if they fall outside the ASA's remit or, if after a Council decision the complaint is considered not worth pursuing. However, the ASA state that a complaint will be investigated if any Council members ask for a complaint to be taken forward. Furthermore, there are two levels of investigation: formal and informal. In the latter, the ASA resolve any 'minor and clear cut' (ASA 2014b) issues with the advertiser informally and the investigation is not published. However, if the advertiser chooses not to resolve the complaints informally the investigation will become formal. Finally, in a formal investigation the pre-vetting agency and advertiser are given the opportunity to respond to the complaint and an assessment is reached by the ASA. The adjudication is then published on the ASA's website.<sup>108</sup>

The ASA provides quite a rich description of the advert in question, giving a much needed context to the adjudication, which was often lacking with the ITC. This also allows the reader of the adjudication to more easily locate the advert in question.

Although the ITC sometimes featured the perspective of the pre-vetting organisation (then, the BACC) in their adjudications, particularly in more complex cases, the ASA always invite a response from the advertiser and the pre-vetting organisation (an invite which is not always accepted). The

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<sup>108</sup> The ASA only keep adjudications from the past five years available via their website. Older adjudications were obtainable on request, albeit with some complications and delays (see methodology chapter). Furthermore, the adjudications are organised under the name of the advertiser rather than the advertised brand, making it difficult to navigate the archive if you are looking for a particular adjudication.

ASA then, positioned as a 'neutral' adjudicator evaluate the points raised by the complaint(s) and the defence in order to reach their decision.

### *'Uneven' Dialogism*

An issue that pervades all published adjudications or complaint summaries/bulletins for all the regulators, present and past, is that they often fail to properly account for the complaint(s). I discussed at some length the issue with public complaints being inaccessible under data protection principles in Chapter 4 of this thesis. Following on from this discussion on the invisibility of public complaints relating to media content, I am concerned here with the uneven dialogic relationship between complainant and regulator, as reflected within the adjudication.

Moi (1986) describes the Bakhtinian concept of dialogism as "*writing where one reads the other*" (p. 39, emphasis in original). This suggests that the complaint, although absent from the assessment, can be read in the dialogical reply that the regulator offers. However, reading between the lines in this way is not always a productive exercise in discerning the motivations behind complaints, as I discuss further here.

In order to assess the complaints received, the ITC, BSC, Ofcom and ASA all summarise the complaint(s) in their adjudications. However, in this process the complaints are stripped down to the bare minimum – a few key bullet points highlighting the issues at stake. This approach works rather well for complaints about misleadingness, which are often quite



straightforward, pointing to a particular phrasing or easily misinterpreted imagery, for example. However, when it comes to issues of offence and harm, the context in which such complaints arise is much more complex than what can be relayed in bullet point format. A complaint concerning sexual imagery, for example, needs contextualisation – is it the level of undress that causes offence? The provocative pose? The implied sexual act? Or even more subtly, sexual symbolism? If a complaint highlights sexism, what contextual circumstances is it that makes the complainant feel offended? The rhetorical structure of complaints are ‘lost in translation’, leaving only the disjointed remnants of the complaints available to the reader of the adjudication. Naturally, when receiving a high number of complaints that feature lengthy discussions of offence, reproducing these in full may not be practical for either the regulator or the reader. Nevertheless, complaints are often radically shortened, summarised to the point of meaninglessness. Sometimes a complaint is even just summarised as ‘offence’, leaving it up to the reader to make inferences as to what this offence might be by ‘reading between the lines’ of the assessment (see for example the adjudications for the advertisements for the *Sunday Sport* further on in this chapter).

In contrast to the often short and obscured complaints, the summary of the responses from advertiser and pre-vetting agency (normally not featured in ITC and BSC summaries/bulletins) are often quite lengthy and nuanced. They are given space (literally) to formulate their intentions and interpretations of the advertisement in question (albeit paraphrased by the

regulator). The complainant(s) here become the invisible prosecutor(s) and the advertiser and pre-vetting agency are given the privilege of interpretation through having the space to construct a 'preferred reading' (Lacey 1998), a privilege denied the complainant(s) in this space. The process can be likened to Pearce's (1994) metaphor of dialogism as overhearing a telephone conversation – we hear only one side of the conversation. Although we may be able to read between the lines, the experience can be confusing and rife with misinterpretations.

Indeed, the dialogic relationship between complainant, advertiser and regulator – the adjudication representing *the discursive space where boundaries of offence are (re)negotiated* – is very uneven. The complainant is largely absent in the adjudication, a mere shadow in the discursive shaping of 'serious or widespread offence', yet at the same time the *foundation* for the adjudication; that crucial questioning of boundaries of acceptability that gives reason for investigation. The adjudication is also where misinterpretations can occur, obscuring the complaint even further. Although the motivations behind a complaint can go missing in the stripping of its contextual relevance as discussed above, the dialogic nature of the assessment might bring this vital contextual background back into the adjudication. However, as I argue in this chapter, the discursive power that regulators have in defining 'offence' may foreground certain complaints rather than others, or misinterpret the contextual factors or semiotic readings leading to offence in the first place.

The regulator has a role as an adjudicator, mediator and ‘rational voice’ in the interpretative dispute between the offended complainant(s) and the advertiser (and the pre-vetting agency that has cleared the advertisement for transmission), judging which of these better reflects a ‘widespread’ understanding of the advertisement amongst viewers. The complainant has the right to question the acceptability of an advertisement, but it is left to the regulators to define prevailing cultural standards and boundaries of acceptability. There is a kind of discursive finality here – the adjudication is the beginning *and* end of a dialogic relationship between the offended viewer(s), the advertiser and the regulator.<sup>109</sup>

### **Issues of Concern in Regulation: Three Key Reports on Harm and Offence**

In order to better understand the adjudications presented in the latter part of this chapter, I discuss briefly three key reports commissioned by the ITC and ASA on the issues of nudity, sex and sexism in advertising: *Nudity in Television Advertising*, published by the ITC in 1995; *Boxed In: Offence from negative stereotyping in TV advertising*, also published by the

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<sup>109</sup> As discussed in Chapter 5, the ASA provide an opportunity for unsatisfied complainants or advertisers to have the adjudication re-evaluated by an Independent Reviewer, including decisions not to investigate a complaint. However, in order for a case to be reconsidered, the Independent Reviewer must have been contacted, in writing, within 21 days of the publication of the original adjudication and the complainant or advertiser “must be able to establish that a substantial flaw of process or adjudication is apparent, or show that additional relevant evidence is available” (ASA 2014a). In practice very few adjudications go through this process - in 2011, only 13 cases were received by the Independent Reviewer, 10 of which were investigated and only one referred to the ASA Council and had the wording of the adjudication changed as a result (ASA 2011).

ITC in 2001; and *Public Perception of Harm and Offence in UK Advertising*, published by the ASA in 2012. These reports were all concerned with public perception on issues of nudity, stereotyping and other issues of harm and offence. All three reports have been used by regulators to support the decision-making process for advertisements that feature in this terrain. However, they all also fail to critically analyse how the sexualisation of women features in relation to issues of harm and offence.

### *Nudity in Television Advertising, ITC (1995)*

The *Nudity in Television Advertising* report set out to investigate "whether existing conventions relating to nudity were still valid" (ITC 1995, p. 2), after a controversial advert showing a woman's nipple had been broadcast and received a strong reaction from viewers (this advertisement will be discussed in greater detail below). Through this study, the ITC established that the level of offence caused by nudity was heavily context-dependent. If the inclusion of nudity had direct relevance to the advertised product, or in other ways was being well integrated into the advertising narrative, it was largely seen as acceptable amongst the participants of the study. However, nudity used as part of, or in combination with sexual content, was considered more problematic. The research recognises that gender is a contextualising factor in how people perceived nudity in advertising. However, rather than critically assessing how the use of nudity in advertising can be understood differently in terms of gender, the research instead concludes that an advertisement can be seen as more acceptable and less exploitative if both female and male nudity is present, than if

showing female nudity only. The report fails to critically engage with the notion of sexism in advertising, through framing nudity as evoking a similar kind of offence whether it is coded as male or female. Furthermore, the perception of nudity in advertising is not only considered in relation to contextual factors, but is also pinned down to different 'personality types', which are heavily influenced by an understanding of nudity as an issue of morality and decency:

"The research hypothesised five attitudinal mind-sets regarding nudity. On the disapproving side there were the Puritans, who were embarrassed by nude bodies, and the Moralists, who felt it should not be allowed. The Liberals (the largest single group identified by the research) were much more blasé about it, and felt too much fuss was made about nudity on television. Crusaders were actively in favour of it as a means of encouraging people to be less prudish, and the Libertines (who were present only in small numbers) wanted to see as much nudity as possible"

ITC (1995), p. 69

***Boxed In: Offence from negative stereotyping in TV advertising, ITC (2001)***

The research for the report *Boxed In: Offence from negative stereotyping in TV advertising* was undertaken in conjunction with a review of the advertising code and an increase in complaints over issues of stereotyping (ITC 2001). Sexist stereotyping is here identified as a concern amongst the participants

of this study, although it is recognised that sexism may no longer always be 'easy to spot' (ITC 2001, p. 30). The ITC here argue that sexism may not have disappeared, but that women may have become somewhat 'immune' to it:

"Most of the advertisements showing potentially sexist stereotypes did not seem to cross the 'offence barrier' with the women interviewed. This seemed to reflect the fact that, to some degree, society (and some women) has become inured to stereotyped media portrayals of women. Women have negotiated some equality across many areas of their lives, such as in educational, social and employment spheres. This may have equipped them to deal with sexism in a more dismissive way" (ibid, p. 29)

Moreover, sexism is not discussed in relation to *sexualisation*, a curious omission on ITC's part. Body image and traditional gender roles are mentioned as part of sexist portrayals of women, but *sexual* stereotyping is not.

### ***Public Perception of Harm and Offence in UK Advertising, ASA (2012)***

The most recent report on issues of harm and offence in advertising was commissioned by the ASA in response to the Bailey review, 'Letting Children be Children' (Bailey 2011), as a key recommendation from this review on the sexualisation of children was for the media regulators to

commission more research in this area. In its executive summary, the ASA report states:

“Spontaneous examples of harmful and offensive material in advertising included sexual content, portrayal of body image, hard-hitting charity adverts, gender stereotyping, glamorising violence, and harm from products being advertised, although participants were often not able to think of recent examples that concerned them” (ASA 2012, p. 3)

This report goes some way in establishing a connection between sexual imagery and sexism, stating that “[p]articipants who said they found sexual imagery offensive felt it was disrespectful, usually to women, in a way that they strongly disliked” (ibid, p. 24). The research showed that sexism about women was much more common than for men: “Around one in five (19%) of those who had been offended cited sexism about women, compared with just 1% who cited sexism about men” (ibid, p. 48). It further notes that “[i]n terms of the portrayal of women [...] there were concerns about unrealistic and sexualised female forms in advertising” (ibid, p. 47), and that advertising content that was perceived as sexist towards men on the other hand was distinctly non-sexualised and instead framed more in terms of their behaviour as ‘laddish’. Whilst sexism towards women was identified as a major issue for participants who

claimed to have been offended by advertisements,<sup>110</sup> the report does not go beyond this statement of fact in its exploration of this issue and the analysis of sexism and sexualised imagery is left largely unexplored.

It is interesting to note here, that the key research reports commissioned on behalf of television advertising regulators since the mid-1990s, fail to give adequate attention to issues of gender in relation to sexualisation and sexist portrayals. Moreover, these reports offer little understanding of how advertising regulators position themselves in relation to such complaints, which I explore further below.

### **An Analysis of Adjudications: Sexualised Images of Women**

In this section I use examples from my analysis of complaint adjudications between 1991 and 2012, featuring the sexualisation of women, in order to explore the various ways in which claims to offence in this area have been addressed in regulatory discourse. I argue here that the sexualisation of women in advertising has often been (de)constructed as inoffensive, that alleged sexist images have been ‘de-sexualised’, and that a gendered reading of sexualisation has been largely ignored by regulators dealing with such complaints.

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<sup>110</sup> The report states that “[a]mong the 16% who were offended, the main reasons cited were sexual imagery (20% of those offended), sexism about women (19% of those offended), aggressive selling (17% of those offended) and violence (11% of those offended)” (ASA 2012, p. 5)



### *Nudity as 'natural': Women's bodies and product relevance*

Nudity is relatively restricted in television advertising as it is considered a contentious advertising approach with a potential for evoking public offence. The regulatory stance for television advertising has been not to accept 'irrelevant' and 'unjustified' nudity, although there are no clear guidelines in this area. Regulators have also noted that the way nudity is used – duration of nudity, lingering on particular body parts, etcetera – can cause offence amongst the audience (ITC 1995).

A controversial advertisement for Neutria Shower Gel,<sup>111</sup> broadcast in 1994, featured a woman showering with the advertised product, the naked top half of her body visible to the audience. The cause for controversy was particularly the point where she was soaping her breast, whilst one of her nipples remained exposed. The commercial was restricted to post-Watershed transmission, yet still received a total of 199 complaints<sup>112</sup> who felt that the commercial was 'gratuitously offensive' for various reasons.

The advertisement used some quite conventional symbolism of health and cleanliness for a beauty product: a woman running in slow motion and stretching next to the open water, smiling, dressed in white. The same

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<sup>111</sup> See the advertisement here: <http://www.youtube.com/watch?v=vqv2-ISx1vU>  
Note that this link is for the French version of the advert since I was unable to locate the English one.

<sup>112</sup> In the ITC's adjudication it states 82 complaints were received. However, the 1994 Annual Report and the research report 'Nudity in Television Advertising', published in 1995, both quote 199 complaints as the total number. It may be that some of these complaints were received after the adjudication was published, considering the complaints were not upheld and the advertisement continued to be broadcast.

woman using the product in the shower, the camera panning her body, following her hand's slow soaping movement from her breast and torso up to the shoulder. Her eyes are closed and she is smiling as the shower washes away the soap, suggesting that she is taking some sort of pleasure in the activity. As she steps out of the shower, with the seascape as backdrop, the camera catches a glimpse of the top part of her buttocks.

The advertisement features a great deal of self-touching, particularly of shoulders, but also of the exposed breast in the scene taking place in the shower. Goffman argues that self-touching is a particularly feminine trait in advertising, "conveying a sense of one's body being a delicate and precious thing" (Goffman 1979, p. 31). However, in this advertisement, the self-touching also seems somewhat sensuous, perhaps as it is involving the breast – an often heavily sexualised part of the female body.

The advertisement was the second most complained about advert in 1994. In its summary of the complainants' main concerns the ITC wrote:

"Complainants added variously that it was degrading for a woman's body to be so publicly exposed; that the soaping action had sexual connotations, or that the commercial was opening the doors to unacceptable European standards"

There are at least two, if not three different, yet interlinked concerns present here. Firstly, some of the objections seem to centre around issues

of indecency and feelings of a breach of cultural boundaries of acceptability in terms of nudity exposure. However, it would also seem that there is a distinctly *gendered* concern related to the nudity in the advertisement. That is, many of the complainants seem to object not just to the nudity itself, but more specifically, to the public exposure of a *woman's* body. The ITC have not framed it here as *sexist* offence (although it could certainly be interpreted as such), but instead draw on some slightly ambiguous allusions to (female) propriety. None of the complaints were upheld, but the advertisement instigated the research on nudity discussed above.

In response to the complaints, the advertiser claimed that the advertisement had been broadcast throughout Europe without meeting these kinds of objections and that "the inclusion of the nipple was intended to demonstrate that the product was gentle and suitable for use on sensitive parts of the body". Furthermore, the television companies argued that they had included the advertisement to test whether public attitudes towards nudity had changed. The ITC's response followed:

"The ITC did not consider that the commercial was manifestly unsuitable for broadcasting after 9pm. Although going beyond previous conventions the degree of nudity was still arguably mild and not irrelevant to the product concerned. There was no doubt also that UK public attitudes to partial nudity had relaxed

somewhat as more and more families had had experience of Mediteranian [sic] holidays”

They further noted that:

“[T]he number of complaints resulting from a fairly light campaign was higher than might have been expected, suggesting that the treatment was likely to be regarded as going too far by a significant minority of the audience. While the ITC did not think that there were sufficient grounds for upholding these complaints, nor did it think the television companies were entitled to conclude that the experiment demonstrated that there were no longer problems about the acceptability of material of this kind. Bearing in mind that viewers are not able to select the commercials they see, that some viewers object quite strongly to this type of treatment, and that effective advertising for products in this sector is possible within the previously applicable conventions, the ITC believed that there was not a strong case for going very far beyond the latter at this stage in the development of public opinion. The ITC advised the television companies to be particularly wary of cases where it appeared that the main purpose for using nudity was attention-grabbing and where there would be a likelihood of causing offence on a much wider scale than in this instance”

The BSC also received twenty complaints<sup>113</sup> regarding the commercial being ‘degrading in its exploitation of women’s bodies’ that were investigated. In their assessment of the complaints, the BSC reached the following conclusion:

“The Committee did not believe that the very brief shot of the exposed breast went beyond limits acceptable in an advertisement screened later in the evening”

### *‘De-gendering’ nudity*

Both the ITC’s and BSC’s assessments give a distinctly gender-neutral reading of the advertisement, despite a proportion of the complaints (and all of the complaints, in the case of the BSC) specifically objecting to the advertisement on the grounds of the exploitation of *women’s* bodies. Instead, the assessments focus on the *degree* of nudity and its relevance to the product advertised, (deliberately) ignoring “the ‘signifying power’ of gender” (van Zoonen 1994, p. 67). Of course, it is no coincident that the portrayal is of a woman, rather than a man in this advertisement for a shower gel. Women’s bodies have, and continue to be, perpetually objectified and shown in various stages of undress in advertisements. The portrayal of a nude woman in this advertisement is therefore of significance as it contributes to a long history of sexualising women’s bodies that is left out of the regulatory discussion on the meaning of

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<sup>113</sup> Twenty complaints, although relatively few in comparison to ITC’s 199, was a very high number for the BSC to receive in response to an advertisement.

nudity in this advertisement. Furthermore, despite the claim that the advertisement is degrading in its exposure of the female body, the ITC argue that the nudity has contextual relevance to the product, side-stepping the issue of gender by framing the nudity as 'relevant', without questioning how it was framed or contextualised within the advertisement itself.

### *The politics of women's breasts*

Interestingly, the ITC's assessment not only attempts to 'neutralise' or 'de-sexualise' the nudity in the advertisement, but it is also notable that they do not mention the significance of the breast and nipple. Had the breast not been so blatantly on display, the advertisement would likely have gone by unnoticed – indeed, there was a version without the exposed nipple, with an earlier timing restriction that received no complaints – yet, the significance of the breast and nipple is largely ignored by both the ITC and the BSC.

Naomi Wolf argues in *The Beauty Myth* that the display of women's breasts in popular media and elsewhere, although common, is not trivial (Wolf 1990). She claims that women's breasts, rather than being equivalent to the naked male torso, symbolise female sexuality in the same way that the penis represents male sexuality, and that the unequal distribution of nude women and men in mainstream culture represents an unequal distribution of power: "women's breasts [...] correspond to men's penises as the vulnerable 'sexual flower' on the body, so that to display the former and

conceal the latter makes women's bodies vulnerable while men's are protected" (Wolf 1990, p. 139). The sexual connotations of the advertisement were also picked up by respondents in the qualitative study on viewers' perceptions of nudity that followed this controversial Neutria advertisement. Here the breast, in particular the soaping of the breast and the presence of the nipple, were identified by respondents as reasons for the advertisement's unacceptability:

"The issue appeared to be less about the exposure of the nipple *per se* and more concerned with the woman's manipulation of her nipple. She was perceived to be experiencing a masturbatory pleasure and the viewer was implicated in this as a voyeur (a role with which the majority felt uncomfortable). This impression was reiterated when her actions were repeated when clothed"

(ITC 1995, p. 44)

The study concludes that the female breast is indeed more contentious than its male equivalent, although, similarly to the adjudications from the ITC and the BSC, the study offers no further discussion of the potential reasons behind such a gendered division:

"Many respondents held very clear views about which parts of the body could be exposed, and which could not. This varied depending on the gender of the bodies shown. Male nipples were not contentious, but the exposure of a female breast was much

more problematic. The most acceptable view was from the side, and the least acceptable was a frontal view of both breasts”

(ITC 1995, p. 70)

In their assessment, the BSC’s focus on the ‘brevity’ of nudity, and the time of broadcast (for the purpose of avoiding a large child audience) shows a lack of reflexivity about the *type* of nudity, as both female and sexualised. The ITC include a vague reference to the view of the naked breast in suggesting that Britons’ increased experience of Mediterranean holidays (implying the experience of topless sunbathing) had contributed to a more liberal attitude towards nudity and, although they considered that a ‘significant minority’ of viewers had thought the advertisement as going ‘too far’, this boundary was defined as a distinctly moral boundary.

*‘Preferred readings’: De-sexualising women’s bodies*

In contrast to the Neutria adjudication above, this next adjudication features no nudity but, nevertheless, uses a similar kind of rhetoric in order to de-gender, or de-sexualise the image of a woman’s breasts in order to dispel claims of the imagery being offensive to women. Both advertisements had a post-9pm scheduling restriction, meaning that they in some way were perceived to transgress into more ‘adult’ material in terms of sex or nudity.



The Isklar mineral water<sup>114</sup> advertisement discussed here was broadcast in 2010 and featured a woman pictured from the waist to the neck holding a bottle of water. As she drank her nipples became visibly erect through her T-shirt. As she then looked down at her erect nipples the on-screen text read: 'Pure glacier'. The advertisement received only one complaint, arguing that the advertisement was offensive as it objectified women. Here is the ASA's assessment of the advertisement:

"The ASA noted that the ad showed a natural response to being cold and that no nudity was shown. We considered that the context was clear and the connection between drinking the water and the erect nipples was likely to be understood by viewers. Whilst we acknowledged that some viewers might find the depiction of erect nipples distasteful, given the context of the ad, we considered that it was unlikely to be seen as degrading or objectifying women.

We noted Clearcast had applied a post-9pm scheduling restriction and that the ad had been carefully scheduled around a specific television programme. We considered that the post-9pm scheduling restriction was sufficient for the content of the ad, and concluded that the ad was unlikely to cause serious or widespread offence"

The response emphasises a very literal reading of the erect nipples as a natural response to drinking the cold water. In a similar way to how the

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<sup>114</sup> I was unable to locate this advertisement.

ITC (de)constructed the exposed breast in the Neutrialia advertisement as 'natural' in the context of the product advertised, the ASA here attempts to foreground a reading of the focus on the breast as 'natural' and context-bound, removing it from a specifically sexualised or gendered reading. This is further underlined through the (mis)understanding of the objection to this advertisement as being an issue of taste, or, alternatively, a misinterpretation of the 'preferred reading' (Lacey 1998). The Isklar adjudication then, just like the Neutrialia adjudications, invites an understanding of the call for offence as a moral issue concerning decency rather than taking issue with the portrayal of a distinctly *gendered* body.

The advertisement makes use of double-meaning – the erect nipples are simultaneously interpreted as a reaction to the ice cold water, as well as a sexual response to arousal. The polysemic nature of the advert is necessary here, the double-meaning being a prerequisite for a full understanding of its 'humorous' narrative. The two readings are not *oppositional* readings but *complementary* ones. Yet, there is an insistence on the part of the ASA to emphasise only *one* reading of the advert – that of a non-sexualised reading. The pre-vetting agency, Clearcast, similarly denies the polysemic nature of the advertisement, also refusing a sexual reading of the ad. However, it also becomes clear through the adjudication that the concept of voyeurism was indeed brought into consideration when clearing the advertisement in question:

"Clearcast believed the ad was a humorous and brief depiction of how the body reacts to cold temperatures. They argued that a physiological response, not a sexual one, had been shown. They said there was no nudity in the ad and the woman appeared to be in on the joke as she looked at her nipples and smiled. They added that nobody was seen leering at the woman or behaving inappropriately towards her. They explained that they had given the ad a post-9pm restriction because it showed erect nipples."

There are a couple of interesting points to note in this extract. Firstly, the literal focus on the woman's breasts, cropping the image so that the viewer does not see her head is a well-recognised objectification practice. It strips the depicted woman of agency or subjectivity and allows the viewer to see her as an object for their (male) gaze – the viewer becomes the spectator, or *voyeur* (Mulvey 1975). Clearcast takes account of the notion of voyeurism, but misunderstands Mulvey's critical point in how the gaze belongs, not only to the camera or the (male) protagonist, but to the audience as well. Clearcast's argument that there is nobody 'leering at the woman' (there is no male protagonist present) and no one 'behaving inappropriately' fails to recognise the role of the *viewer* in this visual exchange.<sup>115</sup>

Clearcast seem to challenge the view of the woman as objectified in making use of decidedly postfeminist vocabulary, claiming that the

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<sup>115</sup> As I will discuss in the next chapter, the presence of a man 'leering' or behaving 'inappropriately' does not secure a sexist reading.

woman is 'in on the joke'; that she is *self*-sexualizing. Although she might still be constructed as an 'object' for the male gaze, the "[o]bjectification is pre-empted with irony" (McRobbie 2004, p. 259). As McRobbie (2007) argues, in a postfeminist culture we are supposed to 'get the joke' when seeing sexism in advertisements – it is not meant to be 'serious', to be read as 'sexist'. Clearcast here seem to take into account a feminist critique in noting the absence of obviously marked sexist behaviour (leering and inappropriate behaviour), whilst arguing that such a critique is misplaced. Their reading of the advertisement suggests that the advertisement is not exploitative as the woman portrayed has chosen to do what she does, and the audience is supposed to know this. She is in control, she is enjoying herself and she is knowingly *inviting* us to look at her.

Whilst most adjudications discussed in this chapter could be said to evoke a postfeminist rhetoric in which sexism is de-constructed as 'ironic' in the wake of feminist success (McRobbie 2004), I will put the discussion of postfeminism to one side for now, returning to this topic in greater detail in the following chapter.

### *The female 'nude': Intertextual readings, ironic understandings*

Similarly to the Isklar advertisement, this advertisement for Granary Bread<sup>116</sup> from 1996 made use of the sexualised female body in a way that was somewhat incongruous with the product advertised. The commercial

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<sup>116</sup> The video for this advertisement was found on YouTube but has since been removed from the site due to multiple third-party notification of copyright infringement.

received five complaints for being "sexist, tawdry, salacious and inappropriate for broadcasting when children might be in the audience".<sup>117</sup>

The BSC described the advertisement in the following way:

‘the advertisement featured an apparently naked woman straddling a chair, in the pose made famous by Christine Keeler, extolling the virtues of granary bread’

The advert is shot in black and white and opens with a close-up shot of a woman’s face eating a piece of bread. It slowly zooms out to reveal her straddling a chair in the nude. The (female) voice-over states: ‘The original Granary. It tastes great with nothing on’.

The BSC’s Annual Report from 1988/89 states the use of nudity in broadcasting is acceptable “provided that it in no way exploits the nude person by presenting him or her simply as a spectacle, can be a legitimate element in the material being transmitted.” (BSC 1988/89, p. 39). I argue here that the Granary bread advertisement is distinctly constructed as ‘not a nude’ and hence, escapes the (sexist) reading of woman as ‘spectacle’. Before discussing further the incongruity in this advertisement between nudity and product, I want to make a few comments about the advertisement’s use of the Christine Keeler reference and how intertextuality can be an important tool in creating an ‘ironic’ understanding of nudity and sexualised imagery.

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<sup>117</sup> Five more complaints were received by the ITC but were not investigated.

The Christine Keeler pose referred to here is an iconic nude from 1963 by photographer Lewis Morley, where Keeler is seen straddling a chair facing the wrong way, allowing the triangular-shaped back of the chair to cover the centre (crotch, midriff and torso) of her body. Although considered a piece of art, the photograph was originally a publicity picture for a film and Keeler was contractually obliged to pose nude by the film company (Jones 2013). The National Portrait Gallery have described the photograph and its ambivalent status as a cultural/sexual symbol in the following manner: "A combination of pin-up and icon, suggestive both of sexual liberation and at the same time of the penalties of sexual exploitation, it occupies a morally ambiguous universe" (NPG 2014).

The use of cultural references in advertising is a common technique to quickly relay messages and incite certain cultural, emotional and symbolic connections with the product advertised. Julia Kristeva (1980) refers to this practice as 'intertextuality', where the meaning of one text (here, the Morley-photograph) shapes the understanding of another (the advertisement here as 'pastiche' or 'parody'). Through the visual imitation of this notorious Morley-photograph, the advertisement is making a very clear and deliberate connection to sex, further emphasised through the sensual soundtrack, the sexy female voice-over, the model sensually touching her lips, and the camera work, slowly zooming out to reveal successively more of the model's partially covered body.

### *Sex sells (bread)*

Through the little information we are given about the complaints, the offence caused by the Granary Bread advertisement seems to have taken at least two, if not three, different forms. Seeing the advertisement as ‘tawdry’ and ‘salacious’ seem to reflect a concern with taste and decency – a moralistic concern over the sexual overtones of the commercial. However, the sexist offence may be interpreted as less about the portrayal of sexualised nudity *per se* and more about the particular version of female sexuality that is represented in this advertisement – a sexist stereotype that bears little relevance to the product advertised. Furthermore, the paternalistic concern over children’s (accidental) access to this imagery may not come from a position of regarding the references to sex, or displays of nudity, as inherently ‘wrong’ in this context, but may rather reflect issues with the scheduling of the advert. Curiously, neither of these complaints are reflected in the adjudication, which simply states that:

“The Committee acknowledged that the nature of this alliance [the allusion to Christine Keeler in conjunction with selling bread] might have puzzled some among the audience, but as no nudity was shown, it concluded that the advertisement had not exceeded acceptable limits for broadcasting”

The BSC’s reading of the advertisement does not even begin to engage with the sexual message of the advertisement, which, indeed, seems to be the unifying foundation for all the offended complainants as outlined

above, whether on moral or sexist grounds. The sexual connotations of the imagery – as manifested symbolically both through the use of an image that originally became iconic of the sexual revolution thirty-odd years earlier, as well as the sexually suggesting tagline: ‘It tastes great with nothing on’ – is referred to as ‘puzzling’ for some viewers but dismissed as irrelevant in the light of the nudity being dismissed as non-existent (although the woman in the ad is indeed, and is meant to be seen as nude, the advertisement actually features little more than the exposure of the models legs and arms). In this way, despite rejecting a reading of the advertisement as ‘indecent’, the BSC still foreground a moralistic reading of the advert, as it focuses solely on dismissing offence on moral grounds and fails to engage with the criticisms of sexism. The complaints were not upheld.

### *Representing women? The female body as object*

This next advertisement invokes similar problems as the previously discussed advertisements in that it can be read as gratuitously sexualising and objectifying women’s bodies. However, the adjudication here takes a slightly different turn in deconstructing a sexist reading than the advertisements above. It is included here as it features an interesting discussion of what ‘counts’ as objectification, as the central female character in this advertisement is not a live human being, but a mannequin. It might be argued that the use of an *actual* object to represent women and female sexuality highlights the objectification of women’s bodies further, however, the adjudication takes a different approach.



The advertisement in question was for Mazda cars<sup>118</sup>, broadcast in 2005. It received 425 complaints, an unusually high number<sup>119</sup> and the fourth most complained about advert, in all media, that year.

The advertisement features a man transporting some female mannequins dressed in silky negligee-type clothing to a store. He straps the mannequins into his Mazda car and starts driving. During the drive the camera focuses specifically on one of the mannequins, zooming in on various body parts: her face, eyes (which sparkle mysteriously, suggesting that she is, indeed, imbued with emotion or some sort of 'soul'), breasts, and an interspersed shot of her stocking-clad thigh (which is further exposed by her arm 'falling' down, catching and pulling up some of her negligee). When the car stops at its destination (incidentally located under a large billboard showing a pair of nude, disembodied female legs) and the man lifts out the mannequin, her nipples, which are in line with his eyes, appear erect, suggesting that the mannequin experienced some kind of sexual arousal from a 'stimulating' drive in the advertised car. He looks at the nipples and then, puzzled, looks at the mannequins face, which, as the camera focuses on her, is accompanied by the sound of a woman's giggle. The caption reads 'Surprisingly stimulating. The new Mazda5'.

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<sup>118</sup> See the advertisement here: <http://www.youtube.com/watch?v=W19wAMg3TJg>

<sup>119</sup> Thirty of these 425 complaints objected to the cinema rather than the television advert. The cinema and television advertisement were identical, although the complaints and responses regarding the cinema advert have not been accounted for in this analysis as the different medium brings with it different considerations.

The television advertisement was cleared with a post-7.30pm scheduling restriction, to avoid it being seen by younger children<sup>120</sup>. The advertisement received a range of complaints, including complaints concerning the reference to sexual arousal as offensive (175 complaints) and the scheduling of the advert in relation to concerns about child viewers (136 complaints). However, the largest number of complaints (205 complaints) were concerned with sexual objectification and the advertisement as being demeaning to women. None of the complaints were upheld.

It is perhaps more difficult to assert a 'preferred reading' of the erect nipples outside the scope of sexual excitement in this commercial (as was attempted in the Isklar adjudication) – the contextual factors of the advertisement makes a reading of the erect nipples as a sexual response almost inevitable and the reference to 'stimulation' in the caption has clear sexual connotations. This is not to say that the advertisement does not offer a polysemic reading – it inherently and deliberately does. As with the Isklar advertisement, it is the premise upon which the comedy of the advertisement relies – the 'stimulation' referred to in the advertisement, being applicable both in a sexual and non-sexual way (although the use of women's nipples foreground a sexual reading). Neither does it seem to be a productive venture to argue the relevance of such sexual display to the

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<sup>120</sup> Note here the inconsistencies in scheduling restrictions compared to the Isklar advertisement above. Whereas the erect nipples in the Isklar advertisement were seen to require a post-9pm scheduling restriction, the Mazda advertisement is to not be shown before 7.30pm. It remains unclear as to why the erect nipples in both advertisements require different treatments in terms of scheduling.

product advertised (as in the Neutria advert), although car advertising has a long tradition of using women's bodies to signify the 'sexiness' of a new car.

The (then) pre-vetting agency, the BACC, claimed, in relation to the complaints about the offensive reference to sexual arousal, that the advertisement:

"was about the excitement of the driving experience and its tone was more comic than overtly sexual. They said the reaction of the driver in the final scene was one of surprise and confusion rather than sexual interest"

J. Walter Thompson Ltd., the advertising agency responsible for the advertisement, also emphasised a reading of the advertisement as about the excitement of the driving experience, without reflecting further on the sexual double meaning that provides the ground for the humour of the advert:

"the ad was intended to highlight the exciting aspects of a type of car that may be regarded by some sections of the audience as uninspiring"

However, in their assessment, the ASA acknowledge the sexual connotation in the advert, although render it 'inexplicit' and an issue of

personal taste, situating the reference to sexual arousal outside the scope of regulatory intervention:

"We acknowledged that any reference to sexual arousal in ads could cause offence to some viewers. However, we considered that the humour in the ad was based on mildly sexual material and was not excessively explicit. We understood that the depiction of a mannequin becoming aroused by the excitement of a journey in a car may not have been to everyone's taste but we did not consider it likely to cause serious or widespread offence"

But it is in the assessment of the advertisement in relation to complaints of sexual objectification that the regulatory discourse becomes particularly interesting. The BACC, again, emphasised that "the ad was about the excitement of the driving experience for the mannequin" – a non-response to the claim in question. The advertising agency instead focused on the use of an inanimate object, suggesting that, "the use of mannequins instead of real people contributed to the humour of the ad". The ASA argued along similar lines:

"We appreciated that to some the depiction of the female mannequin becoming sexually aroused could be seen as objectifying and demeaning women. However, we considered that the intention was not to insult or offend but to humorously present the absurd notion that an inanimate object could be turned on in

the first place. We considered that to the majority of viewers the sexualisation of the mannequin would not have been taken to be demeaning to women or portraying them as sex objects”

As opposed to the advertisements discussed so far, this adjudication seems to acknowledge that the advert *does* invite a reading that sees the advert as ‘objectifying and demeaning to women’ (even though this reading is rendered marginalised). Moreover, the ASA further asserts that the mannequin is, indeed, sexualised. But there is also a tension here, in terms of whether the mannequin represents an objectification of *women* or of *itself*, already an object and inescapably objectified. In acknowledging the objectification but rendering it a marginalised reading, the ASA emphasise the latter. The ‘absurdity’ of an inanimate object being sexually aroused is constructed here as the ‘preferred’ and intended reading of the advert. The sexual theme is acknowledged (although represented as ‘inexplicit’) and sexual objectification is rendered inevitable, but sexism is not. None of the complaints were upheld.

### **‘Zoning’ Sex(ism): A concern for child viewers**

In the examples above I have shown how the sexualisation of the female body has come to be deconstructed in various ways in regulatory discourse. It has become clear that, although a reading of ‘indecenty’ is often acknowledged but dismissed as marginal, an in-depth evaluation of how sexualisation interacts and interlinks with gender is rarely provided.

None of the complaints above provoked regulatory intervention – indeed, only a handful of complaints regarding sexism in television advertising have been upheld since 1991, which is the year my data dates back to (see Table 4.4 in Chapter 4). A much more common reason for intervention in matters of sex and sexuality is when an advertisement becomes the object for scrutiny for being broadcast at inappropriate times of day – that is, when an advertisement risks being seen by children. Children are not constructed in regulatory discourse as ‘offended’ by advertising. Rather, children are considered to be vulnerable to ‘physical, moral or mental harm’ as a result of inappropriately scheduled advertising.

In order to explore how targeting and scheduling feature in advertising regulation as a response to offence, I am drawing on the concept of ‘zoning’ from American legal discourse. It is a concept that is used for a content-neutral and effect-based approach to “zoning adult establishments rather than [addressing] the issue of regulating pornographic speech” (Mills Eckert 2003, p. 865). Through zoning ordinances, Courts in the United States are able, for example, to relegate adult establishments away from town centres on the premise that they will have a negative effect on the surrounding property, without compromising their content-neutrality principle in relation to free speech. As Mills Eckert explains: “In zoning cases the Court chooses to combat content-neutral secondary effects [of pornographic speech], rather than the content-based primary effects” (Mills Eckert 2003, p. 865). Mills Eckert here assumes that there are indeed

‘content-based primary effects’, which she argues are specifically *gendered* effects, with a particular negative impact on women:

“In the case of pornography, the zoning cases permit us to acknowledge that pornography produces some unwanted effects. A concentration of adult establishments decreases the vibrancy of communities, reducing property values, increasing crime and debasing neighbourhoods. What the cases do not recognize is pornography’s differential impact on women or that the ordinances regulate a particularly controversial form of speech, namely the male, heterosexual variant of pornography” (Mills Eckert 2003, p. 868).

In this way the Courts are able to regulate a certain form of unwanted sexual speech without getting into the troublesome terrain of free speech restrictions. Although advertising speech is not directly comparable to pornographic speech – although the two have been frequently likened to each other in terms of (re)producing hegemonic, patriarchal and sexist values through their exploitation of women’s sexuality (cf. Kilbourne 2003; Rosewarne 2005; Root 1984) – I argue that the concept of ‘zoning’ is particularly suited for creating an understanding of the regulation of sexually offensive advertising speech.

In what follows, I discuss two advertisements that have been targeted, or ‘zoned’ in various ways in order to avoid offence. The problem here, I

argue, is that whilst 'zoning' indecent or adult material may invite fewer complaints in this area, it does nothing to deal with the gendered concerns regarding sexualisation.

*'Zoning' the 'pin-up' – Targeting as a way of zoning offensive gender portrayals*

Similarly to the advertisements discussed above, this *Sunday and Midweek Sport*<sup>121</sup> newspaper advert from 2012 also made use of sexualised images of women to sell its product, albeit, perhaps reflecting the product sold more than in the previous advertisements, since the papers are as well known for their 'glamour models' as they are for their sports coverage. However, whereas the previous examples showed how regulatory discourse has functioned to negotiate a de-sexualised or de-gendered reading in favour of another, less problematic one, there is reduced scope for a polysemic reading of this advertisement.

The advert opens with a female voice-over exclaiming that it is sponsored by 'Keep Britain Boring' – a sarcastic nod to the longstanding moralist and feminist calls to ban the use of 'Page 3'-girls that feature in tabloid papers such as The Sun and Sunday Sport. Following this opening credit, accompanied by an image of the British flag with the words 'Keep Britain Boring' plastered across it, a male voice-over continues:

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<sup>121</sup> See the advertisement here: <https://www.youtube.com/watch?v=mxLtUpNICqo>



“It has been brought to our attention that the all colour Sunday Sport and the Midweek Sport are available at all good newsagents. Apparently they are packed full of stunning babes, shocking exclusives, the funniest stories and, of course, great football coverage. Outrageous! Gorgeous glamour girls jumping out from every page, jaw-dropping photos and staggering stories to make you laugh. How dare they! Keep Britain boring! I certainly won’t be buying the Sunday Sport tomorrow or the Midweek Sport on Wednesday”

During this monologue a range of the tabloid paper’s front page covers are briefly shown in succession, including covers featuring the headlines: ‘TV SOAP BABES’ TOPLESS HOLIDAY SNAPS!’, ‘GIRLS, GIRLS AND MORE GIRLS’ (accompanied by an image of two women in lingerie) and ‘IT’S AN ALL OUT PHWOAR ZONE!’ (accompanied by an image of a woman dressed in underwear and stockings, leaning forward to emphasise her cleavage). The advertisement also features still pictures of nine different women dressed in underwear or bikinis, striking conventional glamour girl poses to enhance the shape of breasts and buttocks.

The ASA received only three complaints for this advertisement. The complainants challenged whether the advertisement was ‘offensive’ and whether it was ‘inappropriate for broadcast during the day when children could be watching’. It should be noted here that the ‘offence’ complaints

are not explained further by the ASA, leaving the reader unknowing of whether this is in response to the sexual content as *morally* offensive, or if the offence stems from a *sexist* reading of the advertisement. As discussed at the beginning of this chapter, this failure to fully explain and explore the complainant(s) reasoning reflects the uneven dialogical relationship between complainant and adjudicator.

The advertisement was only broadcast on Sky Sport News in order to reach the target audience of men between ages 16-34, according to the advertiser, Sunday Sport Ltd. The transmission of the advertisement, as restricted to one channel part of a subscription service and with a predominantly male audience (74% of the channels viewers were men, according to the ASA) may be a reason behind the few complaints received for a relatively controversial advert. Furthermore, Sunday Sport argued that the content of the advertisement was reflective of the content of the paper.

Clearcast had cleared the advertisement with an 'ex-kids' timing restriction, meaning that it was not to be broadcast in or around programmes of particular appeal to children (defined for these purposes as under 16 years of age). However, as already mentioned, the advertiser had ensured the advertisement was only broadcast on Sky Sport News. In their response to the complaints, Clearcast defended their scheduling restriction by using a very pragmatic and quantitative approach to measuring potential offence:

“Clearcast noted that the ad contained some sexual images but considered that they fell within the recognised charter of glamour. They also considered that the images (seven in total) were photographic stills and appeared fleetingly on-screen during two short sequences measuring two and three seconds in duration. They said that given the fast cutting style of the ad, the brief duration of the seven images (less than one second per image) and their contribution to the ad as a whole (less than 25%), it was judged that the ad should not be transmitted around programs of interest to children and therefore the ad was cleared with an ‘ex-kids’ restriction”

The reasoning behind Clearcast’s statement (paraphrased here by the ASA) seems to be that the *brevity* of sexualised imagery would reduce the likelihood of causing serious or widespread offence. Offence is here measured in terms of the length of exposure to sexualised imagery, rather than the style and context of it. Following Clearcast and the Sunday Sport’s assessments, the ASA write that:

“We understood that it had been targeted at a predominantly male audience and noted that the channel’s profile indicated that 74% of its viewers were men and eight out of ten viewers were aged between 16 and 54. We noted the Sunday Sport’s comment that the ad reflected the content of its newspaper. We also noted that whilst

some of the images shown featured women in sexualised poses, we considered that their impact was reduced due to the brief duration of the images and the fast cutting style of the ad”

This argument is also recycled in response to the complaint(s) concerned with the sexualised imagery being seen by children:

“We considered that the ad was mildly sexual in content and that some parents would consider it inappropriate for broadcast at times when children might be watching TV unaccompanied. We noted that the ad had been given an ‘ex-kids’ restriction by Clearcast which we considered appropriate. We understood from audience index figures that a small proportion of viewers watching Gillette Soccer Saturday on the day in question were children under 16 years of age and therefore the ad had been broadcast in accordance with the restriction. We noted that the seven images of women in their underwear or bikinis were fleeting and stayed on-screen for less than one second each and made up a small part of the ad”

It is unclear throughout the adjudication whether the focus on the amount of screen time afforded to the sexualised imagery is in response to the complainants’ concern for child viewers, or for offence more generally. Nevertheless, it would seem that it is in some way attempting to ‘measure’ offence in how visually *prominent* this content is in relation to the

advertisement as a whole. The ASA here confirms that targeting this material through a channel with a heavily male-dominated, adult audience is considered an appropriate way of avoiding offending audiences, assuming that the offended audience largely consists of women – although this connection is never explored.<sup>122</sup> The complaints surrounding the *Sunday Sport* advertisement were not upheld, largely because the advertisement was already considered to have been ‘zoned’ so as to avoid ‘widespread offence’.

The above adjudication is a good example of how discourses of ‘zoning’ dominate the regulatory landscape in response to sexualised offence.<sup>123</sup> This advertisement, as well as the previous adjudications discussed in this chapter, have all had more or less severe scheduling restrictions imposed on them by the pre-vetting agency so as to avoid being seen by children of various ages. ‘Zoning’ allows regulators to relegate sexual speech to certain times of day and, in a digitalised, multi-channel society, to specific targeted channels. These zoning practices are primarily to keep children from coming across ‘inappropriate’ material – note how advertising content is already here constructed as, if broadcast at certain times, transgressing boundaries of morality, decency and acceptability.

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<sup>122</sup> As discussed previously in this thesis, children are not considered ‘offended’ by broadcast content - to be ‘offended’ you must be able to read and understand cultural norms and boundaries, a kind of social agency, which children are not, afforded in regulatory discourse. Instead, children are seen to be ‘harmed’ by broadcasting material.

<sup>123</sup> Although the *Sunday Sport* advertisement was not ‘zoned’ to be broadcast on Sky Sport News only, the fact that it was is emphasised and endorsed as an appropriate means of zoning by the ASA in their assessment.

Sexual material in advertising is rarely (openly) ‘zoned’ in order to avoid certain sections of the *adult* audience, although it could be argued, in the case of the *Sunday Sport* advertisement, that zoning had this particular function. Indeed, it would seem that this advertisement is zoned, partly to appeal to the target audience (adult men), and partly to avoid claims of sexist offence. Restricting an advertisement to only be broadcast on a digital subscription channel limits not *who* will watch (i.e. paying subscription members – in this case, of a channel that is targeted to a particular audience), but also the *number* of people watching more generally, inadvertently reducing the likelihood of receiving viewer criticism.

### *Boundaries of acceptability*

In this final section, I discuss an advertisement from 2011 for the computer game *Duke Nukem Forever*<sup>124</sup>, which became one of very few adverts subject to regulatory intervention based on complaints concerning the sexualisation of women. It received 34 complaints:

“Thirty-four viewers, who saw the ad after 9pm, challenged whether it was offensive and irresponsible, because it was sexist, violent and overtly explicit and included imagery which was likely to harm children and vulnerable people”

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<sup>124</sup> See the advertisement here: [http://www.youtube.com/watch?v=549nLx8EE\\_k](http://www.youtube.com/watch?v=549nLx8EE_k)

The advertisement featured several shots of women pole dancing (the camera framing their bodies so that their faces were never on show), with pixelated female buttocks and breasts. The women were all watched by a man, obscured by the darkness. It also contained a brief shot of two young women, dressed in school uniforms, leaning in for a kiss, some scenes of violence, including aircrafts firing weapons, punching, explosions, and first-person shooting game footage. The advertisement cuts quickly between scenes and does not form a narrative.

The advertiser, Take Two Interactive Software Europe Ltd (trading as 2K Games), argued, in response to the complaints, that the advert was deliberately exaggerated and clearly unrealistic:

“They [2K Games] said that Duke Nukem Forever was a cartoonish, over-the-top, humorous take on the first person shooter video game genre and deliberately distanced itself from the ultra realistic, graphic modern war games that dominated the field. They said any sexual content and violence was presented in an exaggerated, non-realistic way, by animated characters, in an attempt to send up the main protagonist Duke Nukem, who could be seen as something of a 1980s, muscle-bound, ultra-macho figure of fun”

“They reiterated, with regard to the complaints that the ad was not sexist or overtly explicit, that all footage was part of the game’s story line and although some of the brief sequences were of a

sexually suggestive nature, those images were pixelated or non-explicit. They felt that the imagery was of a type which was common in mass-market entertainment, such as TV, film or music videos”

It is worth noting that there is an emphasis here on the relevance of the imagery to the advertised product (‘part of the game’s story line’), bearing resemblance to the previous *Sunday Sport* advertisement where sexualised imagery was also part, not only of the product *appeal*, but contained within the product itself. Another notable similarity to the *Sunday Sport* adjudication is the emphasis on the brevity of the sexual imagery.

The ASA investigated the advertisement and found it in breach of the following BCAP Code rules:

From Section 1: Compliance

1.2 (Responsible advertising) ‘Advertisements must be prepared with a sense of responsibility to the audience and to society’

(BCAP 2010, p. 11)

From Section 4: Harm and Offence

4.1 ‘Advertisements must contain nothing that could cause physical, mental, moral or social harm to persons under the age of 18’



4.2 'Advertisements must not cause serious or widespread offence against generally accepted moral, social or cultural standards'

4.9 'Advertisements must not condone or encourage violence, crime, disorder or anti-social behaviour'

(BCAP 2010, p. 28)

In short, the advertisement was deemed socially irresponsible, harmful to children, causing serious and/or widespread offence, and seen as condoning violent behaviour. As a result, the advertisement, which already had a post-Watershed (9pm) scheduling restriction, was deemed inappropriate to be broadcast before 11pm. Despite the complaints being concerned with both explicit sexual material and sexism (as well as violence, although this is not included in the scope of this thesis), in its investigation it was clear that the advertisement was upheld only in response to the explicit sexualised imagery:

"We noted that the ad [...] contained several scenes in a strip club, featuring women who appeared naked, or nearly naked, pole dancing and gyrating. We noted some pixilation obscured the women's bottoms and nipples, but nonetheless considered that the presentation of the women's naked bodies and their very sexual movements and gyrations were overly sexually explicit for an ad with a post-9pm scheduling restriction. We also noted that the ad featured two girls in school kilts and bunches about to kiss, and considered that, in the context of other scenes with sexual content,

the ad appeared to link teenage girls with sexually provocative behaviour.

On that basis, although we did not consider that the images of violence were likely to distress or cause harm to children or vulnerable people and although we did not consider that the portrayal of the women in the ad was overtly sexist, because we considered that the sexual imagery and content in the strip club scenes were overly explicit for broadcast at that time, we concluded that the ad was irresponsible and likely to cause serious or widespread offence when broadcast before 11pm”

In this adjudication, the sexual imagery is specifically pinpointed as transgressing (moral) boundaries of acceptability. The nudity and pole dancing scenes are here specifically mentioned as ‘overtly explicit’. The scene with two girls in school clothes about to kiss is also framed as an issue of morality, the concern being the perceived links between the advertising imagery and inappropriate teenage sexual behaviour, rather than an issue of sexualising young girls, for example. As such, claims of sexism are dismissed and re-appropriated as an issue of explicitness, although the adjudication remains unclear in its reasoning behind this decision.

The ‘zoning’ of this advertisement offers a solution to the problem concerning child viewers, yet does little in terms of offering an

understanding or problematisation of the sexualised imagery. By examining the advertisement solely in terms of the levels of 'explicit' content, the ASA fails to make connections between sexualisation and gender. A feminist critique has always focused not on explicitness, but on objectification and sexism (Attwood 2002), yet such criticisms are not accounted for here. The zoning of the advertisement emphasises the reading of viewer offence in terms of explicit content – by restricting the advertisement's broadcast, the ASA seem to confirm that the imagery is not *inherently* problematic in terms of its portrayal of women, but rather is problematic as a form of sexual speech in a public domain at specific times. Through zoning, regulators are able to avoid engaging in a complex discussion on the potentially sexist meanings of sexualisation.

## Conclusion

In this chapter I have outlined some issues with how assessments of complaints often fail to respond adequately to the complainant(s) concerns about sexist advertising speech. I began this discussion by drawing on Bakhtin's concept 'dialogism', arguing that the dialogical relationship between complainant and regulator is 'uneven', where the regulator sets the agenda for interpretation.

I then moved on to a discussion on three key reports published by the regulators since 1995 – all concerning harm and offence to some extent. I argued in relation to these reports that, although they dealt at length with

issues of sexual and nude material, they were failing at making connections between *sexual* and *sexist* portrayals in advertising.

Finally, I turned to my analysis of complaint adjudications from 1991 to 2012 to explore the regulatory discourse around issues of sexual speech and women's sexualised bodies. My concern here has not been with whether the advertisements discussed should or should not be regulated – indeed, the complexities with regulation in this area will become more apparent in the next chapter. Rather, I have argued here, that the regulatory discourse on the sexualisation of women in advertising lacks critical engagement with issues of gender. By failing to account for complainants' concerns regarding sexist advertising speech, regulators foreground an understanding of the advertisement in terms of its sexual 'explicitness' and/or 'exposure' to children. Furthermore, the way in which advertisements are 'zoned' away from viewing times with a high likelihood of children present further contributes to such an understanding of sexualised advertising speech as it fails to critically engage with the *meaning* of sexual content.

## CHAPTER 8

# Sexist imaginations: What counts as sexism?

### Introduction

Whereas the previous chapter explored how issues of sexualisation have been devoid of feminist criticism in regulatory discourse, this chapter looks at how sexism, when taken into account, is rendered ‘harmless’ and ‘inoffensive’. Using adjudications from 1991 to 2012 handling complaints specifically about sexist advertising content I examine how advertising regulators define, mitigate and reject (alleged) sexist portrayals of women.<sup>125</sup> Adjudications featuring complaints regarding sexism towards women amount to 58 out of a selection of 300 (see Table 4.4 in Chapter 4)<sup>126</sup>. I also look at adjudications featuring complaints regarding gendered/sexual violence, harassment and abuse, although these complaints often overlap with complaints concerning sexism.

In this chapter I argue that the discursive strategies used in dismissing a sexist reading do not necessarily rely on sexism or sexual objectification to be *absent* from the advertisement, but merely need to be considered

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<sup>125</sup> There are, indeed, complaints about the sexist portrayal of men in my sample, albeit only a handful, primarily concerned with advertisements depicting men as incompetent at household tasks. This chapter, however, focuses on advertising complaints about sexism towards women.

<sup>126</sup> As previously mentioned in this thesis, the adjudications feature *summaries* of complaints, sometimes making it unclear whether the complainant(s) themselves had constructed the complaint in terms of sexism. There are therefore a range of formulations that I have included here that have not been directly termed ‘sexist’ in the adjudications. Included under this term is, for example, anything concerning unfair treatment of one sex in relation to another, sexual objectification, portrayals that are considered demeaning or derogatory to women/men, or offensive to women/men.

sufficiently removed from ‘reality’ (through the depiction of fantasy, absurdity or irony) in order to escape regulatory intervention. For sexism to be defined as ‘offensive’ or ‘harmful’ it needs to be seen to ‘do’ sexism, to *act* in a discriminatory way towards women as a group. However, through invoking a (postfeminist) notion of sexism as a ‘past’ concept (or a ‘failed performative’), its presence, even in the most blatantly sexist portrayals, is rendered benign.

### *Postfeminism*

The concept of postfeminism has been used to explore a range of cultural shifts and changing subjectivities (both feminine and masculine) in contemporary culture. Some have considered it a form of ‘backlash’ against feminism (Faludi 1991, Levy 2005), whilst others have thought it to be a more complex cultural process featuring both an ‘undoing’ of feminism, whilst simultaneously “engaging in a well-informed and even well-intended response to feminism” (McRobbie 2004, p. 255). Freedom, individualism and choice are emphasised<sup>127</sup> and feminism considered redundant in the wake of its own success (McRobbie 2004, 2011). Much academic work on the contemporary representation of sexism in a postfeminist media culture has emphasised how such representations have become more subtle and ‘indirect’ (Mills 2008; Gill 1993, 2011). As discussed in Chapter 3 of this thesis, Williamson (2003) and Whelehan (2000) both noted a trend in the early 2000s, labelling it ‘retro-sexism’ – a

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<sup>127</sup> Although, as several critics of postfeminism have noted, these freedoms are the domain of a privileged few: the white, young, middle-class woman who can afford the aesthetic, consumer and lifestyle choices offered by postfeminism (Negra 2009; Tasker and Negra 2007; Gill 2007a).

kind of 'traditional' sexism made ironic through being framed in period settings. This 'retro' narrative refers to sexism as a 'historicised' concept and draws, simultaneously, on discourses of postfeminist liberation and nostalgia (Williamson 2003). McRobbie (2007) has further discussed how sexualised images of women have come to be imbued with female sexual agency in order to dismiss claims of sexism, evoking instead the notion of 'self-objectification', or sexualisation by choice. In this chapter, I draw on the notion of postfeminism as a distinct *sensibility* (Gill 2007b), exploring, in particular, 'irony' as a postfeminist theme, where sexist sentiments are understood to simply be ironic reiterations of a sexist past (Gill 2007b; Williamson 2003; Whelehan 2000).

Irony is one of the defining features of postfeminist culture, used to invalidate a feminist criticism of sexist portrayals (Tasker and Negra 2007; Gill 2007b). Rosalind Gill (2007b) has noted that one important way in which irony functions within postfeminism is "through the very extremeness of the sexism expressed" (p. 160). This 'extremeness' of sexism is itself what makes it so 'obviously' ironic or ridiculous, assumed to 'mimic', or 'parody' older forms of hostile sexism, as opposed to speaking sexism in and of itself. As Gill writes: "contemporary sexism is changing to take on knowing and ironic forms – forms in which the hatred of women can easily be disavowed (if challenged), and the finger pointed accusingly at the 'uptight', or 'humourless' feminist challenger" (2007a, p. 82).

Gill notes, paraphrasing Judith Williamson, that "'we' (the assumed feminist audience) [have] allowed the word [sexism] to be mocked and hijacked by the media, and because no one wanted to be seen as 'uptight', 'frigid', or 'humourless' the term sexism fell out of use, latterly acquiring a quaint, old-fashioned ring to it – in a way that was strikingly not paralleled by notions of racism or homophobia" (Gill 2011, p. 61). Gill therefore calls to revitalise the concept of sexism in feminist scholarly work, to (re)turn to sexism as a category of analysis. Attenborough (2012) argues that a conversation of what 'counts' as sexism in contemporary Western culture is of great importance. Nevertheless, he also points out that existing attempts to define and open up a debate on contemporary sexist media portrayals are all linked in "their etic understanding of 'sexism'" (ibid, p. 2). Such an approach relies on the analyst him/herself to locate and define sexist representations in the media. Attenborough suggests approaching sexism instead as an "emic, participant-driven phenomenon; as something referred to, defined and invoked within the media" (ibid, p. 2). This chapter seeks to address this issue, examining how sexism, as invoked by complainants in television advertising, is discussed and negotiated in regulatory discourse. This is of particular importance as the privileged position of the advertising regulator, endorsed by statute to manage misleading, harmful and offensive advertising content and to represent the public interest in their interpretative work, produces an 'official' discourse on sexism in advertising media.



### *The 'lad' in contemporary advertising*

A striking feature of the advertisements that are investigated for sexism by the television advertising regulators (since, at least, 1991) is their mode of address. Overwhelmingly, these advertisements market products intended for a young male viewer, speaking to (and for) the 'lad'. The 'lad' emerged as a new figure of masculine identity in British popular media in the 1990s. Its prominence as a cultural phenomenon through the 1990s and 2000s has been attributed to a range of factors, including "a crisis in masculinity, a backlash against feminism or simply a consumer imperative" (Jordan and Fleming 2008, p. 335). Gill (2003) and Benwell (2002, 2003) have further noted a tendency to position the 'new lad' as a reaction to the 'new man' – the caring, sensitive, egalitarian figure of a man that emerged in popular culture around the 1980s. As Gill notes: "one of the most common cultural narratives of masculinity in the 1990s (alongside a talk of its crisis) was the story of the *displacement* of 'new man' by 'new lad'. In such stories 'new lad' is a reaction against 'new man', as well as a backlash against the feminism that gave birth to him" (Gill 2003, p. 37). However, the two 'figures' of masculinity, to borrow Gill's terminology, have co-existed in popular culture in the past couple of decades.

Whereas much previous work on sexism in postfeminist media culture has focused on the changing role of women in products marketed to women (see, for example, Amy-Chinn 2006; Winship 2000; McRobbie 2007; Persis Murray 2013; Stasia 2004; and Vint 2007, to name a few), there is a

growing body of literature examining sexism as part of a postfeminist (or perhaps *anti-feminist*) 'lad culture', including its prominence in men's lifestyle magazines and 'lad's mags' (Benwell 2002, 2003; Gill 2003; Jordan and Fleming 2008), 'lad lit', (Gill 2009b) and the 'lad flick' (Hansen-Miller & Gill 2011). However, as Mooney (2008) points out, the subject of focus in these studies has generally been on the construction of the 'lad' as a particular type of masculine identity and less attention has been paid to the representations of women in these texts. In the context of these debates, I explore the presence of the 'lad' (as a character in the advertisement itself, or as the implied addressee) as emphasising an ironic and fantastical (absurd) reading, and how 'lad culture' as invoked in regulatory discourse is seen to have a mitigating effect on sexist portrayals and behaviour.

### *Sexism as speech act*

This chapter also draws on speech act theory, originally developed by J.L. Austin (1975) and discussed in greater detail in Chapter 3 of this thesis, in order to explore the notion of sexist speech as a 'failed performative'. I suggest that sexist speech<sup>128</sup> needs to be understood, not simply as speech

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<sup>128</sup> 'Sexist speech' is obviously an arbitrary category as 'sexism' itself is not a direct definition of a type of speech or imagery. I use the term 'sexist speech' here to explore sexist advertising portrayals, as invoked by complaints received by the advertising regulators. Here, a claim to have been 'offended' or 'harmed' by (alleged) sexist speech already presupposes that such speech, in some way, enacts injury. It is the negotiation, involving complainant, advertiser and regulator(s), concerning the 'status' of sexist speech that is of particular interest here.

that *is* but as speech that *acts*.<sup>129</sup> When claiming that an utterance or an image is 'sexist', it is suggested that it *does* something to the reader/listener/viewer – it subordinates, dehumanises, or in other ways *enacts* discrimination. Furthermore, I argue that sexist speech needs to be understood beyond its *perlocutionary*, that is consequential or secondary, effects (although such effects should not be neglected), as a form of *illocutionary* speech act, where the sexist utterance (or imagery) constitutes the very act of sexism itself. In other words, sexist speech not only communicates a message (of inferiority), but also *performs* sexism (e.g. through stating that someone is less intelligent because of their sex, inferiority is not only communicated, but the utterance is itself an act of subordination). As Catherine MacKinnon states: "Social inequality is substantially created and enforced – that is, *done* – through words and images" (MacKinnon 1993, p. 13).

However, sexism as speech act is not always effective – it does not always succeed in doing that which it sets out to do. As Langton notes: "speech acts are heir to all the ills that actions in general are heir to. What we do, and what we aim to do, are not always the same. Speech acts can be unhappy, can misfire. Sometimes one performs an illocution one does not intend to perform" (1993, p. 301). Lisa Schwartzman has emphasized "the necessity of examining relations of power in the social context in which speech acts occur" (2002, p. 422), arguing that the words (or visual

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<sup>129</sup> As Sunderland and Litosseliti (2002) note, words themselves do not have inherently sexist meanings. Words can be reclaimed and resignified (as seen with the use of the word 'queer', for example), and seemingly gender-neutral words can become imbued with sexist meaning (ibid, p. 5)

representations) uttered as part of an illocutionary speech act are not the locus of harm – the words in and of themselves do not have a magical ability to injure – but that harm is located “in the *act* of speaking those words in a particular social context” (ibid, p. 425). The illocutionary speech act is only effective if the speaker posits the authority to perform the speech act and the social and cultural context legitimises the utterance as a speech act<sup>130</sup> (Langton 1993; Schwartzman 2002). Having established this important aspect of the illocutionary speech act, it is possible to see how sexist speech can be stripped of its performative potential. That is, sexist speech can, in certain circumstances, fail to *enact* sexism, opening up possibilities for such speech to be used in humorous, ironic, or subversive ways (Schwartzman 2002).<sup>131</sup>

As we shall see, advertising regulation is not only a space where sexist advertising speech is defined (whether this is in order to acknowledge and intervene, or refute and dismiss), but also provides a space for the negotiation of the *effectiveness* of sexist speech acts, determining the injurious potential of sexism. I make an important distinction here, between sexism as a *successful* or *failed* speech act, as this provides a central feature in the assessments of sexism discussed throughout this chapter. Drawing on this distinction, I argue that the regulators are able to acknowledge sexist speech in an advertisement, whilst rendering it an

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<sup>130</sup> For example, the statement ‘I now pronounce you man and wife’ is only effective if it is uttered by someone with the authority to join two people in marriage, and only if it is said under certain conventions (Langton 1993).

<sup>131</sup> See also Matsuda (1993) who comes to the same conclusion in relation to racist hate speech.

ineffective performative. Sexism, discursively constructed as a *failed speech act* is then rendered 'harmless' or 'inoffensive' by the regulators, emphasising its *inability* to act in a discriminatory way. It is this process of negotiating the 'status' of sexist speech in regulatory discourse that forms the basis for this chapter.

### **'Fictional' sexism – dismissing sexism as part of a (male) fantasy scenario**

The advertisements featured in this section are all framed as 'male fantasy scenarios', narrated from a male perspective, speaking to a male target audience, and positioning women as the sexual objects of desire for the male protagonist (as well as the male viewer). Drawing on this 'meta-fantasy' narrative, the regulators argue that the sexual objectification of the women in these advertisements is not to be interpreted as 'sexist', since these scenarios are *fictional*. That is, the very fact that the objectification is seen as 'contained' within a male meta-fantasy of desire renders it 'harmless' and 'inoffensive'.

#### ***'Only in the man's mind': Sexual objectification as fantasy***

Lynx is a brand famous for its 'cheeky', 'laddish' advertising approach, often using the 'mating game' as a theme, both in their advertising of men's and women's products. Their various media campaigns have been subject for regulation more than once, for being sexist, too sexually explicit

and/or containing offensive sexual innuendos. The particular advert discussed here was for Lynx Body Bullet Spray<sup>132</sup> for men, broadcast in 2009.<sup>133</sup>

The advert features a young, shy man in various everyday scenarios, watching attractive women who, as they pass him by are seen to go from fully dressed to suddenly wearing only underwear. The track 'Can't seem to make you mine' by The Seeds is playing. In the final sequence, the man sprays himself with the Lynx Bullet body spray as he passes a woman in leopard print lingerie in the supermarket doing her shopping. She catches the scent and stops to turn around to look at the man, who is now seen standing, looking back at the woman, wind blowing in his hair, confidently smiling back at her, wearing only a 'comedy-style', leopard print thong. The voice-over states: 'Never miss an opportunity with new Lynx Bullet'. The on-screen text reads: 'New Lynx Bullet. Pocket Pulling Power'.

The television advertisement was cleared with an ex-kids restriction and the advertising campaign received 41 complaints. The television advert received complaints concerning the sexual objectification of women, for being offensive and demeaning to women, for being inappropriately

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<sup>132</sup> See the advertisement here: <https://www.youtube.com/watch?v=OIIFGNI7He8>

<sup>133</sup> The advert featured on television as well as in the cinema, online and on posters. The Internet and poster adverts were slightly different to the television and cinema advertisements. For the purposes of this chapter, only the complaints and responses related to the television advertisement will be discussed. However, it should be noted that it is not clear from the adjudication how many of the complaints were received as a result of the television advert only.

scheduled when children were likely to be in the audience, as well as one complaint about the glamorisation of casual sex.<sup>134</sup> None of the complaints were upheld.

In its response to the complaints, Unilever UK Ltd., who own the Lynx brand, referred to the its advertising approach as widely established, to the point of being *expected* by the audience:

“Lynx had been extremely popular for its playful, sexy, tongue-in-cheek take on the 'mating game' narrative, to which they continuously added creative new twists. The key theme of the majority of Lynx ads was the attractiveness of the product to women; that was what the audience had come to expect and with which it was comfortable”

Clearcast made a similar comment in relation to Lynx’s advertising approach:

“[Clearcast] felt viewers would be familiar with Lynx advertising, which had a common tongue-in-cheek, sexy theme”

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<sup>134</sup> Complaints for the advertisements in media other than television included: inappropriate for child audiences (cinema ad and posters); offensive and demeaning to women (cinema ad and posters); encouraging leering and sexual objectification, leading to women feeling unsafe in public spaces (posters); glamorising guns and violence by linking it to sex (posters); glamorising drinking and casual sex (poster); portraying women as sex objects (Internet). None of these complaints were upheld.

Indeed, Lynx has a history of attempting to appeal to their target audience, a (heterosexual) man in his teens to early 20s who is perhaps lacking somewhat in confidence but wants sexual contact with women (which, it is suggested in their general advertising approach, the product will help him achieve). This can be seen to be a 'risky' theme, especially considering that the Lynx brand often becomes the focus of (feminist) criticism as a result of their offensive portrayals of women. However, in response to the complaints for this advertisement, Unilever and Clearcast attempt to instil some agency for the women featured in this advert, framing them as 'confident', 'in control' and arguing that the 'twist' of the advert where the a woman sees the *man* in his underwear works to 'equalise' the sexualising and objectifying gaze:

"The women in the ad were confident and in control throughout. The man was passively attentive and the tone was light-hearted, flirtatious and humorous. The ads were deliberately sexy but they did not demean women or portray them as sex objects. Unilever did not believe that they would cause serious or widespread offence"

"[Clearcast] felt that although it had sexual content, it benefitted from a comic tone, especially during the twist at the end where the woman viewed him in the same way he had viewed the other women and he was wearing an unflattering animal print thong; the tables were turned and the attraction was mutual. They thought that



[the] comic tone would be understood by most viewers and so the ad would be unlikely to cause serious or widespread offence”

Clearcast’s suggestion that the advertisement contains ‘mutual attraction’, and that it, in this way, offers a female, as well as a male gaze challenges Mulvey’s (1975) much acclaimed and debated theory of the gaze as inescapably male, and the passive object of desire as necessarily female. As discussed in Chapter 3 of this thesis, Mulvey’s theory of the gaze has received a great deal of criticism for its inability to account for an active, pleasurable female gaze (van Zoonen 1994). Indeed, at first glance, it would seem that the audience is presented with a moment of reversal, where the man becomes the object of a female gaze, as Clearcast suggests. However, I argue that the gaze continues to be explicitly male throughout the advertisement, as the reversal of the gaze does not provide a sense of (heterosexual) female or homoerotic pleasure. Rather it offers a depiction of the male body as comedic, sharply contrasted with the ‘ideal’ masculine body, the humour of the advert deriving from the incongruity that arises from the unlikeliness that the attractive woman gazing back would find him sexually desirable. The male body in this advertisement is no site for voyeuristic pleasures for the female gaze – although the woman in the advert is, indeed, gazing at him as an object of desire, the audience is offered no such pleasure. Instead, the viewers become implicated in a male gaze (perhaps not so strange considering the advertisement addresses male viewers), where women’s bodies are sexualised and the male body is the site for comedy and ridicule.

It is nevertheless the ASA's assessment of the advertisement that offers the most interesting interpretation of the (alleged) sexist portrayals of women. Although they consider the imagery to be inexplicit and non-provocative, the ASA refrain from arguing that sexual objectification is in any way *absent* or mutual. However, they do suggest that the depiction of the women in the advert is not sexist since their status as sexual objects is, indeed, *imagined*:

"The ASA considered the ads showed a clearly fictional situation, in which women could be seen by a man without their clothes when walking down the street. We noted the women were wearing underwear and did not strike overtly provocative or sexual poses. The ads were not explicit and the innuendo in them was mild; they clearly used humour to depict a scenario that took place only in the man's mind. We acknowledged that some viewers might find the images of women distasteful but nevertheless concluded that the ads were unlikely to cause serious or widespread offence or be seen as sexist or demeaning to women"<sup>135</sup>

Similarly to the Lynx advert, a commercial for Coca-Cola Zero<sup>136</sup> from 2008, broadcast in Sweden, albeit by a channel licensed by Ofcom and therefore under the jurisdiction of the ASA. The advertisement depicted a

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<sup>135</sup> Note here how the offence felt by the complainants is described as an issue of 'taste' – suggesting a type of personal affront, as opposed to public offence, as discussed in Chapter 6.

<sup>136</sup> See the advertisement here: <https://www.youtube.com/watch?v= oIT5R-TdSHs>

male fantasy scenario, this time of the 'ideal break-up' where women were featured as sexualised 'props' to signify the male protagonist's desires of a sexually hedonistic single lifestyle. The ASA described the advert in the following way:

"As a car drove up to an American diner, on-screen text stated 'The break up'. Inside the diner, a waitress opened a bottle of Coca-Cola Zero and gave it to a man sitting with a woman at a table. The woman asked 'What's wrong?'. The man replied 'I don't know how to put this but...'. He took a mouthful of the drink and, to a background of noises the screen rapidly changed colour as the drink took effect. A voice-over, in the style of a film trailer, said 'From the makers of Coca-Cola Zero comes 'Break up as it should be''. Dance poles, with scantily clad women attached, appeared from the ceiling. As the women danced around the man and one fondled his chest, the woman at the table [casually] said 'So you want to break up? You don't want to be with just one woman? Just call me when you want to have fun'. The man was seen leaving the diner and driving off on a motorbike [with a group of women in tow]. The voice-over said 'Real taste. Zero sugar. As it should be'"

The ASA received only one complaint concerning the advertisement's offensive portrayal of women and its unsuitability for broadcast before the

9pm Watershed.<sup>137</sup> In its assessment the ASA evoked a similar rhetoric to what can be seen in the case of the Lynx advertisement, arguing that the sexist portrayal was firmly placed within a (male) fantasy scenario and was, as such, unlikely to be seen as sexist and demeaning to women:

"The ASA considered that the ad was clearly a fantasy, albeit based on a stereotype, of a young mans [sic] idea of a relationship break-up. We noted the women were fully clothed and considered that the dancing was no more provocative than the type seen in many music videos broadcast at that time of day. We also noted the ad was broadcast at 8pm, when young children were unlikely to be watching TV alone. We considered that the ad did not contain any images that were inappropriate for the time of day it was broadcast, and viewers were likely to consider the ad to be a humorous fantasy rather than offensive or demeaning to women"

The ASA's assessment is here echoing Coca Cola's and the broadcaster's own readings of the advert as 'humorous fantasy':

"[Coca cola] believed the ad was clearly humorous and unrealistic in the style of Hollywood fantasy adventure films. They did not believe the exaggerated storyline would be seen as offensive to women and believed that children, familiar with the type of film parodied, would recognise the humour and the caricature intended"

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<sup>137</sup> The advertisement also provoked complaints in Sweden, received by the Ethical Council against Sexism in Advertising (ERK).

“TV6 [the broadcaster] said they did not believe that the ad was offensive to women because it was clearly a parody of a stereotypical male fantasy of a perfect relationship break-up. They said the women were fully clothed and the dancing was not particularly erotic or provocative especially for the time of day the ad was broadcast”

The emphasis on the advertisement as ‘humorous fantasy’, mimicking Hollywood action films, is used to establish a disconnection between sexism, rendered a (necessary) part of the parodic narrative, and ‘real life’. The parodic element is further enhanced by its *containment* within the (male) fantasy scenario. However, interestingly, when the same advertisement was assessed by the Swedish regulatory body, the Ethical Council against Sexism in Advertising (ERK),<sup>138</sup> the conclusion differed from the ASA’s. The ERK decided that the advertisement was, indeed, sexist and discriminatory towards women in its use of women as sexual objects, arguing that the advert contributed in upholding negative gender stereotypes (TT 2008).

The dichotomy between ‘fantasy’ and ‘reality’ is crucial in the ASA’s assessment of the Lynx and Coca Cola Zero advertisements as the fantastical represents that which is inconceivable as ‘real’. As Butler writes: “we can understand the ‘real’ as a variable construction which is always and only determined in relation to a constitutive outside: fantasy,

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<sup>138</sup> The ERK is no longer in existence, replaced by the self-regulatory body ‘Reklamombudsmannen’ (‘The Advertising Ombudsman’, *my translation*).

the unthinkable, the unreal” (Butler 2004, p. 185-186). In this case then, sexism comes to be read by the ASA as ‘suspended action’ (ibid) – a mere fantasy without the ability to injure.

### *Challenging fantasy: perpetuating rape myth discourse*

In 2007, 242 complaints were received for two advertisements for Rustlers microwavable fast food – one for Rustlers burgers<sup>139</sup>, and one for Rustlers chicken tikka naan. The adverts were identical apart from the end where the product featured was either the burger or the naan, with the accompanying voiceover replacing one for the other. Accounted for as one advert by the ASA, it was the third most complained about advertisement in all media in the UK that year.

The advertisement depicted a scenario involving a man and a woman entering the man’s flat, after what is presumed to be a less than successful first date. Whilst the man seems excited to have her there, the woman seems less than happy with this visit, which is clear from her refusal to take off her coat, her uncomfortable facial expression and her insistence that she is only there for a cup of coffee (the understanding being that inviting someone home after a date is also an invite to sex). Whilst the woman sits uncomfortably on the edge of the sofa in the living room the man goes in to the kitchen to heat up a Rustlers burger (or chicken tikka naan, depending on the version of the advertisement). He sets a timer for 70 seconds – the time it takes to heat up the advertised product – and,

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<sup>139</sup> See the advertisement here: <https://youtube.com/watch?v=Ix8NiSfxnYE>

looking through a serving hatch positioned between the kitchen and living room he watches excitedly as the sofa in the next room starts spinning with the woman still sitting on it, until the sofa makes one last turn and she is seen lying in a sexy pose, dressed only in lingerie looking invitingly at him. The image cuts to the burger spinning on a microwave plate and the voiceover stating: 'If only everything was as quick as Rustlers. Rustlers – naught to tasty in 70 seconds'.

The advertisement was cleared with an ex-kids restriction by the then pre-vetting agency, the BACC, keeping it out of or around programmes made for, or specifically targeted at children (presumably due to the levels of nudity and/or the sexual theme). The majority of the complainants claimed that the advert was sexist, demeaning to women, sexually objectifying, and that the woman in the advertisement was equated to a piece of meat. Some also complained about undertones of sexual abuse and date rape – as the ASA stated, viewers were concerned that "by showing the woman's attitude change from one of apparent hostility to one of apparent sexual compliance, the ads perpetuated the idea that women said "No" when they meant "Yes". The viewers believed there were undertones of sexual abuse and the ads could encourage date rape". A minority of the complainants brought up inappropriate scheduling, objecting to the sexual imagery after having seen the advert in breaks in and around various family films and programmes.

The complaints were upheld in part. Although the objections concerning sexism and sexual abuse were dismissed, the complaints about the scheduling of the advertisement were upheld under the rule of the BCAP TV Scheduling Code entitled 'Treatments unsuitable for children'. The ASA considered that the advertisement had breached the given ex-kids restriction as it had been broadcast during 'Bugsy Malone', which had had a high proportion of child viewers.<sup>140</sup> This decision did not affect the content or broadcast of the advertisement – it remained on air and was not amended in any way.

Told from the perspective of, and clearly speaking to the target audience – defined by Rustlers as 18 to 34-year-old (presumed heterosexual) men – the advertisement was meant to portray the dating scenario from a 'male' or 'lad' perspective, drawing on popular cultural narratives of dating as a 'feminised' process, where sexual intercourse is a reward for the man after a certain number of dates. The ad presents the desire, understood to be a particularly male desire, to 'getting to the good a bit quicker', a double-entendre referring both to heating the burger and getting the woman 'hot' in 70 seconds. This is pointed to by the complainants as sexist, making connections, and indeed drawing a direct comparison between, the meat product advertised and the woman *as a piece of meat*. The semiotic construction of the woman as representing the advertised product is further emphasised through visual cues, such as the serving hatch through

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<sup>140</sup> The ASA motivated this decision by stating that "the image of a woman in her underwear in a dating context, although not explicit, was [...] considered likely to be inappropriate" for very young children.



which she is visible, her central position in this framed image, and the spinning sofa – all visually connected in quite a blatant way to symbolise the microwave ‘heating up’ the woman/food (*object*), ready for (male) consumption.

The assessment works in two ways. Firstly, it attempts to re-frame the symbolic connection between woman and product, foregrounding a less problematic semiotic reading of the advertisement:

“The ASA noted the ads were aimed at 18 to 34-year-old men. We considered that the ads showed a clearly fictional situation and were intended as a humorous depiction of the short time it took to heat a Rustlers burger or chicken tikka naan. We considered that the ads were unlikely to be seen as equating women to a piece of meat but instead compared the speed at which the Rustlers’ products could be heated with a woman removing her clothes in a very short period of time; a situation that would appeal to the target audience. We considered that the humour in the ads was based on mildly sexual material and was not explicit. We understood that the depiction of a woman undressing to her underwear very quickly was unlikely to be to every viewer’s taste but nevertheless considered that the ads were unlikely to cause serious or widespread offence or be seen as sexist or demeaning to women”

Here, the ASA have attempted to emphasise a more literal reading of the advertisement. Although they recognise that the woman in the advert is in some way symbolic, they are arguing that the image of the woman is 'unlikely' to be read as objectifying because her presence is more 'functional', symbolically linked with the product through humorously demonstrating the speed at which the product is heated with the speed at which the woman was able to remove her clothes.<sup>141</sup> This literal reading of the advertisement neatly avoids an engagement with issues of objectification.

Moreover, as with the previous two examples, the assessment seeks to position the sexist vision as a mere reflection of (male) fantasy. This is emphasised at several points throughout the adjudication, both by the ASA ('*the ads showed a clearly fictional situation*') as well as by Rustlers themselves. Although Rustlers do not deny the symbolic link made between the product and the woman as an object of desire – indeed, they attribute the humour of the advertisement to this double-entendre of '*instant gratification*' – they are also careful to point out that the advertisement portrays a *fantasy* and is not to be seen as a 'realistic' scenario:

"Rustlers said their target market was 18 to 34-year-old men. They asserted that the ads were intended as a fantastical portrayal of their primary target market's life; they were not intended to portray a real-

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<sup>141</sup> A process that is distinctly absent from the advertising narrative, which, if anything, enforces a reading of the woman as (passive) object.

life situation. They argued that the ads gave a tongue-in-cheek look at Rustlers' core benefit: instant gratification. They pointed out that the man seduced a woman in 70 seconds and believed that was unrealistic; they asserted that the audience was never led to believe the seduction was a reality. They argued that the fantastical element of the ads was confirmed by the line "If only everything in life was as quick as Rustlers" and said the ads were intended to illustrate 'getting to the good bit quicker'"

The distinction between 'fantasy' and 'reality' becomes even more prominent in response to the complaints claiming that the advertisement *"perpetuated the idea that women said 'No' when they meant 'Yes'"*:

"Rustlers believed there was no undertone of sexual abuse and the ads would not encourage date rape. They pointed out that the man did not touch the woman and that, when she was in her underwear, he was not in the same room as her. They also pointed out that the ad concluded with the man back in reality eating the burger, not having success with the woman; they believed that implied the scenario had happened only in the man's mind"

"We [the ASA] considered that the woman had clearly gone back to the man's flat of her own free will and was not shown being forced by him at any stage. We noted the man did not touch the woman and was not in the same room as her when she was in her underwear. We

considered that the ads clearly showed a fictional situation that, whilst reflecting the man's desire for the woman to be undressed, took place only in his mind and contained no violence or any interaction between the two once the woman was in her underwear. We considered that the ads did not contain undertones of sexual abuse and were unlikely to encourage date rape”

Although some complainants seem to have suggested that there might be a causal relationship between the advertisement and instances of date rape – a causal relationship that would prove very difficult to establish – the main issue at stake here, in terms of the call for regulatory intervention, is the perceived perpetuation of rape mythology, where the blame for rape and sexual assault is shifted from perpetrator to victim (Suarez and Gadalla 2010). However, the assessment fails to examine these complaints as part of the problem of sexism – indeed, there is no consideration for how this advertisement may contribute to, or form part of, a social discourse that perpetuates cultural myths of men as predators and women as always ‘willing’, even when verbalising the opposite (Bordo 2003). Instead, the ASA’s emphasis is on distinguishing between the fantastical advertising scenario (whether the advert *depicts* sexual abuse) and ‘real life’ (whether the advertisement is a likely to *cause* incidents of date rape), which fails to address the advertisement’s potential role in perpetuating a discourse of discrimination through victim-blaming. Bordo emphasises how cultural images contribute to an ideology in which men are sexual perpetrators and women sexual temptresses (ibid). She is particularly

concerned with how such ideology is internalised by women, “holding themselves to blame for unwanted advances and sexual assaults” (ibid, p. 8). The discourse of fantasy here obfuscates how such advertising speech may contribute to, and maintain, certain patriarchal ideologies – or, how it may enact discrimination by, itself, reiterating and perpetuating essentialist, cultural myths of men and women’s sexuality.

*Beyond fantasy: Defining ‘sexism’ in an advertisement for crazydomains*

In 2013, after my data collection had ended, an advertisement for a web hosting company, crazydomains<sup>142</sup>, was banned by the ASA for being sexist and degrading to women. Although not part of my original sample, I have included this advertisement in the analysis as it adds some interesting insights into the ASA’s conception of sexism in conjunction with (male) fantasy scenarios.

The advertisement featured a boardroom with a group of men seated around a conference table. The actress Pamela Anderson was chairing the meeting and another woman served coffee. Both women were wearing fitted jackets and shirts, unbuttoned to show some cleavage. This was clearly noted by one of the men at the table (named Adam) who, as the meeting progressed started to imagine the two women dressed in gold bikinis and lathered in cream, rubbing up against each other and writhing in slow-motion to a seductive soundtrack. Adam is awoken from his

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<sup>142</sup> The advertisement is only available in the Australian version, which states that the domain name is ‘crazydomains.com.au’. See the advertisement here: <https://www.youtube.com/watch?v=hNhSBhJHBIs>

fantasy by Anderson's voice, first suggestive (in the fantasy scenario), then stern (back in 'reality'), asking: 'Adam. What are we gonna do about the web address?' to which he responds: 'Um... crazydomains.co.uk?' Anderson is pleased with his reply. The advertisement ends with the other woman leaning in over Adam's shoulder, offering him cream for his coffee. As she pours, Adam gazes intently at her cleavage.

The advertisement had a 9pm timing restriction. It received four complaints arguing that it was sexist and degrading to women. The advertiser, Dreamscape Networks, dismissed the claims of sexism, stating that the women were portrayed in an overwhelmingly positive light:

"[Dreamscape Networks] said the ad deliberately portrayed the lead female character, played by Pamela Anderson, as the head of the business and portrayed her and the other female character as being attractive, dynamic and confident business people. They said the lead male character 'Adam', on the other hand, was portrayed as being nerdy and lacking in confidence. They believed this was anything but degrading to women"

Clearcast similarly thought that the advertisement showed Anderson to be a "strong, confident woman who could stand up for herself". Nevertheless, the ASA concluded that the advertisement caused serious sexist offence with the following statement:

“The ASA understood that the ad was intended as a parody of a mundane business meeting and was intended to be humorous and light-hearted. Whilst we noted Dreamscape Networks' and Clearcast's comments about the female characters being portrayed as strong, confident business women, we considered that they were also portrayed sexually throughout the ad, not just during the fantasy sequence. We noted that even though they were wearing business attire, their shirts were buttoned down so that they were exposing their bras and cleavages. Furthermore, during the fantasy sequence, they were seen dancing and writhing around in cream whilst wearing bikinis. Although the fantasy scene, which we considered was sexually suggestive, was limited to Adam's imagination, we considered it gave the impression that he viewed his female colleagues as sexual objects to be lusted after. Because of that, we considered the ad was likely to cause serious offence to some viewers on the basis that it was sexist and degrading to women”

The advertisement is very similar to the examples discussed above, featuring a male fantasy scenario in which 'everyday'-women become sexualised objects in the male protagonist's mind. So, what is it with this advertisement that makes it subject for different regulatory treatment from the other adverts discussed in this chapter? I suggest that the above statement by the ASA works to reaffirm rather than challenge my argument that a male fantasy scenario works to dismiss claims of sexism.

Indeed, the reason for upholding the complaints in this advertisement is precisely because the sexual objectification of the female characters was perceived to go *beyond* the male fantasy scenario, suggesting that 'Adam's' view of his colleagues as sexual objects was not only relegated to his imagination. Moreover, it should be noted that the assessment specifies that the advertisement was not deemed to cause widespread offence, but, rather, *serious* offence to *some* viewers. This seems to suggest that sexism is not considered a structural and social problem, offensive to women, generally (or the population as a whole), but that it is something that affects only 'some' viewers, individually<sup>143</sup>.

Yet, it remains unclear why this particular fantasy scenario is seen to be a reflection of the male character's misogynistic views when the previous examples were interpreted very differently. In the previous advertisements discussed in this chapter, the regulators have continuously rejected the idea of the fantasy of objectification as in any way 'realistic' or as representing a misogynistic attitude on behalf of the male protagonists. The advertisement's professional setting may have played a part in the decision to uphold the complaints, discrimination in the work place being, perhaps, a more controversial issue in terms of equality than the romantic/sexual relationship between men and women (often imbued with essentialist notions of sexual difference), which formed the basis for the previous examples. The ASA also mention the sexualisation that occurred outside the scope of the man's fantasy, in terms of the type of

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<sup>143</sup> This echoes my discussion on the historical (mis)understanding of complaints concerning sexism in relation to 'public offence' in Chapter 6.



dress the women wore and their exposed cleavages (*'they were also portrayed sexually throughout the ad, not just during the fantasy sequence'*). In the Lynx, Coca Cola Zero and Rustlers advertisements the sexualisation was clearly relegated to the fantasy scenarios – a deliberate contrast to the 'ordinary' portrayal of the women as part of the 'reality'-setting and a necessity in dichotomising the fantasy/reality distinction. Sexism is here argued by the regulators to be very much present and very much offensive, seemingly defined based on how *realistic* the depiction of it is.

Objectification strips a person of their personhood; it denies someone their autonomy, agency and subjectivity; it is "treating *as* a thing, something that is really not a thing" (Nussbaum 1995, p. 257); it silences the objectified person, reduced to their body or body parts only (Langton 2009). As discussed in Chapter 3, feminist thinkers disagree as to how pervasive the objectification of women is in mainstream culture. Some consider the collective objectification and dehumanisation of women as a group to be inescapable (e.g. Dworkin 1981, MacKinnon 1989) – as Dworkin (1981) reminds her readers, there is a long history in the Western world of women as property, including their 'chattel status' in reproductive law and sexual relations. Others have argued that the sexual objectification of women in public space leads to harm, such as body dissatisfaction (Wolf 1990), eating disorders (Cohen-Eliya and Hammer 2004), and a fear of sexual harassment, abuse and rape (Rosewarne 2005). However, as Nussbaum tentatively points out, objectification does not have to be dehumanising and can even be a 'source of joy' in the erotic

exchange (1995, p. 290-291). However, any enjoyable objectification needs to be mutually engaged in by both the objectified and the 'objectifier'. In the context of the advertisements presented here there is little to suggest a reading of pleasurable objectification, particularly considering the framing of the male fantasy scenario, emphasising that the sexual objectification is on *his* terms – it is his fantasy, not hers. The 'blatantness' of the objectification in these advertisements is striking and, indeed, *heightened*, rather than dispelled, by the male meta-fantasy. As Mulvey (1975) notes: "Woman [...] stands in patriarchal culture as signifier for the male other, bound by a symbolic order in which man can live out his phantasies and obsession through linguistic command by imposing them on the silent image of woman still tied to her place as bearer of meaning, not maker of meaning" (p. 7). Mulvey further argues that the viewer, whether male or female, become implicated in the male gaze (ibid), which could be seen to destabilise the fantasy/reality dichotomy established by the regulators as the objectification is no longer 'contained' within the fantasy scenario.

### *The figure of the 'lad'*

It is not insignificant that these advertisements feature a male protagonist moulded, more or less, from the same cultural figure – a young, white, heterosexual man with a strong sexual appetite who views women as sexual objects. I argue, with some reservation,<sup>144</sup> that the male protagonists

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<sup>144</sup> The young man in the Lynx advertisement is perhaps portrayed more as a 'geeky' guy, shy and insecure until he sprays himself with the body spray, *becoming* the confident 'lad', which women are seen to be attracted to. Furthermore, this advertisement, although having a less clear-cut 'lad' protagonist, speaks to a 'lad' audience through its use of sarcasm and sexual/sexist humour.

in the advertisements above represent a version of the figure of the 'lad', distinguished as "hedonistic, post- (if not anti) feminist, and pre-eminently concerned with beer, football and 'shagging' women" (Gill 2003, p. 37). Yet, despite these laddish characteristics, he is also being seen as awkward and unsuccessful with women in 'real life', which is temporarily resolved in the fantasy scenarios depicted in the advertisements discussed. This, however, is not necessarily a contradiction. For example, Benwell observes, what he refers to as an element of 'anti-heroism' present in the notion of 'the lad'. He argues: "Anti-heroic masculinity [...] defines itself in opposition to heroic masculinity and is resolutely and good-humouredly self deprecating. Anti-heroism is associated with ordinariness, weakness and self-reflexiveness and is arguably a phenomenon particularly associated with a British sensibility" (Benwell 2003, p. 157).

The advertisements above speak through and to the lad using humour, irony and in 'othering' women (as objects of men's desires), forming a 'discourse community' between men that is normally relegated to 'lads mags' (Benwell 2004). As Benwell (2002) writes: "Men's magazines tend to focus on women in one of two ways. The first way is as an idealised sexual object – usually a celebrity – and this is very much as a fantasy, unattainable icon. The second way of focusing on women is as real women – wives, girlfriends, lovers – and these depictions are almost invariably negative; real women are difficult, different, impossible to understand and sometimes threatening and to be avoided" (p. 167) – perhaps a reaction,

suggests Benwell, to the *real* threat of women as actors in public life. In the advertisements discussed in this section, the male protagonist channels this 'laddism', denying the 'real' women agency, fantasising about them as sexual objects of desire as a way of 'reclaiming' masculine power in a situation where it has been lost – a kind of “nostalgic revival of old patriarchy” (Whelehan 2000, p. 6). The regulators draw on this figure of the lad as a kind of 'figure of fun', liberated from the constrictions of political correctness and changing gender dynamics (Stevenson et al. 2000).

### **In the realm of the 'absurd': Reading sexual harassment in 'humorous' advertising**

The figure of the 'lad' remains present in the following adjudications, drawing on brash and 'bawdy' humour in an unapologetic way. The adverts featured here are silly, surreal and absurd but also contain some disturbing behaviour, such as leering and sexually harassing behaviour. Nevertheless, the behaviour is performed unapologetically, as just a bit of 'tongue-in-cheek' sexism. Whereas in the previous examples the advertisements have been framed as a fantasy of sexual objectification, clearly marked by the use of a 'meta-fantasy' scenario, contrasted with 'reality' and displayed within the narrative itself, these advertisements are marked as 'unreal' and fantastical through their 'absurd' and 'over the top' portrayals, emphasised further through the surrounding regulatory discourse, emphasising a reading of the advertisements as fantastical.

Similarly to the previous advertisements, the advertisements here speak to a male audience through its use of 'laddish' humour, in which women become the objects for the male gaze, or 'props' in the comedic trajectory. Jordan and Fleming (2008) call attention to humour, and particularly irony used as a 'buffer' for offensive material found in 'lads mags', forming part of discourses on sexism, xenophobia and homophobia. Gill argues similarly that irony, as part of 'laddism', "functions primarily as a means of subverting potential critique – allowing expression of an unpalatable truth in a disguised form, while claiming it is not what you actually meant" (Gill 2009b, para. 9). In the following examples, I explore the regulatory discourse around sexually harassing or in other ways sexist behaviour in advertisements, arguing that the notion of 'laddish' irony permeates a regulatory discourse on sexism in advertising, rendering it a bit of 'harmless fun'. Regulatory discourse here becomes an *extension* of 'laddish' humour, (re)articulating surrealism and absurdity as legitimate defences against (feminist) criticism.

### *Surrealism and absurdity*

A Vauxhall Corsa<sup>145</sup> advertisement from 2008 featured in the borderland of the fantastical and realistic, using a mix of knitted puppets, human characters and realistic scenarios to create a sense of surrealism and absurdity. The ASA described the ad in the following way:

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<sup>145</sup> See the advertisement here: <https://www.youtube.com/watch?v=t5erA6DqDwI>

"A TV ad, for Vauxhall Corsa, showed an attractive female cyclist in shorts and a vest top being overtaken by a car. As the car passed her, voices inside the car could be heard saying "oooooh", and it was clear from the camera angle that the occupants were looking at the cyclist. The car pulled over in front of the cyclist, the window was wound down and a puppet leaned out and said "come on" and beckoned the cyclist towards it. The puppet then activated the car's protruding cycle rack at the rear of the car, prompting the cyclist to place her bike on the rack and get into the car. The puppet adjusted the rear-view mirror to look at the cyclist as she sat in the back with more puppets before driving off"<sup>146</sup>

The advert had no scheduling restrictions. Twelve viewers complained that the advertisement "encouraged and condoned leering behaviour towards women in the street",<sup>147</sup> the concern here being how the advertisement may contribute to a cultural climate where sexual leering is condoned and normalised.

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<sup>146</sup> It should be noted here that it is very clear that the 'CMON puppets' are ogling the woman throughout the ad, including the instance when the driving puppet looks at her in the rear-view mirror, adjusted so that her breasts are clearly the object of his (the puppets are distinctly gendered male) gaze, whilst he mumbles an approving 'Cmon', the only word they utter throughout. The ASA's description has, for some reason, omitted this crucial aspect of the scenario.

<sup>147</sup> The same twelve viewers were also concerned that the advert was irresponsible "because it showed a young woman accepting a lift from strangers and therefore modelled unsafe behaviour for young women and children". This concern is clearly also a gendered concern but it is the first issue that I will discuss in detail here.

The advertisement formed part of an advertising campaign featuring a series of Vauxhall commercials, all with the 'CMON puppets', and sometimes also with the same woman that is seen in this particular ad. This was strongly emphasised, both by Vauxhall and Clearcast in the adjudication, as the campaign context assumed that the characters in the advertisement knew each other beforehand:

"[Vauxhall] said that it was important to note the puppet characters and the young woman had in fact met before and were friends. In a previous ad in the CMON puppet series the woman was seen in the red character's apartment after a night out with the rest of the CMONS, implying they might be in a relationship together. The advertisers said, bearing this in mind, the red puppet's reaction to the young woman in 'Bikerack' was merely a cheeky reaction to his 'girlfriend' as opposed to one of leering at a stranger in the street"

"Clearcast said the ad was the latest instalment to feature the fun-loving and surreal puppets called the CMONs. They said the previous ad in the Vauxhall Corsa series showed the puppets' human girlfriend stealing their car and the group embarking on a mission to get it back. They said the "Bikerack" ad featured the same cast of characters, the CMON puppets and their human girlfriend. They said the girl was pleased to see her woollen friends because she was cycling up a steep hill and gladly accepted a lift, and that the CMONs were equally pleased to see their human friend, and show

off the new accessory to their car. Clearcast said the CMON puppets were not a baying mob of lust driven strangers but a harmless bunch of puppets genuinely helping out a friend in difficulty”

The fact that the CMONs are puppets and not ‘real’ people is of great importance in the ASA’s rejection of the complaints. Their puppet-status positions them as non-threatening and harmless, making it easy to dismiss their actions as insignificant (consider exchanging the puppets for a group of men and the advertisement would have had a very different tone). The ‘surreal’ aspects of using puppets also contributes to the humorous incongruity of the advertisement, as they are not behaving like cuddly toys, but as quite a brash group of ‘lads’.

The ASA recognised that the relationship between the woman and the CMONs was likely to be misinterpreted if the viewers were not familiar with the previous advertisements in the campaign. They also noted that the behaviour displayed by the puppets could have been considered inappropriate, although they did not draw the argument so far as to have it constitute *sexist*, drawing on the surrealism brought to the ad by the puppets’ presence:

“The ASA acknowledged that if viewers had seen the previous ad in the CMON puppets series they would know that the young woman in the “Bikerack” ad was already acquainted with the puppets. We considered, however, that this might not be clear to viewers who had



not seen the previous ad. We noted the young woman was dressed for a summer's day biking, and that on spotting her on the road the CMON puppets made noises which could be interpreted as indicating a rather "laddish" appreciation of the woman's appearance. We noted the puppets in the ad were male, and were likely to be taken to be so by most viewers. We also noted the puppets were surreal, animated and quirky characters"

The ASA carefully refrain from using terminology that negatively constructs the behaviour in the advertisement. Nevertheless, the phrase a *"'laddish' appreciation of the woman's appearance"* indicates a perception that the behaviour is distinctly gendered and not completely unproblematic – 'laddish' here both denoting a certain chauvinistic machismo, as well as an innocuous boisterousness.

The ASA conclude, in a similar way to the advertisements examined above, that the scenario was sufficiently removed from reality to realistically condone or encourage sexist behaviour:

"We considered that, although there was a laddish tinge to the behaviour of the knitted CMONs in this ad, it was unlikely, because of the highly fictional nature of the scenario, to encourage or condone offensive leering towards women in the street. We concluded that whilst the ad might be distasteful to some, it was unlikely to cause serious or widespread offence"

This assessment followed Clearcast's similar reasoning in clearing the advertisement for broadcast:

"[Clearcast] said they believed the puppets were a crew of fun-loving characters whose behaviour was in no way threatening [...] Clearcast further said, in their opinion, the vocabulary of the puppets, limited to the word "CMON", was never said in a threatening or sexual manner and that the CMON puppets were simply a slightly cheeky collection of woollen adventurers"

The puppets' behaviour, then, is downplayed in the assessment by emphasising the surreal nature of the advertisement, as instilled through the use of puppets, rather than a group of 'real' men. The puppets further contribute to the incongruous humour, behaving like 'lads' whilst looking like little 'woollen adventurers'. Their unthreatening appearance is perpetuating the idea that their behaviour cannot possibly be 'threatening' – as is pointed out in the assessment, the CMONs never say anything inappropriately 'threatening' or 'sexual' (as their vocabulary is limited to one word only). However, it should be noted that leering does not have to be 'threatening' to be highly inappropriate and that, despite Clearcast's insistence otherwise, the sounds the puppets make can (and is intended to) be interpreted as sexual, both when checking out the girl when she is biking on the road, as well as when she is seated in the backseat of the car. Nevertheless, the regulators dismiss claims of sexism, drawing on the

surreal humour and ‘absurdity’ in the advertisement to render any sexist behaviour ‘harmless’.

*The lad as a ‘figure of amusement’*

An advertisement from 2008 for FilmOn<sup>148</sup>, a website for downloading film, received two complaints, one of which claimed that the advertisement was sexist and demeaning to women.<sup>149</sup> The advertisement was described by the ASA in the following way:

“[The advert] showed a man dressed as Elvis Presley walking down a street. As he walked along he pushed a man, slapped a woman on the bottom, shoulder barged a man to the ground and then pushed a man in the face; his actions were accompanied by loud sound effects. At the end of the ad the man was shown doing some acrobatic dance moves; two women pulled open their tops to reveal their bras and the man fell over”

There are two moments in the advertisement that are discussed here as particularly problematic in terms of sexism – when the Elvis character slaps a woman’s bottom, and when two women flash their bras at the Elvis character. Clearcast address both incidents:

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<sup>148</sup> See the advertisement here: [http://www.tellyads.com/show\\_movie.php?filename=TA5892](http://www.tellyads.com/show_movie.php?filename=TA5892)

<sup>149</sup> Both complainants were also concerned with the violence displayed in the advertisement as ‘unnecessary’ and as condoning violent behaviour.

“Clearcast considered that the ad did not show sexist or demeaning behaviour. They believed the two female characters quickly flashed their bras at the Elvis character to surprise him and therefore stop him showing off. They believed the girls were not coerced and seemed to enjoy their moment of control over the man. They believed, when the man slapped the woman’s bottom, it was part of his crassness which could be seen as tasteless but was essentially innocent and comical and not demeaning or sexist”

Clearcast further added that the commercial had been given an ex-kids restriction to avoid young children seeing the ‘gentle nudity’ or emulate any of the violent actions.

What is particularly interesting about this assessment by Clearcast is, firstly, the agency afforded to the women flashing the Elvis character in the advertisement. In ascribing agency and choice (to flash their breasts) to the women in the advert Clearcast are drawing heavily on a postfeminist ‘discourse of liberation’, which “allows women to exploit their sexual appeal at the expense of men” (Amy-Chinn 2006, p. 156). The ASA also draw on female agency, emphasising *choice* and sexual power in a similar way to Clearcast:

“We noted the women were not coerced but chose to undo their tops to flash their bras at the man in an apparent attempt to distract him. Although we recognised that some viewers would consider

the women's actions to be inappropriate and tasteless, we considered that the ad was unlikely to cause serious or widespread offence or to be seen as demeaning to women"

The two women are afforded some form of sexual power (they '*seemed to enjoy their moment of control over the man*'), by actively choosing to make use of their status as sexualised objects of desire. The suggestion here is that there is no exploitation in a naïve sense as the women portrayed have actively invited a (male) gaze. Gill (2008) argues that contemporary advertisements communicate a discourse of female liberation, and empowerment in the way of sexual agency. She writes: "Where once sexualized representations of women in the media presented them as passive, mute objects of an assumed male gaze, today women are presented as active, desiring sexual subjects who choose to present themselves in a seemingly objectified manner because it suits their (implicitly 'liberated') interests to do so" (ibid, p. 42). Postfeminism here offers a 'discourse of liberation', which "allows women to exploit their sexual appeal at the expense of men" (Amy-Chinn 2006, p. 156). However, in this instance a postfeminist reading of sexual agency is not driven by the advertiser,<sup>150</sup> but instead is distinctly *imposed* on the advertisement by Clearcast and the ASA. That is, although the advertisement itself may be read as 'absurd', 'surreal', or even 'ironic' in its exaggerated display, the interpretative work on behalf of the regulators, concluding that the women 'enjoyed' a moment of control in being able to distract the man is

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<sup>150</sup> The advertiser has not responded to the criticisms of this advertisement and so their voice is not present in the adjudication.

very much a subjective reading that finds no real basis within the advertisement.

Secondly, Clearcast's response to the incident involving the male character slapping a woman's bottom works to trivialise what is generally considered an action of sexual assault through re-framing it as nothing beyond potentially 'tasteless' (*'it was part of his crassness which could be seen as tasteless but was essentially innocent and comical'*). The ASA also concluded that the incident was neither offensive, nor likely to encourage or condone similar behaviour:

"The ASA considered that the man in the ad was clearly intended to be a figure of amusement. We considered that, although the ad included images of the man pushing people and slapping a woman on the bottom, the tone of the ad was very light-hearted and similar to a slapstick comedy rather than being gratuitously violent; we believed that impression was furthered by the loud sound effects heard when the man pushed or slapped someone. We considered that the ad was obviously over the top and distanced from actions in real life and we concluded that it did not condone violence and was unlikely to encourage violence"

"We [...] considered that the ad did not encourage or condone sexist behaviour"

Although this advertisement is not explicitly described as ‘fantastical’, as with the adverts discussed above, the ASA attempts to establish a disconnection between sexism as part of a humorous (‘slapstick’) discourse and ‘real life’. Slapstick is a form of physical and often aggressive humour, “characterized by an exaggerated display of violence that is not accompanied by realistic consequences” (Jorgensen et al 2008, p. 12). The reference to ‘slapstick’ here plays a significant role in framing the sexist behaviour displayed by the Elvis character as hyperbole, comical and absurd, sufficiently distanced from reality to amuse rather than offend. His ‘infantile’, ‘laddish’ behaviour is, perhaps, a rebellious act against adulthood, or maybe against feminism (cf. Attwood 2005). Nevertheless, the ASA are careful to point out that the absurdity of the situation portrayed ensures that the behaviour is not condoned or encouraged in a ‘realistic’ setting.

Whereas the allegedly sexist behaviour displayed in the Vauxhall advertisement may have been in dispute as to how it may have been ‘harmful’, the alleged sexist behaviour in this advertisement – the non-consensual slapping of a woman’s bottom – is, indeed, commonly classified as sexual assault. By not upholding the complaint, the ASA seem to be suggesting that a man, uninvitingly slapping a woman’s bottom (the act is clearly non-consensual as the woman in question is evidently shocked), forms part of ‘generally accepted’ cultural standards.<sup>151</sup>

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<sup>151</sup> The advertisement was investigated under the BCAP code rule ‘offence’, stating that: “Advertisements must not cause serious or widespread offence against *generally accepted moral, social or cultural standards*, or offend against public feeling” (BCAP 2005, p. 28, my emphasis).

However, through emphasising the advertisement's humorous intentions, the ASA do not have to approach the more thorny question of whether it is also sexist or not, as any display of sexism becomes 'contained' within the fantastical and humorous narrative – it is *absurd, unrealistic* and *not to be taken seriously*. In this way, the ASA insinuates that the sexist behaviour may not form part of generally accepted cultural standards, but that the type of humour in which it features – slapstick comedy – certainly does. The complaint, in contrast, epitomises the archetype of the 'humourless feminist', assumed to have misunderstood, rather than legitimately criticising the comical, 'slapstick' nature of the advert.

### **Reading sexism as parody: A postfeminist take on traditional British humour in regulatory discourse**

In this section I explore how regulators evoke postfeminist discourses of 'retro-sexism' in their assessments of (allegedly) sexist portrayals in advertising. By making references to specific forms of traditional comedy, notably the 'bawdy' seaside postcard and 'Carry On'-scenarios, as outmoded types of humorous heritage, the regulators (re)position the allegedly sexist portrayals of women as an 'ironic' commentary on the 'blatant' sexism of an imagined past. Sexism is seen as unable to enact discrimination in a contemporary context being (re)constructed as a 'past' concept, a *pastiche* of sexism, belonging to a different time. This, I contend drawing on Williamson's (2003) and Whelehan's (2000) notion of 'retro-sexism', is a distinctly postfeminist reading through which 'traditional'



sexism is framed as an ironic (and nostalgic) commentary on *historicised* sexist discourse.

By framing sexism as a (nostalgic) part of British heritage, the humour in the advertisement becomes a kind of self-ridicule of a past sexist cultural narrative. However, I argue, following on from the previous discussion in this chapter, that the reading of the advertisements in this section as cultural commentaries on 'traditional' British humour is a reading imposed by the regulators in order to (dis)place sexism in the realm of the 'fantastical' or 'unreal'.

#### *The 'bawdy' seaside postcard: Comedy-as-heritage*

A commercial for Yorkie bars<sup>152</sup> from 1992, made use of an exaggerated, humorous narrative on the theme of 'man rescues woman' and became the object for a relatively large number of complaints as a result of perceived offensive gender portrayals. The advert featured a woman with very large breasts walking into a bar in a Wild West setting, causing quite a stir amongst the male patrons, including the muscular male protagonist (who is seen arm wrestling a bear in this opening sequence). The woman is then captured by a group of men from the bar and she is tied up and hung from a cliff with the implication that she would be released if the male protagonist gave his Yorkie chocolate bar to her capturers. He refuses but still manages to save the woman. In the end scene he is seen romancing

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<sup>152</sup> See the advertisement here: <http://www.youtube.com/watch?v=ZQUjOUeQ68U>

her, although she is clearly completely uninterested in his romantic advances, instead caught up in reading a book.

The advertisement received 93 complaints for being sexist and degrading to women (particularly in the way the woman was made to be a sexual object for a male gaze), obscene (concerning the actions of the main male character who, towards the end of the advertisement rips his trousers off to reveal a read pair of satin shorts saying 'marry me' on the front), and unsuitable to be seen by children. The complaints were not upheld.

Yorkie, like Lynx, is a somewhat controversial brand that, in the early to mid-2000s, built their advertising campaigns around the slogan 'Yorkie – It's not for girls',<sup>153</sup> producing advertisements that in various ways sought to (re)emphasise an essentialist view of men and women as inherently different in their capabilities and interests.<sup>154</sup> However, their advertising approach in the 1970s and 80s had been quite different, romanticising the image of the 'man's man', not through degrading femininity, but through a

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<sup>153</sup> The slogan 'It's not for girls' formed part of the re-launch of the Yorkie chocolate bar in 2002 (Day 2002).

<sup>154</sup> One advertisement from the early 2000s featured a woman trying to buy a Yorkie chocolate bar disguised as a male builder, tested for her 'masculine' qualities (including knowing the offside-rule, opening a tightly sealed jar and prove unmoved by the sight of a spider, amongst other things) by the shop keeper. She nearly makes it through but fails in the end as the shopkeeper compliments her eyes to which she gushes and the chocolate bar is snatched from her hands. This advertisement received 69 complaints in 2002, claiming it was sexist towards women. The ITC concluded that the advertisement might have 'irritated' some viewers but considered the scenario to be 'fanciful and bizarre', sufficiently 'ridiculous and light-hearted' so as to avoid 'genuinely' offending viewers. Yorkie continued advertising their product by playing on gender stereotypes throughout the decade and in 2005 produced a number of advertisements with the theme 'Driving, like Yorkie, is not for girls'. See the advertisements in this campaign following this link: <http://www.arrowsarchive.com/search.pl?searchterm=yorkie>

non-ironic depiction of a certain type of working class masculinity (truck drivers, crane drivers and painters can be seen in these older generation of Yorkie commercials, for example). These hyper-masculinised figures were seen to be consuming Yorkie as a source of fuel – distinctly different to marketing of women’s chocolate, which is often depicted as an ‘indulgence’ or a ‘naughty treat’ (see, for example, Elliott and Wootton 1997 for an examination of gender idioms in chocolate advertising). However, the advertisement discussed here represents a shift in Yorkie’s advertising approach of the 1970s and 80s (and, perhaps, a wider cultural shift in media representations of gender in the 1990s), bridging the gap between the older generation of Yorkie advertisements where the ‘man’s man’ is idealised and romanticised (although the advertisements often featured a female sexual interest, so as to not invite a homoerotic gaze), and the ‘laddish’ ‘It’s not for girls’-campaigns of the 2000s, where femininity is continuously devalued in order to re-establish a masculine identity, perceived to be under threat.<sup>155 156</sup>

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<sup>155</sup> As Andrew Harrison, the marketing director for Nestlé, who own the Yorkie brand, said about their new advertising approach in 2002: “It used to be that men had some areas of their life that were just for them and that was OK. No one cared and most people recognised that men needed places to be, in a simple sense, men” (Harrison, cited in Day 2002)

The ambivalent roles of both the male protagonist and the female love interest are evident, their traditional gender roles unfittingly old-fashioned, emphasised through the old-style, 'Wild West' setting. The figure of the man, here in a chequered shirt signifying his working class status – a wink, perhaps, to the older generation of Yorkie men – is extremely muscly and made to look fictitious or doll-like, as if he is moulded from plasticine. The exaggerated style in which he is presented evokes the notion of 'ideal masculinity' as a construct, as not real or at least not realistic. Furthermore, the voiceover exclaims: 'Rock Chunk, a bloke, big enough to eat chocolate by the slab!', the emphasis on his gender identity (being obviously obsolete) suggesting that his masculinity needs to be reaffirmed. Symbolically, this is manifested through his arm wrestle with the bear – 'wrestling a bear' being a common euphemism for restoring ones masculine identity. As the woman walks into the bar the male protagonist is seen winning this arm wrestle, her mere presence rescuing him from the threat of being emasculated. However, the display of contemporaneous anxieties about the changing role of masculinity is

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<sup>156</sup> Interestingly, in recent years Yorkie have abandoned their controversial 'It's not for girls'-slogan and produced a television advert featuring a man carrying bags of food shopping from his car to his house. This everyday chore is accompanied by action music and special effects simulating an explosion behind him as he walks, reminiscent of contemporary Hollywood action films, all to give a humorous depiction of his 'hard work'. Coming home we see his (female) partner waiting, completely unimpressed with his feat. The advertisement finishes with the line: 'Man fuel, for Man stuff'. What is interesting about the development of the Yorkie adverts is the trajectory of masculinity, from an idealized version of masculinity through the depiction of the working class man in the 1970s and 80s, to the reestablishment of hegemonic masculinity through the denigration of femininity in the early/mid-2000s. This latest instalment from 2012, however, seems to make a mockery out of what masculinity has become (depicted through the man 'masculinising' a traditionally feminine task through imagining himself as the hero in an action film. However, the advertisement leaves some questions unanswered: does it make a mockery of contemporary masculinity as having been 'feminized' in the wake of feminist success, or does it cast a scornful eye on old hegemonic masculinity as unrealistic and mere 'fantasy'?

not resolved, as the female love interest appears unimpressed by the male protagonist's prowess and strength throughout the advert.

The advertisement could be said to belong to a kind of postmodern aesthetic; it is completely over-the-top and almost cartoon-like (visually and figuratively) in its presentation. Furthermore, it is simultaneously symbolically ambiguous and ironic. Although the advertisement is strongly polysemic – possibly both gender conformist and gender critical – the ITC concludes that the advert presents a 'parody' of a sexist narrative belonging to 'traditional' comedy:

"Whilst acknowledging that the commercial could be thought open to criticism on at least the first charge [i.e. the claim that the advertisement was sexist and degrading to women] and that a degree of greater restraint might have reduced the grounds for complaint, the ITC concluded that, overall, it was made in a traditional bawdy 'seaside postcard' style which, while clearly objectionable to some viewers, was not likely to be found offensive by the majority of the audience"

The BSC received a further ten complaints featuring the same concern as the complaints to the ITC and similarly concluded that:

"In the context of the humorous and larger-than-life style of the advertisement, the Committee did not consider that it would give rise to widespread concern or offence"

The 'saucy' seaside postcard, originating in the 1930s but remaining popular until at least the 1960s,<sup>157</sup> represented carnivalesque excess and vulgarity, transgressive in its use of sexual humour and drawing much of its comedic narrative from the use of gender stereotypes (it is similar in its comedic approach to 'Carry On'-scenarios). The postcards were often based around (more or less) crude sexual jokes and innuendos. However, they went out of fashion as a more 'politically correct' comedy (forming part of the 'alternative comedy' scene, particularly prominent in the stand-up comedy circuit) took the stage in the 1970s and 80s that dismissed earlier traditions of racist, sexist and homophobic humour (Littlewood and Pickering 1998, Gray 1994). As Littlewood and Pickering (1998) write: "During this period [1960s and 70s], racism and sexism were common elements of prime time television and radio comedy, tabloid cartoons and comic strips. By the eighties there was a widening recognition that such content was not only offensive, but had also become tired and worn-out" (p. 297).

In a contemporary context there have been a number of shifts in the cultural trajectory of the seaside postcard and the humour it represents. Its

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<sup>157</sup> In 1954, postcard artist Donald McGill was charged under, and found to be in violation of the Obscene Publications Act 1857 (Hemingway 2006). This hit the 'saucy' seaside postcard business with some force as orders were cancelled and postcards were destroyed and confiscated (Arthurs 2011). However, the cards found a revival in popularity in the 1960s.

original transgressive potential – as sexually explicit humour – was established through a cultural context in which the social moral code was still heavily influenced by the Puritan legacy, linking bodily pleasure with sin. At this point in time, the seaside postcard could be said to have provided some kind of psychological relief through its breach of cultural taboos – expressing repressed (male) sexual desire at a time of strict moral decorum. However, as British culture became more sexually permissive the seaside postcard lost some of its transgressive power. Nevertheless, in the wake of the second wave feminist and gay liberation movements' attempts at addressing issues of gender and sexuality in public life, and with the emergence of the politically aware alternative comedy scene, seaside postcard-style humour became transgressive in a different way, namely through its use of gender stereotypes, asserting masculine superiority over the female object for humour.<sup>158</sup> So, although the seaside postcard (as well as 'Carry On'-scenarios, discussed further below) have largely featured in British popular culture as a bit of 'harmless fun', they have always had the potential to transgress cultural boundaries of offence in one way or another. However, a contemporary, postfeminist take on the seaside postcard and 'Carry On'-humour would suggest their *lack* of transgressive potential, forming part, instead, of a 'retro-sexist' narrative – a bit of harmless fun, somewhat outdated, yet seen as part of a cultural heritage of comedy.

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<sup>158</sup> Porter (1998) argues that the role of women in 'traditional' comedy takes either one of two forms: (1) the 'female tyrant', often someone's wife or mother-in-law, depicted as domineering, unattractive and/or excessively fat, or (2) the 'dumb blonde' (although this figure is not restricted to her hair colour), the sexual interest of one or more male characters. However, both types operate within a male comedic narrative and are invariably positioned as the 'butt of the joke'.

I argue here, that the way this type of humour is invoked by regulators, calling attention to the comic tradition of the seaside postcard in relation to complaints of sexism, suggests that the ITC considers the advert as making a mockery, not of women, but of a sexist past. This type of humour, is here used as a defence against claims of sexism, not because sexism is absent – indeed, the portrayal of gender is ‘open to criticism’ according to the ITC – but because sexism itself is historicised and rendered a ‘joke’ in the wake of feminist success. The advertisement is seen to be making a mockery, not of women, but of itself – it is ‘consciously sexist’ (Williamson 2003) in its old-time setting and styling. The advertisement’s exaggerated visuals signpost an awareness of sexism as belonging to a distant past – an expression of ‘retro-sexism’, “where sexism operates freely within the frame of a period style” (Williamson 2003, para. 5). This ‘retro-sexist’ narrative closes discussion off from gender criticism at large (Williamson 2003; Whelehan 2000). The ‘seaside postcard’-reference in this adjudication, then, works to dispel claims of sexism by suggesting that the sexist reading is encased in a ‘retro’ narrative and therefore rendered ‘ironic’. Whereas it once had the potential as a performative act of sexism, the ITC argue that this performative potential has been lost in time.



*Being the 'butt of the joke': Postfeminist ambivalence*

This assessment for an advertisement for the Setanta Sport Freeview Box<sup>159</sup> similarly draw on 'traditional' forms of British 'Carry On'-humour in order to obfuscate a sexist reading. However, it also contains, following on from the FilmOn.com advertisement discussed above, an interesting negotiation of interpretation around the notion of sexual objectification as a point for feminist criticism and self-objectification or sexual power as part of a postfeminist notion of 'choice'.

The advertisement was a Christmas-themed commercial (presumably, it was broadcast in the run-up to Christmas in 2007, although the adjudication was published in early 2008). The ASA describe the advertisement in the following way:

"A TV ad for Setanta Sports Freeview box showed a man entering Santa's grotto. Des Lynam [a well-known British television and radio presenter], dressed in a yellow Santa outfit, greeted the man 'Ho, Ho, Ho'. The man asked 'Should I sit on your knee?' Des replied in a serious tone 'No'. The man laughed nervously and said 'No, course not'. Des then asked 'Now, what can Setanta Claus get for you?' The man replied 'Some live Barclays premier league football please, Des'. Des turned to his assistant, a woman dressed as Santa's helper in a revealing yellow costume and yellow Santa hat, and said to her 'Another Setanta Freeview box Tinseltoes'.

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<sup>159</sup> See the advertisement here: [http://arrowsarchive.com/asset.pl?asset\\_id=313454](http://arrowsarchive.com/asset.pl?asset_id=313454)

When asked did he want anything else the man stared at the woman's cleavage and said 'Couple of puppies'. Des said 'Ah, for the kids'. The man nodded and said 'Yes, kids' and smiled. At the end of the ad Tinseltoes said 'Only Setanta brings you exclusively live Barclays premier league games on a Freeview box. Give him what he wants this Christmas'''

The ad was cleared with an ex-kids restriction but received 36 complaints concerning sexism and sexual objectification. Nine out of the 36 viewers also thought the adverts play on sexual references was unsuitable for children and called for a post-Watershed restriction.

Although the product in question was targeted to male consumers and the advertisement has a distinctly 'laddish' tone in its use of sexual humour, Setanta argued that the advertisement was not aimed at men, but at women, or, more specifically, 'female partners of male football fans'. Although the female character is only peripheral to the narrative, this mode of address is emphasised towards the end of the advert, where Tinseltoes, facing the camera and the imagined girlfriend on the other side of the screen, advising her to 'give him what he wants this Christmas'. Drawing on a postfeminist rhetoric, Setanta argues that this mode of address creates a reading of the advertisement where the woman wields (sexual) power over the man:

"[Setanta Sports Ltd] stated, as the ad was aimed at women, the implication that the stereotypical man might have as two of his primary interests football, and his female partner (not necessarily in that order) was an appropriate, if mildly tongue in cheek, connection and not degrading to women in any way. They said the female character, a reasonably well-known actress, was portrayed as an attractive and knowing individual, very much in, and part of, the "Aren't blokes simple to please?" conceit; she did not play a passive part in the ad and was not being exploited, objectified or degraded"

"Setanta said the ad presented a rather simplistic and unsophisticated view of men, which was relevant to the overall theme, and which effectively was aimed at encouraging female viewers to humour their partners by giving them some stimulating viewing for Christmas"

Setanta seem to argue here that the woman is not to be read as the object for sexual comedy; instead the male character is (re)positioned as the 'butt of the joke', (assuming that we laugh at his inability to control his sexual desire, and not at her as a sexualised 'bimbo'). Furthermore, Setanta seem to suggest that the complaints concerning sexism are simple misunderstandings of the humour of the advertisement (the figure of the 'humourless feminist' is, again, brought to mind here). Similarly to the FilmOn advertisement discussed above, 'Tinseltoes' is described as

distinctly aware of her sexual effect on men, suggesting that she is, in some way, in control, she is enjoying herself and she is in on the joke. McRobbie (2004) argues that such a reading is distinctly generational. Whereas an older generation of women, who grew up with feminism as a political movement in the 1960s and 70s might be angry by such blatant sexualisation of women's bodies, a woman of a younger generation, brought up in a postfeminist culture and "educated in irony and visually literate, is not made angry by such a repertoire. She appreciates its layers of meaning; she gets the joke" (ibid, p. 259). Speaking to a female audience (although it is likely also appealing in its 'laddish' approach to comedy to the male target consumer), the advertisement is constructed as a shared 'knowingness' – a joke shared amongst women (at the expense of men).<sup>160</sup>

Setanta further argued (although the ASA remained sceptical of this particular stance) that the portrayal of the woman had some contextual relevance, contrasting it with advertisements where women's presence as objects for male desire was seemingly irrelevant. They claimed that:

"there was a distinction between ads which made use of scantily clad females with no contextual relevance other than to draw attention, and to ads, like this one, which legitimately included attractive female characters as an integral part of the narrative"

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<sup>160</sup> Winship (2000) similarly argues that the mode of address in the, now iconic Wonderbra advertisement from 1994, featuring Eva Herzigova. These advertisements were speaking to an assumed male viewer, whilst being simultaneously constructed as a joke made at their expense, through emphasising female sexual subjectivity and empowerment.

Clearcast's response to the complaints of sexism and sexual objectification emphasised the comedic 'style' of the advertisement, as well as drawing on the postfeminist notion that women might 'enjoy' being objectified:

"Clearcast said they did not think the reference to puppies in relation to the womans [sic] chest was any different from the usual mild sexual, double entendre innuendo they routinely gave an ex-kids restriction to. They likened the humour to the Carry On style and added that there was no nudity in the ad and the woman in question, Tinseltoes, was not offended by the attention she was given. On balance, they considered an ex-kids restriction was sufficient"

The ASA did not completely agree with Setanta's attempt at dismissing the sexual objectification as a form of sexual agency and as 'contextualised' in the humorous narrative, taking into consideration the feminist criticism of the advertisement in their assessment. However, drawing on Clearcast's reference to 'Carry On'-humour, the ASA end up dismissing a feminist critique of the sexual objectification as part of a 'period' comedy discourse:

"The ASA noted Setanta's argument that the ad had contextual relevance as the woman and her cleavage was used as the basis for the humour rather than to just draw attention. We considered, however, that that in itself would not excuse an ad from causing

serious or widespread offence. We noted that some viewers might see the portrayal of the woman with her cleavage on display as objectifying women and that the reference 'Give him what he wants this Christmas' could be seen by some as treating women as sex objects. However, we agreed with Clearcast that the reference to 'puppies' and 'Give him what he wants this Christmas' would be seen by the majority of viewers as mild sexual innuendo. We acknowledged that this type of humour, which appeared outdated to some viewers, would not appeal to everyone but considered it unlikely to provoke serious or widespread offence"

The type of humour here becomes the contextual relevance 'needed' for understanding the image of the woman as ironically objectified. The ASA, then, seem to argue that the sexist speech fails to enact harm or offence through invoking a reading of the advertisement as a fantasy – an ironic commentary on a sexist past.

## **Conclusion**

Advertisements are not 'finished' texts, but are necessarily left open for interpretation and meaning-making by the viewer. As Judith Williamson writes:

"Obviously people invent and produce adverts, but apart from the fact that they are unknown and faceless, the ad in any case does not

claim to speak from them, it is not their speech. Thus there is a space, a gap left where the speaker should be; and one of the peculiar features of advertising is that we are drawn to fill that gap, so that we become both listener and speaker, subject and object" (Williamson 1978, p. 14).

Advertisers, forced to "condense a lot of meaning into a limited time and space" (Cameron 2006, p. 35), are relying on the viewer to actively take part in making inferences, guided and prompted by the advertisers use of semiotics. In this way, the polysemic nature of advertising allow multiple meanings to coexist, which, as Cameron has pointed out, means that "complaints about advertisements are *defeasible*" (ibid 2006, p. 35).

My intention in this chapter has not been to favour one reading before another, or to suggest that one is a more 'true' interpretation of the advertisement. Rather, I have critically examined the way that regulators have interpreted and responded to claims of sexism, examining, in particular, the regulatory discourses contributing to the 'undoing' of sexism. Speech act theory, here, gives an insight into how sexism 'functions' as speech, emphasising its performative aspects. I have argued that speech act theory provides a useful tool in exploring how sexism can be seen as *present* but still fail to *act* in a harmful or (generally) offensive way. Positioning sexist speech in the realm of the fantastical and/or ironic (as not to be taken seriously), are ways of removing sexist speech from a

social context where it could be construed as enacting harm and discrimination.

Drawing on postfeminism and the figure of 'the lad' as two key elements of 'ironic' sexism, I have sought to explore how regulators perpetuate a discourse of sexism as a bit of 'harmless fun'. As Stevenson et al. point out: "Irony allows you to have your cake and eat it. It allows you to express an unpalatable truth in a disguised form, while claiming it is not what you actually meant. To render an ironic claim harmful – that is, to claim that language can hurt – is in this reading to miss the point of the joke" (2000, p. 381). However, I argue that it is the postfeminist cultural *moment* in which these advertisements feature that allow these adverts to be read as 'harmless'. In this way, irony becomes an *imposed* reading, (re)situating sexism in the realm of fantasy – whether as a fantasy of desire never actualised, as surreal or excessive in absurdum, or as "safely sealed in the past" (Gill 2007b, p. 160). A sexist reading remains possible, but is rendered 'inactive' – it is 'sexism with an alibi' (Williamson 2003).



## **CHAPTER 9**

### **Conclusions**

In this concluding chapter, I begin with an overview of the main arguments put forward in this thesis and the substance of what my analysis has uncovered. I also consider my research questions again, in the light of my findings. I then outline the contribution of this thesis to academic knowledge in the fields of sociology, feminist theory and media studies. Finally, I discuss some possibilities for future work that this research has opened up for.

#### **Summary of Main Arguments**

This thesis has investigated the regulation of British television advertising from a historical and contemporary perspective. The historical narratives developed through my research, presented in Chapter 5 and 6 in particular, have provided a rich context for understanding the complexities of regulation in the televisual field. Tracing the historical trajectory of advertising regulation – from a paternalistic institution concerned with the moral welfare of the nation, to a neoliberal regulatory system, where the consumer interest is in focus – has provided a crucial insight into institutional values and prejudice in the regulation of ‘taste and decency’ and ‘harm and offence’. As I have argued in Chapter 5, despite some major structural changes in organisation, the regulation of ‘soft’ issues in advertising has remained surprisingly consistent. As I have

further shown in Chapter 6 and 7 of this thesis, the regulation of sexualised advertising speech, for example, remains discursively framed around 'taste and decency'-related issues concerning 'explicitness' and 'exposure' (to children). This does not mean that such advertising is banned from television – indeed, very few of the examples discussed here were subject to regulatory intervention and fewer still were 'banned'. Nevertheless, as I argued in Chapter 7, discourses emphasising an understanding of the advertisement as *sexualised* (although, importantly, not *too* sexualised) take precedence over a concern for *sexism* in assessments, even when such concerns are explicitly evoked by the complainant. This, I have argued here, is particularly problematic as it fails to account for the long tradition of women's sexualised bodies in visual culture. Moreover, I suggested that the 'zoning' of advertisements on the basis of sexual content furthers this understanding of women's sexualised bodies as primarily problematic in relation to where and when they can be seen and by whom.

In Chapter 6, I made a related argument concerning the way in which complaints about the portrayal of women in the media have historically been constructed as feelings of 'annoyance' or personal affront and have consequently not been taken seriously. I argued that what we see in Chapter 7, where complaints about sexism are misunderstood, or reconstructed as issues to do with levels of explicitness, is an extension of this historical dismissal of sexism as outside the scope for *public* offence. This was further emphasised in the three key reports I examined in

Chapter 7, that all made, at best, ambiguous connections between sexual portrayals and sexist offence.

Chapter 8 provided a critical analysis of discourses around sexism in instances where these concerns had been addressed by regulators. Drawing on the notion of 'postfeminist irony' I sought to explain how the regulators saw the scenarios featured as allowing for an 'ironic' or 'unrealistic' reading of, otherwise, quite blatant sexism (or, indeed, *because of the blatant sexism*).<sup>161</sup> I argued here, drawing on speech act theory, that the regulators saw and recognised the sexism within these adverts, but argued that it did not enact harm, or discrimination as the context in which it appeared (a distinctly postfeminist context) had rendered it a 'failed performative'. Within this chapter, I argued that speech act theory may give an insight into how sexism 'functions' as speech, or how it can be seen to *act* upon the addressee in a certain way. MacKinnon would perhaps have argued that sexist speech is by definition *illocutionary* speech, that is, it *does* what it *says*. It subordinates, silences and has harmful effects upon women. Whilst not always a 'successful' performative, I suggest that to think of it as a performative is to gain some greater understanding about how it performs an act of subordination – treating whomever may be the subject for such speech as someone whose interests and their lives are intrinsically less valuable than those of the

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<sup>161</sup> The idea of 'unrealistic' advertising as legitimizing sexism is, of course, a very problematic claim as advertisements by definition are depictions of fantasy and the unreal. By the logic of this reasoning the adjudicators are making their own role as advertising regulator defunct apart from on the basis of possibly protecting children and vulnerable viewers.

speaker.

Furthermore, I have suggested that the power relationship between the advertising regulator and the member of the public is fraught with imbalances. In Chapter 7, for example, I argued that the dialogical relationship between complainant and regulator is marked by its 'unevenness', where the regulator sets the agenda and has the privilege of interpretation. Moreover, I have argued that the shift to self/co-regulation – incorporating a shift in commitment from *public* to *consumer* interest – has some potentially serious consequences for the legal framework of public accountability and freedom of information.

### **(Re)considering the Research Questions**

In the introduction to this thesis I set out my main aims and objectives with this research, as well as provided a set of guiding research questions. I return here to (re)consider these questions in light of the completed project. The questions set out were as follows:

- How has television advertising regulation been shaped by its history as a statutory regulator, with a commitment to the 'public interest'? How has this 'public interest' been defined and changed over time? How is 'public interest' defined in relation to sexist advertising?
- How can we understand 'harm' and 'offence' as categories for

‘measuring’ (un)acceptability? How are harm and offence different from notions of taste and decency? How can we understand harm and offence in relation to claims of sexism?

- In what ways has British television advertising regulation responded to changes in ongoing debates on gender and sexuality?
- How are discourses of sexualisation understood and negotiated in advertising regulation?
- What ‘counts’ as sexism, or how are claims of sexism defined/dismissed/legitimised in regulatory discourse?

Chapter 5 and 6 went some way in delineating the complex terrain of television advertising regulation *vis a vis* the changing social context and transformations in gender relations, responding and expanding upon the questions I posed in the first and third bullet points. However, the second point may need some further concluding comments here.

There is no standardised way of ‘measuring’ the acceptability of an advertisement – regulators regularly emphasise that their work is done on a case-by-case basis and the advertising codes are deliberately vague in this area. As Myers (1995) has pointed out, such a solution is preferable to a case where the meaning of an image is predetermined based on its content. This, she argues, rejects the impact of any contextual factors to be decoded. However, as I have discussed in this thesis, ‘harm’ is a category closely connected with children, creating a divide between children and adults, harm and offence. Despite this, the category ‘harm and offence’

continues to act as a unified category in regulatory discourse. Conflating the two categories in this way presents some problems in regulating against sexism, which is not easily defined as *either*, or perhaps commonly defined as *both* harmful and offensive. Whereas sexism may be offensive, it may also be seen as harmful, perpetuating a damaging view of women or men – a disjunction that I addressed in greater detail in Chapter 8. Nevertheless, ‘harm and offence’ may be a more appropriate category than ‘taste and decency’ for assessing issues of gender discrimination, opening up, at least, for the possibility of seeing advertising speech as possible of more than offending against some sense of ‘public morality’.

Under the fourth bullet point I asked how sexualisation is to be understood and negotiated in advertising regulation – a question which was dealt with at length in Chapter 7 of this thesis, where I argued that sexualisation is distinctly *de*-gendered in regulatory discourse.

Finally, the last question – what ‘counts’ as sexism? – corresponds to the last analytical chapter presented here, which demonstrated how sexism is perpetually dismissed as an issue belonging to a distant past. Even in cases where sexism may be present, it does not ‘count’ as sexism since it is not considered to enact discrimination.

In conclusion, I have argued that television advertising regulation, as a statutory requirement, provides an ‘official’ discourse on harm and offence, and more specifically on sexism in the media. Despite this, it is an

area that has been seriously under-researched by academics to date. I have examined how this 'official' discourse on media sexism emphasises a postfeminist understanding of sexism as a 'past' concept and often fails to critically engage with the complexities that arise in the convergence between sexualisation and sexism. Through exploring the discursive space where boundaries of (un)acceptability are (re)negotiated, I have argued that harm and offence are (and continue to be) contentious categories that allow regulators the privilege of interpretation. This has produced some inevitable issues in the area of regulating against sexism, where the regulator's reading of both public complaints and advertising content have been distinctly lacking in incorporating a (feminist) critique.

This thesis speaks to broader concerns of speech regulation relating to offence and issues of 'public interest', especially in terms of access to complaints and regulatory decisions by an organisation that regulate advertising in a public medium on a statutory basis.

### **Contributions to Knowledge**

This research makes an intellectual contribution to the academic fields of sociology, feminist theory and media history. My main contributions to knowledge can be summarised as such:

- Through extensive archival research related to the organisational structure around issues of taste and decency, and harm and offence, this

research offers a comprehensive understanding of the complex history of British television advertising regulation in this contentious area of speech regulation;

- In my analysis of discourses around sexism in advertising, finding sexism's role in modern advertising to be mitigated by understanding advertisements as 'postfeminist narratives', this work contributes to contemporary feminist debates on sexism's ambivalent status in the wake of postfeminism by proposing an understanding of sexism as a (successful or unsuccessful) 'performative utterance';
- This work contributes to an understanding of the development of regulatory responses to feminist or anti-sexist criticism of advertising in contemporary history;
- As regulation is an area that has received little attention within feminist research to date, this thesis extends previous feminist work in the area of advertising regulation and contentious speech;
- Through the analytical work set out in Chapter 7 in particular, this research contributes to ongoing debates on sexualisation and its intersections with sexism in contemporary social discourse;
- Through exploring advertising regulation as a space where feminist and regulatory voices converge, interact and negotiate (albeit on unequal terms), this work offers an understanding of the complex relationship between feminist criticism, the media, and regulatory institutions.



## Further research

In recent years, there has been a resurgence of interest in feminist issues, enabled and encouraged through social networking sites and 'smart' technology. For example, the contemporary social media landscape has seen a (re)emergence of viral campaigns, such as the 'No More Page 3'-campaign<sup>162</sup> and the 'Everyday Sexism'-project<sup>163</sup>, gaining prominence through Twitter, Facebook and other social media. However, at the same time as feminist voices have found a new platform in the digital age, there has also been a proliferation of discussions and a growing concern about online sexism and harassment targeting women in the online sphere. This was particularly prominent in the case of Feminist Frequency's vlogger and media critic, Anita Sarkeesian, who, after announcing her video-based project 'Tropes vs. Women in Video Games' where she aimed to highlight sexist stereotypes in video games, received a mass of online abuse and harassment. Moreover, there has been some recent controversy regarding Facebook's policies as to what constitutes 'acceptable' under their 'community standards' after banning pictures of women breastfeeding for being 'obscene', whilst many revealing, *sexist* depictions of women's bodies were left untouched (Chemaly 2014). Facebook's ban on images of breastfeeding has since been revoked.

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<sup>162</sup> The 'No More Page 3'-campaign is a revival of the attempts at banning the publication of semi-nude Page 3-girls in British tabloid newspapers in the 1980s.

<sup>163</sup> The 'Everyday Sexism'-project collects stories on social media of everyday sexism and sexual harassment under the hashtag #everydaysexism – a way of highlighting a still existing problem of inequality and putting the small expressions of sexism into a bigger context (making the personal political, so to speak).

What all of the above trends and events have in common is an emerging discussion on the *regulation* and *(un)acceptability* of speech. This discussion can take different forms, including, encouraging *more* regulation in the area of hate speech (in order to keep marginalised voices from being silenced), calling for *less* censorship in the interest of free speech, or, as in the case of Facebook, leading critics to demand a revision of their sexist conception of ‘community values’, I suggest that there is a lot of future feminist work to be done in this area of the ‘everyday’ regulation of speech, to which my project may hold some important insights. I encourage more academic work in this area where feminism, (media) sexism, and the regulation of speech converge.

Furthermore, there are currently some interesting developments in the online sphere that challenges the status of the advertising regulator. With social media, the ability to quickly and directly address companies that produce sexist advertising has improved significantly. One interesting extension of my own study would be to analyse the discursive exchanges that can be found under such ‘hashtags’, i.e. a grouping of comments or pictures under one topic, as, for example, ‘#Notbuyingit’ – a project where people ‘report’ sexist advertising, creating a kind of ‘hub’ for (feminist) anger around sexism in the media. As this project has shown, this anger and concern over sexism in advertising exists but is rarely addressed or taken seriously in regulatory discourse. Examining discourses in direct exchanges between consumer and advertiser would provide an extension of this project, allowing for a more detailed exploration of the (feminist)

‘complaints culture’ surrounding these issues and how this might affect advertisers in instances where there is no regulatory body to mitigate this ‘conversation’, and where consumers can more easily mobilise themselves around issues of common interest.

In this thesis I have examined the historical and contemporary features of the British television advertising regulatory system. My interest has centred on the regulation of harm and offence, with a specific focus on gender and sexuality portrayals. Through this research I have shown the various ways in which complaints about sexism have been misinterpreted, mitigated and dismissed by regulators. I hope to continue to be part of this discussion on what constitutes sexism in popular culture, whilst contributing to a rich scholarly field of feminist research.

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