

Friday, September 28, 2007

Obscenity: Miller test v. Canadian list.

Â Bill of Rights.Â (From the public domain.)Â While on the topic of free expression and the censorship thereof, hereÂ are the different approaches ofÂ the United States and Canada to censoring so-called obscenity. Â In the United States,Â a juryÂ must affirmatively answer the following three questions beforeÂ finding guilt for obscenity:Â (1) whether the material depictsÂ patently offensive representations or descriptions of "ultimate sexual acts, normal or perverted, actual or simulated"Â or "masturbation, excretory functions, and lewd exhibition of the genitals;" (2)Â whether the average person, applying contemporary community standards would find that the work, taken as a whole, appeals to the prurient interest, and (3)Â whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value. Miller v. California, 413 U.S. 15 (1973). Â In Canada, the federal government maintains a list of admissible and prohibited material for importation, and some provinces provide stickers of approval. Consequently, the United States' approach violates the First Amendment in part by promoting self censorship to minimize the chance that a jury will find material to be obscene. The Canadian approach is undesirable censorship, as well, for giving government bureaucrats the power to decide what material will be banned before it even reaches the sales shelves; however, some businesses may prefer the Canada model, by having assurances that approved material will not later get prosecuted. Â Here are samples of Canada's quarterlyÂ prohibited and admissible imported videos and books. (Caveat emptor: The site depicts a topless woman; I could not find any other site that lists so many quarterly list of Canada's prohibited material.) In addition to listing alleged obscenity, the list also covers permitted and banned material that allegedly are hateful. Â I wonder what qualifications these Canadian censor-bureaucrats need to get hired. Perhaps McGill University offers an interdisciplinary major on Censorship Studies. Jon Katz.Â

Posted by Jon Katz in First Amendment at 00:00