

33RD MEETING

9, 10, 17 NOVEMBER 2001

23-33 MARY STREET

SURRY HILLS NSW

8 DECEMBER 2000 (BY TELECONFERENCE)

PRESENT: Ms Barbara Biggins (Convenor)
Ms Robin Harvey
Mr Ross Tzannes
Ms Glenda Banks

APPLICANT: AXIS, a Division of Adultshop.com Limited

BUSINESS: To review the decision of the Classification Board to assign the classification RC (Refused Classification) under the *Classification (Publications, Films and Computer Games) Act 1995* to the film *Fame is a Whore ... On Butt Row*.

DECISION AND REASONS FOR DECISION

1. Decision

The Classification Review Board decided to set aside the decision of the Classification Board, and to classify the film *Fame is a Whore ...*

On Butt Row X18+ with the consumer advice “Contains real depictions of actual sexual activity”.

2. Legislative Provisions

The *Classification (Publications, Films and Computer Games) Act 1995* (the Act) governs the classification of films and the review of classification decisions. The Act provides that films be classified in accordance with the National Classification Code and the classification guidelines. Relevantly, the National Classification Code (the Code) in paragraph 1. of the Table under the heading “Films” provides that films that “depict, express or otherwise deal with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified” should be classified “RC.”

Further, the Code provides that films that

a) contain real depictions of actual sexual activity between consenting adults in which there is no violence, sexual violence, sexualised violence, coercion, sexually assaultive language, or fetishes or depictions which purposefully demean anyone involved in that activity for the enjoyment of viewers, in a way that is likely to cause offence to a reasonable adult; and

b) are unsuitable for a minor to see

may be classified “X 18+”.

In addition, the *Guidelines for the classification of films and videotapes (Amendment No. 3, 18 September 2000)* provide, in part that, “No depiction of violence, sexual violence, sexualised violence or coercion is allowed in the category. It does not allow sexually assaultive language. Nor does it allow consensual depictions, which purposefully demean anyone involved in that activity for the enjoyment of viewers. Fetishes such as body piercing, application of substances such as candle wax, ‘golden showers’, bondage, spanking or fisting are not permitted.”

3. Procedure

3.1 Four members of the Review Board viewed the film at its meeting on 9-10, 17th November 2000.

4. Matters Taken into Account

In reaching its decision the Board of Review had regard to the following:

(a) the applicant’s Application for Review

- (b) the film *Fame is a Whore ... On Butt Row*.
- (c) written and oral arguments made by Ms Elvis Caneers-Barnes and Mr John Davey on behalf of the applicant
- (d) the relevant provisions in the Act
- (e) the relevant provisions in the National Classification Code as amended in accordance with section 6 of the Act and endorsed by Censorship Ministers
- (f) the current Classification Guidelines for the classification of Films and Videotapes determined under section 12 of the Act.

5. Findings on material questions of fact

5.1 The film contained various unrelated scenes of real depictions of actual sexual activity.

5.2 The Review Board considered the scene cited by the Classification Board as leading to an RC classification. This occurred at 77 minutes and in which a female is given one smack, followed by sounds of further smacking off screen. A female with reddened buttocks leans over a couch and is given three further smacks each by two other participants.

5.3 The Review Board found that the scene at 77 mins did not contain a depiction of a fetish such as spanking.

5.4 As the film contained real depictions of actual sexual activity as in the Code para 2 under Films, the Review Board found that the film was appropriately classified X 18+.

6. Reasons for the Decision

6.1 The Review Board based its decision to classify the film X18+ with the consumer advice "contains real depictions of sexual activity" on its content as described in 5.1 to 5.4 above.

6.2 To aid it in its determination as to whether the scene at 77 mins constituted a depiction of a fetish such as spanking, the Review Board examined the intent of the Code and Guidelines in this regard.

6.3 The Review Board found that while some "fetishes" listed in the Guidelines, such as the application of candlewax, golden showers, bondage and fisting can be fairly easily recognised, the same cannot be said of "fetishes such as spanking". The Review Board saw a potential distinction between acts of spanking or smacking and " a fetish such as spanking" .

6.4 The definition in the glossary to the Guidelines provides that a fetish is "an object, an action, or a non sexual part of the body which gives sexual gratification". This definition also gives rise to problems of interpretation, viz there are many actions which give

sexual gratification but which would not usually be deemed to be "fetishes"- such as kissing, and playful slapping or smacking.

6.5 The Review Board looked at the Macquarie Dictionary (3rd ed) for a definition of 'spanking'. It found that "spanking" means to strike (quickly and vigorously) with an open hand as a punishment. "Smacking" is to strike smartly or forcibly with an open hand, or a smart resounding blow.

6.6 The Review Board found that a common characteristic of the list of "fetishes such as "in the Guidelines, and which arise from the Code, was that these either demean, or cause harm or pain, in a sexual context, and for sexual gratification.

6.7 Using this analysis, the Review Board considered that the depiction was of smacking in the context of consensual sex, to produce sexual gratification. The depiction contained no elements of punishment, nor of activity which would demean for the enjoyment of viewers (in the sense used in the Code and Guidelines). The Review Board concluded that the scene at 77mins did not therefore constitute a depiction of a fetish such as spanking.

6.8 The applicant argued that the Classification Board failed to

- (a) take sufficient account of the nature of the film
- (b) take full account of the wording and intent of the Act and the National Classification Code.
- (c) reasonably apply the film Classification Guidelines as they apply to depictions of fetishes such as spanking
- (d) supply sufficient evidence to substantiate its claim that a fetishistic activity occurred.

6.9 The Review Board found that there was some validity in the applicant's arguments.

6.10 The Review Board concluded that as the film contained real depictions of actual sexual activity between consenting adults in a way that is likely to cause offence to a reasonable adult, the film was appropriately classified X 18+. Its decision to apply the consumer advice lines of "contains real depictions of actual sexual activity" is made having regard to the content as set out in 5.1 and 5.2 above.

7. Summary

7.1 The Review Board's decision is to classify the film *Fame is a Whore ... On Butt Row* X18+ with the consumer advice "contains real depictions of actual sexual activity".

This decision is taken after full consideration of the applicant's submission, and after assessing the film as a whole against the

relevant legislative criteria, including those contained in the Code, and in the current Classification Guidelines for Films and Videotapes determined under Section 12 of the Act.

Barbara Biggins
Convenor