

33RD MEETING

9, 10, 17 NOVEMBER 2000

**23-33 MARY STREET
SURRY HILLS NSW**

8 DECEMBER 2000 (BY TELECONFERENCE)

PRESENT Ms Barbara Biggins (Convenor)
Mr Jonathan O’Dea (Deputy Convenor)
Mr Ross Tzannes
Ms Robin Harvey
Ms Glenda Banks
Ms Joan Yardley

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 *Totally Jill*.

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 *Totally Jill* “X 18+” 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".

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

4. Matters Taken into Account

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

- (a) the applicant's Application for Review
- (b) the film *Totally Jill*
- (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 contains a montage of scenes of explicit sexual activity, which the Review Board found to be 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 35 minutes, in which two men seated on a sofa, tickle and smack the buttocks of a woman standing in front of them.

The majority of the Review Board agreed with the minority of the Classification Board that although the scene contains tickling and smacking as a prelude to other sexual activity, it did not constitute a scene portraying “a fetish such as spanking”.

5.3 A minority of the Review Board found that there were elements in the dialogue and actions of the men, of debasement and dominance for the enjoyment of viewers, and that the film was appropriately classified RC.

5.4 The Review Board found that the film contained real depictions of sexual activity between consenting adults in a way that is likely to cause offence to a reasonable adult and is 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 and 5.2 above.

6.2 The scene at 35 minutes had been deemed by a majority of the Classification Board to contain a depiction of “a fetish such as spanking”.

6.3 To aid it in its determination as to whether this was the case, the Review Board examined the intent of the Code and Guidelines in this regard.

6.4 The Review Board found that while some of these "fetishes" 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 and "a fetish such as spanking".

6.5 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.

6.6 The Review Board looked at the Macquarie Dictionary 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.

6.7 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.

6.8 Using this analysis, the Review Board observed that the depiction contained no elements of a portrayal that was demeaning to the participants for the enjoyment of viewers (in the sense used in the Code and Guidelines). Further, the tickling and smacking (both seen and heard) did not contain elements of punishment. As a consequence, the majority of the Review Board concluded that the behaviour depicted was that of smacking to promote sexual excitement, and there were no indicators that this was a depiction of "a fetish such as spanking". The film could therefore be accommodated within the X category.

6.9 The applicant argued, in part, that the Classification Board

- (a) Did not take sufficient account of the convention that adult films focus on sexual gratification which does not necessarily constitute fetish behaviour.
- (b) Failed to recognize the difference between fetish behaviour and common foreplay in an adult film
- (c) Failed to take full account of the wording and intent of the Act and the National Classification Code
- (d) Did not reasonably apply the Film Classification Guidelines as they relate to depictions of fetish activity.

6.10. The Review board found these arguments to have some validity.

6.11. The Review Board concluded that 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 and is appropriately classified "X 18+". Its decision to apply the consumer advice of "Contains real depictions of actual sexual activity" is made having regard to the content, as described at 5.1.

7. Summary

7.1 The Review Board's decision is to classify the film *Totally Jill* "X 18+" 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