

Decision No /2005

IN THE MATTER of the Films, Videos, and  
Publications Classification  
Act 1993 ("the Act")

AND

IN THE MATTER of An Application for Review  
by the Society for the  
Promotion of Community  
Standards of the game  
**Playboy: The Mansion**

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**BEFORE THE  
FILM & LITERATURE BOARD OF REVIEW**

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1. Claudia Elliott, President
2. Greg Presland, Deputy President
3. Peter Cartwright
4. Mark Andersen
5. Lalita Rajasingham
6. Brian McDonnell
7. Marion Orme
8. Stephen Stehlin
9. Ani Waaka

Meeting at Wellington on June 9, 2005

## **BACKGROUND**

- [1.] This is an application for review of the game **Playboy: The Mansion** (“the game”). The game is available for sale in New Zealand and is playable on Xboxes, Playstations and Windows based computers.
- [2.] The game was originally classified by the Office of Film and Literature Classification (“the OFLC”) as objectionable except if the availability of the publication is restricted to persons who have attained the age of 16 years. The game attracted the attention of the Society for Promotion of Community Standards (“the Applicant”) which applied for leave to seek a review of the classification decision. Leave was granted and this review is the result of that decision.

## **THE GAME**

- [3.] The Board has had the benefit of an overview of the game given by employees of the OFLC who had previously worked their way through the game. The Board has also been provided with screen shots and a complete walk through of the game.
- [4.] The purpose of the game is to build a successful business empire by publishing Playboy magazine, and creating television shows and internet services. The player of the game operates as Hugh Hefner, founder of the Playboy organisation, and success is achieved by developing relationships with numerous people who will help produce the various publications. This includes journalists and celebrities for interviews, and photographers and models for photo-shoots. The quality of relationships thus cultivated is reflected in superior publication output.
- [5.] Interactions with characters are usually on a conversational level that is presented as an unintelligible babble. Sex with some of the characters is possible, but only after a relationship has developed to an advanced stage. The sex, which only takes place between the Hugh Hefner character and various female characters, is comical and far-fetched. The “sex” involves unrealistic, acrobatic cavortings on the sofa, and a rodeo-ride simulation on the bed. The participants are never completely nude and no genitals are displayed. The most sexually explicit images involve shots of breasts and buttocks. Some of this occurs with the characters of the game, but real photographic images are accessible for those who progress to more advanced levels and earn

bonus points. Other possible activity includes the holding of parties and the consumption of alcohol.

- [6.] The sexual elements of the game have attracted the concern of the Society. Players are able to photograph models in a semi nude state, and as noted previously given the right circumstances and character development, are able to engage in simulated sexual intercourse with the female characters.
- [7.] The graphics of the game are of low quality. The view is isometric and all characters, although recognisable, are of a cartoon style. Sexual intercourse is portrayed in a highly stylised manner. The females are otherwise almost invariably dressed either in playboy bunny suits or in other scanty attire. Breasts and buttocks are often visible.

## **THE SUBMISSIONS**

### **On Behalf of the Applicant**

- [8.] The Applicant's written submissions included the original application for leave, the application for review, written submissions, rewritten submissions and an appendix to the submissions. The submissions are somewhat lengthy but perhaps can be boiled down to three propositions, first, the game is exploitative of young persons, secondly that the game is degrading or dehumanising of women, and thirdly that although the depictions of nudity and sex are of a relatively low level, because an interactive game is involved extra caution is required. The written submissions were augmented by verbal submissions that were presented at the hearing by Graham Fox and Des Chambers.
- [9.] The Society considered the game to be exploitive of young persons. The player of the game is trapped into a certain view of the world, where the exploitation of women is normalised and rewarded. Young people are being exploited in that they are paying for the game. Article 13 of the United Nations Charter was cited to enforce the general requirement that the New Zealand Government and its agencies act in a way that protects public health and children.
- [10.] The Society submitted that the game is immoral and conditions an inappropriate response by the player. It also considered the game to be degrading of women who are shown to be easily manipulated. The availability of the game is not easily policed, and once available in a home, is readily accessible by persons of all ages.

- [11.] It was submitted that the game is voyeuristic and pornographic and has the disturbing message that sexual harassment of employees is acceptable. The submitters concern about the corrosive effect that pornography can have on individuals was also expressed. A definition of "Pornography" was not offered.
- [12.] The Society's preference was that if the game was not banned it be given a classification of R18.

### **The Distributor**

- [13.] The distributor of the game is Monaco Corporation. Its submissions were in writing by Ben Ward on behalf of Monaco. It did not appear at the hearing. It provided some analysis of the game and screen shots of the archival photographs which are available in the game. Its submissions were briefly that sex in the game is simulated, is always consensual, that drunken characters can never have sex, and that there is no violence in the game. It also noted that there is no genital nudity in the game, that the game could be completed without having sex, and that two characters could not be commanded to have sex. A preferred classification was not given, but it is implicit in the tone of the submission that no change was sought to the OFLC's original classification.

### **The OFLC**

- [14.] The OFLC explained the classifications that the game had received in various overseas jurisdictions. The sample provided indicated classifications from R18 in the UK to MA15+ in Australia with most jurisdictions settling on a classification of R16. The office was not aware of any jurisdiction banning the game or requiring cuts.
- [15.] It was submitted that the content of the game brings it within the "subject matter gateway" of sex. It was noted that although there was some nudity there were no scenes showing genitalia. Much of the game involved the building up of the business and publication of the magazine, organising a music festival, throwing parties and launching an internet presence. The graphics quality of the game was low and the game was described as slow, far-fetched and silly.
- [16.] The sex scenes were considered to take up a relatively small part of the gameplay, are time consuming to achieve and are presented in low quality CGI. It was submitted that it is difficult to see how the game injures the public

good by inuring players to, or encourages them to take, pleasure from promiscuity.

- [17.] The OFLC also disagreed with the Society's suggestion that the game's use should be restricted to video game parlours. It considered that there was no basis to believe that Video Game Parlour supervision of age would be better than parental supervision and also considered this submission to be contrary to the Court of Appeal decision in *Baise Moi* CA 239/03, CA, December 9, 2004.
- [18.] The OFLC submitted that as the sexual content was equal to or lower than that appearing in Playboy magazines that have been classified as R16, the current classification was appropriate. It was noted that this classification is consistent with the majority of overseas classifications. This classification was sufficient to prevent injury to the public good by preventing the exposure of more mature sexual content to impressionable young persons.

## **DECISION**

- [19.] The Game clearly passes through the "gateway test" of sex contained in Section 3(1) of the Act. Sexual elements include the centrefold shoot, the sexual activity of the characters, the content of the magazine and the presentation of topless female characters during the game. There is also the ability to access photographs from various Playboy magazines showing models with naked breasts and buttocks, although it is noted that genitalia are not discernible.
- [20.] The next test to apply is the "deemed objectionability" test contained in section 3(2) of the Act. This section deems as objectionable material that promotes and supports or tends to promote and support such things as the use of young persons for sexual purposes, the use of violence to coerce persons to engage in sexual activity, bestiality, necrophilia, the use of excrement in association with dehumanising or sexual conduct, or acts of torture or the infliction of extreme violence or cruelty. It was suggested by the Applicant that the game involved the use of young persons for sexual purposes, in that sex was being used to sell the game to young persons. This submission is not accepted. The characters in the game all presented as being adult. To breach the section the young person must be used "for sexual purposes" rather than sex being used to attract the young person's commercial support. The Board finds that the game does not breach the deemed objectionability test contained in Section 3(2) of the Act.

- [21.] With regard to the provisions of Section 3(3) the game raises issues under subsection (c) in that it is arguable that the game is degrading, dehumanising and demeaning to women. It is noted, however, that the game depicts women as having a character and choice, they are able to say “no” to Hefner’s advances, and they ultimately decide if intercourse will take place. The presentation of fictional cartoon women is fundamentally no different to the depiction of real women in the Playboy Magazine.
- [22.] With regard to the matters listed in Section 3(4) of the Act, the dominant effect of the game is that it is somewhat ponderous, predictable and repetitive. The impact of the medium is an important consideration, although the nudity is less severe than that contained in the magazine, the interactive nature of the game means that a higher degree of concern is warranted and extra caution is required. The game has limited merit as a corporate simulation. It is noted that indulging in sex is not required to win the game. Positive values required by the game include the need to build relationships, and the fact that co-operation with others is needed to succeed. The game is obviously aimed at males under the age of 25 years, and presumably at teenage boys although the simulation nature of the game requires a business strategy approach.
- [23.] Taking all matters into consideration the Board has determined that the appropriate classification is that the game is objectionable, unless its availability is restricted to persons who have attained the age of 16 years. For the reasons outlined previously, the Board does not consider that a further limitation that the game be restricted to use in Video Parlours is appropriate.
- [24.] The Board has considered excisions. Because of the nature of the publication it would be technically difficult in the extreme to excise all aspects of the game complained about. The Board’s preference is to leave the publication as is and to rate it accordingly.

### **THE BILL OF RIGHTS ACT**

- [25.] It is necessary to consider the effect of the Bill of Rights Act 1990.
- [26.] This Board has in other decisions such as *Baise Moi* (2002) and *Bully* (2003) discussed the “five step process” set out in the Court of Appeal decision in *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9.

- [27.] The first two steps are to identify the different possible interpretations of the word or words in the Act, and if only one meaning is properly open to adopt it. If there are two possible meanings then that interpretation that constitutes the least possible limitation on the right or freedom in question should be adopted. The phrase “exploitation of ... young persons for sexual purposes” arguably has different interpretations. The Society wants the Board to adopt a wide interpretation of this phrase, which for reasons previously identified the Board cannot.
- [28.] Even if the two interpretations were available the interpretation preferred by the Board is that which is more conducive to Bill of Rights considerations. Section 3(2) imposes a significant limitation on free speech and a restricted interpretation of its provisions is more conducive to freedom of speech.
- [29.] The next two steps are to identify the extent if any to which the meaning adopted limits the relevant right or freedom and to determine if the limitation can be demonstrably justified in a free and democratic society. The Act is by definition one that limits the freedom of speech.
- [30.] The Board considers that the limitation imposed by its decision can be demonstrably justified in a free and democratic society and is appropriate. The Act is designed to provide a classification and censorship system for publications. Restrictions must be in proportion to the importance of the objective, and interfere as little as possible with the right or freedom affected.
- [31.] The final step requires the Board to consider whether the limitations it has placed on the game are justified on balance, taking into account the intention of the Act under which the Board is required to make its decision. The Board considers that its decision can be demonstratively justified in accordance with Section 5 of the New Zealand Bill of Rights Act 1990.

## **CONCLUSION**

- [32.] The Board has determined that the appropriate classification is that the “Playboy: The Mansion” is objectionable except if the availability of the publication is restricted to persons who have attained the age of 16 years. A warning that the game “contains sexual themes” is appropriate.

Dated at Auckland this 12th day of August 2005

**Claudia Elliott**  
**President, Film and Literature Board of Review**