

IN THE MATTER of The Films, Videos, and  
Publications Classification  
Act 1993

AND

IN THE MATTER of an application under  
Section 49 of the Act by the  
Society for the Promotion of  
Community Standards Inc. of  
the video “**Playboy : The  
Mansion**”

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**DECISION OF THE PRESIDENT OF THE  
FILM AND LITERATURE BOARD OF REVIEW  
DECISION NUMBER TWO**

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**APPLICATION**

- [1] The background to the application is dealt with in Decision Number One in respect to “Playboy : The Mansion” dated 12 August 2005.

**INTERIM DECISION**

- [2] In a decision dated 10 August 2005 I directed that all parties be given the opportunity to make submissions on the issue of whether an Interim Restriction Order should be granted by 4.00 p.m., on Thursday 11 August 2005.

[4] **THE LAW**

The applicable sections of the Act are :

[5] **40. Classification Office to publish list of decisions—**

(1) The Classification Office shall, not later than the 10th working day of every month, produce a list, in alphabetical order, of the publications that, during the month immediately preceding the month in which the list is produced, have been examined by the Classification Office or the Board and in respect of which the Classification Office or the Board has made a decision.

(2) Every list produced in accordance with subsection (1) of this section shall contain—

(a) Such particulars of the publications listed in it as may be prescribed; and

(b) Such decisions of the Board as are required, pursuant to section 55(1)(e)(ii) of this Act, to be published by the Classification Office.

(3) The list produced in accordance with subsection (1) of this section shall be kept by the Classification Office, and shall be open to inspection by the public during ordinary office hours.

Every person shall, on request, and on payment of such fee (if any) as the Classification Office may determine, be entitled to a copy of any list produced in accordance with subsection (1) of this section.

[6] **47. Right of review—**

(1) Any of the persons specified in subsection (2) of this section who are dissatisfied with any decision of the Classification Office with respect to the classification of any publication shall be entitled, on application, to have the publication reviewed by the Board.

(2) The following persons may seek a review under subsection (1) of this section: ...

(e) With the leave of the Secretary, any other person. ...

[7] **48. Applications for review—**

(1) Every application for a review under section 47 of this Act shall— ...

(a) be in the prescribed form; and

(b) be lodged with the Secretary before the relevant deadline specified in section 48A; and

(c) be accompanied by the prescribed fee (if any).

(2) On receiving this section an application for review the Secretary must, if satisfied it complies with subsection (1), forward it forthwith to the President of the Board.

[8] **48A Deadline for lodging applications for review--**

The deadline referred to in section 48(1)(b) is,--

(a) if the person concerned requires the leave of the Secretary under section 47(2)(e) in order to seek the review, the end of ordinary office hours on whichever is the later of the following:

(i) the 5<sup>th</sup> working day after the day on which that leave is granted by the Secretary; or

(ii) the 30<sup>th</sup> working day after the day on which the relevant decision of the Classification Office is, in accordance with section 40(3), first made open to inspection by the public in a list produced in accordance with section 40(1); and

(b) in every other case, the end of ordinary office hours on the 30<sup>th</sup> working day after the day on which the relevant decision of the Classification Office is, in accordance with section 40(3), first made open to

inspection by the public in a list produced in accordance with section 40(1).

[9] **49. Interim restriction orders –**

(1) Any person who is entitled, under section 53 (2) of this Act, to make written submissions to the Board in relation to a publication submitted for review under section 47 of this Act may, at any time before the review is completed, apply to the President of the Board for an interim restriction order in respect of the publication to which the review relates, and the President may, if satisfied that it is in the public interest to do so, make such an order accordingly.

(2) Every application under subsection (1) of this section shall be dealt with as soon as practicable.

(3) While an interim restriction order is in force, no person who has knowledge of the making of that order shall do any act or thing in relation to the publication to which the order relates that would be an offence against paragraph (c) or paragraph (d) or paragraph (e) of section 123 (1) of this Act or against section 127 or section 129 of this Act if that publication were an objectionable publication.

[10] **50. Notification of interim restriction order –**

(1) Every interim restriction order shall be published in the *Gazette*.

(2) As soon as reasonably practicable after an interim restriction order is made, the person on whose application the order is made shall-

(a) Advertise the making of the order, in such manner as the President of the Board shall direct; and

(b) Serve notice of the making of the order on such persons or classes of persons as the President of the Board shall direct.

(3) Every person on whom notice of the making of an interim restriction order is served shall, if that person has furnished the publication to which the order relates to any other person for distribution, exhibition, or supply, give, where practicable and as soon as reasonably practicable, a notice of the making of the order to that other person.

[11] **51. Duration and revocation of interim restriction order-**

(1) Every interim restriction order shall come into force on the day on which it is made and, unless sooner revoked, shall remain in force until the review of the publication to which the order relates is completed by the Board.

(2) The President of the Board may, on the application of any of the following persons, or on the President's own motion, revoke an interim restriction order:

(a) The applicant for the order:

(b) The owner, maker, publisher, or authorised distributor of the publication to which the order relates:

(c) Any other person who satisfies the President of the Board that the person is detrimentally affected by the existence of the order.

(3) Every order under this section that revokes an interim restriction order shall be published in the *Gazette*, and shall be advertised in such manner, and notified to such persons, as the President of the Board shall direct.

**SUBMISSIONS**

[12] A submission was received from the Society for the Promotion of Community Standards (hereinafter called "the Society"). The submission is dated 11 August 2005.

[13] The submission states that the public interest is served by restricting the computer game "Playboy : The Mansion."

- [14] It notes that the current restriction is R16.
- [15] It asserts that a 16 year old could purchase the game and allow younger children to see it, but would be committing an offence.
- [16] The submission notes that the British Board of Film Classification classified the publication 18 on 31 March 2005.
- [17] In the United States “Playboy : The Mansion” is classified as M17+
- [18] The Australian Office of Film Classification has issued an MA15+ Certificate
- [19] The Society has concern “*about the possibility of downloadable patches.*” (MODS) then can radically transform the game to a new level, so users can practice interactive pornography (including simulated sex scenes) at new explicit levels.

**THE DECISION**

- [20] Section 49 (1) of the Act provides the President of the Board with a discretion to make an Interim Restriction Order if satisfied that it is in the public interest to do so. The phrase “*in the public interest*” is not defined in the Act and therefore cognisance is taken of Court interpretations of the phrase.
- [21] In *Re M* [1992] 1 NZLR 29 Gallen J stated
 

*“The concepts of public interest and what can be considered to be contrary to that interest are both matters of some vagueness and also subject to variation from time to time as public attitudes and concerns change .....and construed in a manner which reflect the provisions of the New Zealand Bill of Rights Act”*
- [22] In *Woods v Cinematograph Films Licensing Authority and Another; Valentine v Cinematograph Films Licensing Authority and Another* [1978] 1 NZLR 851 McMullin J stated

*“The interests of the public,” where that expression is used in s 123(1) of the Transport Act 1962, are expressed somewhat differently from the “public interest” referred to in s 40 of the Cinematograph Films Act 1961 in that the former Act refers to “the interests of the public generally” and the latter to “any other considerations it considers relevant affecting the public interest.” But in my view, the two expressions have the common feature that each encompasses a variety of factual situations which may confront the particular authority discharging a statutory function in hearing and deciding applications before it. Each calls for a judicial assessment of every relevant factor affecting the interests of the public at large.”*

- [23] The Board decision on “Playboy : The Mansion” has now been released and the Society will have received a copy of it.
- [24] The Interim Restriction Order is refused on the basis that the Board’s Decision has now been released. It is therefore not “*in the public interest*” for an interim restriction Order to be made, as the process of hearing by the Board is completed pursuant to its obligations under the Act with its decision being released.
- [24] In making this decision the New Zealand Bill of Rights Act 1990 has been considered. The criteria set in the decision of *Moonen v Film Board of Review* [2000] 2 NZLR 9 has been applied and it is the President’s view that this decision can be demonstrably justified in a free and democratic society as placing no more restriction than is necessary in the public interest.

DATED at AUCKLAND this 16<sup>th</sup> day of AUGUST 2005

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