

The Response of The Christian Institute to the Consultation Paper on the Regulation of R18 Videos

The Christian Institute is a registered charity which seeks to promote the Christian faith in the UK.

We have recently campaigned against the granting of sex establishment licences in large venues normally used for family entertainment. In September we sought judicial review in the High Court of the decision by Newcastle upon Tyne City Council to grant a single sex establishment licence to an exhibition organiser. The event was said to include some 90 stalls. We lost the judicial review. As a result of this the link between the licensee and the seller of R18 videos intended by the 1984 Video Recordings Act has been broken.

R18 videos can now be sold by anyone renting a stall from an exhibition organiser who has a sex establishment licence. This evades all the checking procedures intended by the (adoptive) legislation governing sex shops.

The regulation of R18 videos

We welcome the decision of the Home Secretary to act quickly in response to the High Court judgment in the judicial review brought by the British Board of Film Classification (16th May 2000). We strongly support many of the measures proposed to protect children in the consultation paper.

However it is vital that the damaging effects of R18s on adults are also considered.

Advertising

Over £15 billion is spent each year on advertising in the UK.¹ To say that the media and advertising have no effect on behaviour is to say that all the companies which fund advertising are completely deluded.

While there may be no direct link between *a* person viewing *an* advert and then *immediately* going out to buy that product as a direct response, there is a cumulative effect of seeing advertisements and being influenced to buy.

The precautionary principle

In areas where it is believed there may be a potential for harm, public policy usually operates on the precautionary principle. The onus is on those who want a particular change to prove that it is safe.

¹ <http://www.adassoc.org.uk/inform/stats.html>

There are two examples where the Home Office adopts this principle. The licensing of a drug by the Medicines Control Agency (MCA) occurs only after it is proved that a particular drug is safe following clinical trials. The use of parole is on the basis that the parole board makes the judgement that an offender is safe to be released into the community. Parole is never automatic.

Mr Justice Hooper has reversed the precautionary principle as far as hard core pornography and extreme video violence are concerned. The onus is now on those who believe that R18's might harm children to prove it.

As the Home Office paper implies, proving this would involve un-do-able research. It would obviously be completely unethical to subject children to hard core pornography to observe the effects.

Hard-core pornography clearly has potential for harm and therefore the precautionary principle should apply. The reasons are:

- Pornography can act like a drug. Users can develop a tolerance and seek more and more explicit material (to achieve the same level of stimulation), involving, for example, the sexual abuse of children or sexual violence against women.
- Pornography promotes a view of sex that is degrading to women.
- Pornography influences behaviour, for example, in terms of male attitudes to women. A "laddish" culture which views pornography as harmless fun is not entirely harmless. There is a negative impact on the way women are treated.
- There are many instances where sex offenders have been heavy users of pornography.
- The pornography industry, like the gaming industry, has historically been linked to organised crime.²

The link between video-nasties and crime

Many users of soft-core pornography will go on to seek out hard-core pornography. A certain proportion of these hardcore users will then be influenced to act out their fantasies. The same applies to violent videos, and there is a video genre which contains both violence and hard-core pornography.

Pornography was clearly linked to the activities of Fred and Rose West.³

In the Bulger case, Neil Venables, the father of one of the offenders, rented horror videos. The judge referred to the bad influence of the videos. In one of these videos, "Child's Play 3", the soul of a serial killer inhabits a doll named

² See for example Manchester, C, 1986 *Sex Shops and the Law* Gower, pp 37-38

³ <http://www.crimelibrary.com/serials/west/house.htm>

“Chucky”. The evil doll, about the size of James Bulger, runs around slaughtering hapless victims. But in the end, he is killed in a haunted roller coaster/train ride. A battle ensues on the tracks, and Chucky, who is eventually dismembered, has blue paint splattered on his face from an earlier scene. Although there is no proof that Jon Venables saw the entire film, there are some remarkable parallels.⁴

In the United States the young men who gunned down their fellow pupils in the Columbine High School incident were regular viewers of violent and pornographic videos. Time Reported (December 20, 1999 Vol. 154 no. 25):

“Klebold and Harris were completely soaked in violence: in movies like *Reservoir Dogs*; in gory video games that they tailored to their imaginations.”⁵

Those who have gone on to commit violent and sexual offences later in their lives are frequently found to have been addicted to pornography.

Ted Bundy, convicted serial killer of at least 28 women and girls in the United States said, in a video interview before he was executed: *“I’ve lived in prison a long time now. And I’ve met a lot of men who were motivated to commit violence just like me. And without exception, every one of them was deeply involved in pornography – without question, without exemption – deeply influenced and consumed by an addiction to pornography.”*⁶

*“... there is loose in their towns, in their communities, people like me today whose dangerous impulses are being fueled day in and day out by violence in the media in its various forms, particularly sexualised violence ...”*⁷

Changes in the law

While the Institute welcomes the tightening of the law so as to protect children, we also call on the Government to review what is legally available to adults. Such a review should take into account where such items can now be sold in view of the recent judgment of the High Court as to the legality of “sex markets”⁸ (attached). There is a general perception that the British Board of Film Classifications (BBFC) and its Videos Appeals Committee (VAC) are bodies which are ‘industry-led’.

⁴ <http://www.crimelibrary.com/classics3/bulger>

⁵ Time, 20th December 1999. The article can be viewed at <http://www.time.com/time/magazine/articles/0,3266,35870-3,00.html>

⁶ Quote taken from Dr Dobson J, *Life on the Edge* pp 192-201

⁷ Excerpt from Dr James Dobson 1998 *Coming Home* Tynedale House Publishers

⁸ R v Newcastle City Council, Ex Parte The Christian Institute, 5 September 2000

The Options

Option 1:

We welcome the change in wording which would require the BBFC to give greater weight to the harm to children (and others) of viewing the video. The words “who is likely to view” should be amended to “may view”.

Option 2:

We strongly welcome the creation of new criminal offences of showing an R18 video to a child; allowing a child to watch an R18 video; and failing to take reasonable care to prevent a child watching an R18 video. We would also welcome the stronger sentencing of those convicted of such crimes to reflect the potential damage to a child’s development from exposure to videos of this nature. We would recommend the inclusion of a statutory notice on the video box reminding the purchaser/renter of their responsibility and the possible punishment.

We do not accept that the offence should only occur when the child is under the age of 16 (para 3.9). To do so would make a mockery of having the classification as R18. The effect of having no offence where the young people involved are aged 16 and 17 would lead to the creeping ineffectiveness of R18 as a category. It does not follow that because the heterosexual age of consent is 16 that children of the age of 16 and 17 should therefore be able to view any pornography. If that argument is followed to its logical conclusion then there is no reason to exclude 16 and 17 year old children from sex shops and indeed from having such videos sold directly to them.

A child is defined in the Children Act 1989, and by the United Nations Convention on the Rights of the Child, as a person under the age of 18.

This definition should be used in this case.

Following any tightening of the law surrounding the availability of pornography to children, it may be argued that more pornographic material should be allowed under the R18 category. There are two fallacies behind this.

First, that R18 videos will not be seen by children. They are.

The second fallacy is that adults are not corrupted by what they watch. They can be.

We would strongly dispute any claim which says that, given that children will not see an R18 video, an adult should be free to view whatever they wish. The mere fact that some people would wish to view such material does not in itself justify its availability. The existence of demand does not necessarily justify supply. There is no doubt demand for videos of illegal acts involving children. Such demand should not be met. On the same basis we maintain that guidelines

for 18 and R18 should not be relaxed to satisfy the demands of the small minority of adults who wish to view these materials.

In the interest of the protection of the wider society and public morality, restrictions should be maintained. **The Government should look at both the Obscene Publications Act 1959 and what is licenced under the R18 category, reaffirming a commitment to class some materials as obscene and therefore illegal to distribute regardless of the intended age of the audience.** We submit that the current R18 guidelines permit obscene and grossly inappropriate materials to be classified. The BBFC's response to this consultation⁹ states that material previously rejected by the BBFC has subsequently been classified as R18: "These [rejected videos] do not include a number of 'R18' videos which were rejected because they breached the Board's guidelines, which were current at that time, but which have been subsequently given 'R18' certification."

There is a need to redefine what is classified as obscene, replacing the need to prove that it will *deprave and corrupt* with a more practical definition based on causing gross offence to a reasonable person. Lord Alton, as Member of Parliament for Liverpool Mossley Hill, raised the need for such reforms in the House of Commons in 1989.¹⁰

Option 3:

We would welcome the establishment of the Video Appeals Committee as a statutory body, appointed by the Government. In order to maintain public confidence, and to stop appointees becoming over accustomed to the images they view, we would welcome a limitation on the amount of time that an individual can serve on the Committee. The industry-led nature of the BBFC and VAC must end. **We would recommend ordinary parents and lay people make up a majority of members of the BBFC and VAC and that the VAC is given clear aims as to the purpose of its decision making.** Their primary purpose should be to protect both children and wider society from images and productions which are offensive to society as a whole.

Availability

One aspect that the consultation fails to mention is the availability of R18 videos to the general public.

a) R18 videos are not difficult to buy by mail order. To prove the point the Institute has used an advert in the Daily Sport to obtain an R18 video through the post.

⁹ Available at their website:

<http://www.bbfcc.co.uk/website/2000About.nsf/30e9a418a8cbab068025691c003b0bc4/874c2dd0074ff68b80256984002f31db?OpenDocument>

¹⁰ House of Commons Hansard, 15 Dec 1989, col 1367-1371

b) There is also another important point about sex establishment licences. While para 2.2 of the consultation document rightly says that R18 videos can only be sold in licensed sex shops the recent decision of the High Court in *R v. Newcastle City Council*¹¹ means that such videos are available to buy at travelling fairs which operate with short term licences. This opens a specific loophole in the legislation.

The purpose of the Local Government (Miscellaneous Provisions) Act 1982 was to give local authorities powers to ensure that vendors of sex articles were fit for such responsibility. The decision of the High Court means that the licensee of a sex establishment can permit third parties to sell R18 videos on their own account within the licensed premises. The council is under no obligation to check the character of the vendors.

We would ask the Government to review the current legislation with a view to ensuring that all sellers of R18 videos have their own sex establishment licence.

The existence of events, such as those run by Xsensual Ltd in recent months, attempt to give a gloss of respectability to the sale of R18 videos. Previously such videos were only available in shops where there are clear restrictions which, amongst other things, signal the disapproval of society (the scarcity of shops, the severe display restrictions, and the warning sign required to be displayed outside such a shop). They now may be available as part of a show at a local arena more commonly used for family entertainment. When asked to license videos of increasingly extreme content the BBFC should bear in mind the change in the nature of “sex shops” as a result of this case.

Classification

The BBFC’s classification is unacceptable. A U certificate video may contain “Occasional natural nudity, with no sexual context” and “Infrequent use only of very mild bad language”. U videos are said to be suitable for audiences aged four years and over. We submit that no film containing nudity or bad language should be given a U certificate. The purpose of the U certificate should be for parents to have full confidence that what is contained would be entirely suitable for young children.

We were also disturbed to see that “sex education” at school was used as a justification in the 12 category for sexual references. Sex education in the classroom is set in the proper context of families and relationships. It does not follow that sporadic and casual references to sexual activity should be placed before children in films and videos.

We would suggest that the BBFC guidelines should be placed before Parliament for their scrutiny and approval.

¹¹ *R v Newcastle City Council, Ex Parte The Christian Institute*, 5 September 2000

Research

There is a need for research into the accessibility of both 18 and R18 videos to those under the age of 18. There is evidence to suggest that the current classification system is failing to protect children from viewing pornographic and violent material.¹² Ordering an R18 video by mail order is a very easy thing to do. We welcome the Government's attempt to use criminal penalties to deter adults from giving children the opportunity to view pornography in this form. However, if it is the case that such materials are available to children (despite restrictions) then there is an even stronger case for the Government to restrict the nature of the content of R18 videos for the sake of protecting children and the wider society.

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¹² See *The Street of the Pied Piper* a survey of teachers' perceptions of the effects in children of the new entertainment technologies, undertaken on behalf of the Education Committee of the Professional Association of Teachers, April 1994