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(On CAC headed paper)

(version agreed by CAC Council, 10/12/'99)

BBFC Classification Guidelines 1999-2000: Draft Consultation Document

The Campaign's Areas of Concern

Section 1: General

1. The Campaign is not opposed to classification as a form of consumer guidance; to give the cinema goer or video viewer an idea of what to expect from a film.

2. The Campaign holds that all films should be shown as their makers intended, without cuts.

3. If a film is cut for British distribution, a clear statement to that effect should appear on the screen at the cinema and/or on the packaging of the video, so that people paying to see the film are not deceived into thinking that what they see is complete.

4. The welfare of children is the responsibility of their parents. Only in individual cases where parents can be shown to have failed should the state intervene.

5. The Campaign is opposed to state-controlled pre-publication censorship in any medium.

6. Overall, the wording of the guidelines has been simplified. We suggest that in practice this 'dumbing down' will not lead to greater public support for the Board. Instead it gives the impression that the guidelines are to become more arbitrary and more rigid than previously. Also it has led to one real 'blooper' (see below).

7. The Campaign notes with regret that the glossary of terms included in the 1998 guidelines is missing from the current draft. In the interests of greater understanding we suggest that it be restored.

Section 2: Specific (page references are to the consultation document)

Page 3 - list of elements singled out as potentially harmful. This is inaccurate. There is no such list in the Video Recordings Act, 1984. The reference should be to the Criminal Justice and Public Order Act, 1994, section 90.

Page 6 - 'material likely to be found obscene by the courts'. Whilst the Campaign recognises that one of the Board's functions is to guard the film industry against possible prosecution under the UK's very restrictive legislation, we suggest that it is not your function to second-guess entirely the decisions of magistrates or juries.

Pages 9-15 - it is noted that the statement included in the 1998 guidelines under each category that 'context may justify exceptions' has been dropped. This is regrettable, as its inclusion gave the Board the opportunity to allow in

context subjects or treatments which might otherwise have been excluded from a particular category. CAC would like to see it restored.

As the Williams Committee Report on Obscenity and Film Censorship (Cmnd 7772) recommended, it must be clearly stated who is trying to protect whom from what and why. The present draft guidelines fail to do this and instead contain arbitrary and illogical lists of what is and is not permitted. This is unacceptable in a democracy. Each category should therefore be augmented by clear, concise explanations of why each item on the list of material is not permitted. The European Convention on Human Rights creates a right of freedom of expression. The lists of non-permitted items should be therefore be as short as possible.

Pages 13-15 - The 18 and R18 categories should differentiate between films and video recordings, since the BBFC has applied different criteria to these two separate media. Some works have been granted a film certificate but not a video one for the same version. (A fact which page 3 of the draft guidelines fails to mention.) In any event, the Video Recordings Act does not apply to cinema films. To extend it to cinema films, without lawful authority, is to thwart the intention of the legislature.

For cinema films, the R18 category should be merged into the 18 category since each can only be viewed by adults and there are hardly any cinema clubs left, to which R18 material is confined. A new, more liberal 18 category, applicable only to cinema films, should therefore be introduced. It should state how and why it is different from the equivalent video category.

Protection of minors cannot apply to such category 18 films, since only adults have access. Limitation on content should therefore be governed by the law. The current definition of obscenity can be gleaned from recent contested jury trials (not uncontested forfeitures). Under English law, nothing is obscene in itself. It can only become so through the circumstances of publication. Scenes of explicit sex, including actual copulation, are not obscene if published exclusively to consenting adults. That is why there are no prosecutions for the sale in sex shops of magazines featuring actual penetration. The test of obscenity applicable to R18 material is that of items sold in sex shops, not ordinary retail outlets.

To command public acceptability (which is necessary in a democracy) justifications should be given for preventing adults watching what they choose. No logic emerges from the list of non-permitted items in the 18 and R18 categories. Why, for instance, are erections permitted but not ejaculation nor masturbation, when the latter are depicted in magazines lawfully sold in sex shops? Explanation is needed to win public acceptance.

The whole purpose of creating the R18 category (in addition to the 18 one) was to accommodate in sex shops material to which minors should be denied access. It is therefore absurd and a violation of the intention of the law to cut from 18R material everything which might harm minors. No other Western jurisdiction has such a policy, as the contents of sex shops in other European Union countries demonstrate.

The result of this draconian censorship is that the United Kingdom is the only country in the Western world to have a thriving video market which is operated outside the law, flouting consumer protection, copyright and taxation.

The numerous British buyers wanting sexually explicit material purposely avoid BBFC certificated works, because that indicates bowdlerisation. In 1998 James Ferman, the retiring Director of the BBFC, warned of the consequences in terms of loss of producer income, consumer protection and retail business opportunities of the development of a big British "black market" in uncertificated video recordings sustained by the Board's censoriousness (see: Daily Telegraph, 8th August, 1998). Even an increase in the unacceptably small number of licences granted to sex shops in England will not solve the problem. Accommodation for sexually explicit material in them is also required.

It is undesirable for a significant part of this country's entertainment industry to be illegal through being driven underground by prohibition. It is also unnecessary because there is no public demand for control of the content of sex shops, as such material is expected to be explicit (not simulated). In addition it can be assumed that illegal access by minors will be largely avoided. The decision of the Video Appeals Committee of August 1999 illustrates this commonsense approach, which has been adopted by nearly every other country in the European Union.

In any event, decreasing customs control between member states of the Union will result in British consumers being able to circumvent the BBFC's censorship of British video recordings by buying them on the Continent, thereby damaging retail outlets in this country. British entrepreneurs are already bringing in video recordings from the Continent and selling pirated copies in the United Kingdom.

CAC therefore proposes that the 18 and R18 categories be abolished and replaced by three new categories, namely: 18-CINEMA, 18-VIDEO and R18 (VIDEO). 18-CINEMA should include all material permitted in 18-VIDEO and R18 (VIDEO), because there is less possibility of access by minors. The only restriction on content of 18-CINEMA should be the current criminal law, as applicable to magazines.

18-VIDEO should include all material permitted in the present 18 category.

R18 (VIDEO) should include the material permitted in the present R18 category plus explicit images of sexual activity. There should be no "laundry lists" of activities the portrayal of which is prohibited.

Section 3: Public Consultation

Supporters of the Campaign attended the presentations in London, Edinburgh, Bristol and Newcastle. We noted the points made by the Board. Our submission has taken these into account. However, CAC submits these comments before the stated deadline of 17th December under protest. That date is totally unrealistic given that the last of the presentations is on the 16th (Swansea).

The judicial review of the Video Appeals Committee decision in the cases of Sheptonhurst Ltd and Prime Time (Shifnal) Ltd (appeals numbers 15 & 16) will be held early next year. We hope that the Board will delay issuing new guidelines until after the outcome of that review is known.