

BBFC Classification Guidelines 1999-2000 Draft Consultation Document Liberty's observations (2)

Liberty (The National Council for Civil Liberties) is one of the UK's leading civil liberties and human rights organisations. Liberty works to promote human rights and protect civil liberties through a combination of test case litigation, lobbying, campaigning and research. It is the largest organisation of its kind in Europe and is democratically run.

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Liberty would also like to respond specifically to the restrictions relating to the depiction of violence in the 'R18' category:

- The use of any form of physical restraint which prevents participants from withdrawing consent
- Any element of violence including the infliction of pain, real or simulated

Liberty has a specific interest in this issue arising from our involvement in *Laskey, Jaggard and Brown v UK* (1997) 24 EHRLR 39, a test case concerning the prosecution of several gay men for their participation in private consensual sadomasochistic activity. This area of the law has also been extensively considered in two Law Commission Consultation Papers (134 and 139).

We share the concerns raised by the Spanner Trust, regarding the absence of a distinction in the guidelines between the portrayal of actual violence and the enactment of consensual sadomasochistic activity.

Clearly the depiction of consensual sadomasochistic activity may be a 'taboo' theme for many audiences, and Liberty would acknowledge that classification guidelines in this area require caution and sensitivity. However, we would ask you to reconsider the automatic exclusion of such material from the 'R18' category, and the underlying assumption that the depiction of such activity is likely to encourage harm to potential viewers, or, through their behaviour, to society.

Consensual sadomasochism is a common activity amongst adults in the UK. As a form of consensual role-play it is entirely distinct from actual violence. Such activities are undertaken in a relationship of trust (even one of short duration) and for mutual pleasure. These might include: whipping, flogging, tattooing, piercing, bondage and various forms of corporal punishment.

The law in this area remains unclear. However, we note that since *Laskey Jaggard and Brown* only one prosecution has been brought, and this was unsuccessful (1). Given the extent of consenting sadomasochistic activity (2), it is thus difficult to discern a pressing need to protect the public from a genuine risk of violence in this context - and even less so from the risk of violence encouraged by the depiction of such activity.

The depiction of non-sexual illegal activity - such as murder, robbery or the consumption of illegal drugs - does not necessarily encourage the commission of such crimes. There is no evidence to suggest that the depiction of consensual sadomasochistic activity encourages the commission of acts of sexual violence.

We would accept that in relation to film classification this is not necessarily a straightforward issue, and Liberty would welcome the opportunity to discuss these issues further.

Notes

1 *R v Wilson* (1997) QB 47, in which the Court of Appeal stated "we are firmly of the opinion that it is not in the public interest that activities such as the appellant's in this appeal should amount to criminal behaviour. Consensual activity between husband and wife in the privacy of the matrimonial home is not, in our judgment, normally a proper matter for criminal investigation, let alone prosecution."

The Law Commission has recommended that consent should be a defence to (activities which would otherwise be regarded as) assault unless the activity involves the intentional or reckless causing of seriously disabling injury.

2 See, for example, the wealth of evidence received by the Law Commission in response to their consultation, some of which is set out in Consultation Paper 139, paragraphs 10.16 - 10.54