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Description of document: **Documents pertaining to the Department of Defense (DoD) Resale Activities Board of Review relating to the acceptability of sale or rental of sexually explicit material on DoD Property, 1988 -2009**

Requested date: 11-February-2008

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Office of Freedom of Information
1155 Defense Pentagon
Washington, DC 20301-1155

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**DEPARTMENT OF DEFENSE
OFFICE OF FREEDOM OF INFORMATION
1155 DEFENSE PENTAGON
WASHINGTON, DC 20301-1155**

APR 16 2010

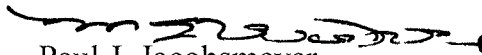
Ref: 08-F-0749

This is the final response to your electronic Freedom of Information Act request dated February 11, 2008, asking for documents pertaining to the DoD Resale Activities Board of Review. In your original letter, you indicated four categories of documents for this Office to search. Also, in a February 25, 2008 email you agreed to narrow the timeframe of your request for items #2 and #3 to 10 years.

A search of the records systems maintained by the Office of Resale Activities & Nonappropriated Fund Policy located the attached 20 documents, consisting of 97 pages, responsive to items #1, #2, and #4 of your request; however, no records responsive to item #3 of your request were located. Mr. Arthur Myers, an Initial Denial Authority (IDA) for the Office of the Under Secretary of Defense for Military Community and Family Policy, has determined that the excised information is exempt from release pursuant to 5 U.S.C. § 552(b)(2), which pertains solely to the internal rules and practices of the agency, and would allow circumvention of an agency rule, policy, or statute, thereby impeding the agency in the conduct of its mission; 5 U.S.C. § 552(b)(6) which pertains to information the release of which would constitute a clearly unwarranted invasion of the personal privacy of individuals.

If you are not satisfied with this action, you may appeal to the appellate authority, the Director of Administration and Management, Office of the Secretary of Defense, by writing directly to the Defense Freedom of Information Policy Office, Attn: Mr. James Hogan, 1155 Defense Pentagon, Washington, D.C. 20301-1155. Your appeal should be postmarked within 60 calendar days of the date of this letter, should cite to case number 08-F-0749, and should be clearly marked "Freedom of Information Act Appeal."

Sincerely,


for Paul J. Jacobsmeyer
Chief

Attachments:
As stated



Department of Defense INSTRUCTION

NUMBER 4105.70

June 2, 2006

Incorporating Change 1, September 17, 2008

USD(P&R)

SUBJECT: Sale or Rental of Sexually Explicit Material on DoD Property

- References:**
- (a) DoD Instruction 4105.70, "Sale or Rental of Sexually Explicit Material on DoD Property," June 29, 1998 (hereby canceled)
 - (b) Secretary of Defense Memorandum, "Delegation of Authorities," November 14, 1996
 - (c) DoD Directive 5124.02, "Under Secretary of Defense for Personnel and Readiness (USD(P&R))," February 11, 2006 June 23, 2008
 - (d) Section 2489a 2495b of title 10, United States Code
 - (e) DoD Instruction 1330.09, "Armed Services Exchange Policy," December 7, 2005
 - (f) DoD 8910.1-M, "~~DoD~~ Department of Defense Procedures for Management of Information Requirements," June 30, 1998

1. REISSUANCE AND PURPOSE

This Instruction:

1.1. Reissues Reference (a) under the authority of References (b) and (c).

1.2. Implements Reference (d), consistent with Reference (e), by providing guidance about restrictions on the sale or rental of sexually explicit materials on property under the jurisdiction of the Department of Defense or by members of the Armed Forces or DoD civilian officers or employees, acting in their official capacities.

1.3. Establishes the Resale Activities Board of Review.

2. APPLICABILITY AND SCOPE

This Instruction:

Change 1, 9/17/2008

2.1. **Applies to** ~~the Office of the Secretary of Defense (OSD), the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff,~~ the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred to *collectively* as the “DoD Components”).

2.2. Shall not confer rights on any person.

3. DEFINITIONS

For the purpose of this Instruction, the following definitions apply:

3.1. **Dominant Theme.** A theme of any material that is superior in power, influence, and importance to all other themes in the material combined.

3.2. **Lascivious.** Lewd and intended or designed to elicit a sexual response.

3.3. **Material.** An audio recording, a film or video recording, or a periodical with visual depictions, produced in any medium.

3.4. **Property under the Jurisdiction of the Department of Defense.** Commissaries, facilities operated by the Army and Air Force Exchange Service, the Navy Exchange Service Command, the Navy Resale and Services Support Office, Marine Corps Exchanges, and ship stores.

3.5. **Sexually Explicit Material.** Material, the dominant theme of which is the depiction or description of nudity, including sexual or excretory activities or organs, in a lascivious way.

4. POLICY

It is DoD policy that:

4.1. No sexually explicit material may be offered for sale or rental on property under the DoD jurisdiction, and no member of the Armed Forces or DoD civilian officer or employee, acting in his or her official capacity, shall offer for sale or rental any sexually explicit material.

4.2. Material shall not be deemed sexually explicit because of any message or point of view expressed therein.

5. RESPONSIBILITIES

5.1. **The Principal Deputy Under Secretary of Defense for Personnel and Readiness (PDUSD((P&R)),** under the *authority, direction, and control of the* Under Secretary of Defense for Personnel and Readiness, shall:

5.1.1. Monitor and ensure compliance with this Instruction.

5.1.2. Establish a Resale Activities Board of Review (the "Board") and approve senior representatives from the Army and Air Force Exchange Service, the Navy Exchange Service Command, and the Marine Corps Exchange Service; and approve a senior representative from each of the Military Departments: if Army, the Air Force, the Navy and the Marine Corps, designated recommended by the Military Department concerned, to serve as board members on the Resale Activities Board.

5.1.3. Appoint a Chair of the Board.

5.1.4 Monitor the activities of the Board and ensure that the Board discharges its responsibilities as set forth in section 6 of this Instruction.

5.2. The Secretaries of the Military Departments shall: ensure that their respective component DoD resale activities comply with this Instruction and may designate a senior representative to serve on the Board.

5.2.1. Ensure that their respective Department's resale activities comply with this Instruction

5.2.2. Recommend senior representatives from their respective Departments to serve on the Board. Board members shall represent the Senior Enlisted Advisors of the Army, the Navy, the Air Force, and the Marine Corps; the Surgeons General of the Army, the Air Force, and the Navy, and the Army, Navy, Air Force, and Marine Corps military community and family programs. Board members shall be a member of the Armed Forces or a DoD civilian officer or employee not currently assigned to or employed by the Army and Air Force Exchange Service, the Navy Exchange Service Command, or the Marine Corps Exchange Service.

~~5.3. The Secretary of the Army and the Secretary of the Air Force shall each appoint one senior representative from the Army and Air Force Exchange Service to serve on the Board.~~

~~5.4. The Secretary of the Navy shall appoint a senior representative from the Navy Exchange Service command and a senior representative from the Marine Corps Exchange Service to serve on the Board.~~

6. PROCEDURES

6.1. The Board shall have the authority and responsibility to periodically review periodically material offered or to be offered for sale or rental on property under DoD jurisdiction and to determine whether any such material is sexually explicit in accordance with this Instruction.

6.2. If the Board determines that any material offered for sale or rental on property under DoD jurisdiction is sexually explicit, such material shall be withdrawn from all retail outlets

where it is sold or rented and returned to distributors or suppliers, and shall not be purchased absent further action by the Board.

6.3. The Board shall convene as necessary to determine whether any material offered or to be offered for sale or rental on property under DoD jurisdiction is sexually explicit. The Board members shall, to the extent practicable, maintain and update relevant information about material offered or to be offered for sale or rental on property under DoD jurisdiction.

6.4. If any purchasing agent or manager of a retail outlet has reason to believe that material offered or to be offered for sale or rental on property under DoD jurisdiction may be sexually explicit as defined herein, and such material is not addressed by the Board's guidance issued pursuant to ~~under~~ subparagraph 6.5., he or she shall request a determination from the Board about such material prior to purchase or as soon as possible.

6.5. At the conclusion of each review and, as necessary, the Board shall issue guidance to purchasing agents and managers of retail outlets about the purchase, withdrawal, and return of sexually explicit material. The Board may also provide guidance to purchasing agents and managers of retail outlets about material that it has determined is not sexually explicit. Purchasing agents and managers of retail outlets shall continue to follow their usual purchasing and stocking practices unless instructed otherwise by the Board.

6.6. Material ~~which has been determined by the Board to be sexually explicit~~ *by the Board* may be submitted for reconsideration every 5 years. If substantive changes in the publication standards occur earlier, the purchasing agent or manager of a retail outlet under DoD jurisdiction may request a review.

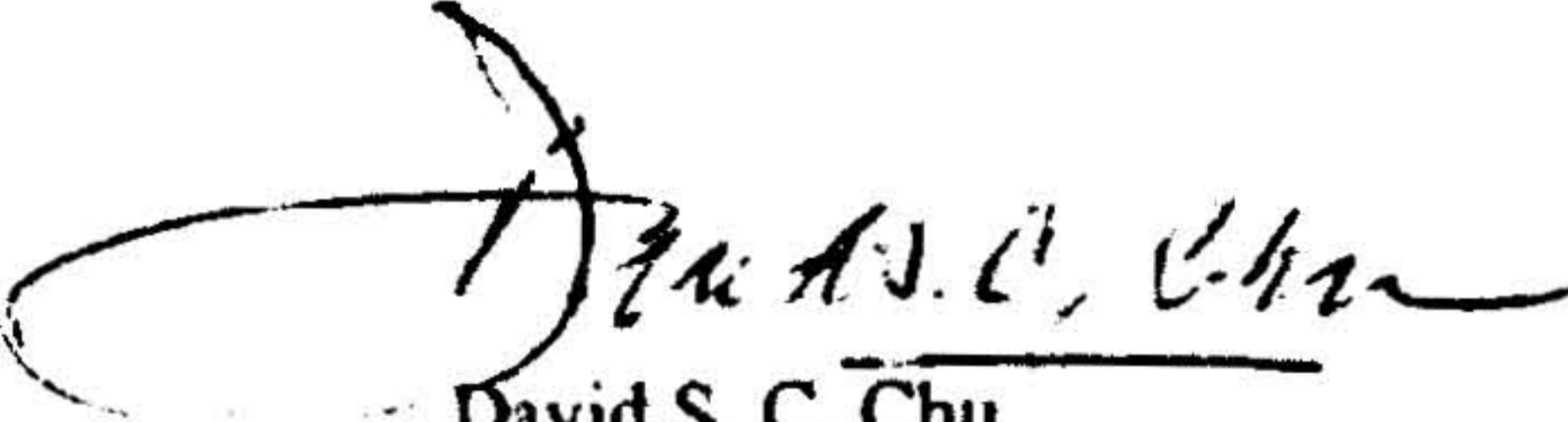
6.7. *The Board shall establish procedures for the Exchanges to provide information to the Board*

7. INFORMATION REQUIREMENTS

The Chair, ~~Resale Activities of the Board of Review~~, shall submit to the PDUSD(P&R) an annual report documenting the activities, decisions, and membership of the Board during the previous fiscal year. Negative reports are required. The annual report shall be due on October 1st of each year, and is not subject to the licensing internal information requirements of ~~The annual report required by this Instruction is exempt from licensing requirements in accordance with paragraph C.4.4.3. of DoD 8910.1-M (Reference (f)).~~

8. RELEASABILITY, UNLIMITED. This Instruction is approved for public release. Copies may be obtained through the Internet from the DoD Issuances Web Site at <http://www.dtic.mil/whs/directives>.

89. EFFECTIVE DATE. This Instruction is effective immediately.



David S. C. Chu
Under Secretary of Defense
(Personnel and Readiness)



FORCE MANAGEMENT
POLICY

ASSISTANT SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000



DEC 7 1998

**MEMORANDUM FOR COMMANDER, ARMY AND AIR FORCE EXCHANGE SERVICE
COMMANDER, NAVY EXCHANGE COMMAND
DIRECTOR, PERSONAL AND FAMILY READINESS DIVISION,
HEADQUARTERS, UNITED STATES MARINE CORPS**

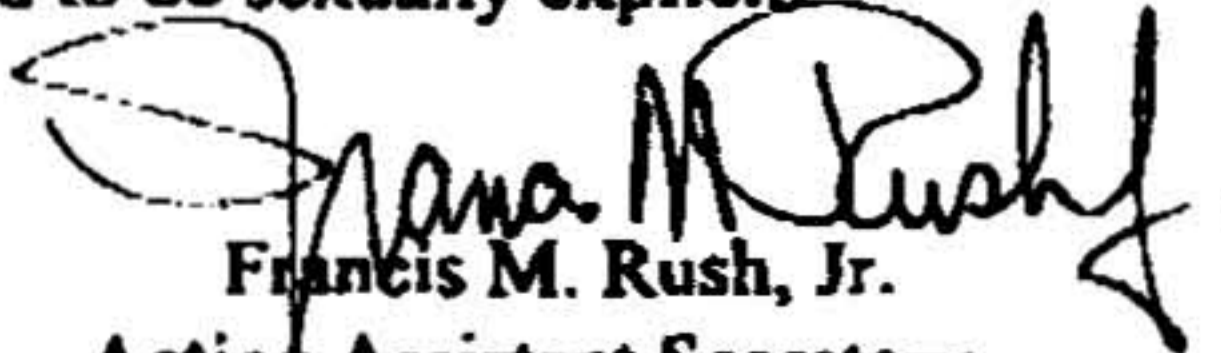
SUBJECT: Update on Adjudicated Materials by the DoD Resale Activities Board of Review

Pursuant to the Military Honor and Decency Act of 1996 (Section 2489a, Title 10, United States Code) and Department of Defense Instruction 4105.70, "Sale or Rental of Sexually Explicit Material on DoD Property," the Resale Activities Board of Review met November 16-17, 1998, to consider potentially sexually explicit materials that may be available for sale or rental at DoD retail outlets. This memorandum provides guidance regarding the disposition of periodical publications and video recordings based on that review.

Attachment 1 lists "adult sophisticate" periodicals that the Board determined to be sexually explicit under criteria contained in DoD Instruction 4105.70. Attachment 2 lists those periodicals determined by the Board not to be sexually explicit. There may still be additional "adult sophisticate" periodicals available for sale in DoD resale activities which have not yet been forwarded to the Board for review. Please take action to ensure that any "adult sophisticate" periodicals or other potentially sexually explicit materials that you anticipate offering for sale and that have not been identified on the attachments hereto or the lists that I sent to you in my September 21, 1998 and October 8, 1998 memoranda, are forwarded to the Board for review.

Attachment 3 lists the industry standard unrated video recordings that the Board has determined to be sexually explicit under criteria contained in DoD Instruction 4105.70. Attachment 4 lists those unrated video recordings determined by the Board not to be sexually explicit. Again, there may be additional mature-theme video recordings that you anticipate offering for sale or rental in DoD resale activities and that have not been previously reviewed by the Board. Accordingly, please forward for Board review all Non-Rated video recordings not identified in my aforementioned memoranda that you believe may be sexually explicit under the Act.

Finally, please ensure the materials listed in Attachments 1 and 3 are not offered for sale or rental in the resale activities of your organization. The materials listed in these attachments are in addition to the materials previously determined to be sexually explicit.


Francis M. Rush, Jr.
Acting Assistant Secretary

Attachments:
As stated

Copy to:
ASA (M&RA)
ASN (M&RA)
ASAF (MRAI&E)



**ADULT SOPHISTICATE PERIODICALS DEEMED TO BE SEXUALLY EXPLICIT
UNDER 10 U.S.C. 2489a BY THE DOD RESALE ACTIVITIES BOARD OF REVIEW**

30 Something
Couples
Options
Raunchy Couples
Wet
Young & Stacked

**ADULT SOPHISTICATE PERIODICALS DEEMED TO BE NOT SEXUALLY EXPLICIT
UNDER 10 U.S.C. 2489a BY THE DOD RESALE ACTIVITIES BOARD OF REVIEW**

Savage

**VIDEO RECORDINGS DEEMED TO BE SEXUALLY EXPLICIT UNDER
10 U.S.C 2489a BY THE DOD RESALE ACTIVITIES BOARD OF REVIEW**

Anna Nichol Exposed
Beach Babes 2 (Cave Girl Island)
Bikini Hoe Down
Bikini Traffic School
Caligula
Crash
Emmanuelle 6
Emmanuelle in Bangkok
Emmanuelle in Egypt
Forum Letters V. 1
Girls After Midnight
Girls of 976
Inner Sanctum
Let Me Love You
Night Dreams
Obsessed with Lust
Satin and Lace (Erotic History of Lingerie)
Satin & Lace II (Hollywood Undercover)
Sinful Bed
Sister Emmanuelle
The Lover
Wager of Love
Wild Child

**VIDEO RECORDINGS DEEMED TO BE NOT SEXUALLY EXPLICIT
UNDER 10 U.S.C. 2489a BY THE DOD RESALE ACTIVITIES BOARD OF REVIEW**

25th Anniversary Swimsuit (Sports Illust.)	Night Eyes 2
Angel Heart	Night Eyes 3
Barbarian Queen	Oriental Massage
Best of Anna Nicole Smith	Party! Party!
Big Ballers	Play Nice
Blindfold: Acts of Obsession	Playboy 1995 Playmate Calendar
Blown Away	Playboy's Playmate Bloopers
Body Chemistry 4	Playgirl Morning Workout
Body of Evidence	Poison Ivy (The New Seduction)
Casanova	Poison Ivy 2 (Lily)
Catcher	Possessed by the Night
Country Cuties Barnyard Bash	Red Shoe Diaries
Crimes of Passion	Red Shoe Diaries (Another Woman's Lipstick)
Curse of the Queenwolf	Red Shoe Diaries (Double Dare)
Dangerous Passion	Rubdown
Deadly Exposure	Savage Lust
Desperate Living	Sex Search
Dressed to Kill	Sexual Response
Eat Drink Man Woman	Sexy Lingerie V
Fallen Angels	Sins of the Night
Fallen Angels 2	Sketch Artist II
Farmers' Daughters	Sorceress
Freddy's Nightmares (Dreams that Kill)	Striptease
Freddy's Nightmares (Tricks and Treats)	The Cook, The Thief, His Wife & Her Lover
Girls of Hooters	The Getaway
Girls of Topless Volleyball	The Limbic Region
Great Pet Hunt Part 1	The Other Woman
Hot Body Video Magazine (Snow Bunny)	The Stunners
Hot Body Video Magazine (Southern Belle)	The Vampyre
Hot on the Trail	Trashy Ladies Wrestling
Hotline	Tropical Tease
Inner Sanctum 2	True Romance
Jerry Springer (Bad Boys & Naughty Girls)	Vampire Vixens
Jerry Springer (Secrets & Surprises)	Vicious Circles
Jerry Springer (Too Hot for TV)	Video Centerfold - Kerri Kendal
Kamasutra	Video Centerfold - Pamela Anderson
Lingerie Nights	Video Centerfold - Sherry Arnett
Love Crimes	Video Centerfold - Teri Weigel
Married People Single Sex	Whore 2
Married People Single Sex 2	Wild Cactus
New York Nights	Woman of Desire
Niagara Strip	



OFFICE OF THE SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

4 DEC 1998

MEMORANDUM FOR ACTING ASSISTANT SECRETARY OF DEFENSE FOR FORCE
MANAGEMENT POLICY

SUBJECT: DoD Resale Activities Board of Review Update Report

In accordance with paragraph 6.3 of Department of Defense Instruction 4105.70, "Sale or Rental of Sexually Explicit Material on DoD Property," dated June 29, 1998, this memorandum provides an update of the Board's actions, based on a November 16-17, 1998 meeting to review materials offered for sale or rental on property under DoD jurisdiction. The Board requests that you provide additional guidance to purchasing agents and managers of resale activities consistent with this report, in compliance with the Military Honor and Decency Act of 1996 (10 United States Code, 2489a).

The Board was provided seven additional adult-oriented periodicals by the Assistant Director, Morale, Welfare, and Recreation and Resale Activities, Office of the Assistant Secretary of Defense (Force Management Policy). Attachment 1 lists the six periodicals that the Board found to be sexually explicit under the statute as implemented by DoD Instruction 4105.70. Attachment 2 identifies the one periodical that the Board found not to be sexually explicit. The Board recommends that any other "adult sophisticate" materials that DoD resale activities anticipate offering for sale and that have not already been reviewed by the Board be forwarded to the Board for review.

One hundred six Non-Rated (NR) video recordings were provided to and reviewed by the Board. Attachment 3 lists the 23 NR video recordings found to be sexually explicit and Attachment 4 lists those 83 video recordings found not to be sexually explicit.

(b)(6)



Chairman

Resale Activities Board of Review

Attachments:
As stated

DoD RESALE ACTIVITIES BOARD OF REVIEW

Minutes of Meeting of November 16-17, 1998

The seventh DoD Resale Activities Board of Review meeting convened at 9:00 a.m. on November 16, 1998, in Pentagon, Room 2B271. This was a two-day meeting for the Board to consider potentially sexually explicit periodicals not previously reviewed, and to continue review of non-rated mature-theme video recordings. The list of attendees is at Tab A.

1. Administrative Matters:

Prior to consideration of the adult-oriented periodicals and video recordings, the Chairman asked Board members to review definitions (for example, "dominant theme," "lascivious," and "sexually explicit materials") contained in DoD Instruction 4105.70, "Sale or Rental of Sexually Explicit Material on DoD Property." He reiterated that the definitions are the guidelines the Board is bound to follow in its review of periodicals, videotapes, and audio recordings available for sale or rental in DoD retail outlets.

2. Results of Board Review of Materials:

- a. Each member of the Board present reviewed seven separate adult-oriented periodicals. Board members were given the opportunity to discuss each publication prior to voting. All Board members present cast votes on each periodical. Based on Board member votes, six periodicals were deemed to be sexually explicit, and one periodical was judged to be not sexually explicit. The not-sexually explicit periodical was entitled, Savage.
- b. In addition, the Board reviewed 106 non-rated adult-oriented video recordings. Twenty-three video recordings were found to be sexually explicit, and 83 video recordings were deemed to be not sexually explicit. The not-sexually explicit video recordings are at Tab B.

3. Future Board Issues:

(b)(6)

advised the Board that the next meeting would be scheduled when sufficient periodicals and video recordings arrive to warrant convening a Board session. The meeting adjourned at 6:30 p.m. on November 17, 1998.

(b)(6)

Captain, USA
Board Recorder

APPROVED BY: 07 DEC 1998

(b)(6)

Chairman, Resale Activities Board of Review

1998 RESULTS OF RESALE ACTIVITIES BOARD OF REVIEW

**ADULT SOPHISTICATE PERIODICALS DEEMED TO BE SEXUALLY EXPLICIT
UNDER 18 U.S.C. 2489a BY THE DOD RESALE ACTIVITIES BOARD OF REVIEW**

**30 Something
Couples
Options
Raunchy Couples
Wet
Young & Stacked**

1998 RESULTS OF RESALE ACTIVITIES BOARD OF REVIEW

**ADULT SOPHISTICATE PERIODICALS DEEMED TO BE NOT SEXUALLY EXPLICIT
UNDER 18 U.S.C. 2480b BY THE DOD RESALE ACTIVITIES BOARD OF REVIEW**

Savage

1998 RESULTS OF RESALE ACTIVITIES BOARD OF REVIEW

**VIDEO RECORDINGS DEEMED TO BE SEXUALLY EXPLICIT UNDER
18 U.S.C 2483a BY THE DOD RESALE ACTIVITIES BOARD OF REVIEW**

**Anna Nichol Exposed
Beach Babes 2 (Cave Girl Island)
Bikini Hoe Down
Bikini Traffic School
Caligula
Crash
Emmanuelle 8
Emmanuelle in Bangkok
Emmanuelle in Egypt
Forum Letters V. 1
Girls After Midnight
Girls of 978
Inner Sanctum
Let Me Love You
Night Dreams
Obsessed with Lust
Satin and Lace (Erotic History of Lingerie)
Satin & Lace II (Hollywood Undercover)
Sinful Bed
Sister Emmanuelle
The Lover
Wager of Love
Wild Child**

1998 RESULTS OF RESALE ACTIVITIES BOARD OF REVIEW

VIDEO RECORDINGS DEEMED TO BE NOT SEXUALLY EXPLICIT UNDER 18 U.S.C. 2486a BY THE DOD RESALE ACTIVITIES BOARD OF REVIEW

25th Anniversary Swimsuit (Sports Ilust.)	Night Eyes 2
Angel Heart	Night Eyes 3
Barbarian Queen	Oriental Massage
Best of Anna Nicole Smith	Partyl Partyl
Big Ballers	Play Nice
Blindfold: Acts of Obsession	Playboy 1995 Playmate Calendar
Blown Away	Playboy's Playmate Bloopers
Body Chemistry 4	Playgirl Morning Workout
Body of Evidence	Poison Ivy (The New Seduction)
Casanova	Poison Ivy 2 (Lily)
Catchaser	Possessed by the Night
Country Cuties Barnyard Bash	Red Shoe Diaries
Crimes of Passion	Red Shoe Diaries (Another Women's Lipstick)
Curse of the Queenwolf	Red Shoe Diaries (Double Dare)
Dangerous Passion	Rubdown
Deadly Exposure	Savage Lust
Desperate Living	Sex Search
Dressed to Kill	Sexual Response
Eat Drink Man Woman	Sexy Lingerie V
Fallen Angels	Sins of the Night
Fallen Angels 2	Sketch Artist II
Farmers' Daughters	Sorceress
Freddy's Nightmares (Dreams that Kill)	Striptease
Freddy's Nightmares (Tricks and Treats)	The Cook, The Thief, His Wife & Her Lover
Girls of Hooters	The Getaway
Girls of Topless Volleyball	The Limbic Region
Great Pet Hunt Part 1	The Other Woman
Hot Body Video Magazine (Snow Bunny)	The Stunners
Hot Body Video Magazine (Southern Belle)	The Vampyre
Hot on the Trail	Trashy Ladies Wrestling
Hollie	Tropical Tease
Inner Sanctum 2	True Romance
Jerry Springer (Bad Boys & Naughty Girls)	Vampire Vixens
Jerry Springer (Secrets & Surprises)	Vicious Circles
Jerry Springer (Too Hot for TV)	Video Centerfold - Kerri Kendal
Kamasutra	Video Centerfold - Pamela Anderson
Lingerie Nights	Video Centerfold - Sherry Arnott
Love Crimes	Video Centerfold - Teri Weigel
Married People Single Sex	Whore 2
Married People Single Sex 2	Wild Cactus
New York Nights	Woman of Desire
Niagara Strip	



OFFICE OF THE SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

04 OCT 2000

MEMORANDUM FOR ASSISTANT SECRETARY OF DEFENSE (FORCE MANAGEMENT POLICY)

SUBJECT: Annual Report of the DoD Resale Activities Board of Review

Department of Defense Instruction 4105.70, "Sale or Rental of Sexually Explicit Material on DoD Property," dated June 29, 1998, requires that the DoD Resale Activities Board of Review submit an annual report to the Assistant Secretary of Defense for Force Management Policy. This memorandum responds to that requirement for the period October 1, 1999, through September 30, 2000.

During the period October 1, 1999, through September 30, 2000, the Board did not meet. No materials (periodical publications, films, video recordings, or audio recordings) were submitted to the Board by the Army and Air Force Exchange Service, the Navy Exchange Service Command, or the Marine Corps Exchange Service to determine if they were sexually explicit as defined by the Military Honor and Decency Act of 1996 (Section 2489a, Title 10, United States Code). Moreover, neither the Board's Chairman nor any other official of the Department of Defense received any Congressional or constituent inquiries about the Board's activities.

The only activity regarding the Board during the period in question came from ongoing litigation. In November 1998, a magazine wholesaler and several patrons of military exchanges filed suit against the Department of Defense, alleging that the Military Honor and Decency Act is unconstitutional, both on its face and as implemented by the Department. In July 1999, the United States District Court for the Northern District of California denied plaintiffs' motion for a preliminary injunction, holding that "the First Amendment does not compel the government to offer sexually explicit materials for sale at military exchanges." Plaintiffs subsequently amended their complaint to allege that the Department had violated the Equal Protection Clause in implementing the Act, asserting that most materials designed to appeal to minorities and women had been found to be sexually explicit and removed from military exchanges. In March 2000, the court rejected this argument, finding that plaintiffs had not alleged a statistically significant disparate impact against materials allegedly addressed to minorities and women, and dismissed the case. Plaintiffs have since filed an appeal to the United States Court of Appeals for the Ninth Circuit. Efforts to resolve the case through the Ninth Circuit's standard mediation process have not been productive to date but remain pending. In the event that the mediation process is unsuccessful, we expect that the Ninth Circuit will issue an order establishing a briefing schedule for the appeal.

Attached are the 1998 and 1999 annual reports. I hope these reports and this memorandum will be useful as you provide oversight to the Department's resale activities.

(b)(6)



Chairman

Resale Activities Board of Review

Attachments:
As stated

**REPORT TO
ASSISTANT SECRETARY OF DEFENSE
(FORCE MANAGEMENT POLICY)**

**ANNUAL REPORT OF THE
RESALE ACTIVITIES BOARD OF REVIEW**



OCTOBER 1999

INTRODUCTION

Department of Defense Instruction 4105.70, "Sale or Rental of Sexually Explicit Material on DoD Property," dated June 29, 1998, requires that the DoD Resale Activities Board of Review submit an annual report to the Assistant Secretary of Defense for Force Management Policy by October 1. This report responds to that requirement and documents Board activities, decisions, and membership for the period October 1, 1998, through September 30, 1999.

BACKGROUND

The Military Honor and Decency Act of 1996 (Section 2489a, Title 10, United States Code) prohibits the sale or rental of sexually explicit material as defined under the Act and the Instruction on property under the jurisdiction of the Department of Defense (DoD). Following an unsuccessful legal challenge to the constitutionality of the Act by the publisher of *Penthouse* magazine, on June 29, 1998, the Department published DoD Instruction 4105.70, "Sale or Rental of Sexually Explicit Material on DoD Property," to implement the Act. The Instruction promulgated policy that no sexually explicit materials, as defined under the Act, may be sold or rented on property under the jurisdiction of the Department of Defense, and established a Resale Activities Board of Review to consider materials offered for sale or rental.

COMPOSITION OF THE BOARD

The Board is chaired by a senior DoD civilian who was appointed by the Acting Assistant Secretary of Defense for Force Management Policy. Board membership comprises officials from each Military Department, two representatives from the Army and Air Force Exchange Service, and a representative from each of the Navy Exchange Service Command and the Marine Corps Exchange Service. A list of Board members is at Appendix A.

BOARD REVIEW OF MATERIALS

Pursuant to DoD Instruction 4105.70, the DoD Resale Activities Board of Review is charged with reviewing periodical publications, films and video recordings, and audio recordings currently offered or to be offered for sale or rental on property under the jurisdiction of the Department of Defense to ensure that materials offered are not sexually explicit as defined under the Act. The Board met one time during the period October 1, 1998, through September 30, 1999, and reviewed seven periodicals and 106 films or video recordings. A copy of the meeting minutes is at Appendix B. The Board submitted one report to the Acting Assistant Secretary of Defense for Force Management Policy. A copy of the memorandum from the Board's Chairman containing results of Board deliberations is at Appendix C.

Of the seven periodicals, six (86 percent) were deemed to be sexually explicit and one (14 percent) was deemed not sexually explicit under the Act and DoD Instruction 4105.70. Of the 106 films and video recordings, the Board found 23 (22 percent) to be sexually explicit and 83 (78 percent) not to be sexually explicit.

CONSTITUENT MAIL

During the period October 1, 1998, through September 30, 1999, the Board's Chairman received 55 letters regarding Board activities. Most of the letters were from individuals who believed that the Board erred in its decision that magazines such as *Playboy* were not sexually explicit as defined by the Act and DoD Instruction 4105.70. A sample of letters of inquiry and the Chairman's standard response are at Appendix D.

LITIGATION

In December 1998, a consortium of publishers and several individual Service members filed suit in the United States District Court for the Northern District of California, alleging that the Military Honor and Decency Act is unconstitutional and seeking a preliminary injunction to prohibit the Department from implementing the Act. As was the case with prior litigation, the plaintiffs alleged that the Act's restrictions on the sale of sexually explicit material violated the First Amendment's guarantee of freedom of speech.

On January 4, 1999, the Board's Chairman provided deposition testimony, pursuant to plaintiff subpoena, concerning the Board's membership and procedures used by the Board to determine if periodicals or videos were sexually explicit under the Act and the Instruction. On July 13, 1999, the court denied plaintiff's motion for a preliminary injunction and held that "the First Amendment to the Constitution does not compel the Government to offer sexually explicit materials for sale or rental at military exchanges." Plaintiffs have now raised additional arguments concerning the Act's constitutionality that will be the subject of additional briefings by the parties in the near future.

CONGRESSIONAL INTEREST

On December 1, 1998, Congressman Roscoe G. Bartlett, one of the original sponsors of the Military Honor and Decency Act, wrote to the DoD Inspector General. Congressman Bartlett indicated that he was "troubled by voices from both the right and left which challenged the implementation of the law." Consequently, he asked the DoD Inspector General to determine if the implementation was consistent with provisions of the Act.

Because the Acting Assistant Secretary of Defense for Force Management Policy was the senior Department official responsible for the DoD Resale Activities Board of Review, the DoD Inspector General asked him to respond to Congressman Bartlett. On March 3, 1999, the Acting Assistant Secretary assured Congressman Bartlett that "the Board fully complied with the standards enumerated in the Military Honor and Decency Act in making its determinations and filing its recommendations." A copy of Congressman Bartlett's letter to the DoD Inspector General and the Acting Assistant Secretary's response are at Appendix E.

SUMMARY

Since its first meeting in July 1998, the Board has met seven times. To date, the Board has reviewed 286 periodicals, 164 films and video recordings, and five audio recordings. Of the

286 periodicals reviewed, 248 (87 percent) were deemed to be sexually explicit under the Act and the Instruction and 38 (13 percent) were determined to be not sexually explicit. Of the 164 films and video recordings reviewed, the Board determined 56 (34 percent) to be sexually explicit under the Act and the Instruction and 108 (66 percent) to be not sexually explicit. The Board reviewed five audio recordings and determined that none was sexually explicit. Materials deemed by the Board to be sexually explicit were removed from DoD retail activities and are no longer offered for sale or rental.

**REPORT TO
ASSISTANT SECRETARY OF DEFENSE
(FORCE MANAGEMENT POLICY)**

**ANNUAL REPORT OF THE
RESALE ACTIVITIES BOARD OF REVIEW**



OCTOBER 1998

INTRODUCTION

Department of Defense Instruction 4105.70, "Sale or Rental of Sexually Explicit Material on DoD Property," dated June 29, 1998, requires that the DoD Resale Activities Board of Review submit an annual report to the Assistant Secretary of Defense for Force Management Policy by October 1. This report responds to that requirement and documents Board activities, decisions, and membership for the period July 29, 1998, when the Board was formally constituted, through September 30, 1998. A copy of DoD Instruction 4105.70 is at Appendix A.

BACKGROUND

The Military Honor and Decency Act of 1996 (Section 2489a, Title 10, United States Code) prohibits the sale or rental of sexually explicit material on property under the jurisdiction of the Department of Defense (DoD). A publisher and several trade associations brought a lawsuit in the United States District Court for the Southern District of New York challenging the constitutionality of the statute. On December 31, 1996, the court held the Act unconstitutional and enjoined the Department from changing its merchandising policies with respect to materials subject to the Act. The Government appealed the decision.

On November 21, 1997, the U.S. Court of Appeals for the Second Circuit ruled the law constitutional, reversing the decision of the district court. On June 26, 1998, the Supreme Court declined to hear the case, and the injunction prohibiting the Department from implementing the Act was subsequently lifted. On June 29, 1998, the Department published DoD Instruction 4105.70, "Sale or Rental of Sexually Explicit Material on DoD Property," to implement the statute. The Instruction promulgated policy that no sexually explicit materials may be sold or rented by DoD retail outlets, and established a Resale Activities Board of Review to consider materials offered for sale or rental on DoD property.

ESTABLISHMENT OF THE BOARD

Pursuant to DoD Instruction 4105.70, the DoD Resale Activities Board of Review is charged with reviewing periodical publications, films and video recordings, and audio recordings currently offered or to be offered for sale or rental in military retail outlets to ensure that materials offered are not sexually explicit. During its first organizational meeting, the Board established procedures for conducting reviews and making Board determinations.

The Board's first meeting was held on July 29, 1998, with all Board members present. The Board received briefings from representatives of the DoD General Counsel; the Legal Policy Office, Office of the Under Secretary of Defense for Personnel and Readiness; and the Directorate of Morale, Welfare, and Recreation and Resale Activities, Office of the Assistant Secretary of Defense for Force Management Policy. During the briefings, the Board received information on Board responsibilities and obligations and legal standards for reviewing

materials. The Board developed Standing Operating Procedures to govern internal Board decision making. The Board Standing Operating Procedures are at Appendix B.

The Board requested the assistance of the Executive Director, Morale, Welfare, and Recreation and Resale Activities, Office of the Assistant Secretary of Defense for Force Management Policy, and the Exchange Services in obtaining materials for review. To begin its work, the Board decided to review all periodicals in the "adult sophisticate" category that were offered for sale in any DoD retail activity, and all Non-Rated video recordings currently for sale or rental in military retail stores.

The Board also requested that resale activities forward audio recordings offered for sale with an industry "Parental Advisory" label that were reasonably believed to be sexually explicit. The Board further requested that resale activity managers be informed that they should forward for Board review any other materials being offered for sale or rental that they reasonably believed were sexually explicit.

COMPOSITION OF THE BOARD

The Board is chaired by a senior DoD civilian, appointed by the Acting Assistant Secretary of Defense for Force Management Policy. Board membership comprises officials from each Military Department, two representatives from the Army and Air Force Exchange Service, and a representative from each of the Navy Exchange Command and the Marine Corps Exchange Service. A list of Board members is at Appendix C.

BOARD REVIEW OF MATERIALS

The Board met six times during the period July 29, 1998, through September 30, 1998, and reviewed 279 periodicals, 58 films or video recordings, and five audio recordings. Copies of meeting minutes are at Appendix D. The Board submitted two reports to the Acting Assistant Secretary of Defense for Force Management Policy. Copies of memoranda from the Board's Chairman containing results of Board deliberations are at Appendix E.

Of the 279 periodicals, 242 (87 percent) were deemed to be sexually explicit and 37 (13 percent) not sexually explicit. Of the 58 films and video recordings, the Board found 33 (57 percent) to be sexually explicit and 25 (43 percent) not sexually explicit. The Board reviewed five audio recordings and determined that none were sexually explicit.



DEPARTMENT OF THE NAVY
OFFICE OF THE ASSISTANT SECRETARY
(MANPOWER AND RESERVE AFFAIRS)
1000 NAVY PENTAGON
WASHINGTON, D.C. 20350-1000

OCT 17 2006

**MEMORANDUM FOR PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE
(PERSONNEL AND READINESS)**

SUBJECT: Results of the May 6, 2006 DoD Resale Activities Board of Review

The DoD Resale Activities Board of Review (the Board) convened on May 6, 2006, to review materials currently sold or proposed for sale by the military exchanges to determine if the materials were sexually explicit as defined by DODI 4105.70, "Sale or Rental of Sexually Explicit Material on DoD Property" (the Instruction).

The Board was called into session with seven of eight members in attendance (see Attachment 1). The meeting began with a discussion regarding the nature of the subject matter and the need for open and candid dialogue. Board members were reminded that any communication with third parties outside of DoD concerning the Board's deliberations shall be coordinated with the Office of the Assistant Secretary of Defense (Public Affairs) and the DoD Office of General Counsel.

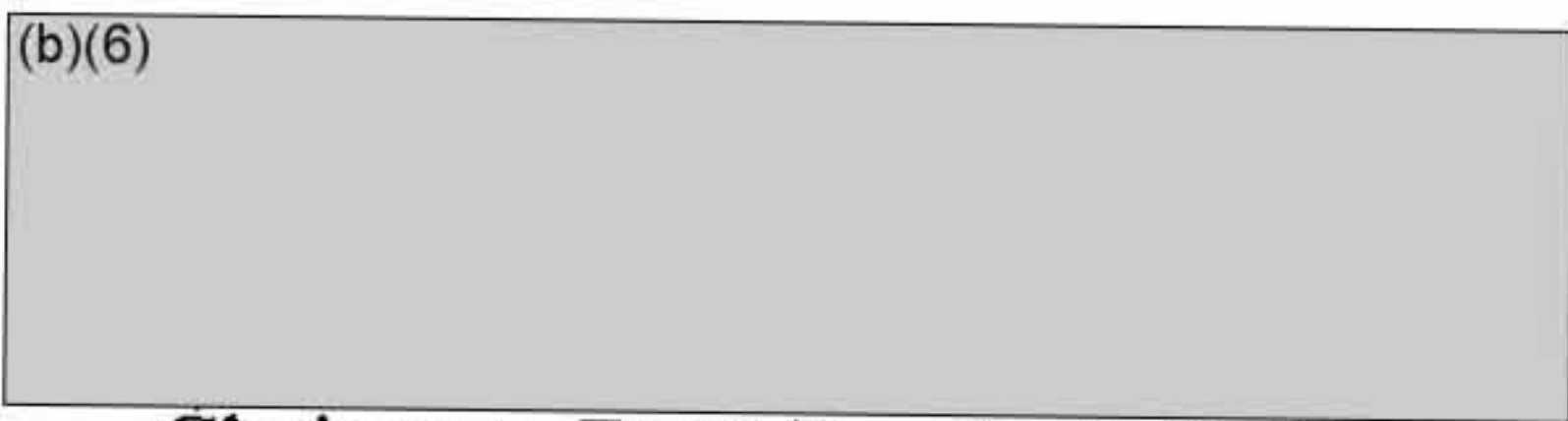
The first item was a briefing by (b)(6) and (b)(6) from DoD OGC concerning the definition of sexually explicit material as stated in the Instruction. After the briefing and a detailed discussion the Board members confirmed that they had a clear understanding of the definition of sexually explicit material. The Board then reviewed the entire Instruction to ensure that members understood the Board's responsibilities.

The Board reviewed eighteen magazines titles, fifteen of which the Board determined to be sexually explicit. The Board determined that three of the magazines were not sexually explicit; these include Penthouse and Playgirl, which the previous Board had determined to be sexually explicit. The Board reversed the previous decision based on revised formats and content of Penthouse and Playgirl.

The Board also reviewed three Playboy videos that it determined were not sexually explicit, and three interactive DVDs by a company named "Peach," which the Board found to be sexually explicit. In reviewing the three Peach DVDs, the Board unanimously agreed to consider them as a single title, not as three separate titles. Consequently, all Peach DVDs shall be considered sexually explicit unless the Board specifically exempts them. A list of the Board's findings is at Attachment 2.

Deliberations concluded with a discussion of the exchanges' responsibility for forwarding to the Board all sexually oriented material submitted by vendors to the exchanges for resale consideration. The Board will reconvene as the volume of material warrants.

(b)(6)

A large rectangular area is redacted with a solid grey fill, obscuring the signature of the Chairman.

**Chairman, DoD Resale Activities
Board of Review**

**Attachments:
As stated**

**CC:
Board of Review members**

Results of the May 6, 2006 DoD Resale Activities Board of Review

Adult Sophisticate magazines that were determined to be sexually explicit:

1. Booty Licious
2. Genesis
3. Leg Sex
4. OUI
5. Swank
6. Gent
7. Hustler
8. Club
9. Black Tail
10. Velvet
11. Score
12. Voluptuous
13. OW
14. Club International
15. Juggs

Adult Sophisticate magazines that were determined not to be sexually explicit:

1. Ultra for Men
2. Playgirl
3. Penthouse

Videos that were determined to be sexually explicit:

Peach DVD Video production of:

- Jenna's Dream Dates
- Armed and Dangerous
- The Luckiest Bachelor on Earth

The Board determined that "Peach Video DVD's" shall be considered as a single title not as separate titles. Therefore, all Peach Video DVDs shall be considered sexually explicit unless specifically exempted by the Board.

Videos that were determined **not to be** sexually explicit:

1. Playboy's Hottest Housewives
2. Playboy's Video Centerfold Playmate of the Year 2005
3. Playboy Playmate DVD Calendar Collection 2000-2005



OFFICE OF THE UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

MAR 30 2007

PERSONNEL AND
READINESS

MEMORADUM FOR COMMANDER, ARMY AIR FORCE EXCHANGE SERVICE
COMMANDER, NAVY EXCHANGE COMMAND
DIRECTOR, MARINE CORPS, PERSONAL AND FAMILY
READINESS DIVISION

SUBJECT: Results of the 2006 DOD Resale Activities Board of Review

The DoD Resale Activities Board of Review (the Board) convened to evaluate specific materials currently sold or proposed for sale by the military exchanges to determine if the materials were sexually explicit as defined by DODI 4105.70, "Sale or Rental of Sexually Explicit Material on DoD Property." The Board's findings, with respect to the materials reviewed during 2006, are attached.

The Board reviewed eighteen magazine titles and determined fifteen of them to be sexually explicit. The three magazine titles determined not to be sexually explicit included Penthouse and Playgirl, which the Board had previously determined to be sexually explicit. The Board reversed its earlier decision concerning Penthouse and Playgirl based on their revised formats and content.

The Board also reviewed three Playboy videos that it determined were not sexually explicit, and three interactive DVDs by a company named "Peach," which the Board found to be sexually explicit. In reviewing the three Peach DVDs, the Board unanimously agreed to consider them as a single title, not as three separate titles. Consequently, all Peach DVDs shall be considered sexually explicit unless the Board determines otherwise.

Please ensure the buyers for your respective organizations comply with paragraph 6.2 of DoDI 4105.70 concerning the sale or rental of sexually explicit material on property under DOD jurisdiction.

(b)(6)

Chairman, DoD Resale Activities
Board of Review

Attachment:
As Stated

cc: Office of Resale Activities & NAF Policy, Military Community and Family Policy



Results of the 2006 DoD Resale Activities Board of Review

Adult Sophisticate magazines that were determined to be sexually explicit:

1. Booty Licious
2. Genesis
3. Leg Sex
4. OUI
5. Swank
6. Gent
7. Hustler
8. Club
9. Black Tail
10. Velvet
11. Score
12. Voluptuous
13. OW
14. Club International
15. Juggs

Adult Sophisticate magazines that were determined not to be sexually explicit:

1. Ultra for Men
2. Playgirl
3. Penthouse

Videos that were determined to be sexually explicit:

Peach DVD Video production of:

- Jenna's Dream Dates
- Armed and Dangerous
- The Luckiest Bachelor on Earth

The Board determined that "Peach Video DVD's" shall be considered as a single title not as separate titles. Therefore, all Peach Video DVDs shall be considered sexually explicit unless specifically exempted by the Board.


Videos that were determined not to be sexually explicit:

1. **Playboy's Hottest Housewives**
2. **Playboy's Video Centerfold Playmate of the Year 2005**
3. **Playboy Playmate DVD Calendar Collection 2000-2005**

DOD RESALE ACTIVITIES BOARD OF REVIEW
Minutes of Meeting on November 26, 2007

1. The DoD Resale Activities Board of Review (the Board) convened at 0800 on November 26, 2007, to review materials proposed for sale by the military exchanges to determine if the materials were sexually explicit as defined by the Military Honor and Decency Act, 10 U.S.C. 2495b (the Act), and DoDI 4105.70, "Sale or Rental of Sexually Explicit Material on DoD Property," (the Instruction).
2. The Board was called into session with all eight members in attendance (attachment 1). The chairman announced that EURPAC Service, Inc., a private entity, had requested that the Board review 87 movies that they intended to offer for sale in exchanges, but subsequently withdrew the request. The members discussed the need for a process to condense the number of proposed titles in that case, since there would not be enough shelf space to sell such a large quantity of movies, assuming they would be deemed not sexually explicit. The Board decided that, pursuant to paragraph 6.4 of the Instruction, the Board would review only those materials submitted by purchasing agents or managers of DoD retail outlets or their supervisors after the exchanges make a business case decision on the specific titles that they could reasonably display in their facilities, and refer those titles to the Board for review.
3. The DoD Office of General Counsel (OGC) provided guidance regarding the definition of sexually explicit material as stated in the Act and the Instruction. The Board members confirmed that they understood the definition of sexually explicit material. The Board also discussed whom to contact for media inquiries, and DoD OGC advised that Board members should refer all media inquiries to the OSD Nonappropriated Fund and Resale Policy Office. The chairman then explained the voting procedures, and the review process began.
4. The Board was presented with 23 magazine titles to review. However, the Board had previously determined that four of those titles were sexually explicit at its May 2006 meeting. Therefore, pursuant to paragraph 6.6 of the Instruction, the Board may not review these titles prior to May 2011 unless there are substantive changes in the publication standards. As this was not the case, the Board reviewed the remaining 19 titles and found ten to be sexually explicit and the remaining nine not to be sexually explicit. The Board's findings are at attachment 2.
5. The Board's deliberations concluded at 1220. The Board will reconvene as the volume of material warrants.

(b)(6)

 Chairman, DoD Resale Activities
Board of Review

DOD RESALE ACTIVITIES BOARD OF REVIEW MEMBERSHIP

CHAIR - ARMY Assistant Deputy, Family, MWR and Resale Activities

<u>DEPARTMENT</u>	<u>MEMBER</u>	<u>ORGANIZATION</u>
Army	Colonel	OASA(M&RA)
Navy	DoD Civilian	OASN(M&RA)
Air Force	Lieutenant Colonel	SAF/MRM

<u>EXCHANGE SERVICE</u>	<u>MEMBER</u>
AAFES	2 Command Representatives
NEXCOM	Command Representative
MCX	Command Representative

RESULTS OF THE 2007 DOD RESALE ACTIVITIES BOARD OF REVIEW

Adult Sophisticate magazines not reviewed due to no substantive changes since previous review in 2006 which found them **to be sexually explicit**:

1. Hustler
2. Club
3. Swank
4. Score

Adult Sophisticate magazines that were determined **to be sexually explicit**:

1. Hawk
2. Fox
3. Fox Double Issue
4. Gallery
5. Best of Gallery
6. Cheri
7. Best of Cheri
8. High Society
9. Very Best of High Society
10. Nasty Housewives

Adult Sophisticate magazines that were determined **not to be sexually explicit**:

1. Vixen by Playboy
2. Playboy Hotshots
3. Curves
4. Playboy's Hottest Nudes 2008 Calendar

German Language magazines that were determined **not to be sexually explicit**:

1. Men's Health
2. Maxim
3. Playboy
4. Matador
5. FHM

DoD Resale Activities Board of Review

Agenda for 26 Nov 07 Meeting

1. Introduction of Board Members

(b)(6)	Chairman
(b)(6)	Army
(b)(6)	Navy
(b)(6)	Air Force
(b)(6)	AAFES
(b)(6)	AAFES
(b)(6)	NEXCOM
(b)(6)	MCX

2. DoD General Counsel Guidance

3. Review Board Standing Operating Procedures

4. Review of Magazines

5. Review of Movies

DOD RESALE ACTIVITIES BOARD OF REVIEW
Minutes of Meeting on February 28, 2008

1. The DoD Resale Activities Board of Review (the Board) convened at 0800 on February 28, 2008, to review materials that had been previously approved by the Board in 1998 for sale or rent by the military exchanges to determine if the materials were sexually explicit as defined by the Military Honor and Decency Act, 10 U.S.C. 2495b (the Act), and DoDI 4105.70, "Sale or Rental of Sexually Explicit Material on DoD Property," (the Instruction).

2. The Board was called into session with six members and 2 alternates in attendance (Attachment 1). The chairman announced that the Board would review 24 periodicals and one movie that had previously been approved by the Board in 1998, to ensure that these materials were not sexually explicit.

3. The DoD Office of General Counsel (OGC) provided guidance regarding the definition of sexually explicit material as stated in the Act and the Instruction. All present confirmed that they understood the definition of sexually explicit material. The chairman then explained the voting procedures, and the review process began.

4. The Board was presented with 24 magazine titles to review, and found one to be sexually explicit and the remaining 23 not to be sexually explicit. The Board then reviewed one movie and determined it not to be sexually explicit. The Board also concluded that three magazines contained no theme that could be viewed as sexually explicit and determined that they no longer needed to be reviewed absent some indication of a change in content including sexually explicit material. The Board's findings are at Attachment 2.

5. The Board's deliberations concluded at 1400. The Board will reconvene as the volume of material warrants.

(b)(6)

✓ Chairman, DoD Resale Activities
Board of Review

DOD RESALE ACTIVITIES BOARD OF REVIEW MEMBERSHIP

CHAIR - ARMY Assistant Deputy, Family, MWR and Resale Activities

<u>DEPARTMENT</u>	<u>MEMBER</u>	<u>ORGANIZATION</u>
Army	Colonel	OASA(M&RA)
Navy	DoD Civilian	OASN(M&RA)
Air Force	Lieutenant Colonel (alternate attended – DOD civilian)	SAF/MRM

<u>EXCHANGE SERVICE</u>	<u>MEMBER</u>
AAFES	2 Command Representatives
NEXCOM	Command Representative (alternate attended)
MCX	Command Representative

RESULTS OF THE FEBRUARY 2008 DOD RESALE ACTIVITIES BOARD OF
REVIEW

Adult Sophisticate magazine that was determined **to be sexually explicit:**

1. Hustler Humor

Adult Sophisticate magazines that were determined **not to be sexually explicit:**

1. Biker
2. Celebrity Skin
3. Celebrity Sleuth
4. Easyriders
5. International Tattoo Art
6. In the Wind
7. Lingerie, Playboy's Book of
8. Outlaw Biker, Daytona
9. Playboy
10. Playboy's 1080-7217 Series
11. Playboy's 1082-4650 Series
12. Playboy's 1091-7276 Series
13. Playboy Playmate Calendar
14. Savage
15. Skin & Ink
16. Skin Art
17. Tattoo
18. Tattoo Flash
19. Tattoo Revue
20. V-Twin

Adult Sophisticate magazines that were determined **not to be sexually explicit and not to need review absent some indication of a change in content including sexually explicit material:**

1. Cosmopolitan
2. Details
3. Esquire

DVD that was determined **not to be sexually explicit:**

1. 2008 Video Playmate Calendar



PERSONNEL AND
READINESS

OFFICE OF THE UNDER SECRETARY OF DEFENSE

4000 DEFENSE PENTAGON
WASHINGTON, DC 20301-4000

February 13, 2008

MEMORANDUM FOR COMMANDER, ARMY AND AIR FORCE EXCHANGE SERVICE
COMMANDER, NAVY EXCHANGE COMMAND
DIRECTOR, MARINE CORPS, PERSONAL AND FAMILY
READINESS DIVISION

SUBJECT: Results of the November 26, 2007, DoD Resale Activities Board of Review

The DoD Resale Activities Board of Review (the Board) convened on November 26, 2007, to review materials proposed for sale by the military exchanges to determine if the materials were sexually explicit as defined in the Military Honor and Decency Act, 10 U.S.C. 2495b (the Act) and DoDI 4105.70, "Sale or Rental of Sexually Explicit Material on DoD Property," (the Instruction).

The Board was called into session with all eight members in attendance. The chairman announced that EURPAC Service, Inc., a private entity, had requested that the Board review 87 movies that they intended to offer for sale in exchanges, but subsequently withdrew the request. The members discussed the need for a process to condense the number of proposed titles in that case, since there would not be enough shelf space to sell such a large quantity of movies, assuming they would be deemed not sexually explicit. The Board decided that, pursuant to paragraph 6.4 of the Instruction, the Board would review only those materials submitted by purchasing agents or managers of DoD retail outlets or their supervisors after the exchanges make a business case decision on the specific titles that they could reasonably display in their facilities, and refer those titles to the Board for review.

The DoD Office of General Counsel provided guidance concerning the definition of sexually explicit material as stated in the Act and the Instruction. The Board members confirmed that they understood the definition of sexually explicit material. The chairman then explained the voting procedures, and the review process began.


The Board was presented with 23 magazine titles to review. However, the Board had determined that four of those titles were sexually explicit at its May 2006 meeting. Therefore, pursuant to paragraph 6.6 of the Instruction, the Board may not review these titles prior to May 2011 unless there are substantive changes in the publication standards. As this was not the case, the Board reviewed the remaining 19 titles and found ten to be sexually explicit and the remaining nine not to be sexually explicit. The Board's findings are attached.

SUBJECT: Results of the November 26, 2007, DoD Resale Activities Board of Review

The Board will reconvene in 2008 to review those materials previously approved by the Board more than five years ago.

Please distribute these results to purchasing agents and managers of retail outlets.

(b)(6)

A large rectangular area of the document is redacted with a solid grey fill, obscuring the signature and name of the Chairman.

**Chairman, DoD Resale Activities
Board of Review**

**Attachment:
As Stated**

cc: Office of Resale Activities & NAF Policy, Military Community and Family

RESULTS OF THE 2007 DOD RESALE ACTIVITIES BOARD OF REVIEW

Adult Sophisticate magazines not reviewed due to no substantive changes since previous review in 2006 which found them **to be sexually explicit**:

1. Hustler
2. Club
3. Swank
4. Score

Adult Sophisticate magazines that were determined **to be sexually explicit**:

1. Hawk
2. Fox
3. Fox Double Issue
4. Gallery
5. Best of Gallery
6. Cheri
7. Best of Cheri
8. High Society
9. Very Best of High Society
10. Nasty Housewives

Adult Sophisticate magazines that were determined **not to be sexually explicit**:

1. Vixen by Playboy
2. Playboy Hotshots
3. Curves
4. Playboy's Hottest Nudes 2008 Calendar

German Language magazines that were determined **not to be sexually explicit**:

1. Men's Health
2. Maxim
3. Playboy
4. Matador
5. FHM



**OFFICE OF THE UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, DC 20301-4000**

April 28, 2008

**MEMORANDUM FOR COMMANDER, ARMY AND AIR FORCE EXCHANGE SERVICE
COMMANDER, NAVY EXCHANGE SERVICE COMMAND
DIRECTOR, MARINE CORPS, PERSONAL AND FAMILY
READINESS DIVISION**

SUBJECT: Results of the February 28, 2008, DoD Resale Activities Board of Review

The Principal Deputy Under Secretary of Defense for Personnel and Readiness requested that the DoD Resale Activities Board of Review (the Board) review all materials that were reviewed more than five years ago and that were found to be not sexually explicit. The Board convened on February 28, 2008, to review these materials to determine if any of these materials were sexually explicit as defined in the Military Honor and Decency Act, 10 U.S.C. 2495b (the Act) and DoDI 4105.70, "Sale or Rental of Sexually Explicit Material on DoD Property," (the Instruction).

The chairman announced that the Board would review 24 periodicals and one DVD that had previously been approved by the Board in 1988, to ensure that these materials were not sexually explicit.

The DoD Office of General Counsel provided guidance concerning the definition of sexually explicit material as stated in the Act and the Instruction. All present confirmed that they understood the definition of sexually explicit material. The chairman then explained the voting procedures, and the review process began.

As reflected in the attachment, the Board was presented with 24 magazine titles to review, and found one to be sexually explicit and the remaining 23 not to be sexually explicit. The material listed at TAB A as sexually explicit may not be sold or rented on military installations. The Board then reviewed one movie and determined it not to be sexually explicit. The Board also concluded that three magazines contained no theme that could be viewed as sexually explicit and determined that they no longer needed to be reviewed absent some indication of a change in content including sexually explicit material. The Board will reconvene as the volume of material warrants.

SUBJECT: Results of the February 28, 2008, DoD Resale Activities Board of Review

Please distribute these results to purchasing agents and managers of retail outlets.

(b)(6)

**Chairman, DoD Resale Activities
Board of Review**

**Attachment:
As Stated**

cc: Office of Resale Activities & NAF Policy, Military Community and Family Policy

**RESULTS OF THE FEBRUARY 2008 DOD RESALE ACTIVITIES BOARD OF
REVIEW**

Adult Sophisticate magazine that was determined to be sexually explicit:

1. Hustler Humor

Adult Sophisticate magazines that were determined not to be sexually explicit:

1. Biker
2. Celebrity Skin
3. Celebrity Sleuth
4. Easyriders
5. International Tattoo Art
6. In the Wind
7. Lingerie, Playboy's Book of
8. Outlaw Biker, Daytona
9. Playboy
10. Playboy's 1080-7217 Series
11. Playboy's 1082-4650 Series
12. Playboy's 1091-7276 Series
13. Playboy Playmate Calendar
14. Savage
15. Skin & Ink
16. Skin Art
17. Tattoo
18. Tattoo Flash
19. Tattoo Revue
20. V-Twin

**Adult Sophisticate magazines that were determined not to be sexually explicit
and not to need review absent some indication of a change in content
including sexually explicit material:**

1. Cosmopolitan
2. Details
3. Esquire

DVD that was determined not to be sexually explicit:

1. 2008 Video Playmate Calendar



OFFICE OF THE UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, DC 20301-4000

September 30, 2008

**MEMORANDUM FOR PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE
(PERSONNEL AND READINESS)**

SUBJECT: DoD Resale Activities Board of Review FY08 Annual Report

1. Department of Defense Instruction 4105.70, "Sale or Rental of Sexually Explicit Material on DoD Property," dated June 2, 2006 (the Instruction), requires that the DoD Resale Activities Board of Review submit an annual report to the Principal Deputy Under Secretary of Defense (Personnel and Readiness). The attached report is provided to meet that requirement and documents Board activities from October 1, 2007 through September 30, 2008.
2. During FY08, the Board met twice and reviewed 43 periodicals and one video recording (see attached results). Of the periodicals, 11 were determined to be sexually explicit and 32 were determined not to be sexually explicit. The video recording was determined not to be sexually explicit. Additionally, pursuant to paragraph 6.6 of the Instruction, the Board declined to review four periodicals that they had determined to be sexually explicit in May 2006. These cannot be reviewed until May 2011 unless there have been substantive changes in the publication standards.
3. The Board will continue to meet as necessary.

(b)(6)

☒ Chairman, DoD Resale Activities
Board of Review

**Attachment:
As Stated**

PLAYGIRL

M A G A Z I N E

SECRETARY OF DEFENSE

2003 MAR 17 PM 12:40

February 28, 2003

Honorable Donald H. Rumsfeld
Secretary of Defense
1000 Defense Pentagon
Washington DC 20301

Dear Secretary Rumsfeld:

Throughout the course of military history, women have fought long and hard for equal rights in our armed services, but banning PLAYGIRL as part of the Military Honor and Decency Act once again labels female soldiers as second class. Allowing sexual magazines that cater exclusively to the interests of men (i.e. *Playboy*) while forbidding the only women's adult magazine proves that the military still views itself as a "boys' club," ignoring the interests of women, including the 200,000 active female soldiers and the 1.4 million women veterans.

We at PLAYGIRL respect the intentions of the MHDA—that removing explicit sexual material from military bases could curtail unwanted sexual harassment. But as long as both genders serve in the armed forces, they're more likely to fantasize about their co-workers than images from a magazine. After all, look at the numbers of both husbands and wives simultaneously serving in the military. As women, the staff at PLAYGIRL is always interested in protecting women from violence and harassment. For example, if you had read several issues of our magazine, you would notice that in no way do we allow for editorial content that even hints at violent or aggressive behavior towards women. Meanwhile, the men's magazines often have jokes that demean women or show pictorials of couples in the midst of sexual activities. (PLAYGIRL has made it our policy never to show penetration or climax.)

Granted you and the other legislators that initiated the MHDA, then subsequently reviewed adult magazines to see which were acceptable, probably didn't enjoy PLAYGIRL. That's because this magazine is not written for you and the other straight

U03549 14/03

men on your committee. PLAYGIRL is written by women, for women. And we're not writing to you now with our complaints about being banned because we want to increase sales. We want our magazine on military bases because the female soldiers on active duty want us there! Log on to the website www.militarywomen.org and read how those women see this ban not as an act for their protection as you see it, but as censorship—something they enlisted to fight against! Even those who may not be interested in our content see it as wrong that you have taken away their option. Again, allowing men's magazines and banning the only women's adult magazine is blatant discrimination against women. And that is one aggressive act against women that we will not stand for. We felt it was our duty and speak out against this gender bias and we hope that in the near future you will seriously reconsider your position on this issue.

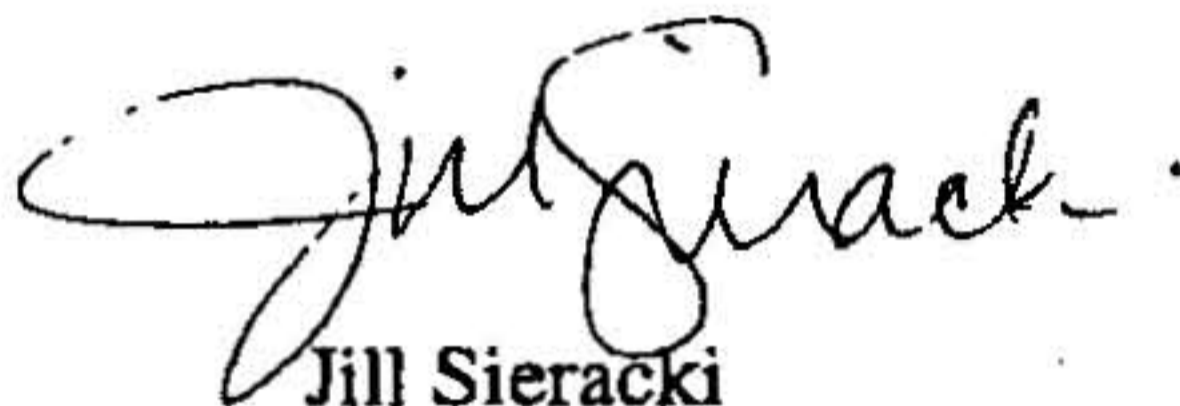
Sincerely,



Michele Zipp
Editor-In-Chief



Angela Derasmo
Art Director



Jill Sieracki
Associate Editor



Diane Ferrara
Associate Art Director



OFFICE OF THE UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, DC 20301-4000

September 30, 2009

**MEMORANDUM FOR PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE
(PERSONNEL AND READINESS)**

SUBJECT: DoD Resale Activities Board of Review FY09 Annual Report

1. Department of Defense Instruction 4105.70, "Sale or Rental of Sexually Explicit Material on DoD Property," dated June 2, 2006 (the Instruction), requires that the DoD Resale Activities Board of Review (the Board) submit an annual report to the Principal Deputy Under Secretary of Defense (Personnel and Readiness).
2. During FY09, there were no materials presented to the Board for review. Therefore, the Board did not meet.
3. The Board will continue to meet as necessary.

(b)(6)



Chairman, DoD Resale Activities
Board of Review

DoD RESALE ACTIVITIES BOARD OF REVIEW

Minutes of Meeting of July 29, 1998

The first DoD Resale Activities Board of Review meeting convened at 9:00 a.m. on July 29, 1998, in Pentagon, Room 3E752. (b)(6) Chairman of the Board and Director for Accession Policy, Office of the Assistant Secretary of Defense (Force Management Policy) provided opening remarks and introduced Board Members. The list of attendees and the agenda are at Tabs A and B, respectively.

1. Briefings Presented to the Board:

- a. (b)(6) (DoD Office of General Counsel) briefed the Board on the Military Honor and Decency Act of 1996 and litigation history. (b)(6) discussed the standards for "sexually explicit" set forth in the law and in the implementing DoD Instruction 4015.70, Sale or Rental of Sexually Explicit Material on DoD Property. (b)(6) also described the role, duties and responsibilities of the Board.
- b. (b)(6) (Deputy Director, Office of Legal Policy, Office of the Under Secretary of Defense (Personnel & Readiness)), reviewed definitions (for example, "dominate theme," "lascivious" and "sexually explicit material") that would apply to all decisions made by the Board in its consideration of materials available for sale or rent on property under the jurisdiction of the DoD. (b)(6) reviewed the requirements of DoDI 4015.70 and discussed options available to the Board in developing standing operating procedures for conducting reviews and making decisions. Options included secret ballot votes versus open votes or whether the Chairman should have voting rights. (b)(6) addressed Board members' needs to maintain independence and avoid conflicts of interest. Briefing slides used during his presentation are at Tab C.
- c. (b)(6) (Assistant Director MWR & Resale Activities, Office of the Assistant Secretary of Defense (Force Management Policy)) briefed the Board on current policies and procedures in the DoD retail system for the purchase and sale of periodicals, videos, and audio materials. (b)(6) explained industry standards for rating videos and audio recordings. Briefing slides used during his presentation are at Tab D.

2. Board Discussions and Decisions:

- a. (b)(6) led the discussion regarding operating procedures for the Board. The final procedures adopted by unanimous consent of Board members are reproduced in the attached Board Standing Operating Procedures (SOP) at Tab E.

- b. The Board discussed procedures to be used for conducting the initial review of materials being sold or rented in DoD retail activities. The Board requested copies of all "adult" magazines currently being sold and, if available two back issues, be available for Board review at the next meeting. The Board also requested that a list of all "R" and "NR" movies and all audio tapes carrying an industry warning label offered for sale or rent in DoD resale activities with a short synopsis of each article be made available for review at the next Board meeting. In addition, the Board requested that DoD retail managers be informed of the requirement to forward materials to the Board if they have reason to believe the materials are sexually explicit. On behalf of the Board, the Chairman sent a memorandum to the Executive Director, Morale, Welfare, and Recreation and Resale Activities, requesting materials for the Board's next meeting. A copy of that memorandum is at Tab F.
- c. The Board scheduled the next meeting for August 13, 1998 at 9:00 a.m. in Conference Room 2B271, Pentagon (b)(6) asked Board members to set aside the entire day for Board business. The Board will review all materials forwarded in response to the Board's request for materials.

The meeting adjourned at 11:30 a.m. on July 29, 1998.

(b)(6)

Board Recorder

APPROVED BY: 14 AUG 1998

(b)(6)

Chairman, Resale Activities Board of Review

Resale Activities Board of Review

Agenda for 29 July 1998 Meeting

I. INTRODUCTION OF BOARD MEMBERS (See attachment 1)

II. DoD GENERAL COUNSEL BRIEFING

Military Honor and Decency Act (Attachment 2)

Role of the General Counsel and Legal Advice to the Board

Initial Guidance

III. LEGAL POLICY OFFICE BRIEFING

DoDD 4105.70, *Sale or Rental of Sexually Explicit Material* (Attachment 3)

Established Policy and Procedures

Board Procedures to be Developed

Deliberations and Voting

Role of the Chairman

Quorums

Recording Decisions and Record Keeping

Conducting Reviews

IV. MWR BRIEFING

Current Policies at the Exchanges

Magazines

Audio Tapes

Videos

Board Meeting Logistics

Funding

Communications with Members

Setting up Meetings

Implementing Board Decisions

V. BOARD MEMBER ISSUES

Personal Liability and Legal Representation

Duration of Assignment

Maintaining Independence

VI. AGENDA FOR NEXT MEETING

Time and Place

Review of Materials

Preparation of Annual Report to ASD(FMP)

VII. ADJOURNMENT

DoD RESALE ACTIVITIES BOARD OF REVIEW

Minutes of Meeting of September 8, 1998

The fifth DoD Resale Activities Board of Review meeting convened at 8:00 a.m. on September 8, 1998, in Pentagon, Room 2B271. This was the final meeting for the Board's initial review of materials as required by Department of Defense Instruction 4105.70, "Sale or Rental of Sexually Explicit Material on DoD Property," dated June 29, 1998. The list of attendees is at Tab A.

1. Administrative Matters:

- a. The Board approved the minutes of its August 27, 1998, meeting.
- b. (b)(6) Office of Legal Policy, OUSD (P&R), provided a memorandum signed by the Acting Assistant Secretary of Defense for Force Management Policy [ASD(FMP)], to the Board extending the 60-day initial review deadline by 15 additional days. That memorandum is at Tab B. (b)(6) also provided advice in response to Board inquiries on the definition of 'DoD Property' in DoD Instruction 4105.70.
- c. Prior to consideration of the adult-oriented magazines (b)(6) asked Board members to review definitions (for example, "dominant theme," "lascivious," and "sexually explicit material") contained in Department of Defense Instruction 4105.70. He reiterated that the definitions are the guidelines the Board is bound to follow in its review of magazines, videotapes, and audio recordings available for sale or rental in DoD retail outlets.
- d. During the meeting, the Honorable Rudy de Leon, Under Secretary of Defense for Personnel and Readiness, and Mr. Frank Rush, Acting ASD(FMP) stopped by the conference room to thank the Board members for their professionalism and dedication in conducting a challenging job.

2. Results of Board Review of Materials:

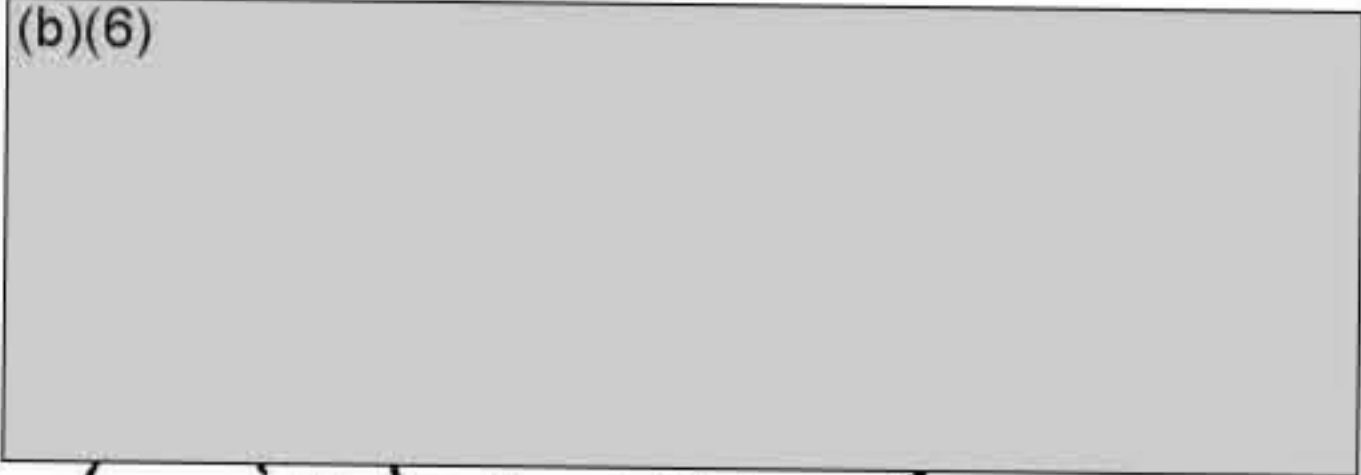
Each member of the Board present reviewed 66 issues representing 22 separate adult-oriented magazines. Board members were given the opportunity to discuss each issue prior to voting. All Board members (except the Chairman) cast votes on each magazine issue. Board members voted that every issue of the magazines reviewed was sexually explicit.

3. Future Board Issues:

- a. The Board reviewed and edited a draft version of the initial report to be submitted to the Acting ASD(FMP). This initial report of the DoD Resale Activities Board of Review is in accordance with paragraph 6.1, DoD Instruction 4105.70.
- b. (b)(6) advised the Board that the next meeting would be scheduled when sufficient magazines and movies had arrived to warrant convening a Board session.

The meeting adjourned at 12:30 p.m. on September 8, 1998.

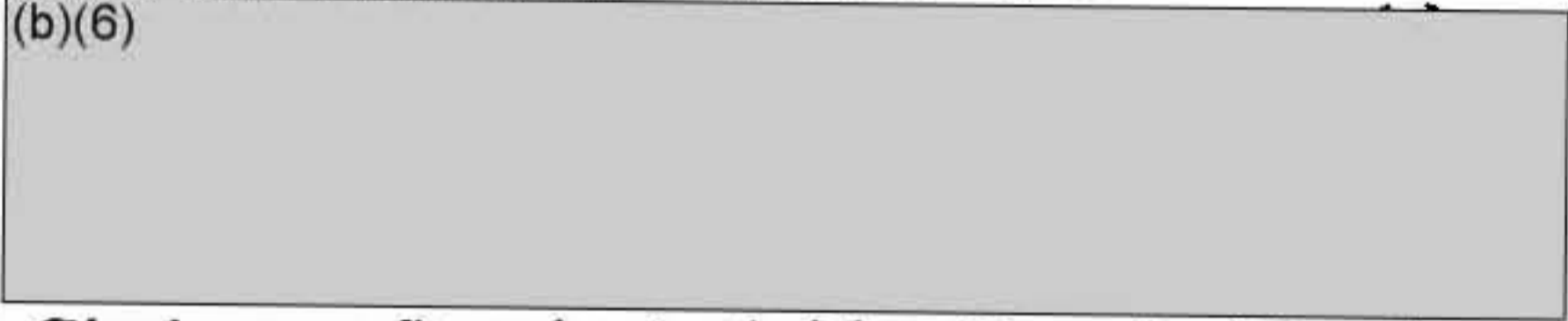
(b)(6)



Captain, USA
Board Recorder

APPROVED BY: 29 SEP 1998

(b)(6)



Chairman, Resale Activities Board of Review

Resale Activities Board of Review (September 8, 1998)

<u>Member</u>	<u>Organization</u>	<u>Telephone</u>	<u>Grade</u>
Chairman			
(b)(6)	Director Accession Policy, MPP	(b)(2)	SES-4
Army			
(b)(6)	Asst Deputy MWR & Family Programs	(b)(2)	GS-15
Air Force			
Navy			
(b)(6)	Director, Force Support and Family Programs	(b)(2)	GS-15
Marine Corps Exchange			
(b)(6)	Deputy Director, Personnel & Readiness Div	(b)(2)	NF-5 (GS-13)
NEXCOM			
(b)(6)	NEXCOM Divisional Merchandise Manager	(b)(2)	NF-5 (GS-13)
AAFES			
(b)(6)	Deputy Director EEO	(b)(2)	Pay Band 5 (GS-15)
	Deputy General Counsel		Pay Band 5 (GS-15)



OFFICE OF THE SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

SEP 17 1998

MEMORANDUM FOR ACTING ASSISTANT SECRETARY OF DEFENSE FOR FORCE
MANAGEMENT POLICY

SUBJECT: Initial Report of the DoD Resale Activities Board of Review

In accordance with paragraph 6.1, Department of Defense Instruction 4105.70, "Sale or Rental of Sexually Explicit Material on DoD Property," dated June 29, 1998, I am submitting to you the Board's initial report on its actions to review materials offered for sale or rental on property under DoD jurisdiction. The Board requests that you provide guidance to purchasing agents and managers of resale activities consistent with this report and paragraph 6.5 of the Instruction, as it implements the Military Honor and Decency Act of 1996 (10 United States Code, 2489a).

PUBLICATIONS

The Board requested that the Executive Director, Morale, Welfare, and Recreation and Resale Activities, Office of the Assistant Secretary of Defense (Force Management Policy), {OASD(FMP)}, provide three current issues of all publications in the "adult sophisticate" category, based on their potential to contain sexually explicit content. This request applied if one DoD outlet offered one issue for sale. The Board was informed that some resale activities have permitted distributors to decide what items in the "adult sophisticate" category will be stocked at a particular resale activity. The resale activities do not maintain records by publication title. The Assistant Director, Morale, Welfare, and Recreation and Resale Activities, OASD(FMP), informed the Board on July 29, 1998, that 337 publications might have been offered for sale under the criteria that one resale activity offered one issue.

The Board was provided three issues of 167 publications. Those publications with less than three issues were not reviewed, but will be considered when the necessary issues are received. Those publications where three issues were provided were reviewed pursuant to the definitions contained in DoD Instruction 4105.70. After consultation with the Office of DoD General Counsel, it was decided that three issues would be a sufficient number to permit determination regarding whether or not a publication is sexually explicit.

Attachment 1 is a list of publications the Board found to be sexually explicit under the statute. Attachment 2 is a list of publications the Board found not to be sexually explicit. Based upon the Board's review of publications in the "adult sophisticate" category, the Board believes that those "adult sophisticate" publications listed in Attachment 2 may be offered for future sale at DoD resale activities. The Board recommends that any "adult sophisticate" publication, which has not already been reviewed by the Board, and is not on Attachments 1 or 2, be referred to the Board for review. Seven publications

provided by DoD resale activities, not in the "adult sophisticate" category are pending review once additional issues arrive.

MOVIES

Ten R-rated and two Non Rated (NR) movies were provided to the Board. The Board found none of the R-rated movies to be sexually explicit. After review of the two NR movies submitted to the Board, the Board found one to be sexually explicit and one not to be sexually explicit. Attachment 3 names the NR-rated video found to be sexually explicit and Attachment 4 contains a list of those movies found not to be sexually explicit.

As a matter of policy, DoD resale activities do not offer NC-17 or X-rated movies for sale, resale or rental. The Board recommends that movies with G, PG-13, and R- ratings be offered for sale or rental without Board review if resale activities reasonably believe that a particular movie is not sexually explicit. However, if movies with those ratings are believed to be sexually explicit, a copy of the movie should be forwarded for Board review. In addition, the Board requests that resale activities forward NR movies, available for sale or rental at DoD resale activities, which may be sexually explicit according to the definitions contained in DoD Instruction 4105.70, to the Board for review.

AUDIO RECORDINGS

The Board requested that resale activities forward any audio recordings offered for sale that carry an industry "Parental Advisory" label and were believed to meet the definitions of sexually explicit under DoD Instruction 4105.70. The Board reviewed five audio recordings; none were found to be sexually explicit. A list of those audio recordings is at Attachment 5.

The Board recommends the continued offering for sale of audio recordings with a "Parental Advisory" label. However, resale activities should forward to the Board any that might reasonably meet DoD Instruction 4105.70 definitions of sexually explicit materials. Resale activities may use descriptions on the audio recordings along with media reviews to assist with these decisions. Any audio recording offered to the Board for review must include the words for each track/selection on the recording to be reviewed.

(b)(6)

Chairman
Resale Activities Board of Review

Attachments:
As stated

ADULT SOPHISTICATE PERIODICALS DEEMED TO BE SEXUALLY EXPLICIT BY THE DOD RESALE ACTIVITES BOARD OF REVIEW

Allstars	Dude
Amateur Porn, Adam Presents	Erotic Video Guide
Assertive Women	Erotica, Adam Gays Video
Barely 18	Erotica, Adam Gays Video Special
Barely Legal	Family Affairs
Barely Legal, Girls of	Family Joy
Beach Girls	Family Letters
Beau	Family Room
Beaver Hunt, Best of	Family Tales
Big Butt	Family Talk
Big Girls	Fantasy Imports XXX
Black Beauties	Fiesta
Black Heat	Fiesta Special
Black Legs	Fifty Plus
Black Lust	First Hand
Black Pleasure, International	For Men
Black Tail	For Men, Ultimate Collection
Black Video Illustrated, Adam's	Forty Plus
Blue Boy	Forum, Penthouse
Boy Next Door	Fox
Buf	Gallery
Bump and Grind	Genesis
Busty	Gent
Busty, Best of	Gent's Special
Buttime Stories	Hard
Calendar, Penthouse	Hawk
Candy Girls	High Society
Cheaters Club	High Society, Very Best of
Cheeks	Hometown Girls
Cheri	Honeybuns
Cheri, Best of	Hot Shots
Cherry Tales	Hot Talk, Penthouse
Chic	Hustler
Club	Hustler Fantasies
Club Confidential	Hustler, Best of
Club International	Hustler, Girls of
College Girls	Jock
Coming Out, Beau Presents	Jock Collectors
Contact Girls	Juggs
Cream of the Crop	Juniors
D-Cup	Just 18

ADULT SOPHISTICATE PERIODICALS DEEMED TO BE SEXUALLY EXPLICIT BY THE DOD RESALE ACTIVITES BOARD OF REVIEW

Just Come of Age	Penthouse, Girls of
Key Club	Petite
Kinky	Pictorial
Kinky Fetishes	Players
Kinky Konnections	Playgirl
Knave	Plumpers
Knave Special	Portfolio
Leg Action	Ravers
Leg Scene	Ravers, Special
Leg Sex	Readers' Wives
Leg Show	Readers' Wives, Guide to (Specials)
Leg World	Real 100 Percent Wives
Letters, Original	Rookies
Lingerie, Hustler	Rough Trade
Lips	Salza
Locker Room Tales	Score
Machismo	Skinny and Wiggly
Mantalk	Stacked
Mayfair	Sticky Buns
Men's World	Street
Model Directory	Sugah
Nasty	Swank
Naughty Neighbors	Swank, Girls of
New Rave	Taboo
Nude Readers' Wives	Tail Ends
Nugget	Talent, New
Numbers	Talent, Very Best of
Only 18	Teazer
Options	Turn-Ons
Oriental Dolls	Variations, Penthouse
Oriental Women	Velvet
Oui	Video Erotica, Adam Girls International
Over 50	Voluptuous
Panty Play	XXX Movie Illustrated, Adam Film World Guide
Penthouse	XXX Showcase, Adam Gay Video
Penthouse Letters	

**ADULT SOPHISTICATE PERIODICALS DEEMED TO BE NOT SEXUALLY
EXPLICIT BY THE DOD RESALE ACTIVITIES BOARD OF REVIEW**

Airbrush, Art + Action
Celebrity Skin
Celebrity Sleuth
Easyriders
Hustler Humor
International Tattoo Art
Lingerie, Playboy's Book of
Perfect 10
Playboy
Playboy's 1082-4650 series
Playboy's 1091-7276 series
Players Calendar Series
Tattoo
V-Twin

**VIDEO RECORDINGS DEEMED TO BE SEXUALLY EXPLICIT
BY THE DOD RESALE ACTIVITIES BOARD OF REVIEW**

Playboy's Story of X

**VIDEOS SOLD OR RENTED IN DOD RESALE ACTIVITIES
DEEMED TO BE NOT SEXUALLY EXPLICIT**

Boogie Nights
Butcher Boy
Chinese Box
Dangerous Beauty
Great Expectations
I Went Down
Naked Lies
No Looking Back
Out of the Past
Playboy's 1999 Video Playmate Calendar
Species II

**AUDIO RECORDINGS SOLD IN DOD RESALE ACTIVITIES
DEEMED TO BE NOT SEXUALLY EXPLICIT**

<u>Musical Group</u>	<u>Title</u>
Capone -N- Noreaga	The War Report
Goodie Mob	Still Standing
Lil' Keke	The Commission
The Lox	Money, Power & Respect
Various Artists	Cream

DoD RESALE ACTIVITIES BOARD OF REVIEW
Minutes of Meeting of September 29-30, 1998

The sixth DoD Resale Activities Board of Review meeting convened at 9:00 a.m. on September 29, 1998, in Pentagon, Room B271. This was a two-day meeting for the Board to consider potentially sexually explicit periodicals not previously reviewed, and to continue review of non-rated mature-theme video recordings. The list of attendees is at Tab A.

1. Administrative Matters:

- a. The Board approved the minutes of its September 8, 1998, meeting.
- b. The Board consulted with (b)(6) DoD Office of General Counsel on the issue of adjudicating periodicals with fewer than three issues. For various reasons (e.g., level of publisher cooperation, discontinuance of the periodical, or a periodical name-change) the Board was unable to obtain three issues of some periodicals. After discussion with (b)(6) it was decided that the Resale Activities Board of Review could consider and adjudicate periodicals with fewer than three issues. Based on the Board's initial review of 167 "adult sophisticate" periodicals, the Board believed that one issue was generally representative of the periodical as a whole. In addition, a diligent effort had been made to retrieve three issues of each periodical under review.
- c. Prior to consideration of the adult-oriented periodicals (b)(6) asked Board members to review definitions (for example, "dominant theme," "lascivious," and "sexually explicit material") contained in DoD Instruction 4105.70. (b)(6) reiterated that the definitions are the guidelines the Board is bound to follow in its review of periodicals, videotapes, and audio recordings available for sale or rental in DoD retail outlets.

2. Results of Board Review of Materials:

- a. Each member of the Board present reviewed 112 separate adult-oriented periodicals. Board members were given the opportunity to discuss each publication prior to voting. All Board members present cast votes on each periodical. Based on Board member votes, 89 periodicals were deemed to be sexually explicit, and 23 periodicals were judged to be not sexually explicit. The not sexually explicit periodicals included: American Rodder Swimsuit Calendar, Biker, Bikini, Cosmopolitan, Details, Detective Cases, Esquire, Heavy Metal, In the Wind, New Woman, Outlaw Biker (Daytona), Penthouse Calendar, Playboy Playmate Calendar, Playboy's 1080-7217 Series, Playgirl Centerfolds, Skin & Ink, Skin Art, Startling Detective, Tattoo Calendar, Tattoo Flash, Tattoo Revue, True Police Cases, and True Story (Romance Special).
- b. In addition, the Board reviewed 46 non-rated adult-oriented video recordings. Thirty-two video recordings were found to be sexually explicit, and 14 video recordings were deemed to be not sexually explicit. The not sexually explicit video recordings were: Adult Video Awards, Babes of Baywatch, Best of Jenny McCarthy, Centerfold-Shannon Tweed, Complete Massage, Farrah Fawcett-All of Me, Playmate Calendar, Playmates Revisited, Sisters, Penthouse's Swimsuit

Calendar, Twenty-one Playmates, Voluptuous Vixens, Wet-Wild-Bottoms, and Blondes-Brunettes-Red Heads.

3. Future Board Issues:

- a. The Board reviewed and edited a draft version of the annual report to be submitted by the Board to the Acting Assistant Secretary of Defense (Force Management Policy). The annual report is in accordance with paragraph 7.0, DoD Instruction 4105.70.
- b. (b)(6) ^{b(6)} advised the Board that the next meeting would be scheduled when sufficient periodicals and video recordings arrive to warrant convening a Board session.

The meeting adjourned at 12:30 p.m. on September 30, 1998.

(b)(6)

Captain, USA
Board Recorder

APPROVED BY: 7 Oct 1998

(b)(6)

Chairman, Resale Activities Board of Review



OFFICE OF THE SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

7 OCT 1998

MEMORANDUM FOR ACTING ASSISTANT SECRETARY OF DEFENSE FOR FORCE
MANAGEMENT POLICY

SUBJECT: DoD Resale Activities Board of Review Update Report

In accordance with paragraph 6.3, Department of Defense Instruction 4105.70, "Sale or Rental of Sexually Explicit Material on DoD Property," dated June 29, 1998, this memorandum provides an update of the Board's actions, based on a September 29-30, 1998 meeting, to review materials offered for sale or rental on property under DoD jurisdiction. The Board requests that you provide additional guidance to purchasing agents and managers of resale activities consistent with this report, in compliance with the Military Honor and Decency Act of 1996 (10 United States Code, 2489a).

After recent consultation with the DoD Office of General Counsel, it was decided that the Resale Activities Board of Review could consider and adjudicate the remaining periodical publications on the basis of a review of fewer than three issues. Based on the Board's previous review of three issues of 167 "adult sophisticate" periodicals, the Board has determined that one issue is generally representative of a periodical as a whole and provides sufficient basis to determine whether the periodical is sexually explicit. In addition, despite diligent efforts to retrieve three issues of each periodical for review, the Board has been unable to obtain three issues of some periodicals for various reasons (e.g., level of publisher cooperation, discontinuance of the periodical, or a periodical name-change).

The Board was provided 112 additional adult-oriented periodicals by the Assistant Director, Morale, Welfare, and Recreation and Resale Activities, Office of the Assistant Secretary of Defense for Force Management Policy. In addition, the Board reviewed some periodicals not in the "adult sophisticate" category. Attachment 1 lists the 89 periodicals that the Board found to be sexually explicit under the statute as implemented by DoD Instruction 4105.70. Attachment 2 identifies the 23 periodicals that the Board found not to be sexually explicit. The Board recommends that any other "adult sophisticate" publications that DoD resale activities anticipate offering for sale and that have not already been reviewed by the Board be forwarded to the Board for review.

Forty-six Non-Rated (NR) video recordings were provided to and reviewed by the Board. All video recordings for this review were adult-oriented with mature themes. Attachment 3 lists the 32 NR video recordings found to be sexually explicit, and Attachment 4 lists those 14 video recordings found not to be sexually explicit.

(b)(6)

Chairman
Resale Activities Board of Review

Attachments:
As stated

Corrected Copy
October 9, 1998

**ADULT SOPHISTICATE PERIODICALS DEEMED TO BE SEXUALLY EXPLICIT
UNDER 10 U.S.C. 2489a BY THE DOD RESALE ACTIVITIES BOARD OF REVIEW**

Amateurs Xtra	Hot Pink
Anal Action	Hump
Asian Babes, Best of	Innocence
Asian Beauties	Leg Passion
Asian Lace	Leg Tease
Baby Face	Legal and Tender
Big and Black	Lesbian Licks
Big Ones, Best of	Lesbian Lust
Bizarre Letters	Lewd Letters
Black Creme	Lollypops
Bra Busters	Lusty Letters
Butt Lust	Mature Nymphos
Campus Tales	Mayfair, Best of
Cheerleaders	Men
Cherry Pop	Mens World, Best of
Chocolate Creem	Open Legs and Lace
Club International, Best of	Outlaw Biker, Girls of
Club, Best of	Outlaw Biker, Special
Confidential Letters	Personal Letters
Confidential, Swank's	Porn Stars, Adam Film World Guide
De Unique	Private Lust
Dirty	Rear Action
Electric Blue, Best of	Ripe
Eros	Road Sex Tales
Erotic Babes	Sex Acts
Erotic X-Film Guide	Shaved
Erotomic	Shaved Orientails
Fetish Erotica, Best of	Shaved Smooth
For Adults Only, Swank's	Silk Stockings
For Women	Sista!
Forty Four-Plus	Sleaze
Forum, Penthouse, Best of	Stag
Foxy Nymphs	Steamy Letters
Friends and Lovers	Thirty Something (Score Special)
Gallery, (Specials)	Tight Squeeze
Gem	Top Heavy
Girls Over Forty	Uncensored
Heels, Swank's	Uncensored Close-Up
Hole	Uncensored Sex
Honey Cups	
Honeycup Presents DD-Cup	

Corrected Copy
October 9, 1998

**ADULT SOPHISTICATE PERIODICALS DEEMED TO BE SEXUALLY EXPLICIT
UNDER 10 U.S.C. 2489a BY THE DOD RESALE ACTIVITIES BOARD OF REVIEW**

Unensored Sex Scenes
Up the Skirt
Urge
Variations, Penthouse, Best of
Video World
Wicked Fetishes
X-Rated Action Guide
xxx Confessions
Young and Tight

Corrected Copy
October 9, 1998

**PERIODICALS DEEMED TO BE NOT SEXUALLY EXPLICIT UNDER
10 U.S.C. 2489a BY THE DOD RESALE ACTIVITIES BOARD OF REVIEW**

American Rodder Swimsuit Calendar
Biker
Bikini
Cosmopolitan
Details
Detective Cases
Esquire
Heavy Metal
In the Wind
New Woman
Outlaw Biker, Daytona
Penthouse Calendar
Playboy Playmate Calendar
Playboy's 1080-7217 Series
Playgirl, Centerfolds (Special)
Skin & Ink
Skin Art
Startling Detective
Tattoo Calendar
Tattoo Flash
Tattoo Revue
True Police Cases
True Story, Romance Special

**VIDEO RECORDINGS DEEMED TO BE SEXUALLY EXPLICIT UNDER
10 U.S.C. 2489a BY THE DOD RESALE ACTIVITIES BOARD OF REVIEW**

Playboy	Babes, Wheels, and Hi Heels	1997
Playboy	Best of Playboy's Strip Search	1997
Playboy	Erotic Underground	1996
Playboy	Fast Women	1996
Penthouse	Fire and Ice	1997
Playboy	Gen-X-Girls	1997
Playboy	Girls in Uniform	1997
Playboy	Girls Naughty Next Door	1998
Playboy	Girls of South Beach	1997
Playboy	Girls of the Internet	1997
Playboy	Hard Bodies	1995
Playboy	Hot Latin Ladies	1996
Playboy	Jenny McCarthy, Playboy Years	1997
Penthouse	Lipstick Girls	1996
Penthouse	Lost Treasure	1997
Penthouse	Luscious Ladies	1998
Playboy	Naturals	1998
Playboy	Night Calls	1998
Penthouse	Pet of the Year Playoff	1997
Playboy	Rising Star-Starlet	1995
Playboy	Sex on the Beach	1997
Penthouse	Sexiest Amateurs	1997
Penthouse	Showgirls	1995
Playboy	Sorority Girls	1998
Playboy	Spring Break	1998
Playboy	Strip	1997
Penthouse	The Amazon Beauties	1998
Penthouse	Tropical Spice	1998
Playboy	Video Centerfold-Karen McDougal	1998
Playboy	Video Centerfold-Victoria Silvstedt	1997
Playboy	Video Playmate Calendar	1997
Playboy	Women Behaving Badly	1998

**VIDEO RECORDINGS DEEMED TO BE NOT SEXUALLY EXPLICIT
UNDER 10 U.S.C. 2489a BY THE DOD RESALE ACTIVITIES BOARD OF REVIEW**

Playboy	Adult Video Awards	1997
Playboy	Babes of Baywatch	1997
Playboy	Best of Jenny McCarthy	1997
Playboy	Blondes, Brunettes, Red Heads	1996
Playboy	Centerfold - Shannon Tweed	1995
Playboy	Complete Massage	1998
Playboy	Farrah Fawcett, All of Me	1998
Playboy	Playmate Calendar	1998
Playboy	Playmates Revisited	1998
Playboy	Sisters	1995
Penthouse	Swimsuit Calendar	1998
Playboy	Twenty-one Playmates	1997
Playboy	Voluptuous Vixens	1997
Playboy	Wet, Wild, Bottoms	1996



ASSISTANT SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, DC 20301-4000



OCT 8 1998

FORCE MANAGEMENT
POLICY

MEMORANDUM FOR COMMANDER, ARMY AND AIR FORCE EXCHANGE SERVICE
COMMANDER, NAVY EXCHANGE COMMAND
DIRECTOR, PERSONAL AND FAMILY READINESS DIVISION,
HEADQUARTERS, UNITED STATES MARINE CORPS

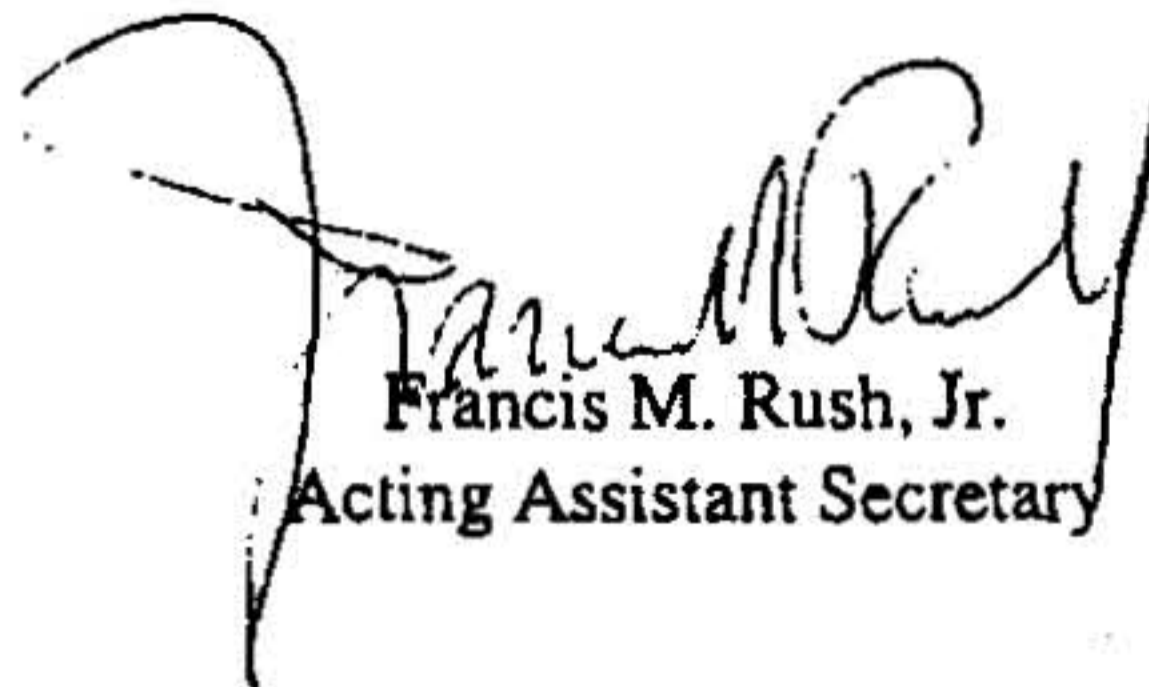
SUBJECT: Update on Adjudicated Materials by the DoD Resale Activities Board of Review

Pursuant to the Military Honor and Decency Act of 1996 (Section 2489a of title 10, United States Code) and Department of Defense Instruction 4105.70, "Sale or Rental of Sexually Explicit Material on DoD Property," the Resale Activities Board of Review met September 29-30, 1998, to consider potentially sexually explicit materials that may be available for sale or rental at DoD retail outlets. This memorandum provides guidance regarding the disposition of periodical publications and video recordings based on that review.

Attachment 1 lists "adult sophisticate" periodicals that the Board deemed to be sexually explicit under criteria contained in DoD Instruction 4105.70. Attachment 2 lists those periodicals deemed by the Board not to be sexually explicit. There may still be additional "adult sophisticate" periodicals available for sale in DoD resale activities which have not yet been forwarded to the Board for review. Please take action to ensure that any "adult sophisticate" periodicals or other potentially sexually explicit materials that you anticipate offering for sale and that have not been identified on the attachments hereto or the lists that I sent to you in my September 21, 1998 memorandum, are forwarded to the Board for review.

Attachment 3 lists the video recordings that the Board has deemed to be sexually explicit under criteria contained in DoD Instruction 4105.70. Attachment 4 lists those video recordings deemed by the Board not to be sexually explicit. Again, there may be additional mature-theme video recordings that you anticipate offering for sale or rental in DoD resale activities and that have not been previously reviewed by the Board. Accordingly, please forward for Board review all Non-Rated video recordings not identified in my September 21, 1998 memorandum, that you believe may be sexually explicit under the Act.

Finally, please ensure the materials listed in Attachments 1 and 3 are not offered for sale or rental in the resale activities of your organization.


Francis M. Rush, Jr.
Acting Assistant Secretary

Attachments:
As stated

Copy to:
ASA (M&RA)
ASN (M&RA)
ASAF (MRAI&E)

Corrected Copy
October 9, 1998



1998 RESULTS OF RESALE ACTIVITIES BOARD OF REVIEW

ADULT SOPHISTICATE PERIODICALS DEEMED TO BE SEXUALLY EXPLICIT UNDER 10 U.S.C. 2489a BY THE DOD RESALE ACTIVITIES BOARD OF REVIEW

Amateurs Xtra	Hot Pink
Anal Action	Hump
Asian Babes, Best of	Innocence
Asian Beauties	Leg Passion
Asian Lace	Leg Tease
Baby Face	Legal and Tender
Big and Black	Lesbian Licks
Big Ones, Best of	Lesbian Lust
Bizarre Letters	Lewd Letters
Black Creme	Lollypops
Bra Busters	Lusty Letters
Butt Lust	Mature Nymphs
Campus Tales	Mayfair, Best of
Cheerleaders	Men
Cherry Pop	Mens World, Best of
Chocolate Cream	Open Legs and Lace
Club International, Best of	Outlaw Biker, Girls of
Club, Best of	Outlaw Biker, Special
Confidential Letters	Personal Letters
Confidential, Swank's	Porn Stars, Adam Film World Guide
De Unique	Private Lust
Dirty	Rear Action
Electric Blue, Best of	Ripe
Eros	Road Sex Tales
Erotic Babes	Sex Acts
Erotic X-Film Guide	Shaved
Erotomic	Shaved Orientails
Fetish Erotica, Best of	Shaved Smooth
For Adults Only, Swank's	Silk Stockings
For Women	Sistal
Forty Four-Plus	Sleaze
Forum, Penthouse, Best of	Stag
Foxy Nymphs	Steamy Letters
Friends and Lovers	Thirty Something (Score Special)
Gallery, (Specials)	Tight Squeeze
Gem	Top Heavy
Girls Over Forty	Uncensored
Heels, Swank's	Uncensored Close-Up
Hole	Uncensored Sex
Honey Cups	
Honeycup Presents DD-Cup	

Corrected Copy
October 9, 1998

1998 RESULTS OF RESALE ACTIVITIES BOARD OF REVIEW

**ADULT SOPHISTICATE PERIODICALS DEEMED TO BE SEXUALLY EXPLICIT
UNDER 10 U.S.C. 2489a BY THE DOD RESALE ACTIVITIES BOARD OF REVIEW**

Uncensored Sex Scenes
Up the Skirt
Urge
Variations, Penthouse, Best of
Video World
Wicked Fetishes
X-Rated Action Guide
xxx Confessions
Young and Tight

Corrected Copy
October 9, 1998

1998 RESULTS OF RESALE ACTIVITIES BOARD OF REVIEW

PERIODICALS DEEMED TO BE NOT SEXUALLY EXPLICIT UNDER 10 U.S.C. 2489a BY THE DOD RESALE ACTIVITIES BOARD OF REVIEW

**American Rodder Swimsuit Calendar
Biker
Bikini
Cosmopolitan
Details
Detective Cases
Esquire
Heavy Metal
In the Wind
New Woman
Outlaw Biker, Daytona
Penthouse Calendar
Playboy Playmate Calendar
Playboy's 1080-7217 Series
Playgirl, Centerfolds (Special)
Skin & Ink
Skin Art
Startling Detective
Tattoo Calendar
Tattoo Flash
Tattoo Revue
True Police Cases
True Story, Romance Special**

1998 RESULTS OF RESALE ACTIVITIES BOARD OF REVIEW

VIDEO RECORDINGS DEEMED TO BE SEXUALLY EXPLICIT UNDER 10 U.S.C. 2489a BY THE DOD RESALE ACTIVITIES BOARD OF REVIEW

Playboy	Babes, Wheels, and Hi Heels	1997
Playboy	Best of Playboy's Strip Search	1997
Playboy	Erotic Underground	1996
Playboy	Fast Women	1996
Penthouse	Fire and Ice	1997
Playboy	Gen-X-Girls	1997
Playboy	Girls In Uniform	1997
Playboy	Girls Naughty Next Door	1998
Playboy	Girls of South Beach	1997
Playboy	Girls of the Internet	1997
Playboy	Hard Bodies	1995
Playboy	Hot Latin Ladies	1996
Playboy	Jenny McCarthy, Playboy Years	1997
Penthouse	Lipstick Girls	1996
Penthouse	Lost Treasure	1997
Penthouse	Luscious Ladies	1998
Playboy	Naturals	1998
Playboy	Night Calls	1998
Penthouse	Pet of the Year Playoff	1997
Playboy	Rising Star-Starlet	1995
Playboy	Sex on the Beach	1997
Penthouse	Sexiest Amateurs	1997
Penthouse	Showgirls	1995
Playboy	Sorority Girls	1998
Playboy	Spring Break	1998
Playboy	Strip	1997
Penthouse	The Amazon Beauties	1998
Penthouse	Tropical Spice	1998
Playboy	Video Centerfold-Karen McDougal	1998
Playboy	Video Centerfold-Victoria Silvstedt	1997
Playboy	Video Playmate Calendar	1997
Playboy	Women Behaving Badly	1998

1998 RESULTS OF RESALE ACTIVITIES BOARD OF REVIEW

VIDEO RECORDINGS DEEMED TO BE NOT SEXUALLY EXPLICIT UNDER 10 U.S.C. 2489a BY THE DOD RESALE ACTIVITIES BOARD OF REVIEW

Playboy	Adult Video Awards	1997
Playboy	Babes of Baywatch	1997
Playboy	Best of Jenny McCarthy	1997
Playboy	Blondes, Brunettes, Red Heads	1996
Playboy	Centerfold - Shannon Tweed	1995
Playboy	Complete Massage	1998
Playboy	Farrah Fawcett, All of Me	1998
Playboy	Playmate Calendar	1998
Playboy	Playmates Revisited	1998
Playboy	Sisters	1995
Penthouse	Swimsuit Calendar	1998
Playboy	Twenty-one Playmates	1997
Playboy	Voluptuous Vixens	1997
Playboy	Wet, Wild, Bottoms	1996



OFFICE OF THE SECRETARY OF DEFENSE

WASHINGTON, D.C. 20301

14 OCT 1998

*Approved M. B. [Signature]
Oct 19, 1998*

MEMORANDUM FOR ACTING ASSISTANT SECRETARY OF DEFENSE FOR FORCE
MANAGEMENT POLICY


SUBJECT: Annual Report of the DoD Resale Activities Board of Review

Department of Defense Instruction 4105.70, "Sale or Rental of Sexually Explicit Material on DoD Property," dated June 29, 1998, requires that the DoD Resale Activities Board of Review submit an annual report to the Assistant Secretary of Defense for Force Management Policy. The attached report is provided to meet that requirement and documents Board activities, decisions, and membership for the period July 29, 1998, when the Board was formally constituted, through September 30, 1998.

During the period July 29, 1998, through September 30, 1998, the Board met six times and reviewed 279 periodical publications, 58 films and video recordings, and five audio recordings that had been offered for sale or rental at a DoD retail outlet. Of the periodicals reviewed, 242 (87 percent) were deemed to be sexually explicit, and 37 (13 percent) were not sexually explicit. Of the films and video recordings reviewed, 33 (57 percent) were deemed sexually explicit and 25 (43 percent) not sexually explicit. All of the audio recordings were deemed to be not sexually explicit.

I hope the report will prove useful as you promulgate policy for and provide oversight to the Department's resale activities. The Board's work continues.

(b)(6)



Chairman
Resale Activities Board of Review

Attachments:
As stated

**REPORT TO
ASSISTANT SECRETARY OF DEFENSE
(FORCE MANAGEMENT POLICY)**

**ANNUAL REPORT OF THE
RESALE ACTIVITIES BOARD OF REVIEW**



OCTOBER 1998

INTRODUCTION

Department of Defense Instruction 4105.70, "Sale or Rental of Sexually Explicit Material on DoD Property," dated June 29, 1998, requires that the DoD Resale Activities Board of Review submit an annual report to the Assistant Secretary of Defense for Force Management Policy by October 1. This report responds to that requirement and documents Board activities, decisions, and membership for the period July 29, 1998, when the Board was formally constituted, through September 30, 1998. A copy of DoD Instruction 4105.70 is at Appendix A.

BACKGROUND

The Military Honor and Decency Act of 1996 (Section 2489a, Title 10, United States Code) prohibits the sale or rental of sexually explicit material on property under the jurisdiction of the Department of Defense (DoD). A publisher and several trade associations brought a lawsuit in the United States District Court for the Southern District of New York challenging the constitutionality of the statute. On December 31, 1996, the court held the Act unconstitutional and enjoined the Department from changing its merchandising policies with respect to materials subject to the Act. The Government appealed the decision.

On November 21, 1997, the U.S. Court of Appeals for the Second Circuit ruled the law constitutional, reversing the decision of the district court. On June 26, 1998, the Supreme Court declined to hear the case, and the injunction prohibiting the Department from implementing the Act was subsequently lifted. On June 29, 1998, the Department published DoD Instruction 4105.70, "Sale or Rental of Sexually Explicit Material on DoD Property," to implement the statute. The Instruction promulgated policy that no sexually explicit materials may be sold or rented by DoD retail outlets, and established a Resale Activities Board of Review to consider materials offered for sale or rental on DoD property.

ESTABLISHMENT OF THE BOARD

Pursuant to DoD Instruction 4105.70, the DoD Resale Activities Board of Review is charged with reviewing periodical publications, films and video recordings, and audio recordings currently offered or to be offered for sale or rental in military retail outlets to ensure that materials offered are not sexually explicit. During its first organizational meeting, the Board established procedures for conducting reviews and making Board determinations.

The Board's first meeting was held on July 29, 1998, with all Board members present. The Board received briefings from representatives of the DoD General Counsel; the Legal Policy Office, Office of the Under Secretary of Defense for Personnel and Readiness; and the Directorate of Morale, Welfare, and Recreation and Resale Activities, Office of the Assistant Secretary of Defense for Force Management Policy. During the briefings, the Board received information on Board responsibilities and obligations and legal standards for reviewing

materials. The Board developed Standing Operating Procedures to govern internal Board decision making. The Board Standing Operating Procedures are at Appendix B.

The Board requested the assistance of the Executive Director, Morale, Welfare, and Recreation and Resale Activities, Office of the Assistant Secretary of Defense for Force Management Policy, and the Exchange Services in obtaining materials for review. To begin its work, the Board decided to review all periodicals in the "adult sophisticate" category that were offered for sale in any DoD retail activity, and all Non-Rated video recordings currently for sale or rental in military retail stores.

The Board also requested that resale activities forward audio recordings offered for sale with an industry "Parental Advisory" label that were reasonably believed to be sexually explicit. The Board further requested that resale activity managers be informed that they should forward for Board review any other materials being offered for sale or rental that they reasonably believed were sexually explicit.

COMPOSITION OF THE BOARD

The Board is chaired by a senior DoD civilian, appointed by the Acting Assistant Secretary of Defense for Force Management Policy. Board membership comprises officials from each Military Department, two representatives from the Army and Air Force Exchange Service, and a representative from each of the Navy Exchange Command and the Marine Corps Exchange Service. A list of Board members is at Appendix C.

BOARD REVIEW OF MATERIALS

The Board met six times during the period July 29, 1998, through September 30, 1998, and reviewed 279 periodicals, 58 films or video recordings, and five audio recordings. Copies of meeting minutes are at Appendix D. The Board submitted two reports to the Acting Assistant Secretary of Defense for Force Management Policy. Copies of memoranda from the Board's Chairman containing results of Board deliberations are at Appendix E.

Of the 279 periodicals, 242 (87 percent) were deemed to be sexually explicit and 37 (13 percent) not sexually explicit. Of the 58 films and video recordings, the Board found 33 (57 percent) to be sexually explicit and 25 (43 percent) not sexually explicit. The Board reviewed five audio recordings and determined that none were sexually explicit.

DoD Instruction 4105.70

“Sale or Rental of Sexually Explicit Material on DoD Property”

APPENDIX A



Department of Defense
INSTRUCTION

June 29, 1998
NUMBER 4105.70

ASD(FMP)

SUBJECT: Sale or Rental of Sexually Explicit Material on DoD Property

- References:
- (a) Assistant Secretary of Defense for Force Management Policy Memorandum, "Sale or Rental of Sexually Explicit Material on DoD Property," December 20, 1996 (hereby canceled)
 - (b) Secretary of Defense Memorandum, "Delegation of Authorities," November 14, 1996
 - (c) Under Secretary of Defense for Personnel and Readiness Memorandum, "Delegation of Authority and Assignment of Duties," December 6, 1996
 - (d) Section 2489a of title 10, United States Code
 - (e) DoD Directive 1330.9, "Armed Services Exchange Regulations," December 15, 1986
 - (f) DoD 8910.1-M, "DoD Procedures for Management of Information Requirements," November 28, 1986, authorized by DoD Directive 8910.1, June 11, 1993

1. PURPOSE

This Instruction supersedes reference (a) and, pursuant to references (b) and (c), implements reference (d), consistent with reference (e), by providing guidance about restrictions on the sale or rental of sexually explicit materials on property under the jurisdiction of the Department of Defense or by members of the Armed Forces or DoD civilian officers or employees, acting in their official capacities.

2. APPLICABILITY AND SCOPE

This Instruction:

2.1. Applies to the Office of the Secretary of Defense, the Military Departments (including the Coast Guard when it is operating as a Service in the Navy), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense, the Defense Agencies, and the DoD Field Activities.

2.2. Shall not confer rights on any person.

3. DEFINITIONS

3.1. Dominant Theme. A theme of any material that is superior in power, influence, and importance to all other themes in the material combined.

3.2. Lascivious. Lewd and intended or designed to elicit a sexual response.

3.3. Material. An audio recording, a film or video recording, or a periodical with visual depictions, produced in any medium.

3.4. Property Under the Jurisdiction of the Department of Defense. Commissaries operated by the Defense Commissary Agency and facilities operated by the Army and Air Force Exchange Service, the Navy Exchange Service Command, the Marine Corps Exchanges, and U.S. Navy ships' stores (sometimes referred to collectively herein as "retail outlets"), excluding, for the purposes of this Instruction, entities that are not instrumentalities of the United States.

3.5. Sexually Explicit Material. Material, the dominant theme of which is the depiction or description of nudity, including sexual or excretory activities or organs, in a lascivious way.

4. POLICY

In implementing 10 U.S.C. 2489a (reference (d)), it is DoD policy that:

4.1. No sexually explicit material may be offered for sale or rental on property under the jurisdiction of the Department of Defense, and no member of the Armed Forces, or DoD civilian officer or employee, acting in his or her official capacity, shall offer for sale or rental any sexually explicit material.

4.2. Material shall not be deemed sexually explicit because of any message or point of view expressed therein.

5. RESPONSIBILITIES

5.1. The Assistant Secretary of Defense for Force Management Policy, under the Under Secretary of Defense for Personnel and Readiness, shall:

5.1.1. Monitor and, as to DoD resale activities under the Assistant Secretary's authority, direction and control, ensure compliance with this Instruction;

5.1.2. Establish, and appoint a chair of, the Resale Activities Board of Review (the "Board") and approve senior representatives from the Army and Air Force Exchange Service, the Navy Exchange Service, and the Marine Corps Exchange Service; and approve a senior representative from each of the Military Departments, if designated by the Military Department

concerned, to serve as board members on the Resale Activities Board.

5.1.3. Monitor the activities of the Resale Activities Board of Review and ensure that the Board discharges its responsibilities as set forth in section 6., below, of this Instruction.

5.2. The Secretaries of the Military Departments shall ensure that their respective component DoD resale activities comply with this Instruction and may designate a senior representative to serve on the Board.

5.3. The Secretary of the Army and the Secretary of the Air Force shall each appoint one senior representative from the Army and Air Force Exchange Service to serve on the Board.

5.4. The Secretary of the Navy shall appoint a senior representative from the Navy Exchange Service Command and a senior representative from the Marine Corps Exchange Service to serve on the Board.

6. PROCEDURES

6.1. The Board shall have the authority and responsibility periodically to review material offered or to be offered for sale or rental on property under DoD jurisdiction, and to determine whether any such material is sexually explicit in accordance with this Instruction. Within 60 days of the issuance of this Instruction, the Board shall undertake and complete an initial review of material that is offered for sale or rental on the date that this Instruction becomes effective.

6.2. If the Board determines that any material offered for sale or rental on property under DoD jurisdiction is sexually explicit, such material shall be withdrawn from all retail outlets where it is sold or rented and returned to distributors or suppliers, and shall not be purchased absent further action by the Board.

6.3. Following its initial review under subsection 6.1., above, the Board shall convene as necessary to determine whether any material offered or to be offered for sale or rental on property under DoD jurisdiction is sexually explicit. The Board members shall, to the extent practicable, maintain and update relevant information about material offered or to be offered for sale or rental on property under DoD jurisdiction.

6.4. If any purchasing agent or manager of a retail outlet has reason to believe that material offered or to be offered for sale or rental on property under DoD jurisdiction may be sexually explicit as defined herein, and such material is not addressed by the Board's instructions issued under subsection 6.5., below, he or she shall request a determination from the Board about such material.

6.5. At the conclusion of its initial review under subsection 6.1., above, and, thereafter, from time to time as necessary, the Board shall provide instructions to purchasing agents and managers of retail outlets about the withdrawal and return of sexually explicit material. The Board may also provide instructions to purchasing agents and managers of retail outlets about

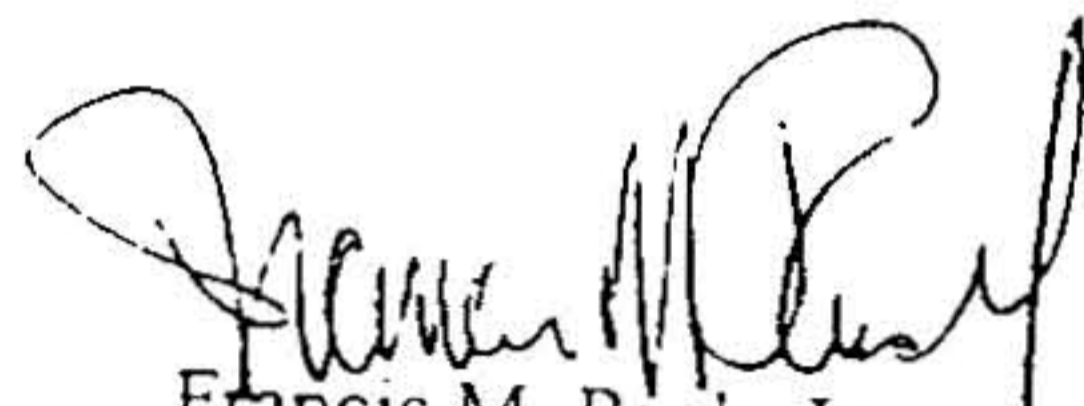
material that it has determined is not sexually explicit. Purchasing agents and managers of retail outlets shall continue to follow their usual purchasing and stocking practices unless instructed otherwise by the Board.

7. INFORMATION REQUIREMENTS

The Chair, Resale Activities Board of Review, shall submit to the Assistant Secretary of Defense for Force Management Policy an annual report documenting the activities, decisions, and membership of the Board. The annual report shall be due on October 1. The annual report required by this Instruction is exempt from licensing in accordance with paragraph E.4.c. of DoD 8910.1-M (reference (f)).

8. EFFECTIVE DATE

This Instruction is effective immediately.



Francis M. Rush, Jr.
Acting Assistant Secretary of Defense
for Force Management Policy

Standing Operating Procedures
DoD Resale Activities Board of Review

APPENDIX B

Appendix B

Standing Operating Procedures

Department of Defense

Resale Activities Board of Review

I. Purpose

The Resale Activities Board of Review was established to implement the Military Honor and Decency Act of 1996, and DoD Instruction 4015.70, Sale and Rental of Sexually Explicit Materials on Department of Defense Property.

II. Duties and Responsibilities of the Board

Within the context of its stated purpose, the Resale Activities Board of Review (hereafter the Board) shall have the authority and responsibility to review materials offered or to be offered for sale or rental on property under DoD jurisdiction and to determine whether any such materials are sexually explicit in accordance with DoD Instruction 4105.70.

III. Composition of the Resale Activities Board of Review

The Board shall be composed of the following members:

- ◆ Chairman;

A representative from each Military Department, if designated; and

- ◆ A representative from the Navy Exchange Service and the Marine Corps Exchange, and two representatives from the Army and Air Force Exchange Service.

IV. Board Procedures

The Board shall meet and complete an initial review of materials offered for sale or rent on DoD property no later than August 30, 1998. The Board shall meet thereafter as necessary at the call of the Chairman.

Five members (excluding the chairman) of the Board shall constitute a quorum. The decisions of the Board shall be made on the basis of a simple majority vote of those present and voting. Votes shall be by secret ballot. Members present during a session of the Board shall abstain from voting or from participating at all if they have a personal or financial interest in materials being considered.

Those voting members present, not abstaining from the consideration of a particular item will review all materials to be considered at that Board session. The Chairman shall vote only in case of a tie vote. A member of the Board may request reconsideration of a Board decision at any time during the same session of the Board. If a majority of the Board agrees to reconsider the decision, another vote on the material will be taken. The decisions reached at the conclusion of a Board session shall be final.

Materials that the Board decides are sexually explicit shall be removed from all DoD resale activities. The Board shall provide instructions to the Executive Director, Morale, Welfare, and Recreation and Resale Activities, Office of the Assistant Secretary of Defense for Force Management Policy, who in turn will advise purchasing agents and managers of retail outlets about the withdrawal and return of sexually explicit materials. In the case of periodicals, if the Board determines that at least three issues are sexually explicit, future editions of the periodical shall not be offered for sale on property under the jurisdiction of the DoD.

V. Consultation

The Board shall consult with the DoD Office of the General Counsel as necessary.

The Board Members shall rely exclusively on the standards contained in the law and DoD Instruction 4105.70. Board members shall not consult with individuals outside the Board or refer to any other sources when making determinations on materials.

VI: Records and Reports

Board decisions on materials shall be recorded and maintained by the Office of the Assistant Secretary of Defense for Force Management Policy.

Minutes of all Board sessions, containing the time, date, place, and members present and a summary of significant actions shall be prepared by a recorder and authenticated by the Chairman.

The Board shall file an annual report to the Assistant Secretary of Defense for Force Management Policy by October 1.

VII: Support

The Morale, Welfare, and Recreation and Resale Activities Office, Office of the Assistant Secretary of Defense for Force Management Policy will provide administrative and logistical support. DoD retail activities will provide all materials requested by the Board. DoD components will provide assistance and cooperate in the work of the Board as needed.

VIII: Applicability

These standing operating procedures shall not infer rights on any person.

Board Membership
DoD Resale Activities Board of Review

Appendix C

DoD Resale Activities Board of Review

<u>Member</u>	<u>Title</u>	<u>Organization</u>
(b)(6)	Director, Accession Policy	Office of the Assistant Secretary of Defense for Force Management Policy
	Deputy General Counsel for Commercial and Financial Law	Army and Air Force Exchange Service
	Deputy Director for Business Operations, Personal and Family Readiness Division	HQ, U.S. Marine Corps
	Chief, Plans and Evaluations Division, Directorate of Services	Office of the Deputy Chief of Staff for Installations and Logistics, HQ, U.S. Air Force
	Deputy Director, Equal Employment Opportunity	Army and Air Force Exchange Service
	Assistant Deputy, MWR and Family Programs	Office of the Assistant Secretary of Army for Manpower and Reserve Affairs
	Director, Force Support and Family Programs	Office of the Assistant Secretary of Navy for Manpower and Reserve Affairs
	Divisional Merchandise Manager	Navy Exchange Service Command

Minutes of Board Meetings
DoD Resale Activities Board of Review

APPENDIX D

DoD RESALE ACTIVITIES BOARD OF REVIEW

Minutes of Meeting of July 29, 1998

The first DoD Resale Activities Board of Review meeting convened at 9:00 a.m. on July 29, 1998, in Pentagon, Room 3E752. (b)(6) Chairman of the Board and Director for Accession Policy, Office of the Assistant Secretary of Defense (Force Management Policy) provided opening remarks and introduced Board Members. The list of attendees and the agenda are at Tabs A and B, respectively.

1. Briefings Presented to the Board:

- a. (b)(6) (DoD Office of General Counsel) briefed the Board on the Military Honor and Decency Act of 1996 and litigation history. (b)(6) discussed the standards for "sexually explicit" set forth in the law and in the implementing DoD Instruction 4015.70, Sale or Rental of Sexually Explicit Material on DoD Property. (b)(6) also described the role, duties and responsibilities of the Board.
- b. (b)(6) (Deputy Director, Office of Legal Policy, Office of the Under Secretary of Defense (Personnel & Readiness)), reviewed definitions (for example, "dominate theme," "lascivious" and "sexually explicit material") that would apply to all decisions made by the Board in its consideration of materials available for sale or rent on property under the jurisdiction of the DoD. (b)(6) reviewed the requirements of DoDI 4015.70 and discussed options available to the Board in developing standing operating procedures for conducting reviews and making decisions. Options included secret ballot votes versus open votes or whether the Chairman should have voting rights. (b)(6) addressed Board members' needs to maintain independence and avoid conflicts of interest. Briefing slides used during his presentation are at Tab C.
- c. (b)(6) (Assistant Director MWR & Resale Activities, Office of the Assistant Secretary of Defense (Force Management Policy)) briefed the Board on current policies and procedures in the DoD retail system for the purchase and sale of periodicals, videos, and audio materials. (b)(6) explained industry standards for rating videos and audio recordings. Briefing slides used during his presentation are at Tab D.

2. Board Discussions and Decisions:

- a. (b)(6) led the discussion regarding operating procedures for the Board. The final procedures adopted by unanimous consent of Board members are reproduced in the attached Board Standing Operating Procedures (SOP) at Tab E.

- b. The Board discussed procedures to be used for conducting the initial review of materials being sold or rented in DoD retail activities. The Board requested copies of all "adult" magazines currently being sold and, if available two back issues, be available for Board review at the next meeting. The Board also requested that a list of all "R" and "NR" movies and all audio tapes carrying an industry warning label offered for sale or rent in DoD resale activities with a short synopsis of each article be made available for review at the next Board meeting. In addition, the Board requested that DoD retail managers be informed of the requirement to forward materials to the Board if they have reason to believe the materials are sexually explicit. On behalf of the Board, the Chairman sent a memorandum to the Executive Director, Morale, Welfare, and Recreation and Resale Activities, requesting materials for the Board's next meeting. A copy of that memorandum is at Tab F.
- c. The Board scheduled the next meeting for August 13, 1998 at 9:00 a.m. in Conference Room 2B271, Pentagon. (b)(6) asked Board members to set aside the entire day for Board business. The Board will review all materials forwarded in response to the Board's request for materials.

The meeting adjourned at 11:30 a.m. on July 29, 1998.

(b)(6)

Board Recorder

APPROVED BY: 14 AUG 1998

(b)(6)

Chairman, Resale Activities Board of Review

Resale Activities Board of Review

Agenda for 29 July 1998 Meeting

I. INTRODUCTION OF BOARD MEMBERS (See attachment 1)

II. DoD GENERAL COUNSEL BRIEFING

Military Honor and Decency Act (Attachment 2)

Role of the General Counsel and Legal Advice to the Board

Initial Guidance

III. LEGAL POLICY OFFICE BRIEFING

DoDD 4105.70, *Sale or Rental of Sexually Explicit Material* (Attachment 3)

Established Policy and Procedures

Board Procedures to be Developed

Deliberations and Voting

Role of the Chairman

Quorums

Recording Decisions and Record Keeping

Conducting Reviews

IV. MWR BRIEFING

Current Policies at the Exchanges

Magazines

Audio Tapes

Videos

Board Meeting Logistics

Funding

Communications with Members

Setting up Meetings

Implementing Board Decisions

V. BOARD MEMBER ISSUES

Personal Liability and Legal Representation

Duration of Assignment

Maintaining Independence

VI. AGENDA FOR NEXT MEETING

Time and Place

Review of Materials

Preparation of Annual Report to ASD(FMP)

VII. ADJOURNMENT