
From: Information Unit
Sent: Monday, 9 May 2022 11:35 am
To: [REDACTED]
Subject: RE: OIA Request
Attachments: [1300957.000] High School DxD Series Collection, Disc 1 (2012) - Sectio....pdf;
[1300957.001] High School DxD Series Collection, Disc 2 (2012) - Sectio....pdf

Kia ora [REDACTED],

Thank you for your request under the Official Information Act 1982 about *High School DxD*, which we received on 6 May 2022.

Please find attached a decision for each disc of the *High School DxD Series Collection*. These decisions explain why this DVD set was classified objectionable.

Please let us know if you would like any more information.

Kind regards,



[REDACTED]
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From: [REDACTED] [mailto:[REDACTED]]
Sent: Friday, 6 May 2022 2:32 am
To: Information Unit <Information.Unit@classificationoffice.govt.nz>
Subject: OIA Request

[REDACTED]
[REDACTED]

Hey, I'm requesting to see under what reasons "High School DXD Series Collection" was considered "Objectionable"? Thanks!

REASONS FOR DECISION

Under the Films, Videos, and Publications Classification Act 1993 (FVPC Act)

Title of publication:	High School DXD Series Collection (Disc 1)
Other known title:	Not stated
OFLC ref:	1300957.000
Medium:	DVD
Classification:	Objectionable.
Excisions:	No excisions recommended
Descriptive note:	None
Display conditions:	None

The Office of Film and Literature Classification (Classification Office) examined the publication and recorded the contents in an examination transcript. A written consideration of the legal criteria was undertaken. This document provides the reasons for the decision.

Submission procedure:

The Film and Video Labelling Body submitted the publication on 04 October 2013 under s12 of the FVPC Act. It was submitted on behalf of Madman Entertainment.

Under s23(1) of the FVPC Act the Classification Office is required to examine and classify the publication.

Under s23(2) of the FVPC Act the Classification Office must determine whether the publication is to be classified as unrestricted, objectionable, or objectionable except in particular circumstances.

Section 23(3) permits the Classification Office to restrict a publication that would otherwise be classified as objectionable so that it can be made available to particular persons or classes of persons for educational, professional, scientific, literary, artistic, or technical purposes.

Description of the publication:

The publication is a DVD around 161 minutes long. It contains the first seven episodes of the Japanese anime series *High School DXD*. The series follows high school student Issei, obsessed with women and sex, and unexpectedly thrown into the supernatural world of angels and demons when he is taken into servitude by Rias, a high-powered and beautiful devil and fellow student. Rias and her

team of devils (all fellow high school students) must fight challenges posed from adversaries using their supernatural abilities whilst maintaining their cover as a high school club of occult enthusiasts. Issei's inauguration into the group, the development of his powers, and the furtherance of his sexual interest in the female characters are the primary narrative plot arcs. The DVD also contains notices and two commentaries.

The majority of the publication is in English or is in Japanese with English subtitles.

The meaning of "objectionable":

Section 3(1) of the FVPC Act sets out the meaning of the word "objectionable". The section states that a publication is objectionable if it:

describes, depicts, expresses, or otherwise deals with matters such as sex, horror, crime, cruelty, or violence in such a manner that the availability of the publication is likely to be injurious to the public good.

The Court of Appeal's interpretation of the words "matters such as sex, horror, crime, cruelty or violence" in s3(1), as set out in *Living Word Distributors v Human Rights Action Group (Wellington)*, must also be taken into account in the classification of any publication:

- [27] The words "matters such as" in context are both expanding and limiting. They expand the qualifying content beyond a bare focus on one of the five categories specified. But the expression "such as" is narrower than "includes", which was the term used in defining "indecent" in the repealed Indecent Publications Act 1963. Given the similarity of the content description in the successive statutes, "such as" was a deliberate departure from the unrestricting "includes".
- [28] The words used in s3 limit the qualifying publications to those that can fairly be described as dealing with matters of the kinds listed. In that regard, too, the collocation of words "sex, horror, crime, cruelty or violence", as the matters dealt with, tends to point to activity rather than to the expression of opinion or attitude.
- [29] That, in our view, is the scope of the subject matter gateway.

The content of the publication must bring it within the "subject matter gateway". In classifying the publication therefore, the main question is whether or not it deals with the following matters in such a manner that the availability of the publication is likely to be injurious to the public good:

Matters such as sex

Included as a "matter such as sex" is any publication that in terms of s3(1A) -

- (a) ... is or contains 1 or more visual images of 1 or more children or young persons who are nude or partially nude; and
- (b) those 1 or more visual images are, alone, or together with any other contents of the publication, reasonably capable of being regarded as sexual in nature.

The publication deals predominantly with matters of sex. All of the female characters are gratuitously sexualised. They are almost constantly depicted in a state of nudity or wearing limited and sexualised clothing. Extreme close up shots of their breasts and underwear are frequent and their breasts are animated with great detail, emphasising their size and movement. Each episode is split into two parts; this separation is indicated by multiple still images of the female high school characters, wearing

skimpy underwear or nude, posed in a hyper-sexualised manner so that the viewer may focus on their bodies, breasts and genitalia. The closing credits feature strip teases performed by all of the central female characters.

The character Issei often fantasises about having sex with these characters, mentally undressing them and touching their naked bodies. He briefly imagines fellow high school students Asia and Akeno engaging in sexual activity in the episode *07 - I Get A Familiar!* The imagery to support this fantasy shows the two girls naked together, one on top of the other, with tensed expressions. Towards the end of this episode, the female characters get covered in a supernatural slime that disintegrates their clothing and wraps around them. At one point a slime tentacle moves between the character Rias' legs and she cries out. The sexual implication is clear.

The series opens on Issei and his friends discussing sex, masturbation and pornography at length. Explicit sexual references are made by them and then more predominantly by Issei, as his character is further developed throughout the publication. His dominant preoccupation is the sexualisation of the female characters and the pursuit of engaging in sexual activity with them. This preoccupation is not in any way undermined by the revelation of the existence of the supernatural; if anything it fosters his sexual obsession by putting him in closer contact with the female characters.

The publication falls just shy of being described as “hentai” or sexually explicit animated content.¹ Instead, the relentlessness of the sexualised imagery (as well as the brief visual allusions to sexual activity) means it is more correct to describe the publication as “etchi” or “ecchi” rather than “hentai”.² The youthfulness of the characters in association with this sexual material is discussed below.

Matters such as horror

Due to the publication's supernatural themes, horror is depicted in a somewhat limited way. The fallen angels are often detailed with sharp teeth and crazed expressions. Their attacks are presented as ominous and frightening. The group also fight monsters on occasion, in the same frightening manner. However, due to the overall tone of the publication and the visual limitations of the anime medium, the publication cannot be said to be horrific in effect.

Matters such as violence

The publication deals regularly with matters of violence. In *01 – I Got A Girlfriend!* Issei is inaugurated into the supernatural world of angels and demons when his girlfriend Yuma turns into an angel and severely maims him. He is rescued by Rias. In *03 – I Made A Friend!* Rias and her team of devils battle a monster. The episodes *04 - I'm Saving My Friend!* and *05 – I Will Defeat My Ex-girlfriend!* are dedicated to Issei and Rias rescuing a young nun Asia from a group of sadistic fallen angels led by Yuma. This leads to a dramatic and violent showdown. The violence perpetrated against Asia is often sexualised, capitalising on her vulnerability, youthfulness and often nudity for titillating effect. The violence is of moderate impact overall.

¹ “Hentai: Perverted or abnormal person or behaviour: but adopted by English speakers to mean explicit or pornographic ANIME, MANGA and games...Retailers and fans called this ‘hentai’ to distinguish animated erotica from normal live-action pornography. Hentai anime typically has a bad image because the medium lends itself to experimentation, private fantasy, exaggeration and fetishism.” Galbraith, Patrick W. (2009). *The Otaku Encyclopedia: The Insider's Guide To The Subculture Of Cool Japan*. Tokyo, Japan: Kodansha International Ltd, 99.

² “Ecchi is an often used slang term in the Japanese language for erotic fantasy and sexual innuendoes...While the word *ecchi* could mean anything from mild to insulting in Japanese language, it is used in Western culture to divide between pornography (hentai) and playful usage of sexualised imagery. Works considered as ecchi don't show any sexual intercourse or primary sexual characteristics.” Wikipedia. (2013). *Ecchi*. Retrieved November 4, 2013, from <http://en.wikipedia.org/wiki/Ecchi>

Certain publications are "deemed to be objectionable":

Under s3(2) of the FVPC Act, a publication is deemed to be objectionable if it promotes or supports, or tends to promote or support, certain activities listed in that subsection.

In *Moonen v Film and Literature Board of Review (Moonen I)*, the Court of Appeal stated that the words "promotes or supports" must be given "such available meaning as impinges as little as possible on the freedom of expression"³ in order to be consistent with the Bill of Rights. The Court then set out how a publication may come within a definition of "promotes or supports" in s3(2) that impinges as little as possible on the freedom of expression:

Description and depiction ... of a prohibited activity do not of themselves necessarily amount to promotion of or support for that activity. There must be something about the way the prohibited activity is described, depicted or otherwise dealt with, which can fairly be said to have the effect of promoting or supporting that activity.⁴

Mere depiction or description of any of the s3(2) matters will generally not be enough to deem a publication to be objectionable under s3(2). When used in conjunction with an activity, the Classification Office defines "promote" to mean the advancement or encouragement of that activity. The Classification Office interprets the word "support" to mean the upholding and strengthening of something so that it is more likely to endure. A publication must therefore advance, encourage, uphold or strengthen, rather than merely depict, describe or deal with, one of the matters listed in s3(2) for it to be deemed to be objectionable under that provision.

The Classification Office has considered all of the matters in s3(2). The relevant matter is:

s3(2)(a) The exploitation of children, or young persons, or both, for sexual purposes.

In *Moonen v Film and Literature Board of Review (Moonen II)* [2002] 2 NZLR 754, the Court of Appeal stated that the absence of definitions of "young persons" and "children" in s3(2)(a) was deliberate. The provision does not require proof of the models' ages; it requires an assessment of whether or not the publication in which the models appear promotes or supports the exploitation of children or young persons for sexual purposes:

The legislation is concerned with the vulnerability of young people and with the corrosive injury to the public good of depicting persons perceived to be children or young people as subjects for exploitation. The Board properly assessed whether the publication of the photographs would tend to promote or support the exploitation of children or young persons, not limited to the impact on the particular persons photographed. The inquiry under s3 does not require the ascertainment of the precise age of the person photographed.⁵

Parliament's intention therefore was that s3(2)(a) should apply to any publication that promotes, supports, or tends to promote or support, the exploitation of children or young persons for sexual purposes. As long as a publication at least tends to promote or support such exploitation, whether or not it depicts underage models, no underage models or no models at all is irrelevant to the proper application of s3(2)(a). The issue is whether, on the evidence presented by the

³ *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9 at para 27.

⁴ Above n3 at para 29.

⁵ *Moonen v Film and Literature Board of Review* [2002] 2 NZLR 754 at para 40.

publication itself, the publication at least tends to promote or support the exploitation of children or young persons for sexual purposes.

The publication tends to promote or support the exploitation of young persons for sexual purposes through the unrelenting sexualisation and fetishisation of young female characters. The characters are all in high school. Their youthfulness is evidenced by their being dressed in school uniforms, the high school setting, and they engage in high school activities. Two of the female characters, Asia and Koneko, present as younger than their high school peers due to their diminutive stature and small, undeveloped breasts. It is indicated that these characters serve a “lolikon” function in the publication (lolikon refers to a “Lolita complex” whereby one is attracted to children).⁶ The erotic appeal of these characters lies primarily in their ‘virginal innocence’ (the dominant sexual characteristic of children and young persons) and it is this which is most exploited by the publication in its efforts to hyper-sexualise young persons.

The thin supernatural narrative involving the high school students serves as a mere device to distract from the dominant purpose of the publication which is the sexual exploitation of the young female characters. Distinctions can thus be made between this particular publication and others which include “fanservice” and other forms of eroticised animation.⁷ The “soft porn” quality of this publication is primary to this distinction.

All of the characters appear to have an understanding of sex and the female characters are aware of their sexual prowess and the effect this has on the protagonist Issei, and as a function of this, on the viewer. For instance, the characters Rias and Asia regularly indulge Issei, and thus the viewer, in their nudity and sexual availability in order to gratify. Scenes regularly focus on their naked bodies in such a way that can only be for the sexual benefit of the viewer. Their awareness suggests to the viewer that the young female characters are complicit in their sexualisation and reinforces the notion that they are viable sexual partners and are ready for adult forms of sexual activity. This is, at times, juxtaposed against Issei’s reaction to the girls’ sexuality. He often demonstrates immaturity and inexperience when confronted with female nudity and the prospect of sexual intercourse. This juxtaposition reinforces the reality that the publication is dealing primarily with young persons, and in Issei’s case, young persons lacking in the sexual development necessary to justify such candid sexualisation and fetishisation.

The main purpose of this sexualised imagery and sexual content, reminiscent of adult entertainment material, is the titillation and arousal of the viewer; further, the titillation and arousal of those with a prurient interest in young persons. The animated medium does not detract from this purpose. If anything the medium allows for greater creative development of this sexual exploitation.

New Zealand Bill of Rights Act 1990:

Section 14 of the New Zealand Bill of Rights Act 1990 (NZBR Act) states that everyone has “the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form”. Under s5 of the NZBR Act, this freedom is subject “only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”. Section 6 of the NZBR Act states that “Wherever an enactment can be

⁶ “Fan service: Showing a series’ characters in risqué or compromising positions to give the fans a thrill. This can be as simple as a gust of wind blowing up a girl’s skirt, or as titillating as a naked girl stepping out of a shower, hidden only by steam...fan service rarely includes full nudity.” Above n1 at 69.

⁷ “Lolicon:...In Japan, “lolicon” is used to describe either a sexual attraction to prepubescent girls or an individual with that desire...the legal age of consent in Japan can be as low as thirteen, depending on the prefecture. The underage appearance of lolicon characters in ANIME is typically excused by the use of convoluted plot devices that suggest that these prepubescent-looking girls are actually much older.” Above n1 at 128.

given a meaning that is consistent with the rights and freedoms contained in this Bill of Rights, that meaning shall be preferred to any other meaning".

Conclusion:

The DVD is classified objectionable because it tends to promote and support the exploitation of young persons for sexual purposes.

The publication relentlessly depicts young female high-school students nude or in limited sexualized clothing, posing sexually and in such ways that emphasizes their bodies, breasts and genitalia. The only purpose of this hyper-sexualised imagery is the titillation and arousal of the viewer. It therefore attracts those with a prurient interest in young persons. It is intended that the viewer find these young characters' sexually desirable because of their youth and available for adult sexual gratification. This publication is therefore likely to create or reinforce a sexual interest in young persons and encourage the sexual exploitation of young persons.

The Classification Office has considered the effects of the NZBR Act on the application of the classification criteria elsewhere in these reasons. The classification of this publication interferes with the freedom of expression, but this is an outcome that is consistent with Parliament's intention that publications falling under s3(2) are deemed to be objectionable. The classification is also a reasonable limitation on the freedom of expression that reflects the concern of "a free and democratic society" to limit the availability of publications that sexually exploit young persons.

Note:

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REASONS FOR DECISION

Under the Films, Videos, and Publications Classification Act 1993 (FVPC Act)

Title of publication:	High School DXD Series Collection (Disc 2)
Other known title:	Not stated
OFLC ref:	1300957.001
Medium:	DVD
Classification:	Objectionable.
Excisions:	No excisions recommended
Descriptive note:	None
Display conditions:	None

The Office of Film and Literature Classification (Classification Office) examined the publication and recorded the contents in an examination transcript. A written consideration of the legal criteria was undertaken. This document provides the reasons for the decision.

Submission procedure:

The Film and Video Labelling Body submitted the publication on 04 October 2013 under s12 of the FVPC Act. It was submitted on behalf of Madman Entertainment.

Under s23(1) of the FVPC Act the Classification Office is required to examine and classify the publication.

Under s23(2) of the FVPC Act the Classification Office must determine whether the publication is to be classified as unrestricted, objectionable, or objectionable except in particular circumstances.

Section 23(3) permits the Classification Office to restrict a publication that would otherwise be classified as objectionable so that it can be made available to particular persons or classes of persons for educational, professional, scientific, literary, artistic, or technical purposes.

Description of the publication:

The publication is a DVD around 161 minutes long. It contains the last five episodes of the Japanese anime series *High School DXD*. The series follows high school student Issei, obsessed with women and sex, and unexpectedly thrown into the supernatural world of angels and demons when he is taken into servitude by Rias, a high-powered and beautiful devil and fellow student. Rias and her team of

devils (all fellow high school students) must fight challenges posed from adversaries using their supernatural abilities whilst maintaining their cover as a high school club of occult enthusiasts. Issei's inauguration into the group, the development of his powers, and the furtherance of his sexual interest in the female characters are the primary narrative plot arcs. The DVD also contains notices and a range of extra material including featurettes, trailers and the series' theme songs.

The majority of the publication is in English or is in Japanese with English subtitles.

The meaning of "objectionable":

Section 3(1) of the FVPC Act sets out the meaning of the word "objectionable". The section states that a publication is objectionable if it:

describes, depicts, expresses, or otherwise deals with matters such as sex, horror, crime, cruelty, or violence in such a manner that the availability of the publication is likely to be injurious to the public good.

The Court of Appeal's interpretation of the words "matters such as sex, horror, crime, cruelty or violence" in s3(1), as set out in *Living Word Distributors v Human Rights Action Group (Wellington)*, must also be taken into account in the classification of any publication:

[27] The words "matters such as" in context are both expanding and limiting. They expand the qualifying content beyond a bare focus on one of the five categories specified. But the expression "such as" is narrower than "includes", which was the term used in defining "indecent" in the repealed Indecent Publications Act 1963. Given the similarity of the content description in the successive statutes, "such as" was a deliberate departure from the unrestricting "includes".

[28] The words used in s3 limit the qualifying publications to those that can fairly be described as dealing with matters of the kinds listed. In that regard, too, the collocation of words "sex, horror, crime, cruelty or violence", as the matters dealt with, tends to point to activity rather than to the expression of opinion or attitude.

[29] That, in our view, is the scope of the subject matter gateway.

The content of the publication must bring it within the "subject matter gateway". In classifying the publication therefore, the main question is whether or not it deals with the following matters in such a manner that the availability of the publication is likely to be injurious to the public good:

Matters such as sex

Included as a "matter such as sex" is any publication that in terms of s3(1A) -

- (a) ... is or contains 1 or more visual images of 1 or more children or young persons who are nude or partially nude; and*
- (b) those 1 or more visual images are, alone, or together with any other contents of the publication, reasonably capable of being regarded as sexual in nature.*

The publication deals predominantly with matters of sex. All of the female characters are gratuitously sexualised. They are almost constantly depicted in a state of nudity or wearing limited and sexualised clothing. Extreme close up shots of their breasts and underwear are frequent and their breasts are animated with great detail, emphasising their size and movement. Each episode is split into two parts; this separation is indicated by multiple still images of the female high school characters, wearing skimpy underwear or nude, posed in a hyper-sexualised manner so that the viewer may focus on their

bodies, breasts and genitalia. The closing credits feature strip teases performed by all of the central female characters.

The character Issei often fantasises about having sex with these characters, mentally undressing them and touching their naked bodies. In the episode *08 – I Pick A Fight!* Rias comes to Issei's bedroom strips naked and begs him to “take her virginity”. During this scene the focus is on her breasts and naked body, positioned in such a way that resonates with explicit adult entertainment material. The scene's construction is wholly for the benefit of the viewer. Later in the episode when confronted by adversary Rex Pheonix, he trumps Issei by demonstrating he has complete sexual control over his devils, kissing and groping the naked breast of one of his female counterparts. She complies. Issei's desire to have a 'harem' of women at his sexual disposal is regularly commented on in the publication.

Issei and his friends discuss sex, masturbation and pornography at length. Explicit sexual references are made by them and then more predominantly by Issei, as his character is further developed throughout the publication. His dominant preoccupation is the sexualisation of the female characters and the pursuit of engaging in sexual activity with them. This preoccupation is not in any way undermined by the revelation of the existence of the supernatural; if anything it fosters his sexual obsession by putting him in closer contact with the female characters.

The component *Fantasy Jiggles Unleashed* is a series of featurettes dedicated to placing the female characters in adult pornographic scenarios such as massaging each other with tanning oil, engaging in bondage behaviour and bathing each other.

The publication falls just shy of being described as “hentai” or sexually explicit animated content.¹ Instead, the relentlessness of the sexualised imagery (as well as the brief visual allusions to sexual activity) means it is more correct to describe the publication as “etchi” or “ecchi” rather than “hentai”.² The youthfulness of the characters in association with this sexual material is discussed below.

Matters such as horror

Due to the publication's supernatural themes, horror is depicted in a somewhat limited way. The fallen angels are often detailed with sharp teeth and crazed expressions. Their attacks are presented as ominous and frightening. The group also fights monsters on occasion, in the same frightening manner. However, due to the overall tone of the publication and the visual limitations of the anime medium, the publication cannot be said to be horrific in effect.

Matters such as violence

The publication deals regularly with matters of violence. Episodes *10 – The Showdown Begins!* to *12 –* feature a long-standing battle between Rias and her devil troop and Zex Pheonix and his troop of devils. The violence is purely fantasy violence and no one is severely injured during these episodes. The tone is dramatic and intense. A skill Issei learns, throughout the later episodes of the publication, is the ability to strip female characters naked. He does this as a method to distract his opponents and also to derive titillation for himself, and vicariously for the viewer. His victims cry out when he strips them of their clothes, humiliated and disgraced. This plainly amounts to sexual assault.

¹ “Hentai: Perverted or abnormal person or behaviour: but adopted by English speakers to mean explicit or pornographic ANIME, MANGA and games...Retailers and fans called this ‘hentai’ to distinguish animated erotica from normal live-action pornography. Hentai anime typically has a bad image because the medium lends itself to experimentation, private fantasy, exaggeration and fetishism.” Galbraith, Patrick W. (2009). *The Otaku Encyclopedia: The Insider's Guide To The Subculture Of Cool Japan*. Tokyo, Japan: Kodansha International Ltd, 99.

² “Ecchi is an often used slang term in the Japanese language for erotic fantasy and sexual innuendoes...While the word *ecchi* could mean anything from mild to insulting in Japanese language, it is used in Western culture to divide between pornography (hentai) and playful usage of sexualised imagery. Works considered as ecchi don't show any sexual intercourse or primary sexual characteristics.” Wikipedia. (2013). *Ecchi*. Retrieved November 4, 2013, from <http://en.wikipedia.org/wiki/Ecchi>

Certain publications are "deemed to be objectionable":

Under s3(2) of the FVPC Act, a publication is deemed to be objectionable if it promotes or supports, or tends to promote or support, certain activities listed in that subsection.

In *Moonen v Film and Literature Board of Review (Moonen I)*, the Court of Appeal stated that the words "promotes or supports" must be given "such available meaning as impinges as little as possible on the freedom of expression"³ in order to be consistent with the Bill of Rights. The Court then set out how a publication may come within a definition of "promotes or supports" in s3(2) that impinges as little as possible on the freedom of expression:

Description and depiction ... of a prohibited activity do not of themselves necessarily amount to promotion of or support for that activity. There must be something about the way the prohibited activity is described, depicted or otherwise dealt with, which can fairly be said to have the effect of promoting or supporting that activity.⁴

Mere depiction or description of any of the s3(2) matters will generally not be enough to deem a publication to be objectionable under s3(2). When used in conjunction with an activity, the Classification Office defines "promote" to mean the advancement or encouragement of that activity. The Classification Office interprets the word "support" to mean the upholding and strengthening of something so that it is more likely to endure. A publication must therefore advance, encourage, uphold or strengthen, rather than merely depict, describe or deal with, one of the matters listed in s3(2) for it to be deemed to be objectionable under that provision.

The Classification Office has considered all of the matters in s3(2). The relevant matter is:

s3(2)(a) The exploitation of children, or young persons, or both, for sexual purposes.

In *Moonen v Film and Literature Board of Review (Moonen II)* [2002] 2 NZLR 754, the Court of Appeal stated that the absence of definitions of "young persons" and "children" in s3(2)(a) was deliberate. The provision does not require proof of the models' ages; it requires an assessment of whether or not the publication in which the models appear promotes or supports the exploitation of children or young persons for sexual purposes:

The legislation is concerned with the vulnerability of young people and with the corrosive injury to the public good of depicting persons perceived to be children or young people as subjects for exploitation. The Board properly assessed whether the publication of the photographs would tend to promote or support the exploitation of children or young persons, not limited to the impact on the particular persons photographed. The inquiry under s3 does not require the ascertainment of the precise age of the person photographed.⁵

Parliament's intention therefore was that s3(2)(a) should apply to any publication that promotes, supports, or tends to promote or support, the exploitation of children or young persons for sexual purposes. As long as a publication at least tends to promote or support such exploitation, whether or not it depicts underage models, no underage models or no models at all is irrelevant to the proper application of s3(2)(a). The issue is whether, on the evidence presented by the

³ *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9 at para 27.

⁴ Above n3 at para 29.

⁵ *Moonen v Film and Literature Board of Review* [2002] 2 NZLR 754 at para 40.

publication itself, the publication at least tends to promote or support the exploitation of children or young persons for sexual purposes.

The publication tends to promote or support the exploitation of young persons for sexual purposes through the unrelenting sexualisation and fetishisation of young female characters. The characters are all in high school. Their youthfulness is evidenced by their being dressed in school uniforms, the high school setting, and they engage in high school activities.

Two of the female characters, Asia and Koneko, present as younger than their high school peers due to their diminutive stature and small, undeveloped breasts. It is indicated that these characters serve a “lolikon” function in the publication (lolikon refers to a “Lolita complex” whereby one is attracted to children).⁶ The erotic appeal of these characters lies primarily in their ‘virginal innocence’ (the dominant sexual characteristic of children and young persons) and it is this which is most exploited by the publication in its efforts to hyper-sexualise young persons. One of the featurettes in the component *New Material From Ichiei Isibubumi* is dedicated to the fetishisation of the “loli girls” in the publication. It combines all of the publication’s nude imagery of the characters with commentary about their sexual appeal which is intrinsically related to their youthfulness.

The thin supernatural narrative involving the high school students serves as a mere device to distract from the dominant purpose of the publication which is the sexual exploitation of the young female characters. Distinctions can thus be made between this particular publication and others which include “fanservice” (titillation which is intentionally added to excite and or please the audience or viewer) and other forms of eroticised animation.⁷ The “soft porn” quality of this publication is primary to this. This is particularly evident in the component *Fantasy Jiggles Unleashed*, which places the young female characters in adult pornographic scenarios. Other examples are discussed above under *Matters Of Sex*.

All of the characters appear to have a knowledgeable understanding of sex and the female characters are aware of their sexual prowess and the effect this has on the protagonist Issei, and as a function of this, on the viewer. For instance, the characters Rias and Asia regularly indulge Issei, and thus the viewer, in their nudity and sexual availability in order to gratify. In the episode *08 – I Pick A Fight!* Asia becomes jealous of Issei’s affection for Rias and directly offers to lift up her skirt so he can see him nude. He later stumbles on her in the shower. The scene gratuitously lingers on Asia’s naked youthful body and she suggests “they make the most of it” as the shot lingers on her undeveloped breasts. This awareness suggests to the viewer that the young female characters are complicit in their sexualisation and reinforces the notion that they are viable sexual partners and are ready for adult forms of sexual activity. These scenes are constructed wholly for the sexual benefit of the viewer. This is, at times, juxtaposed against Issei’s reaction to the girls’ sexuality. He often demonstrates immaturity and inexperience when confronted with female nudity and the prospect of sexual intercourse. This juxtaposition reinforces the reality that the publication is dealing primarily with young persons, and in Issei’s case, young persons lacking in the sexual development necessary to justify such candid sexualisation and fetishisation.

The main purpose of this sexualised imagery and sexual content, reminiscent of adult entertainment material, is the titillation and arousal of the viewer; further, the titillation and arousal of those with a prurient interest in young persons. The animated medium does not detract from this purpose. If anything the medium allows for greater creative development of this sexual exploitation.

⁶ “Lolicon:…In Japan, “lolicon” is used to describe either a sexual attraction to prepubescent girls or an individual with that desire…the legal age of consent in Japan can be as low as thirteen, depending on the prefecture. The underage appearance of lolicon characters in ANIME is typically excused by the use of convoluted plot devices that suggest that these prepubescent-looking girls are actually much older.” Above n1 at 128.

⁷ “Fan service: Showing a series’ characters in risqué or compromising positions to give the fans a thrill. This can be as simple as a gust of wind blowing up a girl’s skirt, or as titillating as a naked girl stepping out of a shower, hidden only by steam…fan service rarely includes full nudity.” Above n1 at 69.

New Zealand Bill of Rights Act 1990:

Section 14 of the New Zealand Bill of Rights Act 1990 (NZBR Act) states that everyone has "the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form". Under s5 of the NZBR Act, this freedom is subject "only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". Section 6 of the NZBR Act states that "Wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in this Bill of Rights, that meaning shall be preferred to any other meaning".

Conclusion:

It is the opinion of the classification office that this publication be classified objectionable because it tends to promote and support the exploitation of young persons for sexual purposes.

The publication relentlessly depicts young female high-school students nude or in limited sexualized clothing, posing sexually and in such ways that emphasizes their bodies, breasts and genitalia. The only purpose of this hyper-sexualised imagery is the titillation and arousal of the viewer. It therefore attracts those with a prurient interest in young persons. It is intended that the viewer find these young characters' sexually desirable because of their youth and available for adult sexual gratification. This publication is therefore likely to create or reinforce a sexual interest in young persons and encourage the sexual exploitation of young persons.

The Classification Office has considered the effects of the NZBR Act on the application of the classification criteria elsewhere in these reasons. The classification of this publication interferes with the freedom of expression, but this is an outcome that is consistent with Parliament's intention that publications falling under s3(2) are deemed to be objectionable. The classification is also a reasonable limitation on the freedom of expression that reflects the concern of "a free and democratic society" to limit the availability of publications that sexually exploit young persons.

Note:

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