## WRITTEN REASONS FOR DECISION SECTION 12

**HEADNOTE** 

Type of Publication:

Film 35mm

Title of Publication:

Hostel Part II

Other Known Title(s):

Not Stated

OFLC No:

701222

Decision:

The unexcised version of this publication is classified as

Objectionable.

The excised version of this publication is classified as

Objectionable except if the availability of the publication is restricted to persons who have attained the age of 18

years.

**Display Conditions:** 

Not Applicable.

Descriptive Note:

Sadistic violence, sexual themes and offensive language.

The publication was examined and the contents were recorded in an examination transcript. A written consideration of the legal criteria was undertaken. This document provides the reasons for the decision.

### Submission procedure

The publication was submitted by Film and Video Labelling Body on 29 May 2007.

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

Hostel Part II is a 35mm feature film written and directed by Eli Roth. It has a running time of 95 min 08 sec. Hostel Part II is the sequel to Hostel, which was examined and classified on 18 January 2006.

Hostel Part II is a sadistic horror film about three young American women who travel to Slovakia on holiday. On arrival at a hostel, they surrender their passports to the clerk checking them in. Without their knowledge, the clerk transmits their identities around the world, auctioning each to the highest bidder. Bidders are members of a Slovakian "hunting" club that is really an abduction syndicate. The winner of each auction travels to Slovakia and enters into a contract with the club to torture and kill the victim in any manner they desire. One of the women is killed in a sexualised torture sequence. The other two are tortured by two American businessmen. Many more people are shown being tortured, killed, or both, before the third woman buys the right to torture and kill her torturer and, in so doing, joins the syndicate to save her life.

To assist with the classification of this film, the Classification Office screened the film to 77 members of the public under s21 of the FVPC Act. These people were selected by a market research company to be broadly demographically representative of New Zealand society. Although 64 percent of this group thought the film should be restricted to persons 18 years of age and over, 30 percent recommended that the film should be banned or cut. Those recommending a ban or excisions expressed concern about the harmful effects that scenes of sustained torture, and in particular, a scene in which sexual satisfaction is derived from torture, might have on viewers. A copy of the consultation report is attached to the file.

## 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.1

<sup>&</sup>lt;sup>1</sup> Living Word Distributors v Human Rights Action Group (Wellington) [2000] 3 NZLR 570 at paras 27-29.

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

The feature deals with matters of sex to a moderate extent throughout the publication.

One scene follows the two American businessmen entering a massage parlour to occupy their time while they wait to carry out their torture fantasy. They are greeted by a room full of naked women walking around and dancing provocatively. This is followed by the more enthusiastic man being fellated by a woman on a bed. The position of the woman's head and body prevents the viewer seeing any explicit depiction of the sexual act. The fellatio is very short in duration because the man brusquely tosses the woman off his lap to read his buzzing abduction syndicate pager.

Other matters of sex include a scene in which the young American women discuss orgasms as they walk through the city streets. On return from the festival, two of them talk about finding their rabbit (vibrator) before they go to bed. Both of these sexual references are conveyed through dialogue and are presented in a light-hearted fashion.

The scene depicting the female client torturing her victim as part of her sexual fantasy is discussed in detail under s3(2)(f) below.

Matters such as horror

Although the horror genre's traditional elements of suspense and the supernatural are largely missing, the film nonetheless occasionally conveys a sense of horror through the use of ominous music, animals, and the manner in which the built environment is filmed.

The cold, dark torture chambers are tailored to suit each client's fantasy and are filmed in a way that evokes a sense of imminent danger and wickedness. The walls are wet and dirty. Tools and syringes are shown not having been cleaned from their previous uses. Glimpses of tortures under way are shown as the camera follows various protagonists through the building. The viewer sees one victim laying upright on an apparatus that is electrocuting him. In another room a man is seen tied down on a table screaming and having to watch another man carve a piece of his thigh as though it were a ham onto a plate, take it to a table and eat it. The viewer sees that the carved leg has been stripped of all the skin, whilst the other leg has been amputated below the knee.

Animals are frequently used in the film for horrific purposes. Examples include a scene near the beginning of the film in which the girlfriend of the character who survived the first *Hostel* film finds him sitting at the kitchen table decapitated. The viewer sees a cat perched on the man's shoulder licking the blood and viscera oozing from the stump of the neck. Later in the film, one of the American businessmen storms out of his death chamber without "finishing off" his victim. The guards of the complex set their vicious dogs on the man as he attempts to leave in an elevator. When the elevator doors reopen, the dogs have killed him and are seen eating his mutilated remains. The guards then place the remains on a trolley and roll it past the man's friend who is busy torturing a woman in another chamber. The friend is enraged by the sight and tortures his victim with renewed vigour.

Matters such as cruelty and violence

Depictions of cruelty, prolonged torture, suffering, violence and death are the feature's undisguised focus. The violence and gore are bloody and graphic. The sadistic and cruel manner in which the violence is carried out significantly increases the impact of these depictions on the viewer. These matters are discussed in detail under s3(2)(f), s3(3)(a)(i) and s3(3)(a)(v).

## 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" 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.<sup>3</sup>

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 activities such as torture, the infliction of extreme violence, and the infliction of extreme cruelty, the Classification Office defines "promote" to mean the advancement or encouragement of those activities. 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 or more of the activities listed in s3(2) for it to be deemed to be objectionable under that provision.

The film's first torture scene invites discussion under two provisions of the Act: the extent and degree to which, and the manner in which, the film depicts physical conduct in which sexual satisfaction is derived from inflicting cruelty and pain in terms of s3(3)(a)(v); and the extent to which the film's inclusion of this scene tends to promote or support acts of torture, the infliction of extreme violence and the infliction of extreme cruelty in terms of s3(2)(f).

<sup>3</sup> Above n2 at para 29.

<sup>&</sup>lt;sup>2</sup> Moonen v Film and Literature Board of Review [2000] 2 NZLR 9 at para 27.

The first torture scene depicts a naked woman hanging upside down by her ankles from a meat hook, her arms bound behind her. Tears from her eyes and mucous from her nose are shown dripping from her body to emphasise her distress. She has a gag in her mouth that muffles her pleading and crying. A pulley system, much like those used in slaughter houses, moves her into the centre of a large white tiled room. Burly men lower the chain to position her directly over a bath recessed in the floor. Other men ignite blow torches which are used to light candles. As the men leave, one of them kisses her goodbye but does not respond to her obvious and desperate pleading. A female client then enters and allows her robe to fall to the ground, revealing her naked body. She lies down in the bath directly below the victim and reaches for a nearby scythe. The viewer sees the client taunt her victim by running the blade up and down her victim's naked body as if to caress her. The scythe then cuts off the gag so she is able to hear her victim scream and beg for mercy. The woman then uses the scythe to, at first, lightly slice the back of her victim causing blood to drip down her victim and onto the naked body of the client. She is shown taking sexual pleasure from inflicting pain on her victim, from the victim's pleading and screaming, and from the feel of warm blood on her skin. She is filmed smearing the blood over her naked body with one hand as she cuts with the other. More and more incisions to the flesh are made with increasing depth and rapidity. The amount of blood that drips down onto the client increases, creating a bloodbath. The sounds of flesh being slashed and screams of overwhelming pain and agony are unreservedly disturbing. This frenzy of bloodletting culminates when the client slits her victim's throat with a sickle, releasing copious amounts of blood onto the woman below who is by this point writhing in ecstasy.

The Classification Office must give "particular weight" in s3(3)(a)(v) to the extent and degree to which, and the manner in which, any part of the film depicts physical conduct in which sexual satisfaction is derived from inflicting cruelty and pain. There is no doubt that the scene described above depicts physical conduct in which sexual satisfaction is derived from inflicting cruelty and pain extensively, to the highest degree, and in a manner that invites the viewer to share in the protagonist's enjoyment of it. Does this depiction, however, go further and at least tend to support or promote acts of torture and the infliction of extreme violence and extreme cruelty in terms of s3(2)(f)?

This scene associates cruelty, torture and violence with sexual gratification, and invites the viewer to do the same. It does so in a number of ways. Up to this point, the film has portrayed the victim as a loser with few if any positive personality traits. It is easier for the viewer to take enjoyment from the suffering of a character in whom the viewer has invested little or no empathy. Further, the victim's expressions of fear, suffering and pain are shown to be an integral part of the client's fantasy fulfilment. Both torturer and victim are naked. The victim's fear, suffering and killing are shown as sources of sexual arousal for her murderer by the sexual way in which the murderer caresses herself while bathing in her victim's blood. The camera focuses as much on the victim's fear as on the pleasure taken by the client in the slow, callous and sadistic torturing and killing of her victim. The lingering of the camera on both the victim's fear and torturer's arousal invites collusion on the part of the viewer in the client's enjoyment of the woman's suffering. The viewer is invited to partake in the sense of relish that the killer is experiencing, to enjoy both the victim's terror and the drawn out focus on her torture and death.

It is reasonable to suggest that a depiction of cruelty, torture and death as sexually gratifying activities at least tends to promote and support acts of torture and the infliction of extreme violence and extreme cruelty in terms of s3(2)(f). The scene at least tends to be promotional because the torturer is not shown to experience sadness, remorse or any of the consequences that would normally follow murder, such as arrest, trial, conviction and imprisonment.

The only consequence she experiences is sexual satisfaction. The negative effect this depiction may have on some viewers, and indirectly on society as a whole, is certainly within the scope of social harm that Parliament sought to remedy by enacting s3(2)(f). Section 3(2)(f) is based on psychological research that has repeatedly shown that depictions of violence and sexual violence against women are more likely than depictions of sex alone to be injurious to the public good. Such depictions reinforce negative attitudes towards women in a number of ways. They have been shown to desensitise viewers to real-life violence<sup>4</sup>, to reduce empathy with victims of sexual violence amongst both men and women<sup>5</sup>, to increase rape myth acceptance<sup>6</sup>, and to increase women's fear of sexual assault.<sup>7</sup> The extensive fusion of violence and sex in this particular scene sets it apart from the other depictions of torture and cruelty in the publication.

This scene tends to promote and support acts of torture and the infliction of extreme violence and extreme cruelty in terms of s3(2)(f) because it depicts acts of torture, extreme violence and cruelty as sexually arousing. Section 3(2)(f) deems the publication to be objectionable. If, however, this scene were to be excised, the Classification Office is of the opinion that in terms of s32, the rest of the film would not be deemed to be objectionable under s3(2)(f).

## Other matters to be given particular weight

Section 3(3) of the FVPC Act deals with the matters which the Classification Office must give particular weight to in determining whether or not any publication (other than a publication to which subsection (2) of this section applies) is objectionable or should in accordance with section 23(2) be given a classification other than objectionable.

The Classification Office has considered all the matters in s3(3). Other matters that it considers relevant to *Hostel Part II* are:

s3(3)(a)(i) The extent and degree to which, and the m

The extent and degree to which, and the manner in which, the publication describes, depicts, or otherwise deals with acts of torture, the infliction of serious physical harm, or acts of significant

cruelty

and

s3(3)(a)(ii) The extent and degree to which, and the manner in which, the publication describes, depicts, or otherwise deals with sexual violence or sexual coercion, or violence or coercion in association with

sexual conduct.

<sup>&</sup>lt;sup>4</sup> E.I. Donnerstein and D.G. Linz. 1986. "Mass Media Sexual Violence and Male Viewers: Current Theory and Research," *American Behavioral Scientist* 29(1):601-618; D.G. Linz,, E.I. Donnerstein and S.M. Adams. 1989. "Physiological Desensitisation and Judgments About Female Victims of Violence," *Human Communication Research* 15:509-522.

<sup>&</sup>lt;sup>5</sup> C.Krafka, D. Linz, E.I.Donnerstein and S. Penrod. 1997. "Women's Reactions to Sexually Aggressive Mass Media Depictions," *Violence Against Women* 3(2):149-181.

<sup>&</sup>lt;sup>6</sup> T.M Emmers-Sommer, P. Pauley, A Hanzel and L. Triplett. 2006. "Love, Suspense, Sex, and Violence: Men's and Women's Film Predilictions, Exposure to Sexually Violent Media, and their Relationship to Rape Myth Acceptance," Sex Roles 55:311-320.

<sup>&</sup>lt;sup>7</sup> C. Krafka, D. Linz, E. Donnerstein, and S. Penrod. 1997. "Women's Reactions to Sexually Aggressive Mass Media Depictions," *Violence Against Women* 3(2):149; "The Research Base on the Impact of Exposure to Sexually Explicit Material: What Theory and Empirical Studies Offer" in D. Thornburgh and H.S.Lin eds., *Youth, Pornography and the Internet* (2002, National Academy Press, Washington DC).

Depictions of acts of torture, the infliction of serious physical harm, and acts of significant cruelty pervade this film. One scene also depicts sexual coercion. These acts are depicted in a graphic and disturbing manner.

The contract between the abduction syndicate and its clients requires the clients to kill their victims before they can leave their torture chamber. Before entering the chamber clients are presented with an inventory of weapons or devices that they can use to torture and kill their victims. Such items include skill saws, knives, drills, and various other domestic tools. One gruesome torture scene sees the enthusiastic American businessman taunt his victim with a skill saw which loses its power when the cord falls out of the power socket. Upon reconnecting the tool, the man is distracted by an outside noise and inadvertently pushes the skill saw into the forehead of the victim. The woman bleeds profusely and begins to experience tremors, but does not die. She is instead re-auctioned to other torturers at a reduced price.

In the final torture scene, the woman talks her way out of being killed by falsely claiming that she loves the man about to torture her. The woman is told to lie down on the ground and the man positions himself on top of her. The man starts to engage in sexual intercourse, although this activity is cut short when the woman strikes a blow to his head and abruptly takes control of the situation, chaining him to the chair. Abduction syndicate members enter the chamber when she tries to escape, and point guns at her head. The viewer sees a bolt cutter clasped on the man's genitals as she negotiates with the syndicate to buy the right to kill the man in order to save her own life. The woman then ruthlessly severs the man's genitals and tosses them to the dogs to eat. The man screams in agony as he is left to bleed to death.

The scene in which one of a gang of children is shot by the leader of the abduction syndicate is one of the most gratuitous killings in the film. The viewer sees the man move down a line of boys holding a gun to each of their heads. When he cannot decide on which innocent boy to shoot, he gestures to the group to nominate one. The group push one of the boys in front of the man who shoots the boy in the head. The viewer hears the shot and then sees blood pooling around the dead boy. The scene is perhaps the culmination of the film's relentless ratchetting up of sadism and callousness in its depictions of violence.

The final scene in the feature depicts the decapitation of a woman. When the head falls to the ground, the same group of children kick the head around in an impromptu game of football.

### Additional matters to be considered

Under s3(4), the Classification Office must also consider the following matters:

s3(4)(a) The dominant effect of the publication as a whole.

The publication is a predictable horror film largely devoid of suspense. Its explicit depictions of torture, suffering and death leave the viewer initially shocked but ultimately drained. Although shocking for adults, viewing the film would be intensely disturbing and damaging to children and young persons.

s3(4)(b) The impact of the medium in which the publication is presented.

As a 35mm film, the publication is intended to be shown in a public cinema. In this medium, the publication is likely to be seen on a large screen that has a digital sound system. The

publication's grisly torture and killing scenes are likely to have a strong impact on the viewers in this medium.

53(4)(c)

The character of the publication, including any merit, value or importance it has in relation to literary, artistic, social, cultural, educational, scientific or other matters.

The publication has no particular merit, value or importance in relation to the above criteria.

s3(4)(d)

The persons, classes of persons, or age groups of the persons to whom the publication is intended or is likely to be made available.

The publication is intended for an adult audience.

53(4)(e)

The purpose for which the publication is intended to be used.

The publication's purpose is to entertain.

# Publication may be age-restricted if it contains highly offensive language likely to cause serious harm

Section 3A provides that a publication may be classified as a restricted publication under section 23(2)(c)(i) if it

contains highly offensive language to such an extent or degree that the availability of the publication would be likely, if not restricted to persons who have attained a specified age, to cause serious harm to persons under that age.

"Highly offensive language" is defined in s3A(3) to mean language that is highly offensive to the public in general.

Although the publication contains such language, it also describes, depicts, expresses or otherwise deals with matters in s3 in such a manner that its availability is likely to be injurious to the public good under that provision unless classified under s23(2)(b) or (c).

# Publication may be age-restricted if likely to be injurious to public good for specified reasons

Section 3B provides that a publication may be classified as a restricted publication under section 23(2)(c)(i) if it

contains material specified in subsection (3) to such an extent or degree that the availability of the publication would, if not restricted to persons who have attained a specified age, be likely to be injurious to the public good for any or all of the reasons specified in subsection (4).

Although the publication contains material specified in s3B(3) to such an extent or degree that its availability is likely to be injurious to the public good for reasons specified in s3B(4), it also describes, depicts, expresses or otherwise deals with matters in s3 in such a manner that its availability is likely to be injurious to the public good under that provision unless classified under s23(2)(b) or (c).

# 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

Hostel Part II is classified as objectionable except if the availability of the publication is restricted to persons who have attained the age of 18 years provided one excision is made to the film. If the excision is not made to the satisfaction of the Classification Office the publication will be classified as objectionable.

The excision is required to remove a scene that tends to promote and support acts of torture and the infliction of extreme violence and extreme cruelty in terms of s3(2)(f) by associating these acts with sexual gratification. The scene depicts a naked woman experiencing sexual pleasure as she slowly tortures and kills another naked woman. The scene is promotional because the torturer is not shown to experience sadness, remorse or any of the consequences that would normally follow murder, such as arrest, trial, conviction and imprisonment. The only consequence she experiences is sexual satisfaction. The film's previous negative portrayal of the victim invites the viewer to share with the killer the pleasure she experiences, and to enjoy both the victim's terror and the drawn out focus on her torture and death. The content of this scene brings it within s3(2)(f), which deems the publication to be objectionable unless this scene is excised.

If the excision is made, the rest of the feature depicts cruelty, prolonged torture, suffering, violence and death without sexual gratification. The violence and gore are bloody and graphic. The sadistic and cruel manner in which the violence is carried out significantly increases the impact of these depictions on the viewer. Because they are less emotionally and intellectually developed, exposure to the extensive depictions of acts of violence, cruelty, torture and death, and the callous and sadistic manner of these depictions, is likely to disturb and perhaps even psychologically damage children and young persons. The excised version of the film is therefore likely to be injurious to the public good unless it is restricted to adults.

The Classification Office has considered the effects of the Bill of Rights on the application of the classification criteria. The classification is 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 depict acts of torture or the infliction of extreme violence or extreme cruelty.

#### Classification:

The unexcised version of this publication is classified as Objectionable.

The excised version of this publication is classified as Objectionable except if the availability of the publication is restricted to persons who have attained the age of 18 years.

In this instance the distributor declined to make the excision as recommended and the publication is therefore objectionable.

# Display conditions:

Where the Classification Office classifies any publication as a restricted publication, it is required under s27(1) of the FVPC Act to consider whether or not conditions in respect of the public display of the particular publication should be imposed.

In considering the issue of public display, the Classification Office must have regard to the matters set out in s27(2) of the FVPC Act, namely:

- (a) The reasons for classifying the publication as a restricted publication;
- (b) The terms of the classification given the publication;
- (c) The likelihood that the public display of the publication, if not subject to conditions, or as the case may be, any particular condition, would cause offence to reasonable members of the public.

The publication's public display is not likely to cause offence to reasonable members of the public.

Written reasons are not legally required for section 12 submissions, but it is the policy of the Classification Office to provide them.

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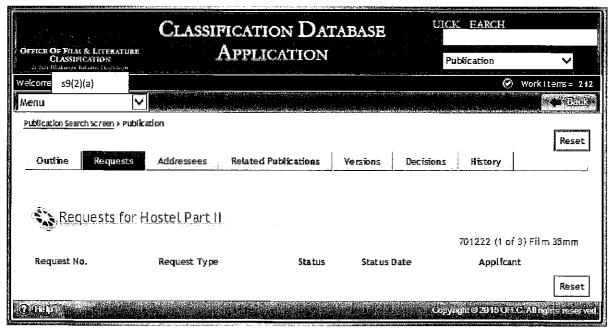
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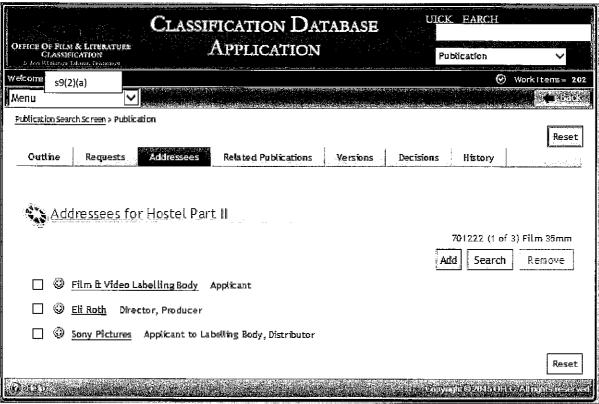
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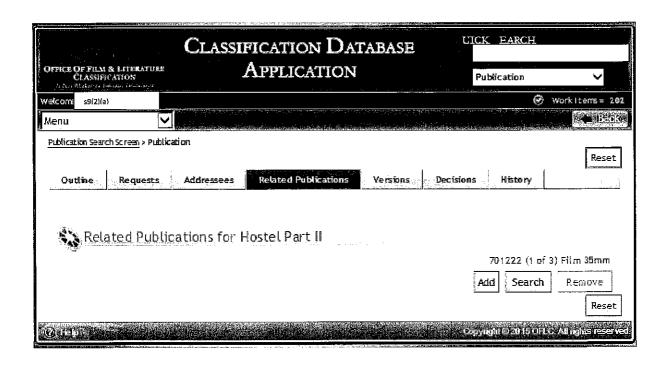
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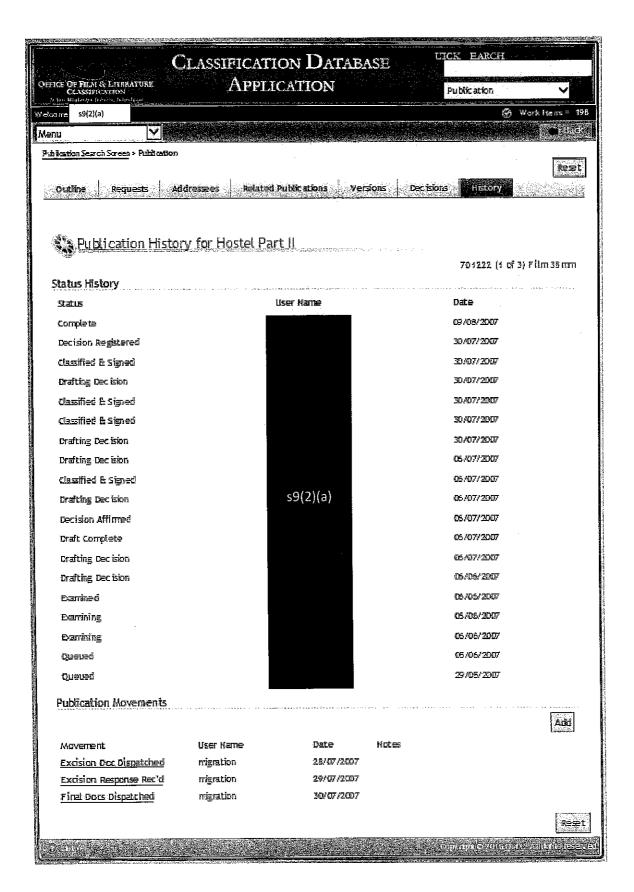
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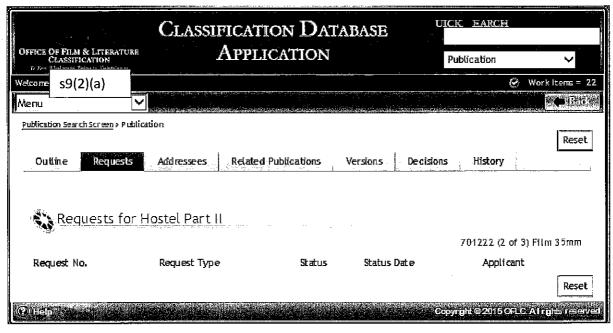
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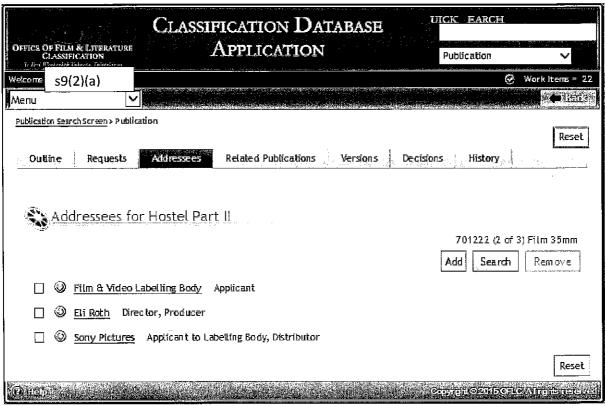
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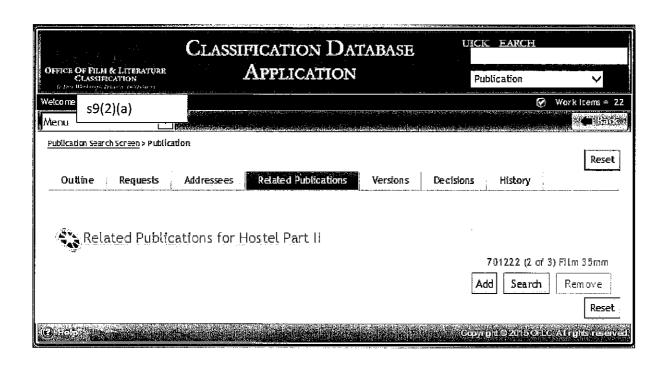


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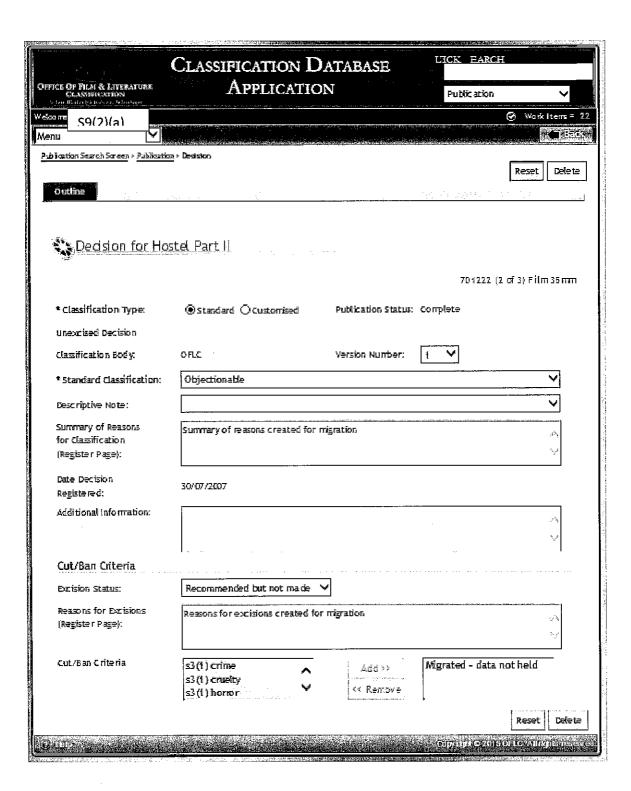


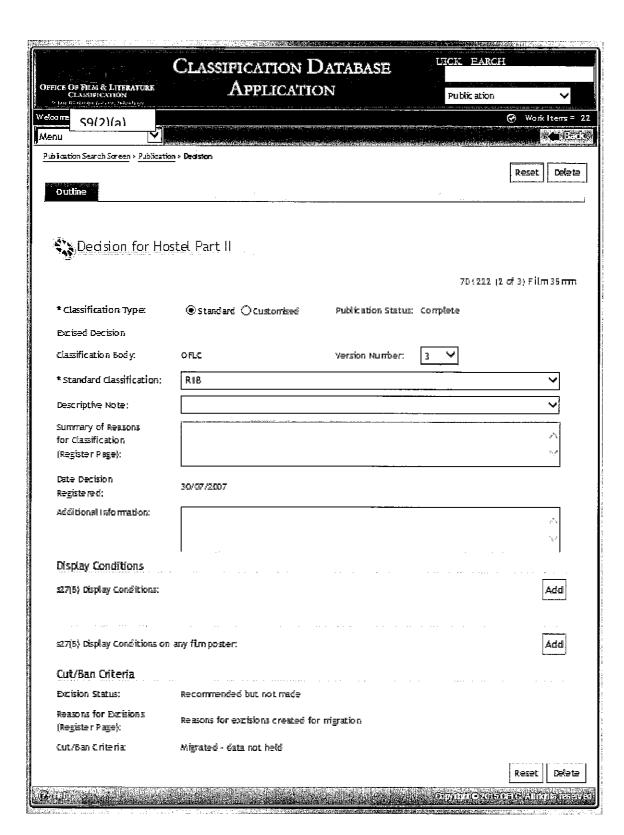




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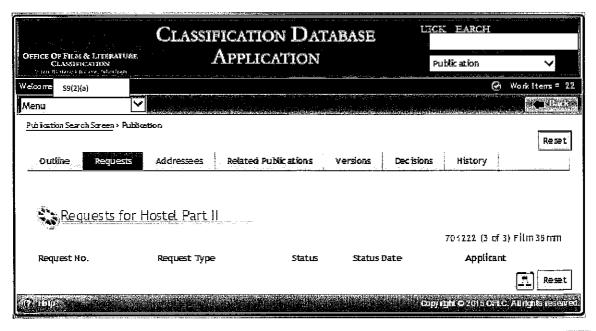


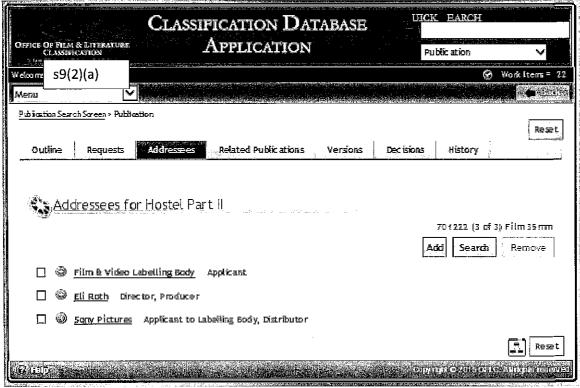


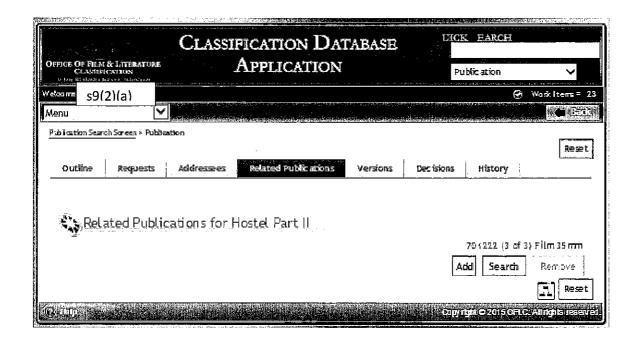
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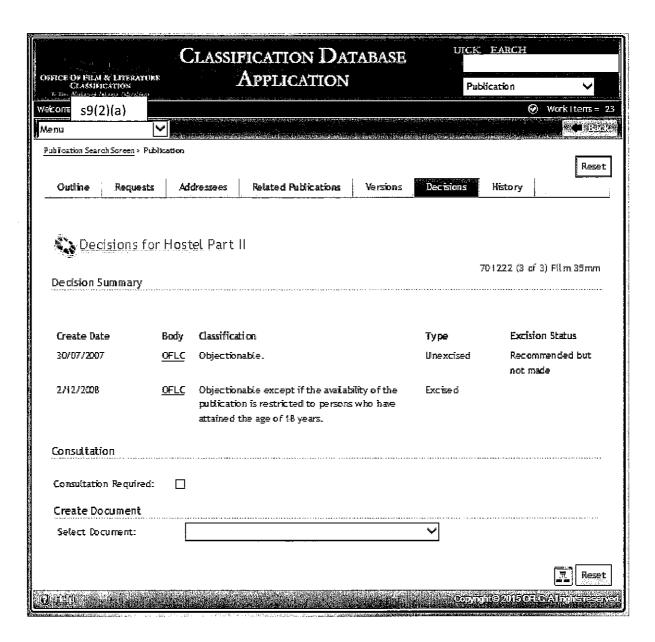
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