

# Submission of Simon Brady to the Film and Literature Board of Review

23 February 2005

## 1 Introduction

Pursuant to section 53(2)(a) of the Films, Videos, and Publications Classification Act 1993, I wish to make the following submission to the Board in respect of the publication *Puni Puni Poemy*.

The essence of my submission is simple: the publication may be trashy and tasteless, but it is not harmful to society if restricted to an adult audience. While it depicts activities that fall within the statutory definition of “objectionable,” it does so in the context of outrageous parody. The manner of depiction therefore nullifies any potential for harm.

My submission begins with a brief summary of the publication’s background and my reasons for seeking a review of its classification. I then consider the publication in light of s3 of the Act, focussing particularly upon the question of how a parody should be interpreted.

## 2 Background to the Publication

### 2.1 Genesis

*Puni Puni Poemy* is a two-episode spin-off from the popular TV anime *Excel Saga*. Famous for its bizarre storyline and total lack of respect for convention, *Excel Saga* has been described as “meta-anime” due to its frequent humorous references to other series. The series is available in New Zealand with an M rating: this includes the notorious finalé, episode 26, which was released direct to video in Japan and went well beyond what Japanese television censorship would have allowed.

*Puni Puni Poemy* began as a joke in episode 17 of *Excel Saga*, when one of the minor characters was shown working on it in the belief that a career in animation is a path to wealth and fame (a misapprehension the main characters are quick to dispel). Various mock trailers and interviews on the later *Excel Saga* volumes, plus the liner notes included with Madman Entertainment’s release of *Puni Puni Poemy*, suggested that the production team “hadn’t learned from their mistakes” and were doomed to failure. Jokes about budget overruns and missed deadlines abound, as do references to the general hopelessness of the staff.

Although their storylines are unrelated, the two series are linked in many ways both on- and off-screen. Yumiko Kobayashi who plays Poemy also sang the *Excel Saga* opening theme, and made cameo appearances in the series itself. Kotono Mitsuishi, voice of Itsue Aasu, played the character Excel (hence the teasing comparisons between Miss Kobayashi’s voice-acting skill and that of the more experienced Miss

Mitsuishi). Most visibly, director Shinichi Watanabe appears in both series as the afro-haired Nabeshin. The background music is lifted straight out of *Excel Saga*, and visual puns are scattered throughout.

The reason this history is relevant to the matter before the Board is that it establishes the “interpretative tradition” in which viewers are likely to approach the publication. The law makes clear that the intentions of a publication’s creators have no bearing upon its classification. However, the classifying body is concerned with the likely effects of the publication: any discussion of effects upon the audience implicitly involves assumptions about how that audience will understand and interpret the publication’s content.

The interpretative tradition surrounding *Puni Puni Poemy* is that it is “like *Excel Saga*, but more so”: more outrageous humour, more self-referential in-jokes, and more pushing the limits than even episode 26. The slick for the Australian release deliberately plays on these expectations:

From the creators of *Excel Saga*, it’s the weirdest, wildest, rudest and out and out most demented anime ever made, *Puni Puni Poemy*!

This interpretative background has implications for the application of s3 to the publication, which I will discuss in due course.

## **2.2 Adaptation for Western audiences**

Although *Puni Puni Poemy* was released in Japan in 2001, it was not until April 2004 that a US release was made by American company ADV Films. ADV produced an English dub using American voice actors, as well as subtitling the original Japanese soundtrack and translating the liner notes. This package was subsequently licensed by Madman Entertainment in Australia, with release there in October 2004. It was Madman’s New Zealand distributor, Gamewizz Interactive, who submitted it to the Labelling Body in the hope of a December 2004 release in this country.

The slow progress of the publication towards its New Zealand release has given local fans ample time to form expectations about its content. In particular, the classification decisions of overseas authorities gave rise to expectations that *Puni Puni Poemy* would not be found objectionable by our own Classification Office: the Australian OFLC classified it “MA15 (sexual references)”,<sup>1</sup> and more recently the British Board of Film Classification gave it an R18 classification.<sup>2</sup> In neither case were excisions required.

While the New Zealand authorities are not bound by international precedent, the Classification Office’s finding that the publication is as harmful as child sex abuse images came as a considerable surprise to many local fans.

### **2.2.1 Soundtracks**

Section 24 of the Act requires the classifying body to take the film’s soundtrack into account. Both the passing of the Act and its reference to “soundtrack” in the singular predate DVD technology: *Puni Puni Poemy* contains three soundtracks, namely the English dub, the original Japanese (with English subtitles), and an English commentary track by the ADV producer and cast. While the question of “subs vs dubs” generates considerable debate among anime fans, it is reasonable to assume that each of the soundtracks will be listened to by a significant proportion of viewers.

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<sup>1</sup>Decision 4152003A, 11 October 2004

<sup>2</sup>Decision of 2 February 2005

I therefore believe all three soundtracks need to be given equal weight under s24, despite the fact that the DVD menu defaults to the English dub. This approach is consistent with the requirement of s4(2) for the classifying body to take into account any evidence placed before it. In the case of the Japanese soundtrack, I submit that the corresponding subtitles fulfill the requirements of s146(1), and I will refer to them as needed in the following discussion.

### 3 Motivation for Review

Obviously I have exercised my right of review under s47 of the Act because I am dissatisfied with how the Classification Office reached its decision. I understand that s52(2) requires the Board to classify the publication without regard to the original decision, but I wish to highlight the principles I believe are at stake in considering a publication like *Puni Puni Poemy*.

My greatest concern is the protection of parody as a vehicle for criticism and comment. The Concise Oxford dictionary defines parody as “a humorous exaggerated imitation of an author, literary work, style, etc.” I interpret *Puni Puni Poemy* as not just parodying a number of specific anime shows, but also as parodying various themes common to the genre. This interpretation is based on the abundant and quite blatant internal cues that fill the show (many of which are explicitly pointed out in the commentary track), plus an appreciation of the meta-anime tradition the publication inherits from *Excel Saga*.

The theme most parodied is that of “fan service,” the unnaturally and gratuitously sexualised depiction of female characters for the supposed pleasure of the audience. *Puni Puni Poemy* exaggerates this tendency to a ridiculous extent, and just to make sure the viewer gets the point characters even address the audience directly on the subject. While we are not talking about the intellectually challenging social commentary of an *Irreversible* or a *Visitor Q*, this show still has something to say in its own absurdist way about the amount of fan service in anime.

The fact that it chooses to make its point through parody puts it in jeopardy of crossing the limits laid down by censorship law. Without question the publication deliberately pushes the boundaries of good taste, but the law rightly recognises that offensiveness alone does not make a publication harmful. As the European Court of Human Rights observed,

Freedom of expression ... is applicable not only to ‘information’ or ‘ideas’ that are favourable received or regarded as inoffensive or as a matter of indifference, but also to those that offend, shock or disturb the State or any sector of the population. Such are the demands of that pluralism, tolerance and broadmindedness without which there is no ‘democratic society’.<sup>3</sup>

In the New Zealand context, the Board is of course familiar with the Bill of Rights considerations articulated by the Court of Appeal in the Moonen decisions. However, it is not simply a matter of balancing freedom of expression against the need to protect society from harm: I submit that erring on the side of over-protection can actually increase the risk of public injury.

I believe that censorship is a necessary last resort in a free society. Like other coercive powers of the State, in the rare cases where it is justified we want it to be as effective as possible. However, a classification system that cannot distinguish parody from serious discourse is neither just nor credible, and without public credibility the system cannot hope to effectively carry out its protective function. *Puni Puni Poemy* is hardly a significant piece of artistic expression, but it presents a classification challenge that the censorship system must be seen to be capable of meeting.

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<sup>3</sup>*Handyside v UK* (1976) 1 EHRR 737, 754 at para 49

## 4 Application of Section 3(1)

I now consider whether the publication is objectionable according to s3 of the Act. With reference to the *Living Word* decision,<sup>4</sup> I take it as given that the publication deals with matters of sex, thereby passing through the subject matter gateway of s3(1). It is therefore necessary to ask whether it deals with these matters “in such a manner that the availability of the publication is likely to be injurious to the public good.” This question is addressed below.

I also take it as given that *Puni Puni Poemy* is inappropriate for young audiences. The remainder of my submission is therefore solely concerned with the publication’s availability to adults.

## 5 Application of Section 3(2)

The guiding authority for considering s3(2) is the Court of Appeal’s *Moonen 1* decision:

The concepts of promotion and support are concerned with the effect of the publication, not with the purpose or the intent of the person who creates or possesses it. The concepts denote an effect which advocates or encourages the prohibited activity ... . 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>5</sup>

I begin with a general consideration of how depictions of prohibited activities might tend to promote or support those activities. This leads onto the question of how such depictions should be interpreted in a parody, where surface impressions are frequently and deliberately misleading. I then apply the resulting principles to particular scenes of concern in *Puni Puni Poemy*.

### 5.1 Promotion and support

Since promotion and support are not defined in law, I follow the definitions used by the Classification Office:

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.<sup>6</sup>

The most obvious way a publication may advance or encourage a prohibited activity is to present it as normal and desirable, or failing that present it as free from harmful consequences and not deserving of opprobrium. One only need consider the range of tactics used by legitimate advertisers to see how promotion can be implicit; yet, at the same time, the idea that a publication can promote an activity by virtue of what it does not say needs to be treated with caution. As in the case of advertising, a certain

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<sup>4</sup>*Living Word Distributors Ltd v Human Rights Action Group (Wellington)* (2000) 3 NZLR 570

<sup>5</sup>*Moonen v Film and Literature Board of Review* (2000) 2 NZLR 9 at para 29

<sup>6</sup>OFLC decision on *Puni Puni Poemy*, registered 20 December 2004, at 4

level of audience sophistication and responsibility must be expected: the fact that a publication does not baldly state “this activity is wrong” does not automatically imply silent promotion.

This principle is especially important when examining a publication like *Puni Puni Poemy*. The show derives much of its humour from the disturbing incongruity of its content. Were it required to stop and berate the viewer with moral lectures at every point, the effect would quickly vanish. Nor is it necessary for it to do so: provided the publication is restricted to a suitably mature audience, that audience should be trusted to exercise appropriate judgement. Of course one can always imagine a viewer so dull-witted or perverse as to draw the wrong conclusions. However, I strongly object to the “lowest common denominator” approach to classification. It is an insult to the intelligence of the wider population and fails to reflect the real diversity of society.

It may be tempting to assert a more insidious “tendency to support” that is specific to comedy. The argument would be that the activities prohibited by s3(2) are simply not funny. On this viewpoint, their mere inclusion in a parody has the effect of desensitising the viewer to their repugnant nature: over time, such desensitisation lowers society’s natural revulsion towards the activities, thereby creating an environment more conducive to depravity.

While this approach may appeal to many social commentators, I submit that it is contrary to the intent of the Act. The law has moved on from the days of being concerned with the weakening of society’s moral fibre. Instead, it is concerned with “a likelihood [of injury to the public good] sufficiently real to be discernible or actual.”<sup>7</sup> Treating the prohibited activities in an off-hand or light-hearted manner may be a relevant consideration under s3(3), but of itself such treatment does not meet the necessarily high threshold required by a deeming provision like s3(2).

## 5.2 Interpretation vs objective fact

Both the courts and s4 of the Act hold that it is simple matter of fact whether a publication promotes and supports a given activity, and one that can be objectively determined by the classifying body. I respectfully submit that things are not so straightforward. To borrow from the language of social anthropology, a publication is merely a sequence of signs. Purported facts about these signs are actually contestable claims about their interpretation. The expertise of the classifying body lies at least partly in its ability to predict how a publication will be interpreted, which in turn allows conclusions to be drawn about its likely effect upon society.

Parody inherently complicates this process of inquiry by favouring symbolism that is open to multiple interpretations. It is this tension between surface appearance and cheeky implication that makes the genre both entertaining and powerful. However, given this deliberate multiplicity of meanings, the question of promotion and support may easily become interpretation-dependent. The problem then becomes one of determining the effect the competing interpretations are likely to have on the mind of the viewer, which in turn requires assumptions to be made about the viewer’s predispositions.

I have suggested that many anime fans will approach *Puni Puni Poemy* in the interpretative tradition of *Excel Saga*, and that even people with no prior knowledge of the show will have no difficulty understanding its farcical nature. It may be objected that I am importing s3(4)(d) and s3(3) considerations here, which have no place in the plain and uncompromising language of s3(2). However, the High Court has recognised that a certain level of cross-consideration is inevitable:

... a sensible inquiry as to whether a given publication “promotes or supports or tends to promote or support” s3(2) activity cannot be made without considering the extent, degree

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<sup>7</sup>*Society for the Promotion of Community Standards Inc v Everard* (1987) 7 NZLR 33

and manner in which the publication deals with that activity (cp. s3(3)). Nor is it possible to make sensible inquiry whether a publication “promotes or supports or tends to promote or support” without considering the “impact” of the “medium” concerned (cp. s3(4)). Thus, in making the s3(2) inquiry, whether a publication has at least a tendency to promote or support a s3(2) activity, there may be a degree of coincidental overlap with s3(3) criteria and s3(4) considerations.<sup>8</sup>

More succinctly, in *Moonen 1* the Court of Appeal observed that a publication’s

fictional character does not however immunise it from the possibility of being found to be objectionable. But such character may be relevant to whether it promotes or supports, or tends to promote or support the exploitation of children and young persons for sexual purposes.<sup>9</sup>

While the Court was concerned with fiction in general, I submit that this statement holds particularly true for parody.

### 5.3 Scenes of concern

A number of scenes need to be considered under s3(2)(a), which is concerned with tendencies to promote or support “the exploitation of children, or young persons, or both, for sexual purposes.” The implied rape of the Aasu sisters near the end of the second episode also risks falling foul of s3(2)(b), by depicting “the use of violence or coercion to compel any person to participate in, or submit to, sexual conduct.”

Sexualised depictions of the younger characters occur in several places:

- The portrayal of Futaba’s crush on Poemy
- Itsue disciplining some of her sisters, including 15-year old Mitsuki
- Poemy and the Aasu sisters bathing together
- Off-the-cuff comments of a sexual nature made by the characters

However, application of the principles developed above soon demonstrates that there is no tendency for promotion or support in these depictions. They fit within the general theme of exaggerated fan service, and are so outrageously incongruous that they cannot possibly be seen as normalising what is depicted. For example, it is precisely the fact that Futaba’s expressed desire for Poemy is so out of place in a ten-year old that stops it being taken seriously. Futaba’s crush takes yet stranger turns as the show progresses, for example where she idly picks up a hand-drill as she struggles to express her feelings to Poemy.

The most explicit scene involving Futaba and Poemy comes when the sisters discover they have not just Poemy Watanabe but the magical girl Puni Puni Poemy in their midst. The depiction of Futaba’s secret wish shows her rolling around naked with the two Poemies. Again though, the scene is so overdone as

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<sup>8</sup>*News Media Ltd v Film and Literature Board of Review* [1997] 4 HRNZ 410 at 418. While the Court of Appeal criticised some aspects of this judgement in *Moonen 1*, I note that this was not one of them.

<sup>9</sup>*Moonen v Film and Literature Board of Review*, supra., at para 25

to avoid any prurient potential. Despite her passionate feelings Futaba is shown to have no real idea of sex, and the activity she wishes for looks more like a bizarre form of nude gymnastics than a sexual act.

The communal bathing scenes are another good example of blatant parody. The first scene opens with the sisters asking why they have to bathe together: Itsue complains that it constitutes “sexual harassment,” adding “you could also take it as a result of the policy of convenience in anime production.”<sup>10</sup> The English dub goes further, with Itsue suggesting that the bathing arrangement is purely to gratify the animators’ own sexual frustrations.

This self-referential breakdown of the storyline happens even more clearly in the second episode’s bath scene. Here, as pointed out on the commentary track, a camera crew are visible in the background apparently filming the scene. The viewer is left in no doubt that the scenes are deliberately and ironically gratuitous, especially in the first episode when the sisters leap out of the bath to catch the “pervert” whose presence Hitomi has sensed. After looking at a freeze-frame of the sisters Poemy remarks to the audience:

Wow. Visually speaking, this layout has got to be for fan service. Good, good.

This heavy layering of overt satire over the scenes in question ensures they will not be taken seriously.

The most troubling scene in the entire anime is the apparent rape of the Aasu sisters by the aliens. While it is undeniably in execrable taste, it must be examined in context to determine its likely effect on the viewer. The alien leader K introduces it by referring to Internet pornography as their motivation for invading Earth. When the sisters are first shown tied up, Poemy exclaims “ooh, a fan service scene!” After the camera takes in their distressed state, this exchange occurs:

**Poemy:** Impossible! Or rather, show us more!

**K:** Well? Now that we’re on the second volume, isn’t it totally extreme?

**Poemy** (addressing the camera): You customers out there sure got your money’s worth.

This taunting theme, that the show is playing to the perverse tastes of the viewer, continues in K’s deranged monologue as the aliens make their entrance:

Ravish! Ravish! Copying won’t be permitted! Japan’s culture is wonderful! Roar unto the universe, Japanimation! Tentacles! Maids! Glasses! Kindergartener! Some sort of incredible implements! Explosive boobs! How about it?! How about all of this?! This is what you guys want, right?!

The rapes themselves are implied, not actually depicted, and during this scene the viewer’s attention is distracted by a range of incongruous background images. The overall effect nevertheless instills revulsion, with the American cast on the commentary track remarking how “wrong” the scene is. As soon as it is over, however, the initial tone is restored with Poemy observing that “that footage was rather satisfying just by using the imagination.”

I submit that these two aspects of the scene’s presentation combine to negate any potential for promotion or support of what is portrayed. On one hand the scene shows the sisters as victims of a heinous act, particularly Hitomi. The aliens are not shown at all, and they have been presented as such repulsive

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<sup>10</sup>Unless otherwise noted, all quotes are taken from the English subtitles for accuracy of transcription

creatures in the lead-up to the scene that no viewer would identify with them even if they were. The viewer's sympathies are with the sisters throughout.

On the other hand, the commentary by Poemy and K before and after the scene shows that it is not there to titillate the viewer. There is a certain irony here in that the character's claims are precisely that it is titillatory. However, as with the bathtub scenes the act of calling out this purported function ensures the viewer is in on the joke. Such is the show's lack of subtlety that no misunderstanding is possible.

The above analysis applies equally to the portrayal of K mistreating Futaba. This is further shown to be despicable by the way it angers Poemy into breaking loose from her chains and rescuing Futaba from K's clutches.

I therefore submit the *Puni Puni Poemy* does not tend to promote or support the activities of s3(2)(a) or s3(2)(b).

## 6 Application of Section 3(3)

I have touched on several s3(3) matters in my discussion of s3(2), particularly those of s3(3)(a)(ii)–(v). A similar argument applies to the others, that the manner of depiction is one of deliberate exaggerated parody. By dealing with the matters in this manner the publication mitigates their potential for harm.

With regard to the exploitation of child nudity, s3(3)(b), I also note that at no point are nipples or genitalia actually shown. They are either obscured, pixelated, or simply not drawn. While this lessens the degree and extent of depiction, there is an obvious cheekiness in the manner by which the publication avoids them, e.g. the strategically placed rubber duck in the episode two bath scene. However, this is in keeping with the fan service theme: while full-frontal nudity is studiously avoided, the animators are clearly out to tease the viewer by brushing as close to the limits of acceptability as possible.

It is convenient to deal with s3(3)(c) and s3(3)(e) together, since both are relevant to the publication's depiction of women. Again I draw the Board's attention to the running fan service parody that constitutes the main theme of *Puni Puni Poemy*. What I have described as the show's meta-anime character is highly relevant here: its subject is largely the depiction of women in other anime and related media, so it is necessary to clearly distinguish between what may be termed first- and second-order representation.

While the second-order representations of women (set scenes parodying fan service clichés) are often objectifying and demeaning, the characters are treated much more sympathetically when represented as just being themselves. The effect is almost one of a visual staff commentary track seamlessly interwoven with the actual show. In these moments the characters are quite scathing of the holes in the storyline, and have no compunction about talking back to the camera. This is particularly true of Poemy, who frequently slips out of character and calls herself Kobayashi, but several of the Aasu sisters also comment on the situations they are placed in. Even K's monologue to the audience falls into this category. This device has the effect of constantly reminding the viewer that fan service is unnatural, which in turn serves to further the parody.

Closely related to this are the scenes where Kobayashi the voice-actress is verbally, and sometimes physically, abused by the production staff. I note that the English soundtrack frequently has Nabeshin addressing her as "bitch" in these exchanges, whereas going by the subtitles the original Japanese is more subtle. While I am not familiar with modern American pop culture (I specifically watch anime to avoid it), it seems that Nabeshin is using a kind of misogynistic language that has become common with the rise of rap music. Regardless, the effect of these scenes is to lampoon the power relationships in anime production, not to degrade women in general or even voice-actresses in particular.

## 7 Application of Section 3(4)

The dominant effect of *Puni Puni Poemy* is one of sustained farcical inanity. No reasonable person could take this publication seriously. While some viewers will enjoy its twisted humour, its frenetic delivery and wildly exaggerated narrative are likely to fray the nerves of many others. It is a blatant parody whose satirical nature will be obvious to any viewer, even those without prior knowledge of anime.

While anime can be a powerful medium of artistic expression, the cartoon nature of *Puni Puni Poemy* merely serves to reinforce its outlandishness. Character designs and settings range from the incongruous to the downright bizarre, and the overall visual style is as haphazard as the storyline. The DVD's packaging echoes the crazed nature of its content, ensuring that viewers are primed to expect farce even before the show begins.

Technically speaking *Puni Puni Poemy* is a competent production, but it makes no pretensions to being great art. Nor does it possess any particular cultural significance, other than a certain appeal to fans of *Excel Saga*. Beyond a few big-budget films anime is a niche market in New Zealand, and even within that niche this publication is likely to have a limited audience. Restricting its availability to adults ensures it will not be misconstrued by younger audiences. In fact, not only would any adult viewer recognise the publication as a parody, but the people who actually go to the effort of watching it are likely to be well-versed in the interpretative tradition I discussed earlier. This adds further weight to my arguments under s3(2)–(3), although those arguments remain valid even if this fact is discounted.

## 8 Conclusion

The publication deals with matters of sex in a manner that some viewers may find offensive. However, it cannot be deemed objectionable under s3(2) of the Act; nor, upon consideration of s3(3)–(4), is its availability to adults likely to be injurious to the public good as required by s3(1).

I therefore submit that *Puni Puni Poemy* should be classified as a restricted publication under section 23(2)(c)(i) of the Act.