



Department of Defense INSTRUCTION

NUMBER 4105.70

June 2, 2006

Incorporating Change 1, September 17, 2008

USD(P&R)

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

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

1. REISSUANCE AND PURPOSE

This Instruction:

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

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

1.3. Establishes the Resale Activities Board of Review.

2. APPLICABILITY AND SCOPE

This Instruction:

Change 1, 9/17/2008

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

2.2. Shall not confer rights on any person.

3. DEFINITIONS

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

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

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

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

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

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

4. POLICY

It is DoD policy that:

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

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

5. RESPONSIBILITIES

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

5.1.1. Monitor and ensure compliance with this Instruction.

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

5.1.3. Appoint a Chair of the Board.

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

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

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

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

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

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

6. PROCEDURES

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

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

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

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

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

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

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

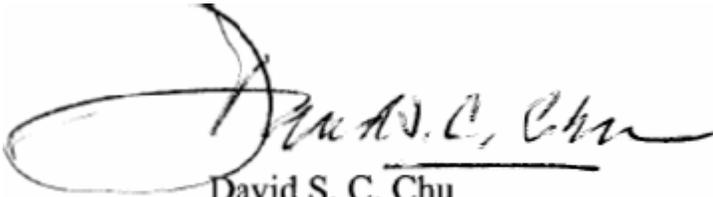
6.7. The Board shall establish procedures for the Exchanges to provide information to the Board.

7. INFORMATION REQUIREMENTS

The Chair, ~~Resale Activities of the~~ Board ~~of Review~~, shall submit to the PDUSD(P&R) an annual report documenting the activities, decisions, and membership of the Board ~~during the previous fiscal year~~. Negative reports are required. The annual report shall be due on October 1~~st~~ of each year. ~~and is not subject to the licensing internal information requirements of~~ *The annual report required by this Instruction is exempt from licensing requirements in accordance with paragraph C4.4.3. of DoD 8910.1-M (Reference (f)).*

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

89. EFFECTIVE DATE. This Instruction is effective immediately.



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Under Secretary of Defense
(Personnel and Readiness)