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12 UNITED STATES OF AMERICA

13 UNITED STATES DISTRICT COURT

14 FOR THE CENTRAL DISTRICT OF CALIFORNIA

15 UNITED STATES OF AMERICA,) NO. CR 07-732-GHK
16 Plaintiff,)
17 v.) DISPUTED JURY INSTRUCTIONS
18 IRA ISAACS,)
19 Defendant.)
20)

21
22 **DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 1**

23 The government has accused Defendant Ira Isaacs with
24 distributing obscene movies. To convict Defendant Ira Isaacs of
25 the charges the government must prove each of the following
26 elements of the crime of obscenity beyond a reasonable doubt:

27 (1) The average person, applying contemporary community
28 standards, would find that the movie, taken as a whole, appeals

1 to the prurient interest; and

2 (2) That the movie depicts or describes in a patently
3 offensive way, sexual conduct specifically defined by a federal
4 statute; and

5 (3) That the movie, taken as a whole, lacks serious
6 literary, artistic, political, or scientific value.

7 Miller v. California, 413 U.S. 15, 24, 93 S.Ct. 2607, 2615
8 (1973).

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1 GOVERNMENT'S POSITION RE INSTRUCTION NO. 1

2 The government objects to the defendant's proposed
3 instruction number one, that is, a request that the jury be
4 provided an instruction indicating that the jury is to assess the
5 term "sexual conduct" as "specifically defined by federal
6 statute." There is no case law to support the requirement that
7 sexual conduct be defined by federal or state statute, and the
8 obscenity statutes do not define sexual conduct. Moreover, a
9 district court is not necessarily required to define a term or
10 word if it is a common word or term which an average juror can
11 understand and apply without further instruction. *United States*
12 *v. Aguilar*, 80 F.3d 329, 331 (9th Cir. 1996); *United States v.*
13 *Tirouda*, 394 F.3d 683, 688-89 (9th Cir. 2005) (Jury instructions
14 need not define a term if that term is "within the comprehension
15 of the average juror."). The jury should be permitted to use its
16 commonsense in determining the meaning of sexual conduct and no
17 particular definition is necessary unless and until the jury
18 requests one.

1 **DEFENDANT'S PROPOSED JURY INSTRUCTION NO. 2**

2 If you find beyond a reasonable doubt that the movie was
3 designed for and primarily disseminated to a clearly defined
4 deviant sexual group, rather than the public at large, then the
5 government must prove beyond a reasonable doubt that the movie,
6 taken as a whole, appeals to the prurient interest in sex of the
7 members of the deviant group. This requirement that the
8 government prove beyond a reasonable doubt that the movie was
9 designed for and primarily disseminated to a clearly defined
10 deviant sexual group, means that you must not consider the
11 average person, but rather consider the clearly defined deviant
12 sexual group, and you still must find beyond a reasonable doubt
13 the other elements of obscenity in order to find the defendant
14 guilty. Otherwise, you must find him not guilty.

15 Miskin v. State of New York, 383 U.S. 502, 508-509, 86 S.Ct.
16 958, 963-964 (1966); Hamling v. United States, 418 U.S. 87, 127-
17 130, 94 S.Ct. 2887, 2912-2914 (1974).

1 GOVERNMENT'S POSITION RE INSTRUCTION NO. 2

2 The government objects to the defendant's proposed
3 instruction number two. This instruction suggests that, pursuant
4 to *Hamlin v. United States*, 418 U.S. 87 (1974) and *Mishkin v. New*
5 *York*, 383 U.S. 502 (1966), the government must prove beyond a
6 reasonable doubt that any movie appeals to the prurient interest
7 in sex, or was designed for and primarily disseminated to a
8 clearly defined sexual group. This is an incorrect statement of
9 law. In *Hamlin*, the Court indicated that the Court's decision in
10 *Mishkin* made clear that in measuring the prurient appeal of
11 allegedly obscene material, consideration may be given to the
12 prurient appeal of the material to clearly defined sexual groups,
13 *Hamlin*, 418 U.S. at 128, and "where the material is designed for
14 and primarily disseminated to a clearly defined deviant sexual
15 group, rather than the public at large, the prurient-appeal
16 requirement . . . is satisfied if the dominant theme of the
17 material taken as a whole appeals to the prurient interest in sex
18 of the members of that group. *Hamlin*, 418 U.S. at 128-129;
19 *Mishkin*, 383 U.S. at 508-509.

20 Here, the government is not alleging that the movies were
21 necessarily designed for a clearly defined sexual deviant group.
22 The defendant's movies were distributed to the general public at
23 large over the internet. Nonetheless, even assuming the defense
24 alleges or the jury finds the movies were designed for a
25 particular deviant group, this only means that the jury can
26 consider this fact and the prurient-appeal requirement within the
27 three-part *Miller* test (see *Miller v. California*, 413 U.S. 15, 24
28 (1973)) will be satisfied if the dominant theme of the material

1 taken as a whole appeals to the prurient interest in sex of the
2 members of that group. It does not impose an additional burden
3 on the government.

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