



Australian Government

Classification Review Board

30 July 2008
23-33 MARY STREET
SURRY HILLS, NSW

- MEMBERS:** Ms Maureen Shelley (Convenor)
The Hon Trevor Griffin (Deputy Convenor)
Mrs Gillian Groom
Mr Rob Shilkin
Ms Kathryn Smith
Ms Ann Stark
- APPLICANT** The Hon Robert Debus, Minister for Home Affairs
- INTERESTED PARTIES** Australian Family Association (AFA) represented by Ms Angela Conway and Mr Damien Tudehope; and NSW Council for Civil Liberties (NSW CCL) represented by Mr Stephen Blanks and Dr Brent Waters
- BUSINESS** To review the Classification Board's decision to classify the film *Holy Virgins* R 18+ with the consumer advice 'High level animated sex scenes'.

DECISION AND REASONS FOR DECISION

1. Decision

In a 5-1 majority decision the Classification Review Board (the Review Board) classified the film 'RC'.

2. Legislative provisions

The *Classification (Publications, Film and Computer Games) Act 1995* (the Act) governs the classification of films and the review of classification decisions. Section 9 provides that films are to be classified in accordance with the National Classification Code (the Code) and the classification guidelines.

Relevantly, the Code in paragraph 5 of the Table under the heading 'Films' provides that:

Films that:

- (a) depict, express or otherwise deal with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified; or
- (b) describe or depict in a way that is likely to cause offence to a reasonable adult, a person who is, or appears to be, a child under 18 (whether the person is engaged in sexual activity or not); or
- (c) promote, incite or instruct in matters of crime or violence, are to be classified 'RC', and

Films (except RC films and X 18+ films) that are unsuitable for a minor to see are to be classified R 18+.

The Code also sets out various principles to which classification decisions should give effect, as far as possible.

Section 11 of the Act requires that the matters to be taken into account in making a decision on the classification of a film include:

- (a) the standards of morality, decency and propriety generally accepted by reasonable adults; and
- (b) the literary, artistic or educational merit (if any) of the film; and
- (c) the general character of the film, including whether it is of a medical, legal or scientific character; and
- (d) the persons or class of persons to or amongst whom it is published or is intended or likely to be published.

Three essential principles underlie the use of the *Guidelines for the Classification of Films and Computer Games 2005* (the Guidelines), determined under s 12 of the Act:

- the importance of context
- the assessment of impact, and
- the six classifiable elements – themes, violence, sex, language, drug use and nudity.

3. Procedure

Prior to the review meeting, the Convenor determined that given the provision of Regulation 21 (2) (d) the application was of sufficient complexity that a decision would be not likely to be completed within 20 business days as more than one application of a similar nature had been received at the one time and that the Convenor had agreed to hear submissions from interested parties namely the NSW CCL and the AFA.

The Review Board met on 30 July 2008 in response to the receipt of an application from the Minister for Home Affairs on 18 July 2008 to determine its validity.

The Review Board determined that it had received a valid application from the Minister and noted the Convenor's decision regarding the complexity of the application and that it would be likely to be processed within 40 business days.

The Minister had advised in writing on 18 July that he would not be making written or oral submissions on the application for review. The original applicant made an undated written submission received by the Convenor on 25 July 2008 and distributed to the Review Board prior to the review meeting.

Six members of the Review Board viewed the film prior to the meeting on 30 July 2008. Arrangements were made for the NSW CCL and the AFA to view the film prior to the meeting on 30 July 2008.

The Review Board heard oral submissions from Dr Brent Waters and Mr Stephen Blanks representing the NSW CCL and from Mr Damien Tudehope and Ms Angela Conway from the AFA. No written submissions were made by the NSW CCL or the AFA.

The Review Board then considered the matter.

4. Evidence and other material taken into account

In reaching its decision the Review Board had regard to the following:

- (i) The Minister's application for review
- (ii) The original applicant's written submissions
- (iii) The oral submissions from the NSW CCL and the AFA
- (iv) the film,
- (v) the relevant provisions in the Act, the Code and the Guidelines, and
- (vi) the Classification Board's report

5. Synopsis

The film is a two episode Japanese animated film, in the anime style, in which characters are depicted participating consensually, unknowingly or unwittingly in explicit sex.

The plot concerns a doctor who is unsuccessful in his medical practice, due to his poor treatment of his patients, and passes time by having sex with his nurse. The doctor and nurse travel to an island to investigate the narcolepsy of a novitiate (a holy virgin) in a convent.

After a range of sexual encounters are depicted, he concludes that a satanic cult led by the local priest is responsible for the novitiate's condition. He confronts the priest and after the three novitiates repeat the words "Tres Marias" the priest's power is broken and the novitiate recovers.

6. Findings on material questions of fact

The Review Board found that the film contains aspects or scenes of importance under various classifiable elements:

(a) Themes – a range of themes were depicted including blasphemy and sexual exploitation of young and innocent females by authority figures including a nun, the doctor and the priest. Whilst these themes may be offensive to some adults, it is noted that under the Guidelines, there are virtually no restrictions on the treatment of themes at R18+ classification.

(b) Violence – the film contains a number of scenes depicting violence including novitiates being held without consent in bondage, explosions and an attack on Dr Fawa by tentacles wrapping around his neck. The tentacles are depicted coming out of a vagina-like opening in a plant. The impact of the violence is not more than high, although the non-consensual bondage is considered as part of the exploitative treatment of the blonde novice's character.

(c) Language – There is little use of coarse language in the film.

(d) Sex – The majority of members of the Review Board determined that the film contains a number of depictions of animated sexual activity that are high to very high in impact given the depictions of at least one of novitiates as a person younger than 18 years.

The film shows numerous sequences of explicit animated sexual activity including fellatio, cunnilingus, front-entry vaginal intercourse, digital-vaginal penetration (including of unconscious patients) and rear-entry vaginal intercourse. Fisting is depicted in episode 1 and bondage activity in episode 2. The novitiates are non-consensual participants of the bondage.

Of particular concern to the majority of the Review Board was the depiction of the blonde novice. The character is shown as being much shorter than the others in the story, wears pigtails tied with red ribbons, holds a teddy bear such as a child would in seeking comfort, and – in the scene where she unwittingly participates in fellatio on the instructions of the doctor – she is shown kneeling before the doctor with him patting her head as if she is a child. In this scene the novice appears most childlike in her voice, manner and lack of understanding of what is taking place.

(e) Drug Use – There is little depiction of drug use in the film.

(f) Nudity – There are a number of scenes of nudity of the novitiates, the nun, the doctor and the nurse.

7. Reasons for the decision

The Review Board noted the conflicting submissions of the NSW CCL and the AFA in regard to the classification of the film and took into account the views expressed. While the submission of the NSW CCL did not provide much assistance to the Review Board, the Review Board noted the very real offence taken by the AFA regarding the content of the film, particularly in relation to the teacher-student relationship.

While the impact of the sex scenes is greatly diminished by the animation of the film, the depiction of the blonde novice unwittingly and at times unconsciously involved in sex scenes is exploitative and, in the view of the majority, given that she appears to be depicted as a child younger than 18 years, the impact of the scenes involving her is very high.

Minority view

It was the view of the minority that impact of the sex scenes was no more than high and that none of the females was depicted as being under 18.

The animation genre uses styling that shows characters as being young and this includes large eyes and small chins such as seen on young persons. However, this styling does not depict the characters as childlike or as children. Given the stylisation and animation, it is the minority view that the film can be accommodated at the R18+ classification as the impact of the sex scenes is no more than high.

8. Summary

The Review Board, in a 5-1 majority, determined that the impact of the sex scenes involving the blonde novice are exploitative and as she is depicted as a child under 18 years that the depictions are likely to cause offence to a reasonable adult. As such the film must be refused classification under section 1(b) of the Code.

The minority view was that the depiction of the characters was in accordance with the anime genre, that the impact of the classifiable elements was greatly diminished by animated nature of the film and that as the impact was no more than high, the film could be accommodated by the R18+ classification.