

33rd MEETING

9, 10, 17 NOVEMBER 2000

23-33 MARY STREET

SURRY HILLS NSW

8 DECEMBER 2000 (BY TELECONFERENCE)

PRESENT: Ms Barbara Biggins (Convenor)
Mr Jonathan O’Dea (Deputy Convenor)
Ms Glenda Banks
Ms Joan Yardley
Ms Robin Harvey
Mr Ross Tzannes

APPLICANT: AXIS, a division of Adultshop.com Limited

BUSINESS: To review the decision of the Classification Board to assign the classification ‘RC’ under the *Classification (Publications, Films and Computer Games) Act 1995* to the film *A Little Piece of My Heart*.

DECISION AND REASONS FOR DECISION

1. Decision

The Classification Review Board decided to set aside the decision of the Classification Board to classify the film *A Little Piece of My Heart* RC, and to classify the film X 18+ with the consumer advice “contains real depictions of actual sexual activity”.

2. Legislative provisions

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

Relevantly, 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;
- (b) the literary, artistic or educational merit (if any) of the film;
- (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.

The National Classification Code (the Code) requires that Classification decisions are to give effect, as far as possible, to the following principles:

- a) adults should be able to read, hear and see what they want;
- b) minors should be protected from material likely to harm or disturb them;
- c) everyone should be protected from exposure to unsolicited material that they find offensive; and
- d) the need to take account of community concerns about:
 - i) depictions that condone or incite violence, particularly sexual violence; and
 - ii) the portrayal of persons in a demeaning manner.

Within the Code, paragraph 1 of the Table under the heading “Films” provides that films that “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” should be classified “RC.”

Further, the Code provides that films may be classified “X” if they:

- a) contain real depictions of actual sexual activity between consenting adults in which there is no violence, sexual violence, sexualised violence, coercion, sexually assaultive language, or fetishes or depictions which purposefully demean anyone involved in that activity for the enjoyment of viewers, in a way that is likely to cause offence to a reasonable adult; and

b) are unsuitable for a minor to see.

In addition, the *Guidelines for the classification of films and videotapes (Amendment No. 3, 18 September 2000)* provide, in part that, “No depiction of violence, sexual violence, sexualised violence or coercion is allowed in the category. It does not allow sexually assaultive language. Nor does it allow consensual depictions, which purposefully demean anyone involved in that activity for the enjoyment of viewers. Fetishes such as body piercing, application of substances such as candle wax, ‘golden showers’, bondage, spanking or fisting are not permitted.”

3. Procedure

Six members of the Review Board viewed the film *A Little Piece of My Heart* at its meeting on 9,10 & 17 November 2000.

4. Matters taken into account

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

- (a) the applicant's Application for Review, including written submissions in support of that Application.
- (b) the film *A Little Piece of My Heart*.
- (c) Written and oral arguments made by Ms Elvis Caneers-Barnes and Mr John Davey on behalf of the applicant
- (d) the relevant provisions in the Act.
- (e) the relevant provisions in the National Classification Code as amended in accordance with Section 6 of the Act, and as endorsed by the Censorship Ministers.
- (f) the current Classification Guidelines for the Classification of Films and Videotapes determined under Section 12 of the Act.

5. Findings on material questions of fact

5.1 *A Little Piece of My Heart* is a film which contains real depictions of actual sexual intercourse and other sexual activity between consenting adults.

5.2 The Review Board considered the two scenes debated by the Classification Board, one of which led to the assigning of an RC classification. These were at 63 and 75 minutes.

At 63 minutes an obviously fake gorilla lunges towards a female tied to a tree as part of a film rehearsal. At this point she is replaced by a stuntperson who is carried off into the trees and screams are heard. The Review Board agreed with the Classification Board that the scene was staged, not 'real' and otherwise such that it did not constitute violence and could be accommodated within the X classification.

5.3 At 75 minutes there is a light-hearted comical scene. A male called Billy seizes his ex-lover female and attempts to drag her to a car. The female screams "Get your hands off me", although she is obviously in no imminent danger. Her new lover then arrives, using a guitar to theatrically hit Billy over the head and knock him out. The way that the musical instrument is used and the portrayal of the "knock-out" with sound effects and comic effect (together with surrounding scenes), are

such that a reasonable person would categorise the scene as slapstick comedy rather than violence.

- 5.4 The Classification Review Board disagreed with the decision of the Classification Board in that it found no violence or sexualised violence to be present in the scene at 75 minutes and therefore concluded that *A Little Piece of My Heart* should be classified X 18+ rather than RC.

6. Reasons for the Decision

- 6.1 The Review Board based its decision to uphold the appeal and classify the film “X 18+” on its content as described in 5.1 to 5.4 above.

- 6.2 The Applicant argued that the Classification Board failed to:

- a) take sufficient account of the tenets of adult films.
- b) recognise the genre in contextually locating plot and narrative developments away from reality.
- c) take full account of the wording of the Classification Act and the National Classification Code.
- d) reasonably apply the Film Classification Guidelines as they related to depictions of violence and sexualised violence.

- 6.3 The Review Board took the view that in its own considerations it had:

- a) fully considered the tenets and nature of adult films.
- b) recognised that the film was largely based on an unreal plot and narrative developments in that many scenes involved a significant degree of slapstick comedy and very light treatment of the subject matter.
- c) taken full account of the wording of the Classification Act and the National Classification Code.
- d) applied in a reasonable manner the Guidelines as they relate to depictions of violence and sexualised violence, and in doing so disagreed with the majority decision of the Classification Board.

- 6.4 The recently revised Film Classification Guidelines prohibit depictions of violence in the X classification category. In seeking to establish whether the depictions were of acts of violence, the Review Board consulted the glossary of terms covering “violence” which state that it “includes not only acts of violence, but also the threat or result of violence.”

In the absence of a clearer or more expansive definition of the term, the Review Board sought to clarify what might constitute violence within the meaning of the Code and Guidelines, while remaining consistent

with the substance and intent of the regulatory framework. It agreed that violence could be recognised as an overt depiction of a credible threat of physical force, or the actual use of such force, intended to physically harm an animate being or group of beings, in a way that a reasonable person would actually categorise as a depiction of violence. Violence would also include certain depictions of physical consequences against an animate being or group that occurs as a result of unseen violent means.

- 6.5 Regarding the first scene at 63 minutes, the Review Board found that there was no real force used nor harmful consequences suffered and therefore no violence.
- 6.6 Regarding the second scene at 75 minutes, the Board found that a reasonable person would not categorise the series of events as violent or a portrayal of violence. The Board found that the scene intended to convey a comedic message.
- 6.7 The Review Board decided that the film should not be classified RC as the film did not contain violence, as set out above. It concluded that the film contained real depictions of actual sexual activity between consenting adults in a way that is likely to cause offence to a reasonable adult and could be accommodated within the X category. Its decision to assign the consumer advice “contains real depictions of actual sexual activity” is made having regard to the content as set out in 5.1 above.

7. Summary

The Review Board's decision is to classify the film *A Little Piece of My Heart* “X 18+”, with the consumer advice line of “contains real depictions of actual sexual activity”.

This decision is taken after full consideration of the applicant's submission, and after assessing the film as a whole against the relevant legislative criteria, including those contained in the Code and in the current Classification Guidelines for Films and Videotapes determined under Section 12 of the Act.

Barbara Biggins
Convenor