

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

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 *Second Coming*.

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 *Second Coming* 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 that

- 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

may be classified "X".

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

Four members of the Review Board viewed the film *Second Coming* 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 *Second Coming*.
- (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 *Second Coming* 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 scene cited by the Classification Board as leading to the RC classification. This is a brief sequence at 23 minutes where a female lightly slaps a male as part of a somewhat heated discussion.
- 5.3 The Review Board found that the slap involved only slight impact that neither harmed nor was intended to harm the man. Rather it saw the act as an expression of frustration and an attempt to interrupt the man from continuing to talk.
- 5.4 There are no other scenes in the film which are suggestive of violence.
- 5.5 The Classification Review Board disagreed with the majority decision of the Classification Board (and agreed with the minority decision) in that it found no violence or sexualised violence to be present in the film and therefore concluded that *Second Coming* should be classified "X18+" 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” 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) take full account of the wording of the Classification Act and the National Classification Code.
 - c) 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) taken full account of the wording of the Classification Act and the National Classification Code.
 - c) applied in a reasonable manner the Film Classification Guidelines as they relate to depictions of violence and sexualised violence.
- 6.4 The recently revised Film Classification Guidelines prohibit depictions of violence in the X classification category. In seeking to establish whether the depiction was one 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 reasonably 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. 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 Using this analysis, the Review Board decided that the film should not be classified RC as the film did not contain violence, as outlined in 5.3 above. It concluded that as 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, the film was more appropriately classified “X 18+”. The Review Board’s decision to assign the consumer advice line “contains real depictions of actual sexual activity” is made having regard to the content as outlined at 5.1.

7. Summary

The Review Board's decision is to classify the film *Second Coming* "X 18+", with the consumer advice "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