

NOTICE OF DECISION UNDER SECTION 38(1)

TO: Chief Censor

Titles of publications: 13 Reasons Why: Episode 1 (Tape 1, Side A)
13 Reasons Why: Episode 2 (Tape 1, Side B)
13 Reasons Why: Episode 3 (Tape 2, Side A)
13 Reasons Why: Episode 4 (Tape 2, Side B)
13 Reasons Why: Episode 5 (Tape 3, Side A)
13 Reasons Why: Episode 6 (Tape 3, Side B)
13 Reasons Why: Episode 7 (Tape 4, Side A)
13 Reasons Why: Episode 8 (Tape 4, Side B)
13 Reasons Why: Episode 9 (Tape 5, Side A)
13 Reasons Why: Episode 10 (Tape 5, Side B)
13 Reasons Why: Episode 11 (Tape 6, Side A)
13 Reasons Why: Episode 12 (Tape 6, Side B)
13 Reasons Why: Episode 13 (Tape 7, Side A)

Other known title(s): Not stated

OFLC ref: 1700158.000
1700158.001
1700158.002
1700158.003
1700158.004
1700158.005
1700158.006
1700158.007
1700158.008
1700158.009
1700158.010
1700158.011
1700158.012

Classification:	Objectionable except if the availability of the publication is restricted to persons who have attained the age of 18 years, or who are accompanied by a parent or guardian.
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Descriptive Note: Series deals with suicide, bullying and depression. Episodes may contain violence, sexual material, drug use, and frequent offensive language. Some episodes contain graphic depictions of suicide and rape.

Display conditions: None

A direction has been given to the Film and Video Labelling Body Inc. to issue labels for these publications.

REASONS FOR THE DECISION

The Office of Film and Literature Classification (Classification Office) examined the publications and recorded the contents in an examination transcript. A written consideration of the legal criteria was undertaken. This document provides the reasons for the decision.

The publications have been examined and considered separately, however for convenience they are discussed together in this decision.

Submission procedure:

The publications are all 13 episodes of a TV series currently showing on (and made by) Netflix, an international SVOD (Subscription/Streaming Video on Demand) service based in the USA. The Chief Censor called these publications in for classification on 6 April 2017 under s13(3) of the Films, Videos, and Publications Classification Act 1993 (FVPC Act), having become aware of public concerns about the subject matter of the series.

Netflix were notified of the submission of the publications. As persons with an interest in the publications they were informed of their right to make a written submission on the classification.

Under s23(1) of the FVPC Act the Classification Office is required to examine and classify the publications.

Under s23(2) of the FVPC Act the Classification Office must determine whether the publications are to be classified as unrestricted, objectionable, or objectionable except in particular circumstances.

Section 23(3) permits the Classification Office to restrict publications that would otherwise be classified as objectionable so that they can be made available to particular persons or classes of persons for educational, professional, scientific, literary, artistic, or technical purposes.

Synopsis of written submission(s):

A submission has been received from Joshua Korn, Manager of Global Public Policy, at Netflix, Inc. In this submission Mr Korn states that the goal of Netflix is to 'provide appropriate context so that our members can choose to watch content that they find compelling and block children's access to content their parents may find inappropriate.' Mr Korn then outlines the parental controls available on Netflix, and notes that this publication has been labelled 'adult', meaning only those with profiles set to allow 'adult' material will be able to view the show.

Other steps Netflix has taken to provide context and resources for this publication include:

- placing content warnings ahead of episodes that depict sexual violence and suicide;
- creating a short documentary feature in which members of the cast, producers, and mental health professionals discuss suicide, depression, and sexual violence;

- launching the website www.13reasonswhy.info which includes suicide prevention resources and crisis hotline numbers in New Zealand and other markets around the world;
- publishing *13 Reasons Why Talking Points* in partnership with Suicide Awareness Voices of Education and the JED Foundation to facilitate conversations about depression and suicide.

Description of the publications:

13 Reasons Why is an American television show produced by Netflix, and is based on the 2007 book by the same title, written by Jay Asher. It consists of thirteen episodes, each of which corresponds with the tapes left as a suicide note by the show's teenage narrator, Hannah Baker.

Hannah's suicide has already occurred when the show's present timeline begins. The thirteen tapes are being passed like a chain letter through the thirteen people they address. Each addressee – Hannah's high school peers – receives the tapes in turn, listens to all of them, and then passes them on to the next person on the list. This premise establishes the idea that all of the people addressed by Hannah share a mutual guilt because they have been singled out by Hannah as contributing to her death. It also establishes the idea that those on the tapes are fully aware of the content of other people's tapes, and consequently the behaviour that made them worthy of inclusion. The thirteen tapes also establish the show's narrative structure, and the flashbacks on which many of the episodes are based. The episodes' content is, briefly, as follows:

Episode One (Tape 1, Side A): Clay Jensen finds a box filled with audio cassette tapes anonymously dropped on his front doorstep. He plays the first one in his dad's boombox and realizes it is his recently deceased classmate Hannah Baker who is talking. Clay listens to the first tape, in which Hannah starts by sharing the story of her first kiss, with Justin Foley, who then spread a rumour that they had sex. Clay is revealed, through numerous short flashbacks, to have been in love with Hannah and to have worked with her.

Tape subject: Justin Foley, for spreading an unflattering picture of Hannah along with the lie about their 'encounter'.

Episode Two (Tape 1, Side B): On the tape, Hannah reminisces about her friendship with two other new students: Jessica and Alex. Jessica and Alex eventually become an item and stop hanging out with Hannah. When Alex breaks up with Jessica, Jessica blames Hannah. In the present, Hannah's mother, Olivia, finds a note in her daughter's textbook that leads her to believe Hannah was being bullied. Those who have heard the tapes meet with the knowledge that Clay is listening to Hannah's recordings.

Tape subject: Jessica Davis, for mistakenly believing that Hannah was the reason for her breakup with Alex.

Episode Three (Tape 2, Side A): Hannah's relationships are threatened by a 'best/worst list' made by Alex, who has put a 'target' on Hannah by naming her 'best ass'. In the present, Hannah's mother, Olivia, seeks out the school principal about her suspicion of bullying and makes a disturbing discovery. As Justin tries to get it together after a recent bad patch, Bryce strong-arms Clay and Alex into a drink-off in an alleyway.

Tape subject: Alex for listing Hannah's ass as the best one in school to get Jessica jealous, and so he could be more popular with Bryce and Justin's crowd.

Episode Four (Tape 2, Side B): Hannah becomes suspicious, and tells her friend, Courtney, that she might have a stalker. Courtney offers to help her catch them in the act. Bored waiting for the stalker to reveal themselves, they get drunk and the two of them kiss on Hannah's bed. The stalker, school photographer Tyler Down, takes a photo and sends it around to the school. Tape subject: Tyler Down, for stalking Hannah and spreading her and Courtney's kiss photo around the school.

Episode Five (Tape 3, Side A): Courtney, afraid of her classmates finding out she is gay, spreads the rumour that the girls in the leaked photos are Hannah and Laura, an openly lesbian classmate, saying it was part of a threesome with Justin. Meanwhile, in the present, Clay takes Courtney to visit Hannah's grave. She leaves quickly, not ready to face the loss of her classmate and her involvement. Later the boys force Clay into the car with them and scare him into silence about the tapes by driving over the speed limit.

Tape subject: Courtney Crimsen, for sacrificing Hannah to hide her own sexuality.

Episode Six (Tape 3, Side B): Hannah's date on Valentine's Day with Marcus doesn't go as planned when he arrives late, and then aggressively attempts to put a hand up her skirt, leading to a very public altercation. Marcus throws her reputation for being 'easy' in her face. In the present, Alex gets into a fight with Montgomery and they both have to appear before the student council. Tape subject: Marcus Cole, for humiliating Hannah in public on their Valentine's date.

Episode Seven (Tape 4, Side A): After Hannah refuses to go out with Zach, he sabotages her emotionally during a class project. Out of revenge, Clay damages Zach's car, but in the present, things turn out to be different with Zach than Hannah represented.

Tape subject: Zach Dempsey, for stealing the 'positive notes' destined to Hannah in Communications class out of revenge for her rejecting him.

Episode Eight (Tape 4, Side B): Hannah is touched by poetry recited by fellow student Ryan Shaver and pours her heart out after encouragement from him at a local poetry reading group. Ryan betrays her by publishing the poem against her will in his school magazine. In the present day, Tony confides to Clay about the night of Hannah's death.

Tape subject: Ryan Shaver, for taking a poem she wrote noting her personal problems and publishing it in the school newspaper without her consent.

Episode Nine (Tape 5, Side A): While hiding in Jessica's room during a summer party, Hannah witnesses Bryce Walker raping an unconscious and intoxicated Jessica, with her new boyfriend Justin's apparent consent. In the present, Clay talks to Justin who claims it's better Jessica doesn't know the truth (that she was raped). Marcus warns Clay the worst is yet to come.

Tape subject: Justin Foley, for allowing Bryce to rape his girlfriend Jessica.

Episode Ten (Tape 5, Side B): After the party, Hannah gets a ride from Sheri. They get into a small accident and knock down a 'Stop' sign, but Sheri refuses to call the cops. While Hannah is on her way to find a phone, an accident occurs at the same intersection, causing the death of Jeff Atkins, a friend of Clay's. When Hannah tries to tell Clay about the 'Stop' sign he gets angry because he was close to Jeff, and thinks Hannah is enjoying the 'drama'. In the present, Jessica's behaviour becomes more erratic.

Tape subject: Sheri Holland, for abandoning Hannah after she crashed her car into a stop sign, which later caused the death of another student.

Episode Eleven (Tape 6, Side A): Clay finally listens to his tape and is overcome with guilt because he could not do enough to prevent her suicide. In present day, Justin finds out Jessica is

at Bryce's. He confronts her there and admits that Bryce raped her on the night of the party. Olivia finds a list with the names of all the people on the tapes, although she doesn't know what the list means.

Tape subject: Clay Jensen, for leaving Hannah at her request, after they almost have sex.

Episode Twelve (Tape 6, Side B): After accidentally losing her parent's deposits which were supposed to go to the bank, a depressed Hannah stumbles upon a party thrown by Bryce. She ends up alone with him and he rapes her. In the present, Clay goes to Bryce's house on the pretext of buying marijuana from him and confronts Bryce about the rape, secretly taping his confession. The episode ends with an ambulance treating an unknown teenager with a gunshot wound to the head.

Tape subject: Bryce Walker, for raping Hannah.

Episode Thirteen (Tape 7, Side A): Clay gives Tony the confession tape to copy. Hannah, with only one tape left, decides to give life one more chance and look for help. She visits Mr. Porter, the school guidance counsellor, and tells him about her rape, without admitting who was responsible. Mr. Porter implies that she has no chance of being taken seriously and insists that she continue with her life as if it never happened. Hannah records the conversation, which will become the subject of side A of tape 7, gets her things in order, goes home, and commits suicide by cutting her wrists and bleeding out in the bathtub. She is later found by her mother. In the present, Clay confronts Mr. Porter about the incident and gives him the tapes, with the side B of tape 7 being Bryce's rape confession. Meanwhile, Tony decides to give Hannah's parents audio files of the tapes. Alex tries to commit suicide by shooting himself in the head. He is in critical condition and it is not revealed if he survives.

Tape subject: Mr. Porter, for not recognising Hannah was suicidal and for not giving her proper help.

New Zealand Bill of Rights Act 1990:

Section 14 of the New Zealand Bill of Rights Act 1990 (NZBORA) states that everyone has "the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form". Under s5 of the NZBORA, this freedom is subject "only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". Section 6 of the NZBORA states that "Wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in this Bill of Rights, that meaning shall be preferred to any other meaning".

The meaning of "objectionable":

Section 3(1) of the FVPC Act sets out the meaning of the word "objectionable". The section states that a publication is objectionable if it:

describes, depicts, expresses, or otherwise deals with matters such as sex, horror, crime, cruelty, or violence in such a manner that the availability of the publication is likely to be injurious to the public good.

The Court of Appeal's interpretation of the words "matters such as sex, horror, crime, cruelty or violence" in s3(1), as set out in *Living Word Distributors v Human Rights Action Group (Wellington)*, must also be taken into account in the classification of any publication:

[27] The words "matters such as" in context are both expanding and limiting. They expand the qualifying content beyond a bare focus on one of the five categories specified. But the expression "such as" is narrower than "includes", which was the term used in defining "indecent" in the repealed Indecent Publications Act 1963. Given the similarity of the content description in the successive statutes, "such as" was a deliberate departure from the unrestricting "includes".

[28] The words used in s3 limit the qualifying publications to those that can fairly be described as dealing with matters of the kinds listed. In that regard, too, the collocation of words "sex, horror, crime, cruelty or violence", as the matters dealt with, tends to point to activity rather than to the expression of opinion or attitude.

[29] That, in our view, is the scope of the subject matter gateway.¹

The content of the publications must bring them within the "subject matter gateway". In classifying the publications therefore, the main question is whether or not they deal with any s3(1) matters in such a manner that the availability of the publications is likely to be injurious to the public good.

Matters such as sex

Included as a "matter such as sex" is any publication that in terms of s3(1A) -

- (a) ... is or contains 1 or more visual images of 1 or more children or young persons who are nude or partially nude; and
- (b) those 1 or more visual images are, alone, or together with any other contents of the publication, reasonably capable of being regarded as sexual in nature.

There are several matters of sex in this publication. Hannah and Justin date, and she shares her first kiss with him, Justin then lies at school saying that he and Hannah had sex, and shares a photograph (innocent in its original context) of her to bolster his claim. Jessica calls Hannah a slut. Hannah's mother, Olivia, is overwhelmed by the amount of slut-shaming graffiti in the girl's bathrooms at the high school, including sexually explicit descriptions. Bryce gropes Hannah in a store, she's very upset. Hannah removes her bra and Courtney removes her shirt and they kiss while drunk. Courtney is revealed to be a closeted lesbian. In a flashback Clay masturbates over this image, not knowing it is of Courtney and Hannah. Marcus propositions Hannah, and when she declines, he attempts to put his hand up her skirt several times. Jessica tries to perform fellatio on Justin but he physically forces her away. At a party at Jessica's, Clay and Hannah go upstairs and start hooking up in an empty bedroom. Clay explicitly asks for consent, which Hannah gives and then suddenly withdraws, asking him to leave. Jessica convinces Hannah to get into a crowded hot tub with her at Bryce's party. Hannah is later raped – this is discussed further in 'Matters of violence' below.

Matters such as horror

There are two instances of strong bodily horror in this publication. The first is the discovery of Jeff's body by Clay after the car crash. His lifeless body is clearly seen: there is blood all over his face, and broken glass. The second is Hannah's suicide. Hannah, wearing old clothes, gets into a bath with the tap still running, causing the water to overflow. She uses a razor blade to slit both her wrists twice, from wrist to inner elbow. This is very graphically shown. As she cuts herself, Hannah whimpers and cries, but she doesn't stop. She lies back in the bath hyperventilating, and the audience stays with her face until her breathing calms. At various points in the show Clay also

¹ *Living Word Distributors v Human Rights Action Group (Wellington)* [2000] 3 NZLR 570 at paras 27-29.

hallucinates Hannah: for example, he has a vision of Hannah's dead body on the floor of the school gymnasium.

Matters such as crime

There are several matters of crime in this publication. Justin is seen smoking marijuana out of a bong and being subject to the effects of the drug. School faculty members discuss Justin's background and probable abuse. Bryce forcibly makes Clay buy liquor even though they are both underage, and then forces him to skull it in an alley. Tyler stalks Hannah and secretly photographs her through her bedroom window. Hannah and Courtney drink alcohol together even though they are both underage. Tony and his brothers beat someone up for 'interfering' with their sister. Jessica drinks heavily throughout the show as she struggles with the weight of her emotional trauma, and also uses marijuana. Clay is abducted by Alex, Justin, Bryce and others, who play chicken while speeding down a dark country road with the lights out. They are pulled over by the policeman who turns out to be Alex's father, and lets them off. Justin steals Clay's bike. Clay keys Zach's car. Marcus buys marijuana off Bryce, which he plants in Clay's school bag to get him suspended. After Jessica's party Sheri offers Hannah a ride home. During the ride Sheri hits a stop sign at an intersection, knocking it down. Despite Hannah's insistence she refuses to report the incident and leaves, and as a result the car crash that kills Jeff occurs. Jessica and Bryce smoke marijuana together. Clay buys marijuana off Bryce. Tyler buys a gun illegally and is shown hiding it with ammunition and other guns in a lock box in his bedroom.

Matters such as cruelty

The premise of the publication itself is cruel on several levels. There is the cruel behaviour that leads Hannah to commit suicide (which has been sufficiently discussed under the other matters in this section), there is the effect of her death on her friends and particularly her parents – who are depicted as suffering from profound grief, and then there is the fact of Hannah's tapes, each of which explicitly blames a single person for being one of the thirteen reasons she has decided to commit suicide. The blame that Hannah places on individuals has wide reaching consequences, and clearly effects the mental health of key characters. For example, Clay suffers from violent nightmares and hallucinations about his culpability in Hannah's death, and Alex's slow self-destruction (which appears largely motivated by guilt) culminates in his attempted suicide. Jessica is also extremely traumatised by her rape, which is compounded by the assertion of everyone around her (including her boyfriend) that nothing happened and that Hannah lied about witnessing it. This contributes to Jessica's ongoing substance abuse problems.

Matters such as violence

While Hannah is hiding in a bedroom at Jessica's party, she witnesses Bryce enter the room and rape Jessica while she is drunk and incapacitated. This is a strong scene. Elements of the rape are repeated again in a flashback. The audience learns from Justin's perspective that he tried to pull Bryce out of the room but that Bryce resisted violently and removed Justin from the room. The night Hannah is left alone with Bryce in the hot tub he rapes her. It is a strong scene – both graphic and violent. Hannah initially tries to climb out of the pool but Bryce keeps forcing her back in. Once she realises that the rape is inevitable, Hannah freezes, waits for it to be over, and walks home. Alex attempts suicide and is in critical condition at the end of the final episode. Montgomery and Alex get into a very violent fight, Alex is punched repeatedly in the face until a member of staff intervenes. While Jessica and Bryce are at her house she pulls out one of her father's guns and starts casually threatening him with it, before making him learn to shoot it. Tyler and Montgomery get in fight. Clay confronts Bryce about raping Hannah, and punches

Bryce in the face, resulting in Bryce beating him very badly, both punching and kicking him. This is a visceral scene and Clay is left lying bleeding on the floor.

Certain publications are "deemed to be objectionable":

Under s3(2) of the FVPC Act, a publication is deemed to be objectionable if it promotes or supports, or tends to promote or support, certain activities listed in that subsection.

In *Moonen v Film and Literature Board of Review (Moonen I)*, the Court of Appeal stated that the words "promotes or supports" must be given "such available meaning as impinges as little as possible on the freedom of expression"² in order to be consistent with the Bill of Rights. The Court then set out how a publication may come within a definition of "promotes or supports" in s3(2) that impinges as little as possible on the freedom of expression:

Description and depiction ... of a prohibited activity do not of themselves necessarily amount to promotion of or support for that activity. There must be something about the way the prohibited activity is described, depicted or otherwise dealt with, which can fairly be said to have the effect of promoting or supporting that activity.³

Mere depiction or description of any of the s3(2) matters will generally not be enough to deem a publication to be objectionable under s3(2). When used in conjunction with an activity, the Classification Office defines "promote" to mean the advancement or encouragement of that activity. The Classification Office interprets the word "support" to mean the upholding and strengthening of something so that it is more likely to endure. A publication must therefore advance, encourage, uphold or strengthen, rather than merely depict, describe or deal with, one of the matters listed in s3(2) for it to be deemed to be objectionable under that provision.

The Classification Office has considered all of the matters in s3(2). The relevant matters are:

s3(2)(b) The use of violence or coercion to compel any person to participate in, or submit to, sexual conduct.

Both Hannah and Jessica are raped in this publication, but it does not in any way promote or support the actions of the perpetrator of these assaults and therefore more appropriately discussed under Section 3(3).

s3(2)(f) Acts of torture or the infliction of extreme violence or extreme cruelty.

This publication does include acts of extreme violence and cruelty, however neither are promoted or supported by the publication and are therefore more appropriately discussed under Section 3(3).

Matters to be given particular weight:

Section 3(3) of the FVPC Act deals with the matters which the Classification Office must give particular weight to in determining whether or not any publication (other than a publication to which subsection (2) of this section applies) is objectionable or should in accordance with section 23(2) be given a classification other than objectionable.

The Classification Office has considered all the matters in s3(3). The relevant matters are:

² *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9 at para 27.

³ Above n2 at para 29.

s3(3)(a)(i) The extent and degree to which, and the manner in which, the publication describes, depicts, or otherwise deals with acts of torture, the infliction of serious physical harm, or acts of significant cruelty.

Both Alex and Clay suffer from brutal and sustained assaults. Alex's fight takes place in Episode 6: Tape 3, Side B. Alex instigates the fight, ostensibly because Montgomery's car nearly hits him. However, the underlying emotional charge here is Alex's guilt and self-destructiveness following Hannah's suicide. Having thrown the first punch, Alex is then pummelled by Montgomery, who punches him repeatedly once he is on the ground. The scene goes on without intervention for some time until a staff member intervenes. As a result, for the duration of the remaining episodes Alex has a badly bruised face, illustrating the consequences of fighting. He is also brought before a disciplinary committee at school, although their decision not to punish him and instead suspend Montgomery makes him argumentative and angry, giving the audience mixed messages about the seriousness and consequence of violence. Clay's assault happens several episodes later in Episode 12: Tape 6, Side B. Clay throws the first punch despite the fact that Bryce is much bigger than him physically, during a confrontation in which Clay is trying to get Bryce to confess to Hannah's rape. In response to the punch Clay throws, Bryce attacks Clay, punching and kicking him. It is a visceral scene, especially because it is spliced with discussion and depiction of Hannah's rape. The fight leaves Clay lying bleeding on the floor. After the fight, Bryce and Clay talk, having established Bryce's 'dominance'. They share a drink offered by Bryce in the tradition of 'gentlemen', attempting to minimise the assault and its consequences.

s3(3)(a)(ii) The extent and degree to which, and the manner in which, the publication describes, depicts, or otherwise deals with sexual violence or sexual coercion, or violence or coercion in association with sexual conduct.

Both Hannah and Jessica are raped. Scenes that depict Jessica's rape span Episodes 9, Tape 5, Side A to Episode 10, Tape 5, Side B. However, it is discussed on several occasions in the three episodes that follow. In Episode 9, we first see Jessica's rape from Hannah's point of view. She is hidden in the closet, and has a limited view of what happens. Justin brings Jessica into the room. Jessica is highly intoxicated and Justin tries to convince her they should have sex but leaves once he realises how drunk she is. Then Bryce enters the room. Although Jessica is clearly unconscious, he is seen to pull down her underwear and rape her, before leaving the room again. Later in this same episode, we see Jessica's own recollection of events. In her memory, she is awake and struggling while Bryce rapes her. This is a strong scene, and harrowing to watch. This is potentially triggering for survivors of rape and sexual assault to watch.

Hannah's rape occurs in Episode 12, Tape 6, Side B. Hannah is in a hot tub at a party. She is left alone with Bryce. Hannah tries to leave the situation repeatedly, but Bryce heads her off. Once he becomes physical with her, she again attempts to scramble out of the pool, but is overwhelmed by Bryce. The following rape scene is both graphic and violent. Much of the focus is on Hannah's face, which indicates she is frozen in a dissociative state. Hannah says in her voice over "In that moment it felt like I was already dead."

s3(3)(a)(iii) The extent and degree to which, and the manner in which, the publication describes, depicts, or otherwise deals with other sexual or physical conduct of a degrading or dehumanising or demeaning nature.

Hannah feels demeaned by the rumours and pictures spread about her by both Justin (Episode 1, Tape 1, Side A), which she perceives as originating her reputation at school for being promiscuous, and Alex (who makes a list of 'best' and 'worst' female bodily attributes). Hannah

finds this list highly objectifying. From her perspective, the list directly fans the flames of future rumours and contributes to future incidents of sexual abuse. For example, Bryce gropes Hannah's buttocks in a convenience store. The rumour Courtney starts in Episode 5, Tape 3, Side A, that Hannah and Justin had a threesome with an openly lesbian class member again leaves Hannah feeling demeaned and misunderstood. In Episode 6, Tape 3, Side B, Marcus also attempts to grope Hannah in a booth at a diner where they are on a date (also depicted later in the series as a flashback). After she physically defends herself, he yells at her that he thought she was 'easy'. Hannah is left extremely upset by these incidents.

s3(3)(a)(iv) The extent and degree to which, and the manner in which, the publication describes, depicts, or otherwise deals with sexual conduct with or by children, or young persons, or both.

This publication contains multiple incidents of sexual conduct between young people (see Matters of Sex). However, they are older adolescents (roughly sixteen to eighteen years old) and presented in a non-exploitative and responsible context.

s3(3)(d) The extent and degree to which, and the manner in which, the publication promotes or encourages criminal acts or acts of terrorism.

There are several instances of criminal behaviour in this publication (see Matters of Crime). While some of these acts do not have consequences (legally or socially) the publication could not be reasonably interpreted as promoting or supporting criminal behaviour.

Publication may be age-restricted if it contains highly offensive language likely to cause serious harm:

Section 3A provides that a publication may be classified as a restricted publication under section 23(2)(c)(i) if it

contains highly offensive language to such an extent or degree that the availability of the publication would be likely, if not restricted to persons who have attained a specified age, to cause serious harm to persons under that age.

"Highly offensive language" is defined in s3A(3) to mean language that is highly offensive to the public in general.

This publication makes use of highly offensive language in a number of contexts. For example, the use of the word 'fuck' and derivatives thereof are frequent. Offensive sexual language such as 'cumdumpster' is also used on multiple occasions.

Publication may be age-restricted if likely to be injurious to public good for specified reasons:

Section 3B provides that a publication may be classified as a restricted publication under section 23(2)(c)(i) if it

contains material specified in subsection (3) to such an extent or degree that the availability of the publication would, if not restricted to persons who have attained a specified age, be likely to be injurious to the public good for any or all of the reasons specified in subsection (4).

The Classification Office has considered all the matters in s3B(3). The relevant matters are:

s3B(3)(a)(i) material that describes, depicts, expresses, or otherwise deals with harm to a person's body whether it involves infliction of pain or not (for example, self-mutilation or similarly harmful body modification) or self-inflicted death;

Hannah's suicide is discussed from the outset of the publication, as is suicide in general. It is not until Episode 12, Tape 7, Side A, that Hannah's suicide is actually 'seen'. Hannah prepares for her suicide meticulously, before putting on old clothing and getting into a bath with the tap still running. Hannah then takes a razorblade and cuts her wrist deeply, all the way up to her inner elbow. The cutting is extremely graphic: blood starts flowing heavily almost instantly, and the pain is seen on Hannah's face as she cries and whimpers with pain. She then repeats the process, and lies back in the bathtub hyperventilating. The camera stays focused on her face as her crying and hyperventilating gradually ease, and she lies calmly in the bath, breathing shallowly. The scene then cuts to her mother seeing the overflowing water from the bathtub and discovering Hannah's body. In Episode 11, Tape 6, Side A, Skye, a fellow student and waitress at the local café, offers to read Clay's tarot cards. In the process of dealing the cards it is clear that Skye has fresh self-harm cuts on her wrists. When Clay confronts her about them, Skye justifies her self-harm, claiming that "suicide is for the weak." Alex attempts suicide by gunshot. This is first mentioned near the end of Episode 12, Tape 6, Side B. However, the audience only find out that the suicide attempt was made by Alex, and that he remains in critical care, at the end of Episode 13, Tape 7, Side A. Alex's suicide attempt is not shown onscreen, nor is there any resolution as to whether it is ultimately successful, or whether he survives.

s3B(3)(a)(ii) material that describes, depicts, expresses, or otherwise deals with conduct that, if imitated, would pose a real risk of serious harm to self or others or both;

There is a danger of suicide contagion, and of suicide being shown as a reasonable solution to life's problems, which is discussed under Section 3B4. There is also potential for imitation with regards to the drug and alcohol use which is frequent throughout the publication.

s3(B)(3)(a)(iii) material that describes, depicts, expresses, or otherwise deals with physical conduct of a degrading or dehumanising or demeaning nature;

As discussed in Section 3(3)(a)(ii), there are three graphic rape depictions across the series. These will be discussed in further detail under Section 3(4).

Unless restricted this material is likely to be injurious to the public good because the general levels of emotional and intellectual development and maturity of children and some young persons mean that the availability of these publications to those persons would

be likely to cause them to be greatly disturbed or shocked.

increase significantly the risk of them killing, or causing serious harm to, themselves, others, or both.

The graphic violence, rape scenes, and suicide depicted in this publication have a clear potential to greatly disturb or shock viewers. While they may be distressing or triggering for viewers of all ages, there is a particular concern here that younger viewers may be encountering this kind of material for the first time and that the strength of the material in this publication in particular may be extremely disturbing and/or shocking.

Mental health professionals caution strongly against the depiction of suicide in media. This is because of a phenomenon that is known by several names including ‘copycat suicides’, ‘cluster suicides’, and ‘suicidal contagion’. One Ministry of Health Report states that that 5 per cent of youth suicides occur in clusters, which happens when some members of a particular community identify with the distress of a person who has died as a result of suicide.⁴ This is depicted directly in the publication as Alex’s attempted suicide is shown as a response to the guilt he feels over Hannah. Guidelines for suicide and fictional media stress that ‘risky’ depictions of suicide include those that glorify suicide as a meaningful act, where suicide is presented as a reasonable response to one or a series of life events, and those that supply detailed ‘instructions’ on how to commit suicide. Elements of all of these risk factors are present in this publication. Hannah perceives her own death as inevitable and the tapes she leaves behind, and their devastating effect, as also portrayed as a largely successful attempt to justify her suicide. There is the potential for imitative self-harm to occur, heightened by the publication’s detailed, graphic, and instructional depiction of Hannah’s suicide. Despite the additional documentary and web-based content provided by Netflix there is no immediate and localised information about obtaining help for vulnerable viewers. The publication also fails to promote an awareness of the relationship of suicide with mental illness.

New Zealand is consistently ranked as having one of the highest rates of youth suicide in the OECD and this publication has a high potential to cause harm in this country.

However, one of the particular merits of this publication is its emphasis on compassion, support, and active care both for the self and for peers. This will be discussed further in Section 3(4). There is no concern that the publication will cause an audience to feel they, or others, have been degraded or dehumanised.

Additional matters to be considered:

Under s3(4), the Classification Office must also consider the following matters:

s3(4)(a) The dominant effect of the publication as a whole.

13 Reasons Why is a controversial series, and one of the reasons for this controversy is that there are multiple possibilities for the dominant effect of the story as whole. This is because the narrative can be read in multiple ways and allows for multiple interpretations, creating often contradictory opinions about what exactly the overall effect of the story actually is based on the experiences or agendas of the audience. This is not a criticism of the episodes, but it does mean that the discussion as to dominant effect is not straightforward.

The OFLC has discussed the publications with teenagers aged between fourteen and eighteen years old. All felt that the show was clearly aimed at teenagers and that it was accurate in as much as it addressed issues that they felt were relevant to that age group. One male viewer felt that the series would have been helpful for him to view at the age of fourteen/fifteen, which he described as ‘the age just before you hit those issues’. He thought that the reasons that Hannah felt let down were very important for young people to hear early, particularly before they started dating. Overall, those teenagers we spoke to felt that the dominant effect of this series related to social awareness: treating others with respect and compassion, and raising awareness about suicide,

⁴ Ministry of Health, ‘Suicide and the media: The reporting and portrayal of suicide in the media, a resource’, September 1999, p.12.

sexual violence, bullying, and mental health related issues. Other predominant themes that these viewers identified were about the dangers of keeping secrets, and while they felt the ‘content is heavy’ it was ‘good that it’s been created’.

However, numerous mental health advocates have expressed extremely clear concerns about the treatment of youth suicide. As noted in Section 3B(4), *13 Reasons Why* does not follow internationally recognised best practice for the fictional depiction of suicide. Moving beyond the issue of suicide contagion some of those consulted by this Office feel that the series represents a dominant narrative of ‘suicide as revenge fantasy’. In this narrative, the devastating effect of the tapes left by Hannah bullies those who bullied her. Hannah is presented as being so broken by her experiences that the only way she feels capable of reclaiming some agency in her life is through her death. The messaging here is particularly damaging because at no real point does the publication expressly address the well-established and ongoing correlation between mental health issues and suicide. The implication is instead that if people had just been ‘nice’ to Hannah then she would still be alive – an implication that mental health advocates reject outright as trivialising both mental illness and suicide.

While there have been several other interpretations of this series expressed by experts, survivors, and the general public, these two dominant effects appear to be the ones most frequently offered by those engaged with the discussion surrounding the series.

s3(4)(b) The impact of the medium in which the publication is presented.

Netflix allows private users a large amount of control over the way in which they consume content and as such users are able to minimise or enhance the impact of certain scenes. The ability for audiences to view more than one episode at a time is important as it increases the extent of potentially harmful content that is consumed in a short period of time and can potentially increase its impact.

The young people spoken to by the OFLC all appreciated the existing warning notes provided by Netflix ahead of some episodes, which they felt gave them a chance to mentally prepare for the stronger material, but felt that there should be an additional warning at the onset of the series, verbal warnings as well as written warnings, and that persons who may be triggered by the sexual violence and suicide should be provided with these further stop-gaps in addition to the content warnings already in place for several (but not all) episodes. As noted earlier – there is no immediately available, upfront information provided by Netflix on where vulnerable New Zealand viewers can get help.

s3(4)(c) The character of the publication, including any merit, value or importance it has in relation to literary, artistic, social, cultural, educational, scientific or other matters.

13 Reasons Why has significant merits which contribute meaningfully to the overall character of the publication. Sexual violence prevention agencies have highlighted several elements of the publication’s representations of rape which address important issues for youth. For example, characters uniformly (with the exception of the perpetrator) refer to both Jessica and Hannah’s assaults as rape. This is important messaging. In the case of Jessica’s rape, her high level of intoxication is a clear example of when consent is not possible, and is in line with the Crimes Act 1961. The scene in which Hannah is raped provides a nuanced example of how not saying ‘no’ does not mean ‘yes’. During the rape Hannah is clearly in a dissociative state: her body goes limp, her eyes are unfocused, and she stops speaking or protesting. Dissociative and ‘freezing’ behaviours are clear examples of non-verbal ‘no’s’ and are important elements of consent

education. The fact that the episodes again make it unequivocally clear that both Jessica and Hannah are raped is appropriate and consistent messaging for young people to view.

The series also illustrates inappropriate ways to respond to a rape disclosure, through Mr Porter, the school counsellor. When Hannah discloses her rape to him, he asks her a series of inappropriately intimate questions, before suggesting that “Maybe you consented and you changed your mind?” Although Hannah responds with a clear ‘no’ to this question, he tells her that if she can’t or won’t press charges then all she can do is try to go move on, telling her that “He’s a senior, he’ll be gone in a few months”. It is made clear several times throughout the publication that Hannah’s peers consider this an extremely poor reaction to her disclosure, with Clay going as far as suggesting that had he handled her disclosure more appropriately she might still be alive. For these reasons the key messaging around sexual violence is not problematic (although it is also not perfect), and could actually be helpful in clarifying what is and what is not consent.

The series also presents a diverse cast with regards to class, gender, sexuality, and ethnicity. In doing so, it challenges several stereotypes. For example, Courtney is the adopted daughter of a gay couple, with whom she is incredibly close and fiercely protective of. Zach’s Asian mother is concerned with why he isn’t the captain of the basketball team, and doesn’t show much interest in his grades. While many of the characters are depicted as upper middle class or even wealthy, Justin comes from a financially insecure background and is subject to negligence from his mother and abuse from her boyfriend. Despite this, Justin is popular at school and well-accepted into his circle of well-to-do friends. Marcus, a black student, is the head of the Honour Committee. Tony is a working class Latino male whose pride and joy is his car, which he works on himself. He is also gay, an issue that is only addressed long after the audience becomes aware of it, because Clay doesn’t even notice. The diversity of people portrayed is not self-congratulatory or emphasised in any particular way, feels natural, and reflects a more realistic ‘sample population’ than those represented in most publications pitched at teenagers.

It is also important to note that while mental health advocates are deeply concerned by the portrayal of suicide in these publications, many individuals who have at times been suicidal or have attempted suicide themselves have praised the series as an accurate reflection of their experiences. This is especially true of young people themselves, who argue that while Hannah’s story may be at times have been painful for them to watch, feel that their own struggles were validated and well represented. While this is by no means a universal response, it is certainly a significant one that deserves to be taken into consideration.

As the Mental Health Foundation New Zealand has pointed out the series presents opportunities for adults and young people to have conversations about youth suicide and other issues raised by the show, as long as these conversations are informed and safe. To quote, the Mental Health Foundation New Zealand would “encourage parents, guardians and other adults to have open conversations with their young people about the issues raised in the show. Don’t make them feel ashamed for watching or feel they have to hide that they’re watching it. Young people are saying the show is starting conversations about issues they face every day – suicide, sexual violence, bullying, slut-shaming – these aren’t things they should have to figure out alone.” This guidance and support is essential to provide outside the series, which in and of itself offers several problems but not necessarily that many solutions.

s3(4)(d) The persons, classes of persons, or age groups of the persons to whom the publication is intended or is likely to be made available.

Despite Netflix flagging this as an ‘Adult’ publication, it is definitively directed at an audience of teenagers. It is a show about young people, for young people.

s3(4)(e) The purpose for which the publication is intended to be used.

The episodes’ primary purpose is entertainment.

s3(4)(f) Any other relevant circumstances relating to the intended or likely use of the publication.

These publications, or elements of this series as a whole, could be used effectively as teaching aides.

Conclusion:

13 Reasons Why is a complex and controversial TV show. The series has significant merit – it addresses issues that are highly relevant to young people, including but not limited to suicide, sexual violence, bullying, and slut-shaming. Some of these elements have received praise from groups such as the Sexual Abuse Prevention Network, who have highlighted the positive messaging around sexual consent and appropriately and consistently identifying instances of rape. In this sense, the show could be helpful in clarifying what is and is not sexual consent.

The Mental Health Foundation New Zealand also identifies the series as an opportunity to raise awareness around youth and mental health, and to generate important conversations. However, it is important to note that these conversations need to be both informed and safe – parents, guardians, and other adults need to have open conversations with their young people about the issues raised by the show. Young people need guidance and support around the content of the 13 episodes, which – as the Mental Health Foundation New Zealand identifies – raise a lot of problems but do not necessarily provide any solutions.

Some young people in the media, and those spoken to by the OFLC, have strongly expressed the view that *13 Reasons Why* accurately represents the issues facing youth. Those who have spoken out in support of the show include those who have struggled with depression, mental health issues in general, and suicidal ideation, and have survived suicide attempts. These opinions do not represent a consensus, but they are significant and deserve to be taken into consideration when formulating a fair and reasonable classification decision.

However, in making such a classification decision, there are several other key factors that need to be addressed. For example, although the Sexual Abuse Prevention Network considers the overall messaging of the series surrounding sexual violence to be unproblematic, they also stress that the series does not offer any positive examples of appropriate responses to rape disclosures. This is most obviously presented in the form of Mr Porter the guidance councillor, who both Hannah and her peers identify as responding inappropriately to Hannah’s disclosure. While this might be instructive, it is not counter-balanced by any positive or appropriate responses to disclosure. For instance, after listening to the tapes Clay states: ‘I think it’s time we stop thinking about what Hannah wants, and start thinking about what Hannah needs. And Jessica. And every other girl that “begged Bryce to fuck her”’. Young people should not walk away from these episodes believing that they have the right to decide what a sexual violence survivor may ‘need’. More often, support people should focus on building a survivor’s sense of control and autonomy, which is vital after a sexual assault. Support people generally should be asking the survivor what they want to happen, not telling them what they think needs to happen.

In assessing whether or not the episodes are likely to be injurious to the public good, the most immediate concern is their treatment of youth suicide. Hannah's suicide is presented as if she is on rails – once she has started on a particular track her death is represented as not only a logical, but an unavoidable outcome of the events that follow. This is an irresponsible depiction of suicide. Suicide should not be presented as the result of clear, linear thinking. Suicide is preventable and most people who experience suicidal thoughts are suffering from distorted thinking patterns that do not allow them to make rational decisions. Approaching Hannah's suicide as an informed choice that she gets to make also severs suicide from the mental illness that often accompanies it, and therefore eliminates a major factor for lay audiences in developing a realistic understanding of how and why suicides often occur. It is also extremely damaging to present rape as a 'good enough' reason for a suicide to occur, both in the sense that there is no 'good enough' reason and in the harmful message that sends to survivors of sexual violence about their futures and their worth post-assault.

As discussed earlier, *13 Reasons Why* flouts international guidelines for responsible representations of suicide in fiction. The scene depicting Hannah's suicide is graphic, and explicit about the method of suicide she uses, to the point where it could be considered instructional. As the Mental Health Foundation New Zealand notes of the scene in which Hannah dies, 'It was detailed and lengthy, and is likely to have caused distress and an increased risk of suicide in people who are vulnerable. Research has demonstrated an increased use of particular methods of suicide when they are portrayed in popular media.' Given that Hannah's death could be and has been read as a suicide-as-revenge narrative, it's important to understand that 'revenge' is one of the top three reasons listed by the New Zealand Ministry of Health for youth suicide, and is in the top five in studies referenced by the Mental Health Foundation New Zealand.

Suicide contagion is a real phenomenon, which according to Ministry of Health studies accounts for around 5% of youth suicides. This is reflected directly in the publication itself, as Alex's attempted suicide is shown as a response to the guilt he feels over Hannah's death. New Zealand consistently registers one of the highest youth suicide rates in the OECD and it is vital that this issue is taken seriously at all levels. Although Netflix has placed generalised content warnings before some of its episodes, further steps are required.

Netflix should also consider doing more. As a consequence of this classification Netflix will now be required to display a clear warning in respect to the series, as well as in respect to each episode. Best practice suggests that content warnings should be placed at the beginning and end of every episode, and those young people interviewed by this Office have stated a preference for them to be verbal as well as written. These warnings should include help-seeking information pertaining to localised services such as helplines, websites, support numbers, crisis services and so forth. The immediacy of this information being provided without any effort on behalf of the viewers allows for a higher chance of intervention for the episodes' most needy or vulnerable viewers.

Complex as these issues are, this series is clearly popular and has already found a large and enthusiastic audience in New Zealand. In addition to the inclusion of the content notices discussed above, this Office strongly believes that parents, caregivers, and trusted adults need to take a supervisory role with regards to young people and this show. This includes asking the young people in their lives whether they are aware of or have seen this series, watching it themselves, and having open and honest conversations with young people about any issues that may come up surrounding the themes that it presents. All of the young people in *13 Reasons Why* feel unable to enter into an open dialogue with the adults in their lives, or feel (often rightly) that the adults in their lives do not respond in appropriate or helpful ways when they do try to engage

with them: this has palpably negative outcomes for all of them. This is a nuanced story that asks a lot of questions, and raises a lot of issues, but often fails to either answer or fully address them. Therefore discussion needs to occur outside the episodes themselves, and guidance needs to be offered to young people viewing this series by a trusted and appropriate adult.

It is for these reasons that the Classification Office places a restriction on these episodes, limiting them to those eighteen years or older unless supervised by an adult viewer, ordinarily a parent but potentially another responsible adult, older sibling or guardian. We have considered whether an RP16 or R16 could be an appropriate classification, but these classifications would not address the harm caused to sixteen and seventeen year olds (who are at statistically greater risk of suicide). This classification interferes with freedom of expression contained in the New Zealand Bill of Rights Act 1990 but is consistent with Section 3 of the FVPC Act to limit the availability of publications likely to be injurious to the public good. This classification allows the intended audience of young people to continue to access the publications, while providing the necessary intervention of adult supervision in order to keep them safe and sufficiently navigate the relevant but troubling issues that we acknowledge as a part of their lived reality.

Date: 26 April 2017

For the Classification Office (signed):

Note:

You may apply to have these publications reviewed under s47 of the FVPC Act if you are dissatisfied with the Classification Office's decision.

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