

UNDER the Films, Videos and Publications Classifications Act 1993

IN THE MATTER of an application under s47 by Sony Pictures (NZ) Limited
for a review of the publication entitled **“Don’t Breathe”**

**DECISION OF FILM AND LITERATURE REVIEW BOARD OF AN APPLICATION
UNDER s47 BY SONY PICTURES (NZ) LIMITED FOR THE REVIEW OF THE
PUBLICATION OF “DON’T BREATHE”**

Board Meeting on 14 September 2016:

Members: K G Davenport QC
J Peters
Dr T Brown
J Sissons
Dr W Waitoki

Appearances by: Mr Andrew Cornwell, General Manager, Sony Pictures for
the Applicant and accompanied by Matthew Cheetham,
Observer

Dr Andrew Jack, Chief Censor, Classification Office.

The Application

1. Sony Pictures applies for a review of the classification of the movie **“Don’t Breathe”**. The Office of the Film and Literature Classification has rated the movie R18 and noted that it contained violence, sexual violence and offensive language. Sony objects to this classification and submits that it ought to be rated with the classification of R16, or RP15, (ie. is restricted to persons over the age of 15 unless accompanied by a parent or guardian).

The Movie

2. The Board saw the movie in Wellington on 14 September. The movie is about three young people who break into the home of a blind, American war veteran. Their objective is to steal from him a sum of money which they know that he has obtained from a settlement which he has recently reached with the family of a young woman who had run over and killed the veteran’s daughter.
3. The genre of the film is described as thriller/horror. The movie is almost entirely centred around the violent activities which occur when the young people break into the veteran’s house to steal his money. From shortly after they break in the film depicts extreme violence, perpetuated by both the veteran and the intruders. The initial act of violence is the graphically depicted murder of the character called ‘Money’. He is shot in the head by the veteran. Viewers see the blood and brain splatter on the wall after he is shot.
4. The rest of the movie shows the two remaining characters attempting to escape from the locked house. The veteran pursues them relentlessly.
5. There is a scene which involves one of the characters being chased by a Rottweiler dog, who is trying to attack her. During the movie the intruders and the veteran strike, hit and punch each other and try to hurt or kill each other with a variety of weapons: a hammer, a crow bar, two

guns, a shovel. In one scene the veteran tries to strangle the young man, Alex. He stabs one victim with garden shears.

6. When trying to escape and relatively early in the movie, the intruders discover a young woman tied up in the basement with her mouth covered. After some initial reluctance they release her and they attempt to escape together. The young woman (Cindy) is shot and killed by the veteran. The viewer learns she is the young woman who ran over his daughter. Later in the movie he captures Rocky, (the young woman intruder), and ties her into a sling from which he can hoist her in the air. From this position she is helpless, dangling in the air. The veteran slits her clothing open and tries to inseminate her with a turkey baster full of his sperm. His aim in doing this is to get Rocky pregnant to replace the baby that Cindy had been carrying to replace his dead daughter. His view was that Cindy needed to give him a child. The Classification Office comment in their submissions, [and the Board agrees], that these scenes are not a necessary part of the story. They are also disturbing.
7. The Board concludes that the overall impression of the movie is one of extreme violence with little apparent humanity, sexual violence in the scene with Rocky and in the implications of what the veteran has done to the previous captive. There is obscene language, but in the overall totality of the movie it is not an aspect that a viewer is likely to focus on. The scenes of violence are made worse by the fact that this takes place at night with a blind veteran. In one scene he turns off the lights while hunting the intruders. There is understandably a moral ambiguity portrayed in the movie with the viewer feeling both repelled by and sympathetic to all characters.

Sony's Submissions

8. Sony submits that the content of the movie does not merit an R18 rating. They submit that an R18 rating ought to be reserved for films that have the most extreme content. They submit that this movie is not one of those films. They submitted that an R18 rating has significant impact on the minds of consumers who will not view an R18 movie, simply because

of the perceived nature of the content. They also submit that a R18 rating will deter a number of viewers who are over the age of 18 from watching. They submitted that it was misleading the consumer to have a rating which was higher than the content required.

9. Sony also submit that a significant number of theatres, particularly provincial and rural cinemas, will not play R18 movies.
10. Sony drew to the Board's attention the fact that the film had been classified in Australia as MA15+ and in the United Kingdom as R15.
11. Sony suggested that it was a movie which was comparable to the classification given to *Girl with the Dragon Tattoo*, *Django Unchanged* and *the Silence of the Lambs*. These were all rated R16.
12. Sony also noted that they did not agree with the Classifications Office's note that the movie contained "sexual violence". Mr Cornwell submitted that there was no sexual violence. He sought an RP15 rating.

The Classification Office

13. The Classification Office submitted that the publication did meet the gateway test contained s3(1) of the Act. This provides 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.
14. The Classification Office submitted that the movie deals with matters of crime and violence and sex and cruelty and horror, and therefore meets this gateway classification.
15. The Office submits that the movie was not a publication that should be deemed objectionable under s3(2). The Board agree with this submission and do not propose to discuss this further. The film does not promote or support any matter listed in s3(2)(a) to (f).
16. The Board must then consider s3(3) which provides –

3 Meaning of objectionable

- (3) *In determining, for the purposes of this Act, whether or not any publication (other than a publication to which subsection (2) applies) is objectionable or should in accordance with section 23(2) be given a classification other than objectionable, particular weight shall be given to the extent and degree to which, and the manner in which, the publication—*
- (a) *describes, depicts, or otherwise deals with—*
 - (i) *acts of torture, the infliction of serious physical harm, or acts of significant cruelty:*
 - (ii) *sexual violence or sexual coercion, or violence or coercion in association with sexual conduct:*
 - (iii) *other sexual or physical conduct of a degrading or dehumanising or demeaning nature:*
 - (iv) *sexual conduct with or by children, or young persons, or both:*
 - (v) *physical conduct in which sexual satisfaction is derived from inflicting or suffering cruelty or pain:*
 - (b) *exploits the nudity of children, or young persons, or both:*
 - (c) *degrades or dehumanises or demeans any person:*
 - (d) *promotes or encourages criminal acts or acts of terrorism:*
 - (e) *represents (whether directly or by implication) that members of any particular class of the public are inherently inferior to other members of the public by reason of any characteristic of members of that class, being a characteristic that is a prohibited ground of discrimination specified in section 21(1) of the Human Rights Act 1993.*
- (4) *In determining, for the purposes of this Act, whether or not any publication (other than a publication to which subsection (2) applies) is objectionable or should in accordance with section 23(2) be given a classification other than objectionable, the following matters shall also be considered:*
- (a) *the dominant effect of the publication as a whole:*
 - (b) *the impact of the medium in which the publication is presented:*
 - (c) *the character of the publication, including any merit, value, or importance that the publication has in relation to literary, artistic, social, cultural, educational, scientific, or other matters:*
 - (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:*
 - (e) *the purpose for which the publication is intended to be used:*
 - (f) *any other relevant circumstances relating to the intended or likely use of the publication.*

17. The Classification Office made submission on the matters listed in s3(3) and submitted that the violence in the film is high impact and graphically extensive.
18. The Chief Censor drew particular attention to the sexual violence in the film, which they describe as cruel and gratuitous. The Censor submits:

“While the film therefore certainly does not promote or support sexual violence, or stop short of justifying it, it does not leave the viewer entirely unsympathetic to some elements of the perpetrator’s character either. This extra layer of complexity requires a significant level of maturity to process.”
19. The Censor also submits that while the film does not promote or encourage criminal acts, it does present the three intruders as sympathetic by turning them into victims. Further although the criminal acts have significant consequences, the veteran is not held to account for kidnapping, sexually violating or killing Cindy, or for his conduct towards Rocky. Rocky also retains the \$300,000 which she has stolen from him, which she uses to flee her unhappy home life.
20. The Censor also draws the Board’s attention to s3(4) which requires the Board to look at the dominant effect of the publication as a whole.
21. In conclusion, the Censor submits that Don’t Breathe is a *“taut, suspenseful and well-made horror/thriller, it is designed to entertain and it has no particular literary artistic, social, cultural, educational or scientific merit”*.
22. Sections 3A and 3B enables the Board to restrict a publication if it contains offensive language. The movie does contain use of highly offensive language in the form of the use of the word “fuck” and its derivatives. A restriction in age of the viewers can also be made if it is likely to cause injury to the public good. This, the Censor noted, needs to be balanced against the right to freedom of expression in the Bill of Rights Act.

23. The Censor therefore submitted in conclusion that the public good is likely to be injured if this film is made available to children or young people in the lower to mid-teens for the following reasons:
- (a) The violence is high impact, cruel and extensive;
 - (b) The repeated depictions of brutal violence will inure younger people to violence;
 - (c) The Censor referred to literature (provided to the Board) showing the repeated exposure to such material by younger people leads to an increasingly violence society¹;
 - (d) Sexual violence is cruel and dominates the latter part of the film;
 - (e) (The sexual violence) is gratuitous and shocking. The Censor submits that it is so shocking that it would disturb young people, so it would be injurious to public good.
24. The Censor submitted that there were conflicting moral messages within the movie which are challenging for younger viewers, as there is a level of moral ambiguity. Young persons have less experience and greater inability to deal with these moral nuances than adults.
25. The Censor continued to support the rating of the movie as R18.

Discussion

26. The Board adopt the comments of the Classification Office about the matters which the Board is required to take into account under s3(1), s3(2) and s3(4) of the Act set out in paragraphs 13 to 16 above.
27. Section 52 enables the Board to reach its own conclusion as to the classification of the movie. Section 4 makes the decision as to whether the publication is objectionable, the decision of the expert opinion of the Board.

¹ Desensitising Effects of Violent Media on Helping Others, Brad J Bushman, 1,2 and Craig A Anderson 3 Psychological Science 2009

28. The Board have reached the conclusion that the decision of the Censor to rate this movie as R18 is correct. The commercial impact of an R18 classification is not a matter that the Act enables the Board to take into account.

The Board's Reasons

29. In assessing the publication, the Board have taken into account its view of what is injurious to the public of New Zealand based on its own expert opinion and articles as to the impact of violence on youth provided by the Classification Office.
30. The consideration by the Board of this movie comes shortly after the government's announcement that domestic violence in New Zealand is at such a level and of such a concern that significant political and social measures are necessary to address this problem. It is known as well that New Zealand society has an issue with violence.
31. The Board therefore assumes that for New Zealand society movies which depict extreme violence and sexual violence towards woman are of concern to New Zealand society as a whole. This is supported by some of the psychological studies which the Classification Office made available to the Board.
32. Against these concerns must be balanced the right to freedom of expression embodied in s14 Bill of Rights Act. Restriction of any publication should only be done where absolutely necessary and to the least extent possible in keeping with the requirements of the Act.
33. The concept of what is potentially injurious to the public good changes over time and is different from society to society. Therefore, while the classification of this movie in Australia and the United Kingdom is of interest (and might be of concern for example if they had rated the movie G and New Zealand Classification Office considered it should be rated R18) these classifications must also be viewed in the light of those countries' different legislative regimes. The Board understands, for

example, that in many instances, a publication that received an R18 rating in the United Kingdom would be classified as objectionable under the New Zealand legislative context.

34. The Board has taken into account the factors set out in s3(3). The following are the factors that the Board have given weight to:

(a) The continuous and extreme violence (serious physical harm). The Board's overall assessment of the percentage of the movies screening time that showed extreme violence would be at least 80%. The Board considers that this depiction of violence leading to serious physical harm is injurious to those younger than 18, especially when, as the Classification Office remarks, a certain degree of sympathy is felt for all of the characters in the movie. As the Board have noted watching movies showing extreme violence can in turn seriously adversely affect youth who watch it.

(b) The sexual violence towards Rocky and Cindy. It is of particular concern that the two young woman are shown a means of revenge or redress by the veteran for the loss of his daughter. He uses or intends to use these young women by forcing them to become pregnant. When discovered, Cindy was harnessed to the ceiling and her mouth was covered with tape. Rocky was then suspended in a similar way. The helplessness and terror shown by Rocky as she is suspended in the air as this dreadful act is about to be forced upon her is completely gripping and terrifying, despite not being a central part of the story. Further the Board consider that the intended and actual (though unseen) impregnation of these young woman with the intent of using the women as unwilling vessels for carrying a child to term could be said to fall within any of the matters covered by s 3(3)(a)(iii) - sexual or physical conduct of a degrading or dehumanising or demeaning nature.

35. The Board's view is that the portrayal of cruelty and sexual violence on these two young women is sufficiently serious to make the movie

injurious to the public good if viewed by anyone under the age of 18 years.

36. The Board accepts the submissions put forward by the Classification Office as to the potential risk to society if mid-teens could see the movie showing violence and sexual violence. At this age mid-teens struggle with the film's moral ambiguity on the issues.
37. The Board reach the view that because of these two factors the publication should be classified under s23 as objectionable except if the publication is restricted to those over the age of 18.
38. Accordingly, the Board dismiss the application by Sony Pictures. The Board's view is that the movie should be rated as R18, with warnings that the movie contains violence, sexual violence and offensive language.
39. Pursuant to the Act the Board hereby directs the Office of Film and Literature Classification as follows:
 - (i) under s55(1)(d) to direct the Film Video and Labelling Body to issue a label in respect of DON'T BREATHE that specifies the classification that has been given to the film; and
 - (ii) under s55(1)(e) enter the Board's decision in the register.

Dated at Auckland this 19th day of September 2016



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Kate Davenport QC
President