

NOTICE OF DECISION UNDER SECTION 38(1)

TO: Peter Davies

Title of publication: Disney's A Christmas Carol

Other known title: A Christmas Carol
Disney's A Christmas Carol (3D)

OFLC ref: 0901680.000

Medium: Film

Distributor: Walt Disney Studios NZ

Director: Robert Zemeckis

Producer: Robert Zemeckis
et al.

Country of origin: United States

Language: English

| | |
|------------------------|---|
| Classification: | Unrestricted: Suitable for mature audiences 16 years of age and over. |
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Excisions: No excisions recommended

Descriptive note: Content that may disturb.

Display conditions: None

| | Components | Running time |
|---------------------|----------------------------|--------------|
| Feature(s): | Disney's A Christmas Carol | 95:40 |
| Total running time: | | 95:40 |

REASONS FOR THE DECISION

The Office of Film and Literature Classification (Classification Office) examined the publication 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.

Submission procedure:

On 10 November 2009 the applicant, a concerned parent, applied to the Chief Censor for leave to submit this publication for a decision on its classification under s13(1)(c) of the Films, Videos, and Publications Classification Act 1993 (FVPC Act). On 13 November 2009 the Chief Censor granted leave under s15(3) of the FVPC Act.

In a letter dated 19 November 2009, Walt Disney Studios Motion Pictures New Zealand was notified of the submission of the publication and was informed of its right to make a written submission on the classification under s20 of the FVPC Act.

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

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

Section 23(3) permits the Classification Office to restrict a publication that would otherwise be classified as objectionable so that it 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):

The applicant's submission expresses concern about the current PG classification of the film:

Despite the PG rating comparable with movies such as *Alvin And The Chipmunks* and other similar movies this movie contains prolonged scenes of horror imagery. It is a disturbing and frightening movie and quite unsuitable for children. It is marketed as a Christmas family movie and this is most misleading. We attended the movie based on the benign trailer ad expecting it to be like other PG family films with my 6 and 9 year old children. They were very disturbed and we left mid film. I think this movie's classification should be raised to M given the violence and disturbing content.

A written submission was received from Walt Disney Studios Motion Pictures New Zealand on 25 November 2009 stating:

Disney's A Christmas Carol does contain some sequences which may frighten the audience. However, the animated presentation of ghosts and fantasy in some scenes is important to convince the viewer that Scrooge has experienced a transformative event and thus any heightened emotions that the audience may feel are more than placated by the redemptive lesson of the movie. *Disney's A Christmas Carol* is made with 3D motion picture technology which provides realistic animation images making them perhaps more intense.

The various spirits that visit Scrooge and other related material could be potentially unsettling to very young children hence the current and appropriate PG rating and consumer advice 'Some scenes may scare very young children'.

It is our belief that the current rating is appropriate and our written submission for *Disney's A Christmas Carol* is to maintain the current rating of PG.

Description of the publication:

The publication is a 35mm film containing an animated feature, titled *Disney's A Christmas Carol*. It has a total running time of 95 min and 40 sec. It was examined at the Reading Cinema at Courtenay Place, Wellington, in 3D format.

The film is a retelling of the classic Charles Dickens novel, *A Christmas Carol*. It begins on Christmas Eve with the death of miserly Ebenezer Scrooge's business partner, Jacob Marley. Seven years later, Scrooge is visited by Marley's ghost, who warns Scrooge of the fate he may receive. Marley tells Scrooge that he will be visited by three ghosts over the next three nights. The Ghost of Christmas Past shows Scrooge visions of his own childhood, followed by his entry into the world of business. Scrooge sees how he became greedy and obsessive about his own wealth, causing his fiancée Belle to leave him. The Ghost of Christmas Present enters Scrooge's house in a boisterous manner, and shows Scrooge the happiness his employee, Bob Cratchett, and his nephew, Fred, are enjoying on Christmas Day. Scrooge learns that Bob's son, Tiny Tim, is sick and will soon die. The Ghost of Christmas Yet to Come arrives in a more frightful manner and shows Scrooge the consequences of his greed. Scrooge is shown that nobody will mourn his death; Fred is ecstatic at the possibility of an inheritance, Scrooge's maid steals his belongings and the townspeople make humorous banter about his passing. Scrooge begs for a second chance, before being thrown into his own hellish grave. Scrooge wakes to find that it is still Christmas Day. A changed man, Scrooge runs into the town giving donations where he can. With the guidance of the three ghosts, he realises the importance of family, happiness and Christmas spirit. The dialogue uses Dickensian language.

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

¹ *Living Word Distributors v Human Rights Action Group (Wellington)* [2000] 3 NZLR 570 at paras 27-29.
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The content of the publication must bring it within the "subject matter gateway". In classifying the publication therefore, the main question is whether or not it deals with the following matters in such a manner that the availability of the publication is likely to be injurious to the public good:

Matters such as horror

The publication deals with matters of horror. Horror is expressed through visual imagery, the dominant theme of death and associated ghostly hauntings.

The feature has a dark, almost gothic tone, with almost all scenes taking place at night in dimly lit environments. Ghosts dominate the feature which, after the initial set-up scene, proceeds as a long, nightmarish rollercoaster ride. Many of the characters have exaggeratedly ugly features, particularly Scrooge, whose chin and nose are long and hooked, and whose fingers are no more than skin-covered bone. The opening scene shows a close-up of Marley's dead face as he lies in his coffin with pennies on his eyes. Scrooge steals these before leaving. The strongest depictions of horror are described below.

After finishing work, Scrooge walks to his house. As Scrooge approaches the door he is startled by a green semi-transparent face with flowing hair in the place of his doorknocker. He reaches out to touch it and it screams at him. Several teeth fly out toward the viewer. This scene is among several that place emphasis on giving the viewer an unexpected shock, which is enhanced with the 3D format.

Later, Scrooge is eating in front of a fire in his bedroom. He hears noises; bells frantically ring above his door. They are replaced by the sound of chains and heavy objects being dragged outside his door. The noise gets louder and Scrooge is fearful. Large boxes attached to the ends of chains, which are green and semi-transparent, fly through his door. The wailing ghost of Marley is attached to the other end of the chains which are wrapped around him. Marley floats around the terrified Scrooge wailing and dragging the chains. At one point Marley's jaw becomes dislocated and hangs down on his chest, his tongue lolling out of his gaping maw. A large number of ghosts of similar appearance to Marley are later seen flying in the street outside Scrooge's window wailing and dragging their chains.

The Ghost of Christmas Yet to Come is depicted as a shadowy silhouette similar to the archetypal Grim Reaper. This ghost chases Scrooge through London, driving a hearse led by black horses with sharp teeth and red eyes. His black skeletal hand points occasionally to direct Scrooge's gaze. This hand appears to protrude from the screen due to the 3D format. The scene is particularly nightmarish as Scrooge shrinks in size until he is small enough to hide in a sewer pipe. He is eventually attacked by a rat as he listens to his servant laugh at the memory of how she took the pennies from Scrooge's dead eyes.

The Ghost of Christmas Yet To Come reinforces the major theme of death. He shows Scrooge a dead body, which Scrooge later realises to be his own, covered by a sheet and silhouetted against a wall. The ghost leads Scrooge to a graveyard and shows him his grave. The ghost forces Scrooge to confront his fate and pushes Scrooge into his own grave, in which the coffin morphs into a doorway to Hell.

The film is reasonably frightening, with brief moments of pathos and humour to lighten the tone. There is considerable focus on Scrooge's terror and fear as he is led on an uncontrollable journey that includes, at one point, being shot into the stratosphere and then left to fall to earth.

Scrooge's redemption at the end is uplifting but overall the film chooses to focus on the supernatural and frightening aspects of the tale.

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), but none are relevant to this publication.

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), but none are relevant to the publication.

Additional matters to be considered:

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

The dominant effect of the publication is a well-made narrative using cutting-edge computer technology to create a haunting, yet exhilarating, presentation of a literary classic. It has elements that would scare children and material of an adult nature that would be incomprehensible to children.

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

³ Above n2 at para 29.

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

The 35mm film *Disney's A Christmas Carol* is a 3D computer animated feature using a 'performance capture' technique to create a sense of realism.

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.

The publication has merit. It is a visually spectacular adaptation of the classic *A Christmas Carol* by Charles Dickens.

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.

It is marketed to all audiences, but its dark tone and horror themes make it more suitable for a mature audience.

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

The publication is intended for entertainment purposes.

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.

The publication does not contain any highly offensive language.

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), but none are relevant to this publication.

New Zealand Bill of Rights Act 1990:

Section 14 of the New Zealand Bill of Rights Act 1990 (NZBR Act) 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 NZBR Act, 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 NZBR Act 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".

Conclusion:

The unrestricted availability of this publication is unlikely to be injurious to the public good. *Disney's A Christmas Carol* contains material that is likely to shock and frighten younger viewers but is unlikely to have long-term negative effects. The use of Dickensian language is likely to be difficult for younger viewers to understand and would isolate them from the narrative. There are also themes, such as death, horror and supernatural haunting, which require a level of maturity to understand. The animated presentation and fantasy elements may, however, limit the impact of these aspects. Given these considerations the film is classified as unrestricted, but more suitable for audiences 16 years of age and over.

The Classification Office has considered the effects of the Bill of Rights on the application of the classification criteria elsewhere in these reasons. The decision does not interfere with the freedom of expression in the Bill of Rights.

Date: 26 November 2009

For the Classification Office (signed):

Note:

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

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