

NOTICE OF DECISION UNDER SECTION 38(1)

TO: Chief Censor

Title of publication: Paranormal Activity
Other known title: Not stated
OFLC ref: 1000398.000
Medium: Film
Distributor: Hoyts Film Distribution
Director: Oren Peli
Producer: Oren Peli
et al.
Country of origin: United States
Language: English

Classification:	Objectionable except if the availability of the publication is restricted to persons who have attained the age of 16 years.
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Excisions: No excisions recommended
Descriptive note: Contains horror scenes and offensive language.
Display conditions: None

	Components	Running time
Feature(s):	Paranormal Activity	86:14
Total running time:		86:14

A direction has been given to the Film and Video Labelling Body Inc. to issue a label for this publication.

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:

The film was originally cross-rated M by the Film and Video Labelling Body from its Australian classification.

On 1 March 2010 the Chief Censor of Film and Literature directed the Secretary for Internal Affairs obtain a copy of the film and submit it for classification under s13(3) of the Films, Videos, and Publications Classification Act 1993 (FVPC Act). The Chief Censor states his reasons for doing so:

We have received two complains that this rating is inappropriate. It has been classified R in the USA, IIB in Hong Kong, 16 in Germany, The Netherlands and Singapore, 15 in the UK, Finland, Sweden and Norway, 15A in Ireland, and 14A in Alberta, British Columbia, Manitoba and Ontario. I am consequently concerned that the rating assigned to this film may not accurately reflect its content under New Zealand law.

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):

No written submissions were requested.

Description of the publication:

The publication is a 35mm horror film from the United States, with a running time of around 86 minutes. Micah and Katie, a couple living in a suburban house, become increasingly disturbed by a demonic presence in their home. Micah, a sceptic, decides to run a video camera to capture the demon's activity whilst they sleep. The activity becomes more frequent and aggressive, and Katie's nocturnal behaviour begins to change.

The film is shot entirely by hand held camera, and the film takes on the guise of "found footage" – all footage seen appears to be shot by Micah or Katie.

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 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 sex

There is one mild reference to sex. Micah and Katie are preparing to go to sleep. Katie tells Micah to turn the camera off. When the camera is turned on again, Micah jokingly comments that what just happened was "illegal in Kentucky and twenty other states."

Matters such as horror and violence

The film has a supernatural theme. It relies on growing tension that builds slowly, and uses minimal special effects to create a "realistic" storyline. As each night falls, and the camera's timestamp begins to spin forward, the demon makes its presence known with loud thumps, shadowy figures and footprints left on the floor. The couple's bed sheets move by an unseen force, and Katie feels breathing on her face. A Ouija board left unattended in the living room with the camera rolling bursts into flames, and Micah finds an old, burnt photograph of Katie as a child in the attic. Katie is shown sleepwalking and eerily standing in one spot for hours. The activity becomes violent, with Katie eventually being ripped out of bed and dragged down the hallway. Eventually, it is suggested that the demon has possessed Katie. The camera rolls at night as usual, and Katie gets up and goes downstairs. She screams loudly, and Micah runs downstairs. The camera shot remains in the bedroom. Slow, loud footsteps are heard and Katie hurls Micah's body across the bedroom. She kneels down beside his body to either sniff or lick it. She approaches the camera before smiling and then lunging at the lens. A title card informs the viewer that Micah's body was found and that Katie's whereabouts are still unknown.

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

¹ *Living Word Distributors v Human Rights Action Group (Wellington)* [2000] 3 NZLR 570 at paras 27-29.
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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). The matter relevant to the publication is:

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.

Katie obviously kills Micah as she is covered in blood at the last scene and throws his body across the room. His death was not depicted. It is unclear how she killed him.

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.

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

³ Above n2 at para 29.

The publication contains highly offensive language. The word “fuck” and its derivatives are used more frequently as the tension between the couple intensifies. For example, Katie yells at Micah to “get the fuck out” and to turn the “fucking camera” off. Micah goads the demon, and challenges it with phrases such as “you want to fuck with us?” This language increases the intensity of certain scenes and is likely to cause harm to children, who are more likely to be upset by the aggressive language. However, considerations under s3(1) are likely to lead to a restriction that would prevent this harm.

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.

Additional matters to be considered:

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

The dominant effect is of an eerie horror film with a supernatural theme. Effort has been made to present the feature in the most realistic light possible.

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

The film has been presented in movie theatres. This amplifies the effect of the feature on the viewer, with surround sound and a large screen.

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 film has no particular character or merit in relation to the above matters.

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.

The film is intended for older audiences and fans of the horror genre.

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

The film is intended for entertainment purposes.

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 the film is likely to be injurious to the public good. The images of horror, the sinister supernatural themes, and the tension and realistic fear the characters experience in the film are likely to be greatly shocking and disturbing to younger teenagers and children. Although deliberately designed to scare and disturb all viewers, adults and older teenagers will be more likely to be able to put the images and themes of the film into context. Children and young teenagers, on the other hand, are likely to sustain lasting damage from seeing films like this, including nightmares and persistent upsetting thoughts. Therefore, the film is restricted to persons who have attained the age of 16 years.

Considerations under s3 of the Films, Videos, and Publications Classification Act 1993 have been weighed against the relevant provisions of the New Zealand Bill of Rights Act 1990. Given the manner in which the film deals with matters of horror, a limit on its availability to older teenagers and adults is considered to be a reasonable and demonstrably justifiable restriction, and is the minimum restriction that can be applied in order to prevent likely injury to the public good.

Date: 08 April 2010

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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