

NOTICE OF DECISION UNDER SECTION 38(1)

TO: Secretary for Internal Affairs
Department of Internal Affairs
PO Box 805
Wellington

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Title of Publication: The Grudge
Other Known Title(s): Not Stated
Director(s): Takashi Shimizu
Producer(s): Sam Raimi, Rob Tapert, Taka Ishige
Format: Film 35mm
Country of Origin: USA
Language(s): English

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Components of Film:

Feature:	The Grudge	Running Time:	92.32
Trailers:	Nil	Running Time:	
		Total Running Time:	92.32

Decision:

Objectionable except if the availability of the publication is restricted to persons who have attained the age of 16 years.

Display Conditions:

Nil.

... Please turn over

Submission procedure:

On 14 December 2004 the Chief Censor directed the Secretary of Internal Affairs, under s13(3) of the Films, Videos, and Publications Classification Act 1993, to obtain and submit a copy of the publication to the Classification Office under s13(1)(b). The publication was submitted by the Secretary of Internal Affairs on 21 December 2004. The distributors of the publication, Roadshow Entertainment, were notified of their right to make submissions on 22 December 2004 and were reminded of this right on 12 January 2005. They were given until 20 January 2005 to make a written submission. No submissions were received by that date.

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.

Description of the publication:

The publication is a 35mm film, entitled *The Grudge*. The film is 92 minutes and 32 seconds in length. It is a psychological drama/horror and contains many of the standard elements of the genre. The feature, set in Tokyo, is essentially a remake of a Japanese film of the same title with American actors in all the primary roles. A young American woman is studying and working as a part-time home-help in Tokyo. She goes to help an invalid American woman and becomes involved in the curse of the house, inhabited by violently enraged ghosts who kill all who come into contact with them in various hideous ways. As is usual in this type of film, plot and characterisation are secondary in importance to its scare factor, the various killings, and to the clever use of ominous and atmospheric sound track and visual effects to heighten tension and suspense.

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 of horror, cruelty and violence

In terms of s3(1) of the Films, Videos, and Publications Classification Act 1993 the publication deals with matters of horror, cruelty and violence.

Elements of horror are involved in the feature's presentation of violence and cruelty. Some scenes, especially those involving the depiction of realistic domestic violence, suicide and gruesome murders, are horrific in nature.

The impact of scenes in which violence is depicted are increased through means of building suspense and the sudden shock of depiction, emphasised through the use of a soundtrack involving odd clicking noises, creaking, piercing shrieks and other sounds. Most depictions of violence employ camera cut-away and blood is minimal. Violence is implied by the discovery of dead bodies following scenes in which characters who investigate odd noises are suddenly confronted by ghostly faces and their bodies are pulled up into roof spaces or down into baths of water. One scene does involve a considerable amount of blood and is genuinely horrific. This is discussed further below.

The violence in most scenes is implied by means of camera cut-away and the sounds of screaming. There is very little blood involved in these depictions. Violence is primarily implied by the aftermath and by footage of characters struggling and screaming as they are pushed face first into water, dragged up into attics, or simply appearing to choke to death as they are asphyxiated by unseen forces. The real impact of the scenes arises from their shock value and the feature's focus on the terror and trauma of the victims. Elements of cruelty are involved in the fear inflicted on characters before death. These matters are discussed further below.

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

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

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

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). This publication does not fall within s3(2) because it contains none of the matters listed therein.

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 be given a classification other than objectionable.

The Classification Office has considered all the matters in s3(3). The only matter that it considers relevant to *The Grudge* 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.

The feature is primarily concerned with the infliction of serious physical harm on its characters. It generally implies such violence rather than actually depicting it and the impact of such scenes is increased by their shock value and the element of cruelty they contain.

As previously mentioned, most depictions of violence are implied and there is little graphic depiction of violence or its aftermath. One scene does involve a considerable amount of blood, however and stands out in the feature. A young woman has been grabbed up into the crawl space under the roof of the haunted house by a dead Japanese woman with long wild black hair and staring eyes. She disappears. Later the police find a jaw bone in the attic and in a subsequent scene a male character sees the woman shuffling through an office at night. Her clothes are torn and she leaves a trail of blood on the floor as she walks away from the camera. When hailed by the character, the young woman turns back. Her lower jaw bone has been ripped off and her tongue hangs down over the gory mess of what was once her face. The depiction is brief, but stands out in the feature in terms of its graphic impact.

A grainy black and white sequence shot with a shaky camera which shows a man terrorizing his wife and child before killing them and then hanging himself, is also of some impact. This follows

³ Above n2 at para 29.

the gruesome discovery of a woman's body which falls from the crawl-space inside a cupboard when it is opened. The presence of something horrible in there is heralded by the buzzing of many flies around the cupboard door and blood smudged segments of photographs showing the woman's face pinned onto it. The black and white sequence follows. The woman, apparently naked, tries to crawl away from the man down the stairs but is pulled back up screaming. He also drowns the cat and his own son in the bath. The noise of banging on the wall of one of the rooms is used to imply that he has hung himself and his feet are hitting the wall as he swings. This rapid-edited sequence is of considerable impact due to its more realistic implication of domestic abuse and cruelty.

Other scenes, such as the feature's opening sequence in which a man greets the day from his apartment balcony before inexplicably leaning forward and falling to his death also have considerable impact due to their shock value, but this is increased by their more realistic depiction.

Additional matters to be considered:

Under 3(4) of the FVPC Act, the Classification Office must also consider the following additional matters:

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

The dominant effect of the publication is of a psychological drama set in Japan and containing many of the standard elements of the horror genre with a particular xenophobic twist due to its casting of Americans as victims of scary violent Japanese ghosts.

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

The publication is a 35mm film, which increases the impact of frightening depictions and sound effects on the viewer, but involves less risk of inadvertent exposure of younger viewers to disturbing material due to its public screening.

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 is a slick and genuinely scary horror film, employing the clever use of sound and visual effects and manipulation of video and audio technology to increase its impact on the viewer.

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 publication is intended for an audience of mature teenagers and adults who are familiar with the horror genre and who enjoy such films because they like to be scared.

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

The publication is intended for entertainment purposes. The 35 mm version is intended to be screened on the widescreen in cinemas.

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

There are no other relevant circumstances relating to the intended use of the 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 Grudge is a psychological drama/horror, containing many of the standard elements of the horror genre and typified by its concentration on scaring the audience with repeated suspense-building and sudden shocks.

The publication deals with matters of horror, violence and cruelty. Although the infliction of serious physical harm in the feature is generally implied rather than directly depicted, the feature does involve some genuinely frightening elements. Violence occurs when hideous Japanese ghosts lurking in cupboards, attics, and stairwells suddenly emerge from shadows and inflict harm on American victims in their own homes and apartments. While the impact of many of these scenes is lessened by the unlikely nature of some of the scenarios, as well as the use of recognisable techniques for increasing suspense and causing fright in the audience, the violence occurs in areas where people, especially children, are encouraged to believe they are safe.

The basis of the scare-factor in *The Grudge* is the idea that ghostly presences might inflict unspeakable violence on their victims as they go about their normal everyday lives. The fear-response of the audience is heightened by their own normal feelings of vulnerability when it is dark and they are alone. This is why fear-responses are well-known to continue when the viewers of psychological thrillers and horror films return to their own real lives. Younger viewers, with less ability to determine the real from the choreographed special effect, are likely to find some of the more frightening scenes with their heavily implied violence, disturbing to them in other real situations. That the violently enraged and murderous 'spooks' are all Asian could also have a negative impact on the attitudes of younger viewers who have been disturbed or frightened by the publication. For these reasons the availability of the publication is restricted to persons 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 classification of this publication interferes with the freedom of expression, but this is a reasonable limitation on the freedom of expression that reflects the concern of a free and democratic society to limit the availability of publications that deal with matters of horror, cruelty and violence in a manner that is likely to be injurious to the public good.

Display conditions:

Where the Classification Office classifies any publication as a restricted publication, it is required under s27(1) of the FVPC Act to consider whether or not conditions in respect of the public display of the particular publication should be imposed.

In considering the issue of public display, the Classification Office must have regard to the matters set out in s27(2) of the FVPC Act, namely:

- (a) The reasons for classifying the publication as a restricted publication;
- (b) The terms of the classification given the publication;
- (c) The likelihood that the public display of the publication, if not subject to conditions, or as the case may be, any particular condition, would cause offence to reasonable members of the public.

The public display of the publication is not likely to cause offence to reasonable members of the public due to the innocuous nature of its title. No display conditions are necessary.

Date: 26 January 2005

For the Classification Office (signed):

OFLC No: 402077



Note:

You may apply to have this publication (or these publications) reviewed under section 47 of the Films, Videos, and Publications Classification Act 1993, if you are dissatisfied with the Classification Office's decision.

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