## CLASSIFICATION OFFICE DECISION

Title of publication:

Curse Of Chucky

Other known title(s):

Not stated

OFLC ref:

1300832.000

Medium:

Blu-ray disc

Distributor:

Universal Pictures

Director:

Don Mancini

**FVLB** Applicant:

Universal Pictures

Producer:

David Kirschner

Country of origin:

United States

Language:

English

Applicant:

Film & Video Labelling Body

Classification:

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

**Excisions:** 

No excisions recommended

Descriptive note:

Violence, offensive language and horror.

Display conditions:

None

Date of entry in Register: 04 September 2013

Date of direction to

issue a label:

03 September 2013

Date of notice of decision: No notice of decision has been issued

	Components	Running time
Menu:	Play	
	Scenes	
	Extras	
	Audio	-
	Languages	
Feature(s):	Curse Of Chucky	96:41
Timed component(s):	Deleted Scenes (x6)	6:21
	Gag Reel	1:27
	Play With Dolls: The Making Of Curse Of	15:34
	Chucky	
	Living Doll: Bringing Chucky To Life	8:35
	Voodoo Doll: The Chucky Legacy	7:08
	Storyboard Comparisons (x4)	25:19
	Notices	0:55
Total running time:		162:00

# Summary of reasons for decision:

Not applicable

# **CONSIDERATION SHEET**

OFLC ref:

1300832.000

Submission channel:

s12(1)

Title of publication:

Curse of Chucky

Other known title:

Not stated

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Country of origin:

United States

Language:

English

Applicant:

Film & Video Labelling Body

Examination transcript No:

610, p87

Examination date:

28 August 2013

Other identifying

information:

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CDA

# **COMPONENTS OF FILM**

# Components of film originally examined:

	Components	Running time
Мели:	Play	
	Scenes	
1	Extras	
	Audio	
	Languages	
Feature(s):	Curse Of Chucky	96:41
Timed component(s):	Deleted Scenes (x6)	6:21
	Gag Reel	1:27
i i	Play With Dolls: The Making Of Curse Of	15:34
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	Storyboard Comparisons (x4)	25:19
	Notices	0:55
Total running time:		162:00

Components of film excised:

### **EXAMINATION**

## Section 23 Examination and classification -

...the Classification Office shall examine the publication to determine the classification of the publication.

## Section 24 Soundtrack to be considered -

Where a film is intended to be viewed with an accompanying soundtrack (whether or not the soundtrack is an integral part of the film), an examination of the film under s23 of the Act shall also take into account the content of the soundtrack and its relationship to the film.

### Description of Publication:

The DVD contains a feature with a running time of 96 min 41 sec. It also contains a collection of deleted scenes, a gag reel, three behind-the-scenes featurettes on various aspects of the feature's making, and a 25-minute comparison of key scenes with the original storyboards.

The feature is a comedy horror film about an evil doll, Chucky, that is possessed by the soul of a serial killer. It is the latest iteration in a long line of commercially-successful films about Chucky, which began with the 1988 film Child's Play. In Curse Of Chucky, the doll is mysteriously sent through the mail to a mother and daughter living alone in a remote mansion. Shortly thereafter, the mother is found brutally murdered. The daughter, Nica, is physically disabled and struggles to cope on her own. She is soon joined by her sister Barb, and family: husband Ian, daughter Alice, and their nanny, Jill. Alice is immediately smitten by the Chucky doll, but it seems to disappear and then reappear of its own accord. Nica researches Chucky on the internet and discovers he has been linked to numerous homicides. She tries to warn Barb but a misunderstanding ensues. Barb is killed soon afterwards, as well as Jill and Ian. Nica has several close calls with Chucky but manages to survive. Towards the end of the feature it is revealed that the serial killer inhabiting Chucky was an old family acquaintance. Afterwards, Nica is arrested by the police for the violent murders and sentenced to preventive detention in an insane asylum.

Section 20 - Synopsis of Written Submissions

Not Applicable x

Section 21 Other Assistance

None Requested	x
See Record of Assistance	

## Other Relevant Information

None Considered	x
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In reaching a classification decision the Classification Office may consider a variety of information including previous decisions of the Classification Office or other censorship bodies, research, books, articles, reviews, and information obtained from the Internet. If you have used any of this information please record this below.

Previous decisions			
Classification Body	OFLC	VRA	
	Chief Censor of Film	IPT	
Title:			
Publication/Certificate/	Decision No.		
Other Sources (please s	pecify and reference):		
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### CLASSIFICATION

### Section 3 Meaning of "objectionable"-

s3(1)

... 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.

### Subject Matter Gateway

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)* [2000] 3 NZLR 570; (2000) 6 HRNZ 28, must also be taken in to 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.

The content of the publication must bring it within the "subject matter gateway". In classifying the publication therefore, the question is whether or not it deals with the following:

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.

N/A

Matters such as horror

See violence

Matters such as crime

The publication deals with crime in so far as it depicts a number of violent murders. Discussed below.

Matters such as cruelty
See violence

Matters such as violence

The publication deals with matters of horror, cruelty and violence in terms of s3(1) of the FVPC Act. The plot revolves around a malevolent doll possessed by the soul of a serial killer that kills several people in horrific ways. The infliction of serious physical harm and acts of significant cruelty are discussed below under s3(3)(a)(i).

Or – The content of the publication does not bring it within any "subject matter gateway".

For publications that fall outside the "subject matter gateway" go to <u>s3A and s3B</u>

### Section 3(2) 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" 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.<sup>2</sup>

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.

s3(2)(a) The exploitation of children, or young persons, or both, for sexual purposes.

In Moonen v Film and Literature Board of Review (Moonen II) [2002] 2 NZLR 754, the Court of Appeal stated that the absence of definitions of "young persons" and "children" in s3(2)(a) was deliberate. The provision does not require proof of the models' ages; it requires an assessment of whether or

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

Above n2 at para 29.

not the publication in which the models appear promotes or supports the exploitation of children or young persons for sexual purposes:

The legislation is concerned with the vulnerability of young people and with the corrosive injury to the public good of depicting persons perceived to be children or young people as subjects for exploitation. The Board properly assessed whether the publication of the photographs would tend to promote or support the exploitation of children or young persons, not limited to the impact on the particular persons photographed. The inquiry under s3 does not require the ascertainment of the precise age of the person photographed.<sup>3</sup>

It was Parliament's intention therefore that s3(2)(a) should apply to any publication as defined in the Act, that promotes, supports, or tends to promote or support, the exploitation of children or young persons for sexual purposes. As long as a publication at least tends to promote or support such exploitation, whether or not it depicts underage models, no underage models or no models at all is irrelevant to the proper application of s3(2)(a). The issue is whether, on the evidence presented by the publication itself, the publication at least tends to promote or support the exploitation of children or young persons for sexual purposes.

N/A

s3(2)(b)	The use of violence or coercion to compel any person to participate in, or submit to, sexual conduct.
N/A	
s3(2)(c) N/A	Sexual conduct with or upon the body of a dead person.
s3(2)(d)	The use of urine or excrement in association with degrading or dehumanising conduct or sexual conduct.
N/A	
s3(2)(e) N/A	Bestiality.
<i>s3(2)(f)</i> N/A	Acts of torture or the infliction of extreme violence or extreme cruelty.

If the publication promotes and supports, or tends to promote and support, any of the 3(2) provisions above and is deemed objectionable go to the <u>Bill of Rights</u> section.

However, section 32 of the FVPC Act directs the Classification Office to consider whether it would classify the publication differently if the material falling under s3(2) were excised or altered. If an excision were made, the publication would no longer fall under 3(2) of the FVPC Act. If the publication contains material that falls under 3(2) which can be excised or altered, go the <u>Excisions</u> section and then return to s3(3) and 3(4) below.

Otherwise, if the publication does not fall under s3(2) consider the following matters:

Moonen v Film and Literature Board of Review [2002] 2 NZLR 754 at para 40.

### Section 3(3) Matters to be given particular weight -

In determining, for the purposes of the Act, whether or not any publication (other than a publication to which subsection 3(2) of this section 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:

...particular weight shall be given to the **extent** and **degree** to which, and the **manner** in which, the publication describes, depicts, or otherwise deals with...

s3(3)(a)(i) Acts of torture, the infliction of serious physical harm, or acts of significant cruelty.

The feature contains a number of scenes depicting the infliction of serious physical harm, all of which involve strong elements of cruelty. Chucky puts rat poison in one of the soup bowls served to Nica, Barb and her family. The recipient is Barb's priest, Father Frank, who had turned up at the house to offer moral support following the death of Nica's mother. Father Frank leaves the dinner and drives himself home. He is found by police later having been involved in a car accident. When the police prise apart the car Frank's head rolls backwards, sending a spray of blood into the air. The severed head falls into the back seat beside Frank's severed hand. Later, Chucky kills Jill by kicking over a bucket of water where she is sitting. The water rolls inside a power point and electrocutes Jill. The skin around her eye burns and she falls to the ground dead. Chucky kills Barb by stabbing her in the eye with a knife – the knife point is shown entering the eye in close-up. The eye ball bounces down stairs. Barb's body follows, bouncing down the stairs to land beside Nica, scaring her. Ian's death is next; he is knocked to the ground by Nica's wheelchair. Chucky grabs a tomahawk and chops Ian's face, severing the lower jaw. The effect is bloody and mildly disturbing, yet also unrealistic. Chucky uses the tomahawk to chop at Nica's leg. Because she is paralysed from the waist down she does not feel the blow, but the axe is shown sticking in her leg. When it is pulled out it leaves a bloody wound. The last murder is committed by an associate of Chucky's - an unidentified blonde woman – who slices open the neck of the corrupt police officer who planned to sell Chucky after Nica's trial. The neck wound opens sending out a spray of blood.

s3(3)(a)(ii) N/A	Sexual violence or sexual coercion, or violence or coercion in association with sexual conduct.
s3(3)(a)(iii) N/A	Other sexual or physical conduct of a degrading or dehumanising or demeaning nature.
s3(3)(a)(iv) N/A	Sexual conduct with or by children, or young persons, or both.
s3(3)(a)(v)	Physical conduct in which sexual satisfaction is derived from inflicting or suffering cruelty or pain.
N/A	•

...particular weight shall be given to the extent and degree to which, and the manner in which, the publication

s3(3)(b) N/A	Exploits the nudity of children or young persons, or both.
s3(3)(c) N/A	Degrades, dehumanises or demeans any person.
<i>s3(3)(d)</i> N/A	Promotes or encourages criminal acts or acts of terrorism.
s3(3)(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. <sup>4</sup>

N/A

# 3A Publication may be age-restricted if it contains highly offensive language likely to cause serious harm

3A(1) A publication to which subsection 3A(2) applies may be classified as a restricted publication under section 23(2)(c)(i).

3A(2) This subsection applies to a publication that 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.

3A(3) In this section, **highly offensive language** means language that is highly offensive to the public in general.

The feature contains highly offensive language, in particular use of the word "fuck" and its derivatives. The language would be highly offensive to the public in general and likely to cause serious harms such as alienation or intimidation if emulated, such as by impressionable young viewers.

# 3B Publication may be age-restricted if likely to be injurious to public good for specified reasons

3B(2) This subsection applies to a publication that 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).

3B(3) The material referred to in subsection (2) is material that
3B(3)(a) describes, depicts, expresses, or otherwise deals with—

The grounds of discrimination prohibited by s21(1) of the Human Rights Act 1993 are sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status and sexual orientation.

3B(3)(a)(i)

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.

Discussed elsewhere

3B(3)(a)(ii)

Conduct that, if imitated, would pose a real risk of serious harm to self or others or both.

N/A

3B(3)(a)(iii)

Physical conduct of a degrading or dehumanising or demeaning nature.

N/A

3B(3)(b)

is or includes 1 or more visual images—

3B(3)(b)(i)

of a person's body; and

3B(3)(b)(ii)

that, alone, or together with any other contents of the publication, are of a degrading or

dehumanising or demeaning nature.

N/A

3B(4) The reasons referred to in subsection (2) are that the general levels of emotional and intellectual development and maturity of persons under the specified age mean that the availability of the publication to those persons would be likely to—

3B(4)(a)

Cause them to be greatly disturbed or shocked; or

3B(4)(b)

Increase significantly the risk of them killing, or causing serious harm to, themselves, others, or

both; or

3B(4)(c)

Encourage them to treat or regard themselves, others, or both, as degraded or dehumanised or

demeaned.

See conclusion

### 3C Procedure for classification under sections 3A and 3B

In determining whether to classify a publication as a restricted publication in accordance with section 3A or section 3B, the Classification Office must consider the matters specified in paragraphs (a) to (f) of section 3(4).

### Section 3(4) Additional matters to be considered -

In determining, for the purposes of the Act, whether or not any publication (other than a publication to which subsection 3(2) of this section 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:

s3(4)(a)

The dominant effect of the publication as a whole.

The dominant effect of the publication is of a formulaic comedy horror film featuring a notorious, tongue-in-cheek antagonist.

s3(4)(b)

The impact of the medium in which the publication is presented.

DVDs can be rented or bought for private viewing at home. They have the facility to be slowed down, or the image frozen, to focus on particular parts of the content, increasing the impact of certain scenes. Parts can be replayed repeatedly which has the effect of detaching the viewer from the narrative.

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.

No particular merit or character in relation to the above.

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.

Older teens and adults, in particular fans of horror films

s3(4)(e)

The purpose for which the publication is intended to be used.

Entertainment

s3(4)(f)

Any other relevant circumstances relating to the intended or likely use of the publication.

None

## **BILL OF RIGHTS CONSIDERATIONS**

### New Zealand Bill of Rights Act 1990

Section 14 Freedom of expression -

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.

Section 5 Justified limitations -

Subject to section 4 of this Bill of Rights, the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Section 6 Interpretation consistent with Bill of Rights to be preferred -

Wherever an enactment can be given a meaning consistent with the rights and freedoms contained in this Bill of Rights, that meaning shall be preferred to any other meaning.

### Discussion of Bill of Rights Considerations:

Discussed in conjunction with the conclusion below

Page 12 of 15

### **CONCLUSION**

### Injury

If s3(1) applies to the publication the question is whether or not it deals with the matters discussed in a manner that the availability of the publication is likely to be injurious to the public good. In discussing injury consider the nature and severity of that injury, the likelihood of it occurring and who would be injured by the publication's availability. The classification recommended must remedy the injury identified.

If s3B applies to the publication, the injury to the public good must be explained in terms of s3B(4) of the FVPC Act.

If s3A applies to the publication, explain the age restriction in terms of how the language is likely to cause serious harm to persons under the age of the restriction.



The unrestricted availability of the publication is likely to be injurious to the public good. The feature contains scenes of violence, horror and cruelty that would be greatly disturbing or shocking to young viewers. The violence is often graphically depicted. While the ridiculousness of the scenes and hammy black comic sensibility lower the impact somewhat for an older audience familiar with the conventions of the genre, the impact would still be high on younger viewers. Older teenagers and adults have the maturity to place these images in the context of a comedy horror without being negatively affected. The use of highly offensive language supports a restriction. The publication is therefore restricted to audiences who have attained the age of 16 years and over. This classification interferes with freedom of expression contained in the New Zealand Bill of Rights Act 1990 but is consistent with s3(3) of the FVPC Act to limit the availability of publications likely to be injurious to the public good.

### **EXCISIONS/ALTERATIONS**

### Section 32 - Excisions from and alterations to film -

In the case of a film submitted for classification under any part of the Act other than s29(1) and 41(3) (court referrals), if the Classification is of the opinion that it would classify the film differently according to whether any specified part or parts of the film are excised from or left in the film, it shall, before making a final determination in respect of the classification of the film, follow the procedure prescribed by section 33.

Section 33(1) directs the Classification Office to notify the authorised distributor of the film of the classification that would be given if part or parts of the film were excised or altered, and, the classification that would be given if the specified part or parts were not excised or altered.

Section 33(5) provides that, in deciding whether or not to propose excisions or alterations, the Classification Office may consider the effect that any such excision or alteration may have on the continuity of the film or on its overall effect.

EXCISIONS SUMMARY		<u>'</u>
None (for non-moving image and s29(1) / 41(3) publications)		
No excisions recommended (for all other moving image publications)	х	
Excisions/alterations recommended		
Number of Excisions/Alterations:		 
Brief Description:		 -
		·

## PUBLIC DISPLAY CONDITIONS

NT - / A 11 1 1	
Not Applicable	

# Section 27 Conditions relating to the display of restricted publications -

Where the Classification Office classifies any publication as restricted, the Office shall in every case consider whether or not to impose conditions on the public display of that publication, and may impose such conditions at the time of classifying the publication.

In determining whether or not conditions in respect of public display should be imposed, the Classification Office must have regard to:

s27(2)(a) The reasons for classifying the publication as a restricted publication.

Because of the publication's treatment of horror, cruelty, violence and offensive language.

s27(2)(b) The terms of the classification given to the publication.

R16

s27(2)(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.

### Unlikely

Section 27(3) directs that where the Classification Office considers that the public display of the publication, if not subject to conditions under this section, would be likely to cause offence to reasonable members of the public, the Classification Office shall, at the time of classifying the publication, impose such conditions under this section in respect of the public display of that publication as it considers necessary to avoid the causing of such offence.

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