### **CLASSIFICATION OFFICE DECISION**

Title of publication:

South Park: The Complete Seventh Season (Disc 3)

Other known title(s):

South Park: Season 7 (Episodes 11 - 15)

OFLC ref:

1000619.000

Medium:

DVD

Distributor:

Universal Pictures Video

Director:

Trey Parker

Producer:

Frank C. Agnone II

Country of origin:

United States

Language:

English

Applicant:

Film & Video Labelling Body

Objectionable except if the availability of the publication is restricted to persons who have attained the age of 13 years.

**Excisions:** 

No excisions recommended

Descriptive note:

Contains offensive language and sexual references.

Display conditions:

None

Date of entry in Register: 19 May 2010

Date of direction to

19 May 2010

issue a label:

	Components	Running time
Menu:	Episode Selection	
	Play Episodes	
	Set Up	
	Commentaries	
Timed component(s):	Casa Bonita	21:58
	All About Mormons	21:58
	Butt Out	21:58

1	Raisins	21:58
	It's Christmas In Canada	21:58
J	Notices	0:33
Untimed component(s):	Commentary	
Total running time:		110:23

# Summary of reasons for decision:

Not applicable

# **CONSIDERATION SHEET**

OFLC ref:

1000619.000

Submission channel:

s12(1)

Title of publication:

South Park: The Complete Seventh Season (Disc 3)

Other known title:

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Medium:

DVD

Distributor:

Universal Pictures

Director:

Trey Parker

Producer:

Frank C. Agnone II

Country of origin:

United States

Language:

English

Applicant:

Film & Video Labelling Body

Examination transcript No:

508, p227

Examination date:

12 May 2010

Classification Officer(s):

Other identifying information:

# **COMPONENTS OF FILM**

# Components of film originally examined:

	Components	Running time
Menu:	Episode Selection	
	Play Episodes	
	Set Up	
	Commentaries	
Timed component(s):	Casa Bonita	21:58
	All About Mormons	21:58
	Butt Out	21:58
	Raisins	21:58
	It's Christmas In Canada	21:58
	Notices	0:33
Untimed component(s):	Commentary	
Total running time:		110:23

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 publication is a DVD containing five episodes from the highly successfully animated television series, *South Park*. The DVD also contains a language and subtitle menu, commentaries by the creators of the series as well as some notices. This disc contains episodes 11-15 and are taken from the shows seventh season.

The series follows the adventures of four foul-mouthed third/fourth graders, Stan, Kyle, Eric (also known as Cartman), and Kenny. Set in the Colorado town of South Park, each episode sees a different adventure for the boys. Other regular characters include the boys' schoolmate Butters and Stan's adopted younger brother Ike.

In the episode Casa Bonita Cartman learns that Kyle plans to take Butters to his birthday party instead him. The episode deals with Cartman's attempts to get invited back to the party. Cartman creates a fake meteor scare tricking Butters into taking refuge in a bomb shelter.

The episode All About Mormons deals with the arrival of the Harrisons, a Mormon family in South Park. They invite Stan over for dinner and tell him about Mormon beliefs. Stan's father visits the Harrisons intending to tell them to keep their beliefs to themselves. Instead he arrives home and declares Stan's family Mormon.

The episode *Butt Out* deals with the underhanded tactics used by the anti-smoking lobby. Anti-smoking campaigner Rob Reiner takes the boys on a tour of a tobacco factory, photographs them, and then digitally alters the photographs inserting cigarettes into the boys' hands. He then films a commercial where Cartman pretends to have terminal cancer.

In the episode *Raisins* Stan's girlfriend Wendy leaves him. In an attempt to cheer him up his friends take him to Raisins, a restaurant where the waitresses blatantly flirt with customers in order to get tips. While there Butters meets waitress Lexus and becomes obsessed with her. Meanwhile Stan becomes so miserable he joins the goth kids.

In the episode It's Christmas In Canada Ike's natural parents arrive and, due to a law change, are able to take him back Canada. Stan and his friends travel to Canada to talk to the new Canadian prime minister about the law change that enabled this.

#### **Statutory Submissions**

# Section 20 – Synopsis of Written Submissions

Not Applicable X

# Section 21 Other Assistance

None Requested	
See Record of Assistance	

#### Other Relevant Information

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/I	Decision No.		
Other Sources (please sp	pecify and reference):		

### **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.

The publication contains periodic crass sexual references. In one episode Cartman tries to impress Kyle by defending him against a fictional slight. He says to another boy, "If you say you had sex with Kyle's mother again I'll really let you have it." In another scene Stan's father makes a malapropism when making threatening comments about Mr Harrison. He says, "Let's see how you like my fist in your ass."

Matters such as horror N/A Matters such as crime

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N/A
Matters such as cruelty
N/A
Matters such as violence

The publication periodically contains some moderate depictions of animated violence. Most depictions of violence are unrealistic and have a satirical tone. Some episodes depict the character Kenny being killed in a humorous or accidental way. In one episode he is struck by laser beams fired from the eyes of a fiery apparition which is supposed to represent the Canadian prime minister. Kenny explodes in a mess of highly unrealistic blood and gore. The violence is constantly surrounded by satirical remarks. The absurdity of the violence detaches it from any element of reality. The unrealistic manner in which the violence is depicted significantly diminishes the impact it has on the viewer.

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 s3A and s3B	

#### 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.

<sup>&</sup>lt;sup>1</sup> Moonen v Film and Literature Board of Review [2000] 2 NZLR 9 at para 27.

<sup>&</sup>lt;sup>2</sup> Above n2 at para 29.

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 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

The use of violence or coercion to compel any person to participate in, or submit to, sexual conduct.
Sexual conduct with or upon the body of a dead person.
The use of urine or excrement in association with degrading or dehumanising conduct or sexual conduct.
Bestiality.
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 Excisions 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:

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

<sup>3</sup> Moonen v Film and Literature Board of Review [2002] 2 NZLR 754 at para 40.

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.
N/A	
s3(3)(a)(ii)	Sexual violence or sexual coercion, or violence or coercion in association with sexual conduct.
N/A	
s3(3)(a)(iii)	Other sexual or physical conduct of a degrading or dehumanising or demeaning nature.
N/A	
s3(3)(a)(iv)	Sexual conduct with or by children, or young persons, or both.
1 21 21 2	<i>y</i> , <i>y</i> 81 ,

One scene fleetingly references sexual conduct with children and young persons. When in Canada the boys met a man from Newfoundland who says the new prime minister "screwed up things for Canada since he made sodomy illegal". When the laws are repealed the man says happily, "I can sodomise my boys again." The reference is exceptionally fleeting and entirely incidental to the main storyline.

s3(3)(a)(v)	Physical conduct in which sexual satisfaction is derived from inflicting or suffering cruelty or
	pain.
N T / A	

N/A

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

s3(3)(b)	Exploits the nudity of children or young persons, or both.
N/A	Describe delenganism of language and to the second
s3(3)(e) N/A	Degrades, dehumanises or demeans any person.
s3(3)(d) 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).

<sup>&</sup>lt;sup>4</sup> 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.

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

The characters occasionally use highly offensive language during conversation. Such language includes the words "fuck" (and its derivates) and "skank", and other derogatory terms such as "whore". At times these words are partially beeped out, but this has the effect of drawing more attention to the language.

public in general.

# 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—
3B(3)(a)(i)	Harm to a person's body whether it involves infliction of pain or not (for example, selfmutilation or similarly harmful body modification) or self-inflicted death.
3B(3)(a)(ii)	Conduct that, if imitated, would pose a real risk of serious harm to self or others or both.
3B(3)(a)(iii)	Physical conduct of a degrading or dehumanising or demeaning nature.
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.

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.

#### 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 as a whole is of an often witty but crass humour-based animation series, containing periodic animated violence and coarse language that parodies contemporary culture.

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

The publication is presented on DVD with wide potential for high quality copying and viewing in private homes.

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 with regard to entertainment.

The persons, classes of persons, or age groups of the persons to whom the publication is intended or is likely to be made available.

Teenagers and adults

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:

The right to freedom of expression has been weighed against considerations under the FVPC act concerning the likelihood of injury to the public good. The publication will receive a restricted classification due to matters of sex and highly offensive language. This is considered to be a reasonable and justified limitation of freedom of expression consistent with a free and democratic society.

#### **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 this publication would be injurious to the public good given the manner in which it deals with sex and highly offensive language. Periodic use of highly offensive language may inure children to such language and encourage them to use it for themselves. Satirical material dealing with sex may be confusing to children who do not yet have an understanding of sexuality. The publication is classified objectionable except if the availability of the publication is restricted to persons who have attained the age of 13 years.

#### **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.

None (for non-moving image and s29(1) / 41(3) publications	3)
No excisions recommended (for all other moving image publications)	X
Excisions/alterations recommended	
Number of Excisions/Alterations:	
Brief Description:	

#### PUBLIC DISPLAY CONDITIONS

Not Applicable	
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### 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.

Matters of sex

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

R13

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.

The disc contains the title South Park: The Complete Seventh Season (Disc 3) and a picture from the series. These are likely to be inoffensive to reasonable members of the public.

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.

No display conditions are imposed on the publication.

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336 10:30 ok of invasion. Welcoming song to begge - Follow only von Theep Teads to French 3:00 since he made sodomy illegal boys w Mountie, French + W. 16:00 prof to grisf 2 Phys have Work on fine. Loser from kyes exploses /20184. 5 addon H controlling PM 1 I can sodomero eny logs