

Before the Film and Publication Appeal Tribunal

In the matter between:

Nu Metro Distribution

and

The Film and Publication Board

5/2012

Award

In re: Appeal against the classification of the film:

Hunger Games

Professor K. Govender

Chairperson

Introduction

- 1) A classification committee assigned this film a restrictive age classification of 16(V) on the 23rd March 2012. The distributors appealed against this classification arguing that it was unduly restrictive and suggested that a 13(V) classification would be more appropriate. The Appeal Tribunal viewed the film and read the head of arguments filed on behalf of the distributors and on behalf of the Board on the 14th of April 2012. The distributors were represented by Mr Mark Rosen of attorneys Rosen, Rosengarten and Wright and the Board was represented by Mr Niq Mhlongo, a member of the classification committee that classified this film. We are indebted to them for their arguments, both written and oral. The Appeal Tribunal decided to replace the classification of 16(V) with a restrictive age classification of '13(V)'. The parties were informed of the decision and we indicated that reasons would be provided within fourteen days. These are the reasons in support of our conclusion.

Description of the film.

- 2) This is a critically acclaimed sci-fi drama and is regarded as one of the biggest blockbusters of the year which cost an estimated \$75 million to produce. Peter Suderman in his review in the Washington Post argued "[m]aybe it's a liberal story about inequality and the class divide. Maybe it's a libertarian epic about the evils of

authoritarian government. Maybe it's a feminist revision on the sci-fi action blockbuster. Maybe it's a bloody satire of reality television", and finally concludes the film only proposes these theories but brings none of them to a reasonable conclusion.¹

- 3) The film is based on the best-selling novel of the same name by Suzanne Collins and is part of a trilogy. The story is loosely based on the story of Theseus, the Greek mythological figure. Seven maidens and seven boys from Athens had to be sacrificed every year to a Minotaur in order to appease Minos the powerful king of Crete. Minos's son was killed in Athens by a powerful bull and he demanded this sacrifice as penance in exchange for not destroying Athens in revenge for the loss of his son.

- 4) This film is set in the fictitious state of Panem which comprises the capital and twelve districts. The Capital is an opulent modern technologically advanced city with all the trappings of wealth while the districts are impoverished and completely subservient. The districts rebelled against the Capital in the past and as penance a barbaric practice emerged of each district sending one boy and one girl to the Hunger Games each year. The participants known as tributes are required to fight each other until one participant is left alive. The tributes are selected by lottery to participate in the reality games which are held for the amusement of those in the Capital and to remind those in the districts of the costs of their rebellion. This penance has been paid for more than 74 years. The main protagonist, Katniss Everdeen, lives in District 12, a coal mining district. After her 12 year old sister is selected, Katniss steps up and volunteers to be a tribute and is feted and trained as a contestant at the games. This bizarre reality television game is relayed throughout the country and begins with the contestants scrambling for weapons. Within hours, 8 of the contestants are dead. As the games progress we witness Katniss's courage and nobility and that of her fellow contestant from the same district, Peeta Mellark. We witness the misuse of power for amusement, grotesque inequality and abuse of those that are marginalized and impoverished, the indomitability of the human spirit and importance of hope and determination. We will return later to the merits of the film and the importance of the various messages and themes.

Assessment of the arguments.

- 5) From the reports and from the additional written arguments submitted by the classification committee, it seemed that the strength and intensity of the impact, the complexity of some of the themes and the scenes of brief but frequent and realistic violence convinced the examiners that a restrictive classification of 16 was most appropriate for this film. In his oral presentation Mr Mhlongo identified the following scenes as causing the most concern:
 - The killing of Rue with the lance piecing her body.
 - The person being beaten to death with a brick.
 - The fight between Katniss and the other girl.
 - The scene in which Katniss is burnt and her wound exposed.

¹ . As quoted in [http://en.wikipedia.org/wiki/The_Hunger_Games_\(film\)](http://en.wikipedia.org/wiki/The_Hunger_Games_(film))

- The last fight scene with the baying hound-like creatures wait below the structure to devour anyone that falls off.

Mr Mhlongo acknowledged that this was a well made film, but was of the view that the scenes of violence together with the very young participants in the film may be disturbing to younger viewers.

- 6) In summary, Mr Rosen submitted that the themes of the film are easily comprehensible to children of 13 and over. Her argued that the film explores the moral dilemmas of power, injustice, self-preservation, and while simultaneously discovering independence and love. He argued that the film was an excellent exploration of themes and that children of 13 and above would appreciate the themes and messages. He submitted that the various scenes of violence do not warrant a restrictive age classification of 16. He contended that the first scene in which the tributes scurry for weapons and turn on each other was filmed at a faster pace with a hypnotic sound track in order to divert the focus from the violence. He argued that the scene involving the killing Rue was gentle and that there was no gore or certainly not bloody. We agree with his analysis of this scene, except that we would not describe the killing as 'gentle'. The other scenes were mitigated by the fact that the 'bad kids' got their just deserts. He submitted that the scene with the brick was seen on a newsreel and was thus portrayed as a distant event which would be less threatening.
- 7) He was of the view that the first hour and fifteen minutes of the film contains no scenes of violence and carefully develops the main themes of the film. He submitted that the scenes of violence that follow would be tolerable to a 13 year old. He referred us to various other jurisdictions in which the film had been given a less restrictive classification.

Findings and Conclusion.

- 8) Section 18 (3)(d) of the Films and Publications Act 65 of 1996 empowers the classification committees to impose age appropriate age restrictions if the film or game contains a scene which 'may be disturbing or harmful to, or age- inappropriate to children.' In deciding upon the appropriate classification, the classifiers are obliged to have regard to the guidelines. It is apparent that a single scene may be egregious enough to warrant a more restrictive classification. If this is the case then the offending scene must be identified and reasons submitted in justification of the more restrictive classification.

It is apparent from the reports that the examiners took their task seriously and subjected the film to detailed to scrutiny.

- 9) The guidelines² suggest that the classification committees must amongst others apply the following principles:

² . Government Notice 32542 of 17 July 2009.

- The right to freedom of expression within the law;
- The right of access to information within the law;
- The right of children to be protected from material that pose a risk of harm

While it is very important to protect children from material that may be potentially disturbing and harmful, it is also important to appreciate that children are entitled to be exposed to high quality expression which can develop their cognitive and critical skills and also to that which entertains. Thus freedom of expression does not simply refer to the freedom of expression of the distributors and of adults but also to that of children.

10) In South African National Defence Union case³, the Constitutional Court described the importance of freedom of expression in the following terms:

[Freedom of expression] lies at the heart of democracy. It is valuable for many reasons, including its instrumental function as a guarantor of democracy, its implicit recognition and protection of the moral agency of individuals in our society and its facilitation of the search for truth by individuals and society generally. The Constitution recognizes that individuals in our society need to be able to hear, form and express opinions and views freely on a wide range of issues.

We need to acknowledge that as a developing democracy, this applies with equal veracity both to adults and to children. Section 28(2) of the Constitution of the Republic of South Africa 1996 provides that the child's best interests are of paramount importance in every matter concerning the child. Clearly this would include not exposing children to harmful material prematurely, but equally clearly it includes the need to allow children to develop as thinking individuals. The best interests of the child will not be served if children are prevented from engaging with expression that can enable them to form and express opinions and views on a variety of issues.

In our award in Footloose⁴ we stated:

We were of the view that it would be inappropriate to assign a very entertaining film bearing positive messages for young people, a restrictive age classification of 13 because of isolated scenes that may be beyond mild, but were certainly by no means violent. In addition this particular scene may also convey important lessons and we are of the view that it and the other scenes that we considered would not be disturbing and harmful to children. We are of the view that the positive features of the film was such that it justified us assigning a less restrictive classification. The guidelines list a number of classifiable elements and it is apparent that the cumulative impact of the various scenes should be considered in determining the appropriate

³ . South African National Defence Union v Minister of Defence & Another 1999 (4) SA 469 (CC) para 7.

⁴ . Footloose 5/2011

classification of the film. The test is whether the intensity and frequency of the classifiable element is such that it could be disturbing or harmful to children of a particular age group or prematurely expose them to adult experiences. Importantly this assessment must be a contextual one having regard to the positive or redeeming features of the film.

The individual classifiable elements must not be deemed to be in the nature of a veto. By this I mean that if one of the classifiable elements is deemed to stray beyond the 10 age classification, the film automatically cannot be classified as 10. Such an approach would be contrary to the guidelines. Obviously a single scene or a single classifiable element may be of such concern in terms of its impact and intensity that it may on its own justify a more restrictive classification. However this assessment must be made in the context of the film and with regard to all the other classifiable elements. Classifiers must be aware that some classifiable elements will point in the direction of a more restrictive classification while others may favour a less restrictive classification. These various considerations must be assessed cumulatively in the context of the film when the ultimate classification decision is made.

The merits of the film.

- 11) It is thus necessary to assess the scenes of violence in the film within the context of an excellent film that has many socially relevant and important messages and themes. We were informed by Mr Rosin that the book has been prescribed as a grade 10 set work. Ms Collins, the author was also involved in creating the screenplay for the film and we will assume that they are materially similar, even though we have not read the book.
- 12) It was common cause that this was a superbly made film of high artistic merit. The Nazi symbolism and imagery of the controlled totalitarian state is juxtaposed with the latent simmering discontent of those in the districts who are subjugated and who are searching for inspiration and hope. The reaction of the residents of District 11 to the death of Rue indicates the precariousness of the regime, despite its ostensible invincibility. The jarring inequality between the abundance and garish manifestations of wealth in the capital is contrasted with people struggling to survive and exist in the districts. Issues such as fairness, equity and ultimate sustainability come to the fore.
- 13) The desire for revenge implicit in the games is pitted against the nobility of the human spirit when Katniss volunteers to take the place of her sister and is manifested again in the relationship between Katniss and Rue. We are challenged to examine our morbid fascination with reality television when people become the objects of our entertainment and amusement despite the cost to them. Finally there is the triumph of the human mind against all odds. We witness Katniss's relation with Peeta. We are unsure of the sincerity of the relationship and whether it is a ruse created by Katniss to outmaneuver the oppressors. The threat to consume the

poison berries and therefore defy the Capital of a winner is ingenuous as it defeats the objective of one person from District 12 having to be killed. The threat of self-sacrifice in the face of overwhelming odds has on many notable occasions in the past borne fruit for the oppressed. The film ends with the residents of the district having a sense of hope. The consequence of this will no doubt be explored in the sequels. There are thus a host of issues which can profitably be discussed and debated by persons of 13 and above. From a perspective of the broader message and themes, it is the sort of film that thirteen year olds should view, think about and express an opinion on some of the issues canvassed.

- 14) It is apparent that this is an excellent film with important messages that contain scenes of violence that is justified by the context. The scenes of violence must be assessed within the context of the science fiction genre of the film. A badly injured Peeta is miraculously healed after the application of the ointment. The fire and the hound like creatures and digitally and electronically created and then placed into the arena. The issue is whether the scenes of violence are of such a nature as to justify a restrictive interpretation of 16 despite the merits of the film and its science fiction genre.

I now turn to a consideration of the various scenes of violence that were drawn to our attention.

An assessment of the scenes of violence

- 15) It is apparent from the reports of the classifiers that they were primarily concerned with specific scenes of violence. Assessed in isolation, the idea of children killing each other must be a matter of some concern. However one of the main themes of the film is the condemnation of excesses such as the punitive hunger games which are conducted for the amusement of authoritarian regimes. The scenes of violence serve to emphasize the inhumanity and barbarism of the games as opposed to glamorizing or condoning it. Katniss only kills in self-defence or to in order to prevent Cato suffering an agonizing death by being mauled by the hounds. The issue is whether the scenes of violence either individually or collective are of such intensity that it necessitates a restrictive classification of 16.
- 16) The guidelines provide that a '13' classification is appropriate where there are brief scenes of realistic but moderate, physical, psychological or verbal violence justified by context and without focus on the effects of violence on humans. A '16' classification is recommended where there are scenes of realistic violence within a meaningful context and necessary for the development of plot or character. In our award in *Safe House*⁵ we described the distinction between a '13' and '16' classification in the following terms:

The drafters of the guidelines obviously intended that, if a film contained scenes of realistic violence, these scenes had to be of brief duration and of moderate impact to

⁵ . Safehouse 1/2012.

be assigned a classification of 13. If the various scenes cannot be described as 'brief', and if the impact journeys beyond what can be described as 'moderate', then the film needs to be given a more restrictive classification than 13.

- 17) The first scene that caused concern was when the tributes race at the commencement of the games for the weapons and turn on each other. This scene is filmed at a high speed to convey the message without dwelling or emphasizing the violence. Events occur rapidly with very little focus on bloodletting or on the consequence of the violence. The speed with which the act of violence is portrayed, the brevity of the scenes and lack of gore when assessed collectively render the scene much less egregious and concerning than was thought by the examiners.
- 18) The scene in which the brick is used to kill a tribute is filmed in black and white and the blood shown on the brick is less jarring and less gory. The sense of shock is ameliorated by the fact that it is presented as an historical record and is not part of the present.
- 19) The killing of Rue appears to be accidental as the lance was intended for Katniss. There is not much gore and it is certainly not bloody. Immediately thereafter we witness a touching and moving ceremony as Katniss places flowers over the body of Rue in an effort to afford her a dignified burial. Amidst the savagery of the Hunger Games and the quest for survival, we witness Katniss demonstrating warmth and compassion to a fallen compatriot.
- 20) The fight scene between Katniss and Clove is intense but hardly bloody. Katniss appears doomed, but Clove is attacked by Thresh, the tribute from District 11 to avenge the death of Rue. Clove's ultimate demise is directly connected to her killing of Rue.
- 21) The last fight scene between the protagonists and Cato is intense. Katniss shoots Cato to save Peeta and then shoots him again to spare him the painful death of being ripped apart by the hound-like creatures. While the scene was intense, it was not unduly bloody and, within context, not of a nature to be disturbing or harmful to children aged 13. The hounds are digitally created and portrayed as such in the film. The unrealism implicit in sci-fi films reduces the intensity levels of this scene.
- 22) We are of the opinion that the scenes of violence, when viewed in the context of an excellent film conveying important messages which will be edifying to children aged 13 and above, do not justify a restrictive age classification of 16. In our view an appropriate classification would be 13(V). Our conclusion is supported by the classifications assigned to the film in other countries. In the overwhelming majority of countries, an age classification less restrictive than 16 was imposed.

In the circumstances the following order is made:

- I) The decision of the FPB made on the 20/3/2012 that the film, Hunger Games, be assigned a classification of 16 (V) is set aside.**

II) The film, Hunger Games, is assigned a classification of 13 (V).

Concurred by:

Adv. D. Bensusan

Ms H. Devraj

Prof. A. Magwaza

Ms K. Moodaliyar

Ms D. Terblanche