

NOTICE OF DECISION UNDER SECTION 38(1)

TO: Chief Censor

Title of publication: Land Of The Lost
Other known title(s): Not stated
OFLC ref: 0900922.000
Medium: Film
Distributor: Paramount Pictures NZ
Director: Brad Silberling
Producer: Jimmy Miller
Marty Krofft
Sid Krofft
Country of origin: United States
Language(s): English

Classification:	Unrestricted: Suitable for mature audiences 16 years of age and over.
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Excisions: No excisions recommended
Descriptive note: Contains offensive language and sexual references.
Display conditions: None

	Components	Running time
Feature(s):	Land Of The Lost	101:30
Total running time:		101:30

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:

In a letter dated 25 June 2009, the Chief Censor directed the Department of Internal Affairs to obtain a copy of the film and to submit it to the Office of Film and Literature Classification under s13(3)(b) of the Films, Videos, and Publications Classification Act 1993 (FVPC Act). The Chief Censor provided reasons for determining that the publication should be received for examination, stating that:

The film was cross-rated "PG: Contains coarse language" by the Film and Video Labelling Body from its Australian rating of "PG: Drug references, sexual references, mild violence and coarse language". We have received a complaint that this rating is inappropriate. The *Dominion Post* published a letter to the editor ("*Don't trust the movie ratings*") on 20 June 2009 from a person concerned that this film's rating undermines the whole rating system. Although it is rated PG in four Canadian provinces and Singapore, it is rated PG-13 in the USA and 12A in the UK. 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 film with a total running time of 101 minutes 30 seconds. The film is based on a 1970s children's television series and a book.

The film centres on Rick Marshall, a scientist who has been shunned by the scientific community for researching time warps. Holly Cantrell, an avid follower of Rick's research, convinces Rick to test his tachyon amplifier theories. Rick and Holly meet their tour guide, Will Stanton, and set off through a water cave to test the amplifier. When Rick activates the amplifier, the cave trembles and the trio are teleported to an alternate world. The elation of finding this parallel dimension quickly passes when they discover their only way home is with the tachyon amplifier and that is nowhere to be seen. After a short period of time walking around the sandy oasis the group encounter three ape-men who are fighting. Will saves one of the ape-men, Chaka, from being stabbed with a stick by the other two. Having knowledge of a primitive language, Holly befriends Chaka and he joins the group. During their journey to locate the amplifier and return home the group encounter an angry Tyrannosaurus Rex that they aptly name "Grumpy", a reptilian army led by alien-looking leaders, and other dinosaurs and creatures

who inadvertently take the amplifier all around the land. While in this foreign world, the four members of the group get to know each other very well. For instance, Chaka offers Will and Rick fruit from a particular tree while they are in the desert. The liquid inside the fruit causes the trio to act in a manner similar to being under the influence of marijuana. After locating the amplifier and defeating the evil reptilian leader and his followers with the help of Grumpy, Rick and Holly use the amplifier to make it back to modern day earth. Having enjoyed himself on the alternate world, Will decides to stay with Chaka on the parallel world.

Although it has all the characteristics of a children's film, the humour is at times aimed at an adult audience. This includes occasional drug references such as a boy in Rick's science class asking, "If you shot a whole lot of pot at the sun, would everyone get high?" Adults would also perceive the scene depicting the trio drinking from the fruit in the desert as a typical "stoner" scene.

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

The publication deals with matters of sex through sexual references and innuendo. The sexual references are most often made by Will who makes crass and puerile jokes during the film. When Rick and Holly meet Will at his gift shop before the water cave, Will shows Rick and Holly his range of stock, including a "boobie mug" while making the comment, "the perfect woman, a big ol' set of boobies and no head". He then refers to a fire cracker as a "Mexican vasectomy". As the trio are on their journey down the water cave, Will makes reference to Holly being aroused on the cave ride and getting "wet". When the group arrive in the Land of the

¹ *Living Word Distributors v Human Rights Action Group (Wellington)* [2000] 3 NZLR 570 at paras 27-29.
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Lost, they crawl over the sand dunes and see Chaka about to be stabbed with a stick by the other two ape-men. Will puts his hand down his pants and appears to touch himself while this assault is taking place, saying "I've been waiting my whole life for this moment". When Holly is introducing herself to Chaka, she puts her hands on her chest region to point to the fact that her name is Holly. Her action is copied by Chaka who walks up to Holly and touches her chest area and cups her breasts. When Rick introduces himself, Chaka walks over to him and touches the outside of Rick's pants around his genital area.

In the jungle, the group come across a large giant crystal. Will and Rick touch the crystal and find that it is vibrating very strongly. Will associates the vibrating characteristics of the crystal to that of a sex toy, "usually you have to pay for something like this". He then yells out, "Holly, you should sit on this". When Rick starts to give up hope of getting home, he resigns himself to a future of lying in the sun with his hands down his pants. He says "initiating stage 2" and starts to put his hand down the front of his pants, implying he is about to masturbate. He's stopped by the other characters consoling him, and later regains his confidence, saying he will no longer be "hands down his pants guy". After covertly watching two reptilian figures mating, Rick comments to Will, "He's going to tap that ass". The use of sexual references and innuendo throughout the film is aimed at a mature audience that can contextualise the crass jokes and humour.

Matters such as horror and violence

The publication briefly deals with matters of horror and violence. In one scene a group of small dinosaurs attack an ice cream truck that has landed on the sand. The man inside the ice cream truck has his arm ripped off by one of the dinosaurs but in a stylised manner without any blood or gore. Other scenes of violence include the group fighting the army of reptilians. The scenes of the Tyrannosaurus Rex running through the jungle after the group and trying to eat them may frighten some younger viewers. However, by the end of the film the group have befriended Grumpy and the dinosaur ultimately helps to save them from the reptilian army.

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 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

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

³ Above n2 at para 29.

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), but none are relevant to the publication.

Additional matters to be considered:

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

The dominant effect of the publication as a whole is an entertaining time travel adventure, filled with elements of crass adult humour.

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

As a 35mm film, the publication is intended to be shown in a public cinema. In this medium, the publication is likely to be seen on a large screen that has a digital sound system.

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 no merit, value or importance in relation to the above considerations.

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 a wide audience, including older children and teenager, as well as fans of the type of comedy lead actor Will Ferrel is known for.

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

Entertainment.

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.

The film contains the sporadic use of coarse language such as "bitch", "son-of-a-bitch", "wanker", and one whispered "fuck you", but this is not at a level considered highly offensive.

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.

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 this publication is not likely to be injurious to the public good. *Land Of The Lost* is characteristically a children's film but is infused with adult humour, sexual references and low-level offensive language that suggests that it is more suited for a mature audience. The rights and freedoms in s14 of the NZBR Act are not impeded in any way by this classification.

Date: 01 July 2009

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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