



ANALYSIS

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1985, No. 1

An Act to provide for the licensing of film renters and film exhibitors, and for the censorship of films and documents.

(7 July 1985)
 BE IT ENACTED by the Parliament of the Cook Islands in Session assembled and by the authority of the same as follows:

1. Short Title - This Act may be cited as the Films and Censorship Act 1985.

2. Interpretation - In this Act unless the context otherwise requires:

"censor" includes the Chief Censor;

"document" means any book, newspaper, periodical, photograph,

photographic slide or film, and any print or writing;

"exhibitor", in relation to films, means any person who exhibits or causes to be exhibited any film to the public, and 'exhibit' and 'exhibition' have corresponding meanings;

"exhibitors licence" means an exhibitors licence granted pursuant to section 5;

"film" means cinematograph film, and includes a video tape, and any other material record of visual moving images that is capable of being used for the subsequent projection of those images in a fixed sequence on to any screen; and also includes any part of any such film and any copy or part of a copy of the whole or part of a film;

"indecent" includes describing, depicting, expressing or otherwise dealing with matters of sex, horror, crime, cruelty, or violence in a manner that is injurious to the public good;

"Minister" means the Minister responsible for the Crown Law Office;

"premises" means any building, enclosure, ground, or open-air space;

"prescribed" means prescribed by regulation;

"renter" means any person who supplies film for financial reward or other consideration' and 'rent' and 'renting' have corresponding meanings;

"renter's licence" means a renter's licence granted pursuant to section 4.

PART I

LICENCES

3. Licensing authority - The Minister or such officer as may be authorised by him by notice in the Gazette shall be responsible for the issue of licences in accordance with the provisions of this Act.

4. Renters licence - (1) No person shall rent or cause or permit to be rented, any film unless he is the holder of a renters licence.

(2) Any person who contravenes the provisions of subsection (1) shall be guilty of an offence and upon conviction shall be liable to a fine not exceeding \$500.

5. Exhibitors licence - (1) No person shall exhibit or cause or permit or suffer to be exhibited any film unless he is the holder of an exhibitor's licence.

(2) Any person who exhibits a film in contravention of the provisions of subsection (1) shall be guilty of an offence and shall be liable upon conviction to a fine not exceeding \$500.

6. Duties of exhibitors - Every holder of an exhibitor's licence shall ensure that every exhibition is conducted in such a manner

as to provide for the safety, convenience and good order of the persons attending thereat and that there is a responsible and competent person operating the equipment used in the premises for the purpose of the exhibition.

7. Exemptions - Films may be exhibited without an exhibitor's licence -

- (a) by any charitable, philanthropic, religious, educational, social or sporting body or organisation where -
 - (i) the film is exhibited to further the bona fide objects or purpose of the body or organisation, those objects or purposes being other than the exhibiting of film; and
 - (ii) admission to the exhibition is restricted to the members of that body or organisation and their families; and
 - (iii) after meeting actual expenses and charges incurred in that exhibition, any proceeds derived from the exhibition are applied solely and entirely towards the funds of the body of organisation so exhibiting the film, and no portion of those proceeds is payable to any person by way of fee, commission, or other financial reward for acts performed or services rendered by that person in arranging, providing, or carrying out the exhibition except any fee payable to any person projecting the film;
- (b) in any hotel premises which are the subject of a licence issued under the provisions of the Tourist Authority Act 1968 where the exhibition is for the benefit of hotel guests only.

8. Applications - (1) Every application for a licence under this Act shall be made to the Minister or such officer as may be authorised pursuant to section 3 and shall be made in such form and manner and shall contain, or be accompanied by, such information, and documents as may be prescribed.

(2) Where an application is made in accordance with subsection (1) and is accompanied by the prescribed fee the Minister or duly authorised officer may if he is satisfied that the applicant,

- (a) is capable of complying with such conditions as may be imposed or attached to the licence; and
- (b) is in all other respects a suitable person to be granted a licence -

issue subject to such conditions as he may impose or as may be attached thereto, a licence in such form as may be prescribed to the applicant in respect of the premises for which the application was made.

(3) The Minister may by instrument in writing, vary or revoke at any time any condition for the time being attached to the licence pursuant to subsection (2).

9. Duration and renewal - Unless cancelled under section 10, a licence shall remain in force for one year and may be renewed from time to time.

10. Cancellation of licence - The Minister may cancel or suspend any licence where the licensee:

- (a) breaches any condition attached to his licence pursuant to section 8, or
- (b) is convicted of an offence under the Copyright Act 1962; or
- (c) is convicted of an offence under this Part of this Act.

11. Appeals against refusal, variation, suspension, or cancellation of licence - (1) Where:

- (a) an applicant is refused a licence; or
- (b) a licence is cancelled or suspended; or
- (c) conditions imposed or attaching to a licence are varied,

the applicant or the licensee, as the case may be, may within 14 days appeal to the High Court against such refusal, cancellation, suspension or variation.

(2) The decision of the High Court under this section shall be final.

12. Transfer of licenses - Every licence issued under this Act shall only be valid in respect of the premises for which it is granted and shall not be transferable without the consent of the Minister or a duly authorised officer.

13. Lost licence - Any licensee whose licence has been lost or destroyed may on payment of the prescribed fee obtain a duplicate licence from the person by which the original licence was issued.

14. Licences to be displayed - Every licensee shall display and keep displayed in a prominent place at the premises in respect of which a licence is issued, a current licence.

PART II

CENSORSHIP OF FILMS AND DOCUMENTS

15. Appointment of censors - The Minister may from time to time appoint a fit and proper person to be the Chief Censor of films and documents and such other censors and officers as may be required for the purposes of this Act.

FILMS

16. Films to be approved by censor before exhibition - No person shall exhibit any film other than a film exempted under the provisions of section 20 from the operation of this Part, unless and until such film has been approved by the censor for public exhibition.

17. Offence to exhibit film not approved by censor - (1) Every person who in any place to which the public are admitted, exhibits or is concerned in the exhibition of any film or part of a film which -

- (a) has not been approved by the censor; or
- (b) is being shown in breach of any condition imposed by the censor,

commits an offence and is liable to a fine not exceeding \$500 in respect of every occasion on which such film or any parts thereof have been so exhibited.

(2) Any film in respect of which an offence under this Act has been committed may by order of the convicting court made in addition to any other penalty, be forfeited and thereafter may be destroyed or otherwise dealt with as the Minister may direct.

18. Duties of censors - (1) It shall be the duty of the censor to examine every film duly submitted to him for examination with a view to such film being approved for purposes of exhibition to the public.

(2) On the completion of the examination of any film the censor may -

- (a) approve the showing for exhibition;
- (b) refuse to approve the same;
- (c) agree to approve the same subject to such excisions from the film he thinks proper.

(3) The approval by the censor shall not be given with respect to any film or to any part of a film which in his opinion depicts any matter which is contrary to public order or is indecent or the exhibition of which would for any other reason be undesirable in the public interest.

(4) Such approval may be for general exhibition, or may be given subject to a condition that the film should be exhibited only to any specified class or classes of persons, or may be given subject to any other conditions whatsoever that the censor in the public interest thinks fit to impose.

19. Fees - There shall be payable to the censor such fees in respect of the examination of films as may be prescribed.

20. Exemption from censorship - (1) The censor, may on application made to him, waive compliance by any person, organisation, or body, either unconditionally or subject to such conditions as he thinks fit, with the requirements of this part of the Act in respect of any films of any of the following classes:

- (a) films used for educational and instructional purposes;
- (b) films directly related to the curriculum of primary, secondary or tertiary educational institutions;
- (c) films wholly or mainly of a religious nature;
- (d) films that are wholly or mainly commercial advertisements relating to the advertisers' or sponsors' activities;

- (e) films relating wholly or mainly to the social sciences, including economics, geography, anthropology, and linguistics;
- (f) films depicting wholly or mainly cultural activities.

(2) The censor shall not grant a waiver under subsection (1) in respect of any particular film or any particular class of films if he has any reason to believe that the exhibition of that film or films of that class is likely to be injurious to the public good.

(3) The censor may at any time revoke any waiver granted under subsection (1), either wholly or in part.

(4) Notwithstanding that the censor has granted a waiver to any person, body or organisation in respect of any film or class of films under subsection (1) he may require that person, body or organisation to submit that film or any particular film of that class to him under this Part of the Act, in which case the provisions of this Part of the Act shall apply accordingly.

21. Examination of films by censor - In determining whether the exhibition of any film is or is not likely to be undesirable in the public interest, or is or is not contrary to public order, or is not indecent, the censor shall consider the following matters:

- (a) the dominant effect of the film as a whole;
- (b) the extent to which the film has merit, value or importance in relation to artistic, social, cultural or other matters;
- (c) the extent and degree to which, or the manner in which, the film depicts, includes, or treats anti-social behaviour, cruelty, violence, crime, sex, or indecent or offensive language or behaviour.
- (d) the extent and degree to which and the manner in which the film denigrates any particular class of the general public by reference to the colour, race, or ethnic or national origins, the sex, or the religious beliefs or the members of that class;
- (e) any other relevant circumstances relating to the proposed exhibition of the film, including the places and times at which, or the occasion on which, the film is intended or likely to be exhibited.

22. Censor may consult other persons - In examining any film for the purpose of this Act, the censor may exhibit the film to any person whom he considers may be able to assist him in forming an opinion of the film on which to base his decision in respect of the film.

23. Special provisions relating to video tapes sold or rented to the public - (1) No person shall sell to the public or rent to the public, or offer or expose for sale or renting to the public, any video tape (not being blank tape), unless the tape has been approved by a censor for sale or renting to the public, and any conditions imposed by the censor in granting

his approval are complied with.

(2) Subject to subsection (4), nothing in subsection (1) shall apply with respect to any video tape imported into the Cook Islands before the commencement of this section.

(3) Every person carrying on at the commencement of this section the business of selling or renting video tapes to the public shall, within 14 days after the commencement of this section, supply to the censor a list specifying -

(a) the titles of all video tapes in his possession for sale or renting that were imported into the Cook Islands before the commencement of this section; and

(b) the number of copies of each tape specified in the list held by him.

(4) The censor may, by notice in writing to the person supplying such a list, direct that he shall not sell or rent or offer or expose for sale or rent, any video tape specified in the list, unless it is approved by the censor for sale or renting and is in compliance with any conditions imposed by the censor in granting that approval.

(5) The foregoing provisions of this Part of this Act as far as they are applicable and with the necessary modifications, shall apply with respect to every video tape required to be approved by the censor pursuant to this section as if the tape was film intended for exhibition.

24. Duties of licencees - (1) Every licencee shall set up and maintain a register of all films kept by him for rent or exhibition as the case may be.

(2) The register shall record the following particulars -

(a) the title of the film, and

(b) the number of copies (if more than one), and

(c) the classification of the censor, or

as the case may be, any exemption granted, and

(d) the date of the censor's decision.

(2) Every licencee shall ensure that every film owned, rented, or exhibited by him clearly displays, at all times, the classification of the censor, or, as the case may be, the exemption granted.

25. Offences and penalties - (1) Every person commits an offence and is liable to a fine not exceeding \$500, who being the holder of a renter's licence, rents any film otherwise than in accordance with section 23 of this Act.

26. Register of films - (1) For the purpose of this Act, the censor shall set up and maintain a Register of Films, recording the following particulars -

(a) the title of the film; and

- (b) the name of the person applying under sections 16 or 23 of this Act for approval of the film, or as the case may be, under section 20 of this Act for exemption of the film from censorship; and
- (c) the number of copies of the film brought into the Cook Islands; and
- (d) the classification approved by the censor or, as the case may be, any exemption granted, and the date of the censor's decision; and
- (e) where he has approved or exempted the film subject to any conditions, particulars of those conditions; and
- (f) where he has refused to approve the film for exhibition or has approved the film for exhibition following the making of any excisions or alterations, the reason for that decision.

(2) The Register of Films shall otherwise be in such form as the censor thinks fit.

(3) The Register of Films shall be open to inspection by the public, without fee, during ordinary office hours.

27. Constables powers of entry - (1) Every constable may enter any premises (not being a private dwelling house) in which film is being exhibited or in which he has reason to believe that film is being exhibited, or acting on the instructions of the censor, for the purpose of ensuring that the provisions of this Act are being complied with.

(2) In the exercise of the powers conferred on him by subsection (1), a constable may require the production for his inspection of any licence or certificate issued under this Act and may require the holder to give such information as the constable may reasonably require for the proper performance of his duties.

(3) Without limiting the foregoing provisions of this section, every constable who discovers any person -

- (a) exhibiting any film that has not been approved for exhibition by the censor; or
- (b) exhibiting any film in breach of any condition imposed by the censor;
- (c) not being the holder of an exhibitor's or renter's licence exhibits or rents any film in breach of any provision of this Act,

may seize the film and deliver it to the censor.

(4) The censor may, at his discretion, retain any film delivered to him under subsection (3) of this section for subsequent disposal or destruction as he thinks fit.

(5) Every person commits an offence, and is liable to a fine not exceeding \$500, who obstructs any constable in the performance of his duties under this section or who fails to

comply with any requirements of a constable under subsection (2).

DOCUMENTS

28. Functions of censor - The functions of the censor in relation to documents or sound recordings shall be -

- (a) to determine the character of any document or sound recording submitted to him for classification;
- (b) to classify documents or sound recordings submitted to him as indecent or not indecent or as indecent in the hands of persons under a specified age or as indecent unless their circulation is restricted to specified persons or classes of persons or unless used for a particular purpose, as the case may be;
- (c) to hear and determine any questions relating to the character of a book or sound recording referred to him by a Court in any civil or criminal proceedings whether under this Act or otherwise, and to forward a report of its findings to that Court.

29. Matters to be taken into account by censor - (1) In classifying or determining the character of any document or sound recording the censor shall take into consideration -

- (a) the dominant effect of the document or sound recording;
- (b) the person, classes of persons, or age groups to or among whom the document or sound recording is or is intended or is likely to be published, heard, distributed, sold, exhibited, played, given, sent, or delivered;
- (c) the literary or artistic merit, or the medical, legal, political, social or scientific character or importance of the document or sound recording;
- (d) the price at which the book or sound recording sells or is intended to be sold;
- (e) whether any person is likely to be corrupted by reading the book or hearing the sound recording and whether other persons are likely to benefit therefrom;
- (f) whether the document or the sound recording displays an honest purpose and an honest thread of thought or whether its content is merely camouflage designed to render acceptable any indecent parts of the document or sound recording.

(2) Notwithstanding the provisions of subsection (1) where the publication of any document or the distribution of any sound recording would be in the interests of art, literature, science, or learning and would be for the public good, the censor shall not classify it as indecent.

30. Submission of documents and sound recording to censor -
(1) The comptroller of customs or any other person may submit any document or sound recording to the censor for a decision as to whether or not it is indecent or for a decision as to its classification.

(2) Any person whom the censor is satisfied is likely to be affected by the determination may make representations, orally or in writing, to the censor, and may call evidence.

31. Fees - Every submission to the censor shall be accompanied by the prescribed fee.

32. Offences - (1) Every person commits an offence against this Act who -

(a) sells, or delivers by way of hire, or offers for sale or hire, or has in his possession for sale or hire, any indecent document or sound recording;

(b) sells, delivers, gives, exhibits, or offers to any person under the age of 18 years, any document or sound recording which is indecent.

(2) Every person who commits an offence against this section shall be liable to a fine not exceeding \$500.

PART III

MISCELLANEOUS

33. Importation prohibited - The importation of any indecent film or document is hereby declared to be prohibited, within the meaning of the Customs Act 1913.

34. Offences - Any person who contravenes or fails to comply with any of the provisions of this Act for which no penalty is specifically provided shall be liable to a fine not exceeding \$500.

35. Regulations - The Queen's Representative may by Order in Executive Council prescribe all matters that are necessary for carrying out or giving effect to this Act.

36. Repeals - (1) The Cinematograph Ordinance 1957 is hereby repealed.

(2) The Customs Import Prohibition (Indecent Documents) Order 1980 is hereby revoked.

37. Transitional - Notwithstanding sections 4 and 5, a person who immediately before the date of commencement of this Act was a film renter or film exhibitor shall be entitled to continue to rent or exhibit as the case may be without a licence under this Act:

(a) for a period of 90 days beginning with that date; or

(b) if before the expiration of that period he applies for a licence under this Act, until that licence is granted or finally refused or the application is withdrawn.

This Act is administered in the Crown Law Office