BROADCASTING COMPLAINTS COMMISSION OF SOUTH AFRICA

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Case Number: 07/2004

Date of Inquiry: 25 March 2004

Van Rensburg and Light **Complainant**

vs

e-tv **Respondent**

Tribunal: **Prof Kobus van Rooyen SC (Chairperson)**
Mr Ratha Mokgoatlheng (Deputy Chairperson)
Mr. Barnard Mokwena
Dr Linda Venter (Co-Opted member)

For the Respondent: Mr. Bob Tshweu, Regulatory Affairs Executive

The Complainants did not attend.

Child pornography – finding excluded when bona fide drama – such found to be the case – age restriction of 18, however, necessary as a result of prolonged scenes of nudity. Van Rensburg & Light vs e-tv, Case NO: 07/2004.

SUMMARY

The Respondent Broadcaster screened the film Pretty Baby after 22:00 with an age restriction of 16NL. It was alleged by a complainant that scenes from the film amounted to "child pornography". It was held that the scenes did not, per definition, fall within that category. A contextual approach must be followed. It was, however, held that the film should have been classified as an 18 film.

JUDGMENT

JCW van Rooyen (Chairperson)

[1] The film Pretty Baby was screened after 22:15 with an age restriction of 16 plus a warning of NL. The Registrar received two complaints about this broadcast.

[2] Mr. Van Rensburg formulated his complaint as follows:

> On Monday the 9th Feb from 22:15 to about 24:00 on E-tv the movie "Pretty Baby" was screened. This movie in my opinion contains scenes of child pornography of a 12 year old girl. The movie is about a 12 year old virgin who lives in a brothel who is auctioned off for $400 as a prostitute. Several times during the movie she is walking around completely naked. At one point she lies completely naked posing lying down on a couch for a photographer.

Mr. Light also complained that the film amounted to child abuse and pornography. Since the rest of his complaint becomes abusive, I will not quote the letter.

[3] **Clause 28** of the Broadcasting Code defines child pornography as follows:

> "Licensees shall not broadcast material, which judged within context, contains a scene or scenes, simulated or real of any of the following:
>
> (i) A person who, or is depicted as being under the age of 18 years, participating in, engaging in or assisting another person to engage in sexual conduct of a lewd display of nudity."

[4] This film was certified by a committee of the Directorate of Publications in 1991 with an age restriction of 2-18 and no cuts. This followed after the film had initially, in 1978 and 1981, been found to be undesirable. In 1985 it was passed with no cuts and a 2-21 age restriction. In accordance with the Films and Publications Act 1996, licensed broadcasters need not submit a film for classification and, furthermore, a broadcaster must come to its own decision as to what age restriction to impose. This Commission then has the right to find against a broadcaster if, in its view, it has opted for the wrong age restriction. A guideline of this Commission is that broadcasters must give good reasons if they do not adhere to the age restriction and classification imposed by the Films and

Publications Board or its predecessor. In the present case, Mr. Tshweu argued that the film did not, in the light of *De Reuck v Director of Public Prosecutions* 2004(1) SA 406(CC), amount to child pornography. The Broadcasting Code, as does the Films and Publications Act 1996, exempts bona fide drama from being found to be XX material, which includes child pornography. We have no doubt that Pretty Baby is a bona fide drama and that we are accordingly not permitted to hold it to be child pornography. I, in any case, do not believe that the scenes referred to amount to child pornography as defined in the Code or the Act.

[5] The only question which remains is whether the Respondent was justified in imposing a 16 restriction. The classification as NL was appropriate, and needs no further discussion. I am of the view that the nudity referred to requires an age restriction of 18. The theme is grown up and not suitable for viewing by persons under 18. The viewer requires more maturity than a 16 year old to come to grips with the plight and life of the young girl who lives in a brothel. It could, however, have been shown immediately after the commencement of the watershed .

The complaint that the film contained child pornography is rejected. The film, however, required an age restriction of 18. In this sense the complaint is partly upheld.

JCW van Rooyen SC
CHAIRPERSON

Commissioners: Mokgoatlheng, Mokwena and Venter concurred.