



Australian Government
**Australian Communications
and Media Authority**

Investigation Report No. 1866

File No.	2007/1807
Broadcaster	Special Broadcasting Service
Station	SBS
Type of Service	National Broadcasting (Television)
Name of Program	<i>Obscene Machines</i>
Date/s of Broadcast	13 April 2007
Relevant Legislation/Code	Broadcasting Services Act 1992: Section 151: Investigation of complaints relating to the ABC or SBS by the ACMA <ul style="list-style-type: none">• (1) Subject to subsection (2), the ACMA must investigate the complaint SBS Codes of Practice 2006: Code 1: General Programming <ul style="list-style-type: none">• 1.1 (Introduction) Code 4: Television Classification Code <ul style="list-style-type: none">• 4.1 (Introduction)• 4.3 (Sex and Nudity)• 4.5 (Classification Category)• Appendix A (Guidelines for the Classification of Films and Computer Games 2005)

Investigation Conclusion

It is ACMA's view that, in relation to the broadcast of *Obscene Machines* on 13 April 2007, SBS breached Code 4 (Television Classification Code) of the *SBS Codes of Practice 2006* (the Codes) by not complying with the Guidelines for the Classification of Films and Computer Games for programs classified MA 15+, as set out in Appendix A of the Codes.

The complaint

On 1 August 2007, the Australian Communications and Media Authority (ACMA) received a written letter of complaint about the MA 15+ classified program *Obscene Machines* (the program), broadcast by the Special Broadcasting Service (SBS) at 10.00 pm on 13 April 2007.

The complainant alleged that the program was not suitable for viewing on television as it included 'extremely offensive' depictions of sex and nudity. The complainant specifically referred to two segments in the program which she considered exceeded the MA 15+ classification category.

Not satisfied with SBS's response to the complaint, the complainant forwarded the matter to ACMA for investigation.

Under Section 151(1) of the *Broadcasting Services Act 1992* (the Act), ACMA must investigate the complaint if it is a matter that is covered by the *SBS Codes of Practice 2006* and the person has not received a response from SBS within 60 days, or the person has received a response but considers it to be inadequate.

The program

Obscene Machines was broadcast at 10.00 pm in an MA 15 + classification time zone.

According to SBS¹:

Obscene Machines is a television documentary produced by Channel 4 in London and broadcast on free-to-air television in the United Kingdom.

[...]

Obscene Machines examines how technology is being employed by some people to artificially achieve sexual gratification, to support physically challenged relationships, and to assist people who may be lonely or who have relationship difficulties. The documentary explores this topic from a number of perspectives. It contains interviews with:

- self styled theorists on human sexuality and technology;
- users of sex machines and sex dolls;
- creators and manufacturers of machines and dolls.

The following segments in the program are the subject of the complaint:

Segment (the doll)

This segment is approximately 7 minutes and 30 seconds in duration. It features an elderly man's use of a sex doll. The man explains and demonstrates how he uses a life-sized doll, which he calls Emma, to facilitate his sexual needs and erotic fantasies. He indicates that Emma is based on an 18 year-old woman he married when he was aged 53 years.

¹ SBS submission of 27 August 2007 to ACMA.

Segment (the machine)

This segment is approximately 2 minutes and 24 seconds in duration and features a sex scene in which a naked woman is apparently being penetrated by a mechanical dildo. This segment includes several visuals of sexual activity, which are inter-cut with interviews with the creator of the machine and a sexologist, who provide commentary on the nature of the machine and human sexuality, respectively.

The program was broadcast with the following consumer advice and warning:

Sex Scenes, Nudity and Coarse Language

SBS warns that the following program contains sexual references of a medical, scientific or educational nature.

Assessment

The assessment is based on a copy of the relevant broadcast provided to ACMA by SBS and submissions from the complainant and SBS.

The *Special Broadcasting Services (SBS) Act 1991* requires SBS to develop codes of practice relating to programming matters. Program classification is dealt with under Code 4 of the *SBS Codes of Practice 2006* (the Codes). The SBS system of program classification is based on the 'Guidelines for the Classification of Films and Computer Games 2005' (the Guidelines), established under the National Classification Scheme and in accordance with the *Classification (Publication, Films and Computer Games) Act 1995*. The Guidelines incorporate principles for classification decision making that are considered and agreed by the Attorney-General and participating State and Territory Ministers.

The Guidelines state that 'Material classified MA 15+ is considered unsuitable for viewing by persons under 15 years of age. It is a legally restricted category'. The MA 15+ category comprises the strongest material that is permitted for broadcast on free-to-air television (apart from that with violent content). Material that is not suitable for viewing by persons aged 15 years is therefore not suitable for viewing on free-to-air television.

The complainant's concerns raise questions as to whether the program contains references to and depictions of sexual activity and nudity unsuitable for the MA15+ classification category. The program was therefore assessed against Code 1 (General Programming) and Code 4 (Television Classification Code) of the Codes (see Appendix A for relevant code provisions).

Complainant's submissions

As noted above, the complainant specifically referred to two segments in the program that she considered exceeded the MA 15+ classification category.

In relation to the first segment, the complainant submitted the following:

[This] segment was of an elderly man demonstrating how he used a life like sex doll. The doll was hung from the ceiling by a series of pulleys and he showed us how he could manoeuvre the doll's legs into all the positions in which he could have sex with

it. The doll had the face of his first wife (18 years old) painted on it. I found this extremely offensive.

In relation to the second segment, the complainant submitted the following:

[This segment] showed a machine which contained a large, realistic looking penis on the end of a metal rod. This was then shown in action with a woman on all fours having this machine thrusting in and out of her from behind. It's one thing to inform people of the sex machines available, but the physical act of showing its use, surely contravenes the Code of Practice [...]

SBS's submissions

In its response to the complainant and subsequent submission of 27 August 2007 to ACMA, SBS argued that the program was broadcast in accordance with the requirements of the Codes. In particular, SBS stated that²:

Code 1.1 – General Programming – Introduction

[...] *Obscene Machines* contains material which is only suitable for a mature audience [...] Despite the amount of visual material in the documentary relating to sexual toys [...] the documentary is not about these devices per se, it is about the interface between human sexuality and technology.

Code 4.3 – Sex and Nudity

[...] The documentary features mechanical devices that bear absolutely no resemblance to human beings and are utilised for satisfying sexual desire. Within the documentary, the employment of these machines is only implied via montages of brief images that are not sexually detailed. [...]

[...] the sexual contact is depicted in a manner that is indistinct with respect to the physical interaction between the featured humans and machines. Consequently, sexual behaviour was only implied and, since it was not presented in significant uninterrupted segments and was interspersed with more prosaic footage, this material was not gratuitous or high impact, leaving it suitable for inclusion in a program classified MA 15+.

Segment (the doll)

[...] The segment contains no actual vision of sexual activity however viewers receive a rudimentary lesson from a [clothed] George about how he manipulates the doll (also clothed) through a series of crude ropes and pulleys to achieve sufficient references to reality that it allows him to suspend his belief while engaging with it.

² SBS submission of 27 August 2007 to ACMA

Segment (the machine)

[...] The sexual content is contained in two sequences containing brief images of nudity and implied sex which is strong in impact. The impact of the scenes is mitigated by the fact that only the back of the porn actress is shown. These sequences run for 36 seconds of the segments total duration of 2 minutes and 24 seconds.

Code 4.5 – Classification Categories

In accordance with Code 4.5 (Classification Categories) the episode was classified MA 15+ and recommended only for viewers of 15 years and older. It was shown at 10pm, a timeslot appropriate for MA 15+ material as detailed in Code 4.5.

[...] While sexuality and technology is a robust topic, this theme may be accommodated [in the MA15+ classification] by a program directed at a mature audience where material with a strong impact is permitted.

This documentary looks at the emergence and development of sexuality oriented technological devices. It examines the reasons underlying their existence, their sociological implications and future potential. The film is dominated by interviews with experts, members of the industry and patrons of their products. The demonstrations and depictions of these technological sex devices are strongly justified by the context of the documentary's overarching narrative.

In response to ACMA's preliminary finding that SBS breached Code 4 (Television Classification Code) in relation to the broadcast of *Obscene Machines* on 13 April 2007, SBS submitted the following to ACMA on 29 October 2007:

Segment (the doll)

It is understandable that some people may find this segment distasteful or uncomfortable [...] However, SBS considers that such reactions are matters of taste and are not relevant to the question of whether the segment breached Code 4 of the SBS Codes of Practice. SBS remains of the view that it did not.

[...] in classification terms the scene contains no actual nudity and is effectively a show and tell segment, where a fully clothed old man describes how he has sex with his doll and how at times the doll becomes so real to him that he believes he is "in love with her" in the romantic sense.

[...] At no time does the audience see him having sex with his doll. The most the audience sees is him undressing the doll.

[...] The MA15+ category may accommodate nudity that is justified by context. SBS is of the view that the vision of the partially nude doll does not exceed this stipulation or increase the impact of other elements.

[...] The SBS Codes of Practice clearly establishes SBS's role in catering for a diversity of experiences, views and perspectives etc. within the Australian community. A significant part of the program deals with sexual activity for the aged and disabled, that is a proportion of the Australian community for whom information and discussion of this subject is rarely available and sometimes shrouded in prejudice.

There is a frank and honest discussion of the issues both from the elderly man segment and the couple, with one partner suffering from multiple sclerosis. This combination of technical information and personal disclosure has the potential to inform parts of the community for whom sexual activity is often difficult or impossible.

Segment (the machine)

SBS accepts that this scene is at the every [sic] edge of the classification category, and with hindsight considers that the material in which the porn actress appears to be engaged in intercourse with the robot could be seen to have exceeded the 'implied' requirement for sexual activity. As a result, this lengthy scene should have been edited down to more comfortably be accommodated within MA15+.

15 year -old viewers

[...] While MA15+ material may not be within the experience of 15 year olds, the content should be such that a 15 year-old would possess the requisite maturity to be able to cope with such material. If a 15 year-old is considered to be mature enough to view strong content about drug use, murder and war [...] then surely they are mature enough to deal with a discussion of legal, if slightly distasteful, sexual activity as long as the classifiable elements of the program conform to the MA 15+ category.

In conclusion

The effect of ACMA's decision would be that *Obscene Machines* would not be seen on free to air television in Australia. Such a decision would seem to be out of step with the reaction of the reasonable viewer. SBS has broadcast the documentary twice. On 3 June 2005 it attracted 371,074 viewers and when repeated on 13 April 2007 it attracted 349,776 viewers. The estimated combined audience figure was in excess of 720,000 viewers. Of these people only 5 filed formal complaints with SBS and just one has appealed to ACMA.

SBS would like to stress that this program has been seen on free to air television in the United Kingdom and, although SBS appreciates that different regulatory regimes exists, we would submit that the late night SBS audience is no less capable of viewing this material than their English counterparts. The program has also been seen by cable audiences in Italy, France and Holland.

Finding

It is ACMA's view that SBS breached Code 4 (Television Classification Code) by not complying with the Guidelines for the Classification of Films and Computer Games for programs classified MA 15+ in relation to the broadcast of *Obscene Machines* on 13 April 2007.

Reasons

Code 4.1 states that the SBS system of television classification is based on the 'Guidelines for the Classification of Films and Computer Games 2005' (the Guidelines).

The Guidelines state that 'Material classified MA 15+ is considered unsuitable for viewing by persons under 15 years of age. It is a legally restricted category'. The MA

15+ category comprises the strongest material that is permitted for broadcast on SBS television (apart from that with violent content).

Code 4.5 of the *SBS Codes of Practice* sets out that ‘the more explicit and intense material will be included in the MA 15+ classification’, as well as the overarching requirement that, in order to meet the MA15+ classification, the program must be suitable for viewing by persons aged 15 years and over.

The MA 15+ category cannot accommodate material that would be unsuitable for persons aged 15 years. This is consistent with ACMA’s statement in its 2005 *Big Brother Uncut* investigations [No. 1579 and No. 1557, 1558, 1559] that, ‘The MA category... cannot accommodate material that would be unsuitable for persons aged 15. It is therefore relevant in this instance to consider not whether the material is suitable for the adult audience to which is said to be largely targeted, but whether it is suitable for persons aged 15, 16 and 17 years’. While these investigations involved the assessment of programs against the provisions of the *Commercial Television Industry Code of Practice*, the requirement that material be suitable for 15 year-old viewers applies to programs covered by both Codes.

The individual classification elements listed in the Guidelines provide specific guidance in relation to this overarching test. The Guidelines state that impact of material classified MA 15+ should be no higher than strong and that sexual activity may be implied and nudity should be justified by context.

Code 4.3 of the SBS Codes also sets out a number of factors that are given consideration in assessing sex and nudity, including: judgement of a program’s bona fides; the responsibility with which visuals and subject matter are treated; the degree of explicitness of visuals, and the impact which visuals have in the context of a program as whole.

The Guidelines also state that, ‘Context is crucial in determining whether a classifiable element is justified by the story-line or themes. In particular, the way in which important social issues are dealt with may require a mature or adult perspective’.

While SBS has argued that the program has been broadcast on free-to-air television in the United Kingdom, ACMA notes that the above requirements are different to those that apply to free-to-air television in the United Kingdom.

The two segments which are subject of the complaint occur in the context of a program that includes frequent verbal and visual references to sexual activity that are strong in impact. For example, the program commences with a sequence of visuals, which focus on a large vibrating and thrusting mechanical dildo and depict a woman from the waist up (naked) apparently engaging in sexual activity with the mechanical dildo. Subsequent segments also include nudity and references to sexual activity that are consistently strong in impact, including, but not limited to, the two segments identified by the complainant.

In considering whether the program was classified and broadcast in accordance with the Codes, it is noted that the machine segment has strength in impact both in its own right and within the context of the program.

The machine segment is 2 minutes and 24 seconds in duration and is about a company that manufactures sex machines and produces pornographic films for the Internet featuring the machines.

The segment includes a sequence of visuals depicting a pornographic film shoot in progress, in which a naked woman appears to be engaging in sexual activity with a dildo that is attached to a robotic machine.

ACMA is of the view that the sexual activity depicted in some of the visuals in this segment exceeds implied and therefore exceeds the requirements at the MA 15+ classification category. For example:

- In a close-up shot showing the kneeling woman in profile and the machine positioned behind her, the machine activates and the woman's body begins to vibrate.
- In a wide shot showing the woman kneeling on all fours, the machine positioned behind her and a cameraman kneeling by the machine, the machine's 'arm' is shown to spin and thrust. While the point of penetration is obscured by the woman's thigh, her body is seen to vibrate with the impact.
- A close-up panning shot which begins on the sex machine's 'face', pans down the body of the machine, along the thrusting and spinning arm, and across the woman's vibrating body to her face.

While the point of penetration is not shown in these shots, the manner in which the woman's body vibrates clearly suggests actual sexual activity that is obscured.

In ACMA's view the depictions in the machine segment are not justified by the program context, and it is considered that the level of detail and degree of explicitness in depictions of sexual activity in this segment exceeds the MA 15+ requirement that sexual activity be 'implied'. In its submission of 29 October 2007, SBS concedes that some depictions in this segment 'could be seen to have exceeded the 'implied' requirement for sexual activity'.

In relation to the doll segment, ACMA notes that it focuses on an elderly man's use of a sex doll. The life-like doll, which he calls Emma, is modelled on his 18 year old ex-wife. The man uses the doll to recreate his sex life with his ex-wife.

This segment contains some detailed verbal sexual references. The strongest references occur in a scene in which the man explains and demonstrates, while clothed, how he engages in sexual intercourse with the doll. This includes visuals of the man hoisting the doll's legs (initially clothed) with pulleys into what he describes as being the 'delivery position' while she is suspended from the ceiling of his bedroom. He then stands between the doll's spread legs to further demonstrate. The man is shown to undress the doll to reveal her life-like pubic hair, genitals and breasts. He then strokes and manipulates the doll's breasts.

ACMA is of the view that the impact of the sexual references in the doll segment is strong and while not breaching the Codes in its own right, contributes to the overall impact of the program.

Code 1.1 allows for the broadcast of programs that can be controversial and provocative and may at times be distasteful or offensive to some, provided it is justified by context. As noted above, Code 4.3 also sets out a number of factors that

are given consideration in assessing sex and nudity, including: judgement of a program's bona fides; the responsibility with which visuals and subject matter are treated; the degree of explicitness of visuals, and the impact which visuals have in the context of a program as whole.

SBS has argued that a large proportion of the program deals with sexual activity for the aged and disabled, and that the program has the potential to inform parts of the community for whom sexual activity is often difficult or impossible. ACMA notes that only two segments in the program specifically feature elderly or disabled subjects, amounting to less than 10 minutes of a program that is approximately 48 minutes in duration.

The overwhelming focus of the program is on the use of artificial means of sexual gratification. In this case a large proportion of broadcast material in the program contains at least one of the classifiable elements of sexual references and nudity. The nature and frequency of these elements causes them to have a high cumulative intensity whose impact, contrary to the Guidelines, is greater than 'strong'.

ACMA notes that the subject matter of the program is not necessarily unsuitable for the MA category, however it is considered that the treatment of the subject matter in this case renders the program unsuitable for the MA classification. ACMA considers that the treatment of the subject matter in *Obscene Machines* is adult in nature and is therefore unsuitable for ordinary 15 year-old audience members. The program as broadcast was therefore unsuitable for television.

The Australian Communications and Media Authority determines for the above reasons that the Special Broadcasting Service, in relation to the broadcast of *Obscene Machines* on 13 April 2007, breached Code 4 (Television Classification Code) of the *SBS Codes of Practice 2006* by not complying with the Guidelines for the Classification of Films and Computer Games for programs classified MA 15+, as set out in Appendix A of the Codes.

The Common Seal of the
Australian Communications and Media Authority
was affixed to this document in
the presence of:

Signature of Member

Signature of

Name (please print)

Name (please print)

Dated this _____ day of _____ 200

Appendix A

Relevant provisions of the SBS Codes of Practice 2006

CODE 1: GENERAL PROGRAMMING

1.1 INTRODUCTION

[...]

An important consideration in the application of the following *Codes of Practice* is context. What is unacceptable in one context may be appropriate and acceptable in another.

[...]

SBS's programming can be controversial and provocative and may at times be distasteful or offensive to some. Not all viewpoints presented will be shared by all audience members.

CODE 4: TELEVISION CLASSIFICATION CODE

4.1 INTRODUCTION

This Code applies to all programs broadcast on SBS Television, with the exception of news and current affairs, sport programs and general information.

The SBS system of television program classification is based on the 'Guidelines for the Classification of Films and Computer Games 2005' (published at Appendix A) made under the *Classification (Publications, Films and Computer Games) Act 1995*.

SBS believes that the integrity of programs is best retained if programs are broadcast unaltered. However, SBS will schedule programs or, if necessary, modify them in accordance with the 'Guidelines for the Classification of Films and Computer Games 2005' to ensure that they are suitable for broadcast, or for broadcast at particular times. SBS's classification system gives special attention to levels of violence, sex and nudity, and use of language.

4.3 SEX AND NUDITY

In assessing program content involving sex and nudity, consideration is given to factors including:

- judgement of a program's bona fides;
- the responsibility with which visuals and subject matter are treated, particularly the treatment of non-consensual sexual activities and any sexual activity involving children or minors;
- the degree of explicitness of visuals; and
- the impact which visuals have in the context of a program as a whole.

4.5 CLASSIFICATION CATEGORIES

SBS will broadcast programs with the following classifications:

- General (G)

- Parental Guidance Recommended (PG)
- Mature Audience (M)
- Not suitable for people under 15 (MA 15+)
- Not suitable for people under 15 – strong violence (MAV 15+)

[...]

M, MA 15+ and MAV 15 + programs are those which, because of the material they contain, or because of the way the material is treated, are recommended for viewing only by persons aged 15 years or over. While most adult themes may be dealt with, the degree of explicitness and intensity of treatment will determine what can be accommodated in the M, MA 15+ and MAV 15+ classification categories.

[...]

MA 15+: The more explicit and more intense material will be included in the MA 15 + classification. MA 15+ programs may be shown between:

- 9.00 pm and 5.00 am on any day of the week.

APPENDIX A: GUIDELINES FOR THE CLASSIFICATION OF FILMS AND COMPUTER GAMES 2005

MA15+ – MATURE ACCOMPANIED

Impact Test

The impact of material classified MA15+ should be no higher than strong.

Note: Material classified MA15+ is considered unsuitable for persons under 15 years of age. It is a legally restricted category.

Classifiable elements

[...]

Sex: Sexual activity may be implied.

[...]

Nudity: Nudity should be justified by context.