
APPENDIX

CBSC Decision 11/12-2012 HBO Canada re *Paradise Lost 3: Purgatory*

The Complaint

The CBSC received the following complaint via e-mail on June 1, 2012:

Subject: Complaint about repugnant programming on HBO Canada

I have never written and complained about anything I have seen on TV before, but what I saw today I found so utterly shocking and disgusting! Nothing could have prepared me for what I saw and I wish I could erase it from my brain!! The objectionable subject matter in question is the movie, *Paradise Lost 3*. I had recorded it and started watching it. There seemed to be no warning that could prepare a person for seeing actual footage and pictures showing three naked and murdered, young boys. I couldn't believe it!

I was in shock. I am familiar with the case of the Arkansas Three, which the movie is about and was curious about the movie because it had a huge role in setting them free (which I question, but you don't care about that). Anyway, the footage was a gross exploitation of these three little boys and seeing it enrages me beyond belief! Are there not laws about protecting the rights and memories of these victims? The filmmakers are getting rich and maybe helped set free three murderers ... we'll never know! But for HBO Canada to air that nightmare is atrocious ... seeing those poor murdered boys' dead bodies is truly shocking.

Some things in a civilized society just shouldn't be seen. To broadcast it sends a very unsettling message.

Please do something about this.

The CBSC wrote back to the complainant explaining that it would need to know the date and time of broadcast, as well as whether it was aired on HBO Canada East or West. The complainant wrote back on June 4:

Thank you so much for your response regarding the matter. Here is the following info that you have requested:

- Broadcast seen in Vancouver, BC
- Shaw is the service provider
- Broadcast occurred sometime last week (the end of May) ... can't remember exactly because I recorded it and deleted it after 5 min of watching; however, I did go forward in the schedule and see that it will be airing again on HBOC 63, June 13 from 11:30 pm-1:35 am.

I hope that helps. Please let me know what you can do.

The CBSC wrote back again, explaining that it could not do anything about the June 13 broadcast on an anticipatory basis and that it required a more precise date and time regarding the May broadcast in order to pursue the complaint. The complainant wrote back on June 7:

I understand the strict standards that you have to adhere to.

You'll be happy to know that I was able to determine the exact date and time of the broadcast I saw. It aired on May 30, 2012 at 2:15 pm on channel 63 HBOC. I wracked my brain trying to figure out the date! Then I realized I could check my PVR history, which contained all the key data.

Hopefully, something can be done to prevent scarring other viewers from seeing the next broadcast on June 13th.

The CBSC then accepted the complaint. The complainant wrote with some additional information on June 30:

I know you have now forwarded the matter onto HBO Canada, but I just wanted to pass something on that I came across in researching this matter; however, I cannot attest to its authenticity. It is a letter from one of the victim's parents to the Academy (Oscars), imploring them not to consider *Paradise Lost 3* for the Best Documentary category. It is so compelling and heart breaking I cannot help but believe its authenticity. I think HBO Canada and the CRTC would benefit from seeing what the Moores have to say ...

<http://wm3truth.com/2012/01/oscar-nomination-for-paradise-lost-3/>

Thank you for listening to my concerns.

Broadcaster Response

HBO Canada replied to the complainant on July 11:

The Canadian Broadcast Standards Council (CBSC) has asked us to respond to your concerns regarding our recent broadcast of *Paradise Lost 3: Purgatory*.

We are sorry to learn that our airing of this film was disappointing for you. As a discretionary premium pay television service, our goal is to best serve audiences who look to us for unedited programming they aren't able to find anywhere else. We offer and support a variety of entertainment formats and genres, including material that could be considered controversial and may be offensive to some. With programming ranging from Academy-winning features to provocative series and documentaries, we make every attempt to provide a varied schedule with something for everyone.

We believe that one of the objectives of the documentary genre is to examine aspects of real life, including issues or events that people may find contentious or disturbing. Premiered at the 2011 Toronto International Film Festival, *Paradise Lost 3: Purgatory* is the last in an observational documentary series chronicling the aftermath of a heinous 1993 crime in West Memphis, Arkansas and the real-life story of the now infamous West Memphis Three.

We want to assure you that we take our responsibility as a broadcaster very seriously and regularly make decisions regarding appropriate content. As a national service, we use both the Ontario Film Review Board and the Manitoba Film Board to aid in our decisions to rate content and determine scheduling. Although this particular documentary was not yet rated at the time of broadcast on May 31 [*sic*, actually 30], 2012, we recognized that it is not intended for a general audience, and gave it an 18A rating along with a content advisory warning against violence, nudity, coarse language and mature themes. Special precaution has also been taken by the producers through an additional advisory included at the beginning of the film stating: "This film contains images from actual crime scene footage. Viewer discretion is advised."

We continually strive to uphold the codes and standards expected of us as a CBSC member, including the *Pay Television and Pay-Per-View Programming Code Regarding Violence*. This Code prohibits "programming which contains gratuitous violence of any form or programming which sanctions, promotes or glamorizes violence". The archival images included in this critically acclaimed film are actual documentation created by the West Memphis police for the purpose of their investigation that became courtroom evidence. While undeniably graphic, we do not believe that the filmmakers' inclusion of this evidence violates this Code or any other Code administered by the CBSC. However, prior to receiving your feedback we did re-evaluate the scheduling of this documentary. In future *Paradise Lost 3: Purgatory* will only air during the industry-accepted late-night viewing period of 9pm to 6am when programming intended exclusively for an adult audience should be scheduled.

The additional information you've provided for this file suggests more research has been conducted beyond your watching this particular film. As you are no doubt aware, a plethora of information exists surrounding this tragedy – not only on the Internet, but through published books and film as well. The documentary *West of Memphis* was recently released at the 2012 Sundance Festival while a Hollywood interpretation, *The Devil's Knot*, is currently in production and expected to be released in 2013. It stands to reason that not everyone will agree with the opinions expressed in any of these representations; however, in a free and democratic society and as a broadcaster, that is not our judgment to make – agreement with the information presented is entirely up to the individual viewer.

Thank you for taking the time to voice your opinion regarding this film. At HBO Canada we recognize the importance of viewer feedback. Even with the best of intentions, we understand that we may not be able to meet the viewing requirements of every audience member, however, we do appreciate the opportunity to address your concerns. Should you have any additional inquiries regarding our programming, we encourage you to contact us directly at info@moviecentral.ca.

Additional Correspondence

The CBSC received the complainant's Ruling Request on July 26:

I would like to challenge HBO's response. I'm not happy with it and found it patronizing. I think it's a sad justification of the egregious, exploitative nature of the "movie." Showing the footage of the dead, naked boys (set to Metallica playing in the background) was used only for shock value, and continues to violate the victims' and their families' rights. It is truly damaging visual content for viewers to be exposed to, no matter what time it is aired. What about decency laws, child pornography laws, and the obvious fact that this is salacious and exploitative content? May I make reference to the letter the Moore family wrote to the Academy saying how they were misled by the directors of the film and the fact that they were

destroyed when they saw the footage of their dead son on display for all to see like to freakshow circus, all in the name of profit! HBO clearly has no objectivity in the matter as it helped fund the project. This is no different than showing crime scene footage of Clifford Olson's victims for profit. The only difference is that HBO is playing judge and jury, deeming the WM3 innocent and, therefore, backing the production. I shudder to see the day someone entertains the idea of an Olson movie, but then, I am writing this email. Any and all arguments from HBO fell short in my mind. This is mediocre spin doctoring at best. The response is a form letter and a Coles Notes summary of everything related to WM3. It's great that HBO took the time to inform me of all the other people trying to profit on WM3 with their miscellaneous projects, but I'm not paying them money for their monthly service or paying tax dollars for them to protect decency standards, so they are not of immediate concern to me, but passing the buck is always an interesting strategy! A closing sentiment ... I can't think of any parent in the world that would think exploiting these victims on film the way *Paradise Lost*/HBO has is acceptable. And really, did showing that obscene footage add any strength to the directors making their case? The only case made was that we need to protect our children from being victimized and objectified – onscreen and off!!

HBO Canada submitted additional information to the CBSC on August 20:

After reviewing [the complainant]'s ruling request, we would like to have an opportunity to address concerns not originally raised within his correspondence on record for CBSC File 11/12-2012.

This subsequent communication suggests that any broadcast of this film or the content within would be a violation of not only broadcasting standards and regulations but Canadian law as well. The *Criminal Code of Canada*, Section 163.1 (1) defines child pornography as: “a photographic, film, video or other visual representation, whether or not it was made by electronic or mechanical means (i) that shows a person who is or is depicted as being under the age of 18 years and is engaged in or is depicted as engaged in explicit sexual activity or (ii) the dominant characteristic of which is the depiction, for a sexual purpose, of a sexual organ or the anal region of a person under the age of 18 years.” While we can unquestionably agree that the archival images included in this film are graphic records of a heinous crime, they are not a visual representation of sexual activity nor intended for a sexual purpose within this documentary.

As stated in our previous response and required through the *Pay Television and Pay-Per-View Programming Code regarding Violence* we look to provincial film classification boards for guidance when assigning our ratings on our films (Alberta or Manitoba and Ontario, as a Pay Television service available through both Movie Central and The Movie Network). Mandated by the Film Classification Act, Provincial Film boards have the right to “refuse approval for films that contain depictions of explicit sexual assault or degrading and dehumanizing sexual content, including sexual activities with minors” (<http://www.ofrb.gov.on/english/default.htm>). To the best of our knowledge, the film in question has not been rejected by the Canadian film boards due to unacceptable content, it simply does not have a rating currently on record.

In this particular case, none of this vérité documentary trilogy has been rated by the Alberta Film Review Board and, therefore, in accordance with our policies, we made use of the Manitoba Film Classification Board and the Ontario Film Review Board for reference. As stated above, *Paradise Lost 3: Purgatory* has not yet been rated. However, *Paradise Lost: The Child Murders at Robin Hood Hills* and *Paradise Lost 2: Revelations* were both given a 14A rating through the Manitoba Film Classification Board and *Paradise Lost: The Child Murders at Robin Hood Hills* was rated AA by the Ontario Film Review Board (generally

considered equivalent to the current 14A rating). A 14A rating indicates content that is unsuitable for unsupervised viewing by those under the age of 14 and serves as an accompaniment requirement, but does not restrict viewing solely to an adult audience and therefore would not restrict scheduling to the industry-established late-night viewing hours, defined as 9 pm to 6 am.

We can appreciate [the complainant]'s emotional reaction to this chilling documentary and his ardent pursuit in having his opinion heard. We want to assure you that we took his concerns seriously and thoroughly considered his feedback before responding. Our investigation included screening both of the previous films which confirmed that both 14A rated films include the photos referenced along with additional crime scene documentation not seen in *Paradise Lost 3: Purgatory*. Nonetheless, we vigilantly self-imposed an 18A rating with the intent to caution viewers about not only the crime-scene content, but the controversial and overall unnerving subject matter as well.

Like the CBSC and the Canadian Radio-Television and Telecommunications Commission (CRTC), we consider that context of a broadcast is essential in making any programming and scheduling decision or assessing content concerns. The way in which material is presented or observations expressed influences how the majority of viewers will perceive this content, particularly when the information is considered controversial or potentially offensive (Broadcasting Decision CRTC 2006-603). The footage in question appears as a collection of historical and chronological information piecing this tragedy together for an audience that may or may not have been familiar with the previous films. The Metallica soundtrack questioned by the complainant isn't there for shock-value, but plays a significant role in this story as their music, specifically the interest the defendants had in this music, was a damaging element of the original trial.

We understand that this is a haunting film and controversial subject matter that may be unsettling for some viewers. Our intent through broadcasting *Paradise Lost 3: Purgatory* isn't to cause harm, but to inform, providing an in-depth analysis as a long-form documentary should. We do not believe that our broadcast of this critically-acclaimed and award-winning documentary violates any Code provision or is contrary to the *Broadcasting Act* and CRTC regulations.

We have enclosed the 8 requested copies of *Paradise Lost 3: Purgatory* and look forward to hearing the CBSC Panel's decision regarding this matter.