

## NOTICE OF DECISION UNDER SECTION 38(1)

TO: Chief Censor

**Title of publication:** Christchurch Mosque Attack Livestream

**Other known title:**

**OFLC ref:** 1900148.000

**Medium:** Video File

**Creator:** Not stated

**Country of origin:** Aotearoa New Zealand

**Language:** English

<b>Classification:</b>	Objectionable.
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**Excisions:** No excisions recommended

**Descriptive note:** None

**Display conditions:** None

	Components	Running time
<b>Feature(s):</b>	Christchurch Mosque Attack Livestream	16:55
<b>Total running time:</b>		16:55

### 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:

The Chief Censor called in this publication for classification on Sunday 17 March 2019 under s13(3) of the Films, Videos, and Publications Classification Act 1993 (FVPC Act).

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 submissions were required or sought in relation the classification of the video. Submissions are not required in cases where the Chief Censor has exercised his authority to call in a publication for examination under s13(3) of the FVPC Act. In this particular case there is clear public interest in this publication being classified as soon as possible.

### **Description of the publication:**

*Christchurch Mosque Attack Livestream* is a video of a terrorist attack in Christchurch. It is 16 minutes and 55 seconds long. It contains dialogue in English. The video includes images of mass murder of worshippers in a New Zealand mosque taken from a 'first person' perspective by a camera apparently fixed to the attacker's helmet.

A man is shown in a car with a large cache of weapons. He then travels to his destination while listening to music in his car. The video depicts the shooting of many people, including men, women and at least one young person. The victims are shot both at a distance and, repeatedly, at close range.

The extensive and brutal injuries and deaths are clearly depicted. The attacker then drives away from the crime scene, stopping to fire a shotgun through the windscreen and at pedestrians through the front passenger window. The audio track records him analysing his performance and the performance of his weaponry during the attack, before the video cuts out.

The Classification Office understands that the video was originally live-streamed on Facebook and subsequently uploaded to other websites and platforms.

### **New Zealand Bill of Rights Act 1990:**

Section 14 of the New Zealand Bill of Rights Act 1990 (NZBORA) 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 NZBORA, 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 NZBORA 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".

### **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.<sup>1</sup>

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 any s3(1) matters in such a manner that the availability of the publication is likely to be injurious to the public good:

*Matters such as horror, crime, cruelty and violence*

The video *Christchurch Mosque Attack Livestream* deals with matters of horror, crime, cruelty and violence. It documents events immediately prior to, during, and after the mass murder of peaceful and unarmed civilians at a Christchurch mosque. Much of the sound and imagery is horrific.

### **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"<sup>2</sup> 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:

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<sup>1</sup> *Living Word Distributors v Human Rights Action Group (Wellington)* [2000] 3 NZLR 570 at paras 27-29.

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

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.<sup>3</sup>

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 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). The relevant matter is:

*s3(2)(f) Acts of torture or the infliction of extreme violence or extreme cruelty.*

The video depicts the infliction of extreme violence and extreme cruelty. Particular examples include:

- A man repeatedly shot in the back as he attempts to crawl away from the attacker
- The attacker shown repeatedly returning to the main area of the mosque to check for survivors. He shoots anyone who appears to be alive, and fires indiscriminately at close range into piles of huddled bodies
- An adult uses their own body to shield a young person from bullets, but they are both shot and killed. Their bodies, huddled together on a bench behind a doorway, are seen again when the gunman returns
- An injured woman lying in the street and calling for help is shot at close range in the head. There is extensive blood spray. The attacker then appears to run over the dead woman's body as he flees the scene in his car.

The murders and the resulting bodies are shown in detail which is both graphic and horrific.

The video is shot using a camera that appears to be affixed to the helmet of the attacker. The first-person view records the actions of the attacker, creating the disturbing effect of seeing the attack from his perspective.

The video is clearly intended to record, share and glorify the acts of extreme violence and cruelty depicted, namely the graphic mass murder of unsuspecting victims. There is nothing present that denounces such activity. The video is therefore considered to promote and support the infliction of extreme violence and cruelty.

Notwithstanding the clear application of s3(2)(f), the video can also be considered objectionable under s3(3)(d) as set out below.

### **Matters to be given particular weight:**

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<sup>3</sup> Above n2 at para 29.

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). The matter relevant to the publication is:

s3(3)(d) *The extent and degree to which, and the manner in which, the publication promotes or encourages criminal acts or acts of terrorism.*

In addition to the high extent and degree of promotional violence, killing and cruelty previously mentioned, the video contains other notable elements that promote or encourage criminal acts or acts of terrorism.

- The attacker tests, and then deploys, a strobe-like flash, mounted on an assault-style weapon. The likely purpose of this type of flashing device is to disorient his already defenceless victims and make them less able to respond as he shoots them
- The attacker reloads frequently and returns to his vehicle to restock with more ammunition and weapons, emphasising the preparation that has gone into the attack
- The video contains an instructional monologue on the set-up and performance of the weapons used in the attack. This is presented in an observational way, apparently as ‘pointers’ to those who are the attacker’s intended audience and who may learn from his experience should they attempt their own attacks.

References to popular extremist memes or cultural references are present throughout the video. These present as intentional cues, or flags for the attacker’s intended audience. For example:

- One of the attacker’s weapons is emblazoned with the phrase “kebab remover” – a racist statement in this context, but also an apparent reference to an internet meme “Remove Kebab/Serbia Strong”<sup>4</sup>. This meme began as a Bosnian Serb propaganda video glorifying convicted genocidal war criminal Radovan Karadžić before becoming more broadly identified with anti-Muslim, anti-immigration sentiment
- The song ‘Serbia Strong’, relating to the above meme, is played by the attacker in his car as he travels to the mosque
- The number 14 appears prominently on at least two of the attacker’s weapons. ‘14’ in this context is most likely a reference to the fourteen-word slogan “We must secure the existence of our people and a future for white children”. The slogan – known as ‘14’ – is a popular meme and touchstone for white supremacist extremists<sup>5</sup>.

There are other phrases, names and memes contained in this video and written on the attacker’s weapons but which are not clearly visible. We are aware that there are detailed analyses of these memes widely available on the internet.

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<sup>4</sup> <https://knowyourmeme.com/memes/serbia-strong-remove-kebab>

<sup>5</sup> [https://en.wikipedia.org/wiki/Fourteen\\_Words](https://en.wikipedia.org/wiki/Fourteen_Words)

This material promotes and encourages terrorist activity to a high extent and degree, but it is the *manner* in which this content is presented throughout the video that is most injurious to the public good.

The video captures the attacker systematically moving through and around the mosque brutally shooting and killing his victims. The ‘first person’ presentation of the video – from the helmet-mounted camera – has the extreme effect of showing the dehumanisation of the victims from the attacker’s perspective. He quite literally brings the viewer with him, showing neither mercy nor remorse towards those who huddle or try to flee.

For example, the viewer sees the determination of the attacker as he returns to the central area of the mosque to check for, and kill, survivors. The viewer shares the attacker’s view as he looks down at the woman calling for help in the street and shoots her in the shoulder and head. The viewer is then behind the wheel with the attacker as he appears to drive over her body.

In the aftermath of the killing, as the attacker drives at speed to his next destination, he reflects on his own performance and the performance of his weaponry. His only regret appears to be the malfunctioning of the modified ammunition clips that fell out of his weapons during the attack. He remarks that this occurred during the “firefight”, entirely mischaracterising his attack upon unarmed victims.

He further dehumanises his victims by referring to them only as ‘targets’. He states, “There wasn’t even time to aim, there were so many targets”.

The manner in which violence, cruelty, murder and terrorism are promoted throughout the video creates a high probability of significant injuries to the public good. In particular:

- Relatives and friends of the victims are likely to be traumatised through viewing the brutal deaths and injuries of their loved ones. The faces and clothing of victims can be clearly seen and they are likely to be readily identifiable
- Survivors could well be re-victimised through viewing the video, as well as through having strangers view their trauma
- While children and young people are particularly prone to the negative neurological effects of violent media, adults may also be negatively affected. Many are likely to be significantly shocked, disturbed and quite possibly traumatised by the graphic and brutal content of the video. There may well be a risk of psychological disturbance for viewers, particularly younger viewers
- Those who are susceptible to radicalisation may well be encouraged or emboldened given the promotional nature of the video. This creates a risk of emulation of this sort of attack (at worst) and (at least) a risk that dehumanising racist hatred will be further spread
- There are many instructional elements to the video that give potential attackers significant guidance on how to perpetrate mass murder
- The continued sharing of the video provides its creator with notoriety and recognition, thereby establishing him as an example for those who may also seek notoriety and recognition through violent action.

**Additional matters to be considered:**

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

The dominant effect of the publication is of a self-made video depicting harrowing violence and cruelty while attempting to record, share and glorify the terrorist activity of the attacker.

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

The digital nature of the video means that it is able to be shared online. Its ongoing circulation will likely perpetuate terrorist methods and racist ideology. Its ongoing circulation could also traumatise relatives and friends of the victims, re-victimise survivors and shock and disturb the wider public.

*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 video is self-made and has no particular merit with regard to the above criteria, although it will likely have forensic and evidentiary value for Police and other enforcement agencies. Such use is permitted under the relevant sections of the FVPC Act.

*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 video was widely distributed to members of the New Zealand public in the hours after the attack through various apps and online platforms. It was clearly created with the intent that it would be shared widely.

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

A post on an internet forum immediately prior to the attack makes the intended purpose of the video clear. The poster announces his intention to carry out the attacks and to livestream them, and provides a link so that followers can stream the video. The last message on the forum prior to the attacks presents the poster as a heroic figure and encourages people to share the material and make memes related to the poster, effectively attempting to glorify the poster. The intent is further clarified by the attacker's repeated verbal appeals to his audience during the attack (whom he refers to as 'lads' and 'boys').

In posts apparently made as the attack progresses it is evident that at least some of the intended audience have received the message and feel emboldened by it, thereby achieving the video's purpose. Many appear to be carrying out the poster's instructions, sharing links to the manifesto and the video and downloading copies.

*s3(4)(f) Any other relevant circumstances relating to the intended or likely use of the publication.*

There is a vast amount of media and official comment on this attack, but we have sought to focus on factors immediately relevant to the classification of the material.

**Conclusion:**

*Christchurch Mosque Attack Livestream* is classified as objectionable.

The video promotes and supports the infliction of extreme violence and cruelty. The first-person view records the actions of the attacker creating the disturbing effect of seeing the attack from his own perspective. The video is clearly intended to record, share and glorify the acts of extreme violence and cruelty, namely the graphic mass murder of unsuspecting victims who are powerless to resist. There is nothing present that denounces such activity.

Even if the video were not deemed to be objectionable due to its promotion and support of extreme violence and cruelty it would nevertheless be objectionable due to the extent, manner and degree to which it promotes criminal acts including mass murder and terrorism.

In making this decision, the right to freedom of expression – that is to seek, receive and impart information and opinions – protected under s14 of the NZBORA was considered, together with the fact that under s5 of the NZBORA this freedom is subject “only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society”.

An objectionable classification for this video is considered to be a demonstrably justified limit on that freedom in this case due to the high likelihood of significant injuries to the public good arising directly from the video’s continued availability.

The video may have forensic and evidentiary value for Police, the Courts and other enforcement agencies. These parties are already permitted to possess the video for these and other purposes under s131(4) of the FVPC Act.

**Date:** 18 March 2019

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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