

NOTICE OF DECISION UNDER SECTION 38(1)

TO: Commissioner of Police

Titles of publications: What a victory for he who got shahada
We came to fill the horror everywhere

Other known title(s): Not stated

OFLC ref: 1800412.001
1800412.002

Classification:	Objectionable.
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Descriptive Note: None

Display conditions: None

REASONS FOR THE DECISION

The Office of Film and Literature Classification (Classification Office) examined the publications 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.

The publications have been examined and considered separately, however for convenience they are discussed together in this decision.

Submission procedure:

The videos were submitted for classification, as part of a batch of videos, on behalf of the Commissioner of Police under s13(1)(ab) of the Films, Videos, and Publications Classification Act 1993 (FVPC Act). They were received on 28 August 2018.

The owner of the videos was notified of the submission of the publications and informed of their right to make a written submission on the classification. Submissions received are summarised below.

Under s23(1) of the FVPC Act the Classification Office is required to examine and classify the publications.

Under s23(2) of the FVPC Act the Classification Office must determine whether the publications are to be classified as unrestricted, objectionable, or objectionable except in particular circumstances.

Section 23(3) permits the Classification Office to restrict publications that would otherwise be classified as objectionable so that they can be made available to particular persons or classes of persons for educational, professional, scientific, literary, artistic, or technical purposes.

Description of the publications:

These publications are videos containing anāshīd lyrics and other imagery. A nasheed (plural: anāshīd in Arabic) is a work of vocal music that is either sung a cappella or accompanied by percussion instruments. Anāshīd are popular throughout the Islamic world, and their lyrics may make reference to Islamic beliefs, history, religion and current events.¹ Anāshīd can be produced in physical formats such as CDs, or found online accompanied by imagery on streaming sites such as YouTube and Vimeo, which is where these anāshīd were located.

It is important to note that this decision is for the composite videos featuring both lyrics and imagery.

What a victory for he who got shabada (OFLC Ref. 1800412.001) is four min 57 sec in duration. It features a still image of a man wearing a balaclava and black clothing, holding a large machine gun and standing in a field of flowers. Behind him is an ISIL flag. The title *What a victory for he who got shabada* features at the top left. This imagery remains throughout the video. The nasheed is sung in Arabic while English subtitles are displayed. Lyrics refer to warfare, for example “What a victory for he who got martyrdom (shahada) with sincerity, sins will disappear when the bloods dripping” [sic].

We came to fill the horror everywhere (OFLC Ref: 1800412.002) is two minutes in duration. It contains a series of black and white still images, beginning with a group of people wearing black clothing and balaclavas, situated in desert surroundings and aiming AK47 rifles. The title *We came to fill the horror everywhere* features across the centre of the image. Subsequent imagery includes a building erupting with smoke, and images of ISIL flags being flown from an armoured vehicle, and being carried by soldiers in uniform. The nasheed is sung in Arabic while English subtitles are displayed. Lyrics refer to warfare and killing religious enemies, for example “we will drink from the blood of disbelievers”. At the end of the video, a link to a nasheed website is displayed.

Synopsis of written submission(s):

The videos were examined as MP4 files provided by the NZ Police and were originally sourced from Vimeo, a video sharing website. The Police submitted the lyrics to each video, in English.

The Police submission describes each video and submits that they promote and encourage terrorism through their visual references to ISIL and by their themes/messaging such as the glorification of brutality/war, victimhood, Jihad as the solution, fighters as role models and binary opposition (disbelievers/Islamists).

The Police also provided a copy of an academic study article² that discusses the influential nature of anāshīd, arguing that the rhythmic and tonal elements of anāshīd are engaging and can be used as an effective messaging tools.

¹ Wikipedia

² *Islamic State Anāshīd As Messaging Tools*. Henrik Gråtrud, Norwegian Defence Research Establishment, 2016.

The Defence submission discusses the videos in general and submits that they are not likely to be injurious to the public good due to the religious and cultural significance of anāshīd. They argue that the extent of the link to ISIL is insignificant. They draw comparisons between this material and the likes of Bible verses and World War I poetry due to similar themes of martyrdom, sacrifice, righteous battle and vengeance.

Consultation

In the process of classifying these videos, the Classification Office consulted with five Muslim religious and community leaders in Auckland and Wellington, and held a further phone consultation with an Arabic community leader in Australia. Those consulted with are referred to as 'consultees' throughout this decision.

Statements from both submissions and the consultations are incorporated into this decision.

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.³

The content of the publications must bring them within the "subject matter gateway". In classifying the publications therefore, the main question is whether or not they deal with any s3(1) matters in such a manner that the availability of the publications is likely to be injurious to the public good.

Matters such as crime, cruelty and violence

These videos contain violent lyrics and imagery alongside visual references to ISIL, a well-known terrorist organisation, discussed further under ss3(2)(f), 3(3)(a)(i) and 3(3)(d).

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"⁴ 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:

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.⁵

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.

Lyrics speak of the infliction of extreme violence and cruelty against enemies and non-believers. However, in the absence of any instructions or imagery toward extreme violence or cruelty, the videos do not meet the high threshold of promoting or supporting, or tending to promote or support, s3(2)(f) criteria. The videos are more appropriately discussed under s3(3) below, particularly s3(3)(d) which is expressly concerned with acts of terrorism.

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

⁴ *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9 at para 27.

⁵ Above n2 at para 29.

Matters to be given particular weight:

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 relevant matters are:

s3(3)(a)(i) The extent and degree to which, and the manner in which, the publication describes, depicts, or otherwise deals with acts of torture, the infliction of serious physical harm, or acts of significant cruelty.

and

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.

Both videos deal with serious physical harm and acts of terrorism to a moderate extent and degree. However it is the manner in which they combine violent lyrics with ISIL branding that makes them promotional of violence and terrorism.

What a victory for he who got shahada

This video features imagery of an armed man in front of an ISIL flag.

The Police submit that this video “explores themes consistent with ISIL’s messaging (brutality, victimhood, mercy, war, belonging and apocalyptic utopianism)” (para. 3.5).

The Defence submit that this video only deals with abstract concepts of conflict and martyrdom rather than with depiction or detailed description of actual violence or cruelty in a manner likely to be injurious to the public good (para. 45a). They submit that this nasheed appears to celebrate those who have been martyred, referencing conflicts such as the war in Afghanistan (para 23).

One of the consultees also explained that the nasheed featured celebrates Afghanistan’s fight for independence against the Russian occupation in the 1970s. At that time, it was used as a tool to recruit soldiers throughout the Arabian Peninsula to defend Arab lands. The consultee felt that in a contemporary context the lyrics could be of relevance to Arabic peoples whose countries are occupied by foreigners, however the ISIL imagery in this video is out of place as it is not consistent with the original intention of the song.

Lyrics refer to violent actions and send a message that a person’s sins will be erased if they are martyred for a worthy cause – in this case the cause being terrorising enemies:

What a victory for he who got martyrdom [shahada] with sincerity,
sins will disappear when the bloods dripping
...pack up to the jihad in hope of getting killed in Allah’s cause, or achieving victory,
and in order to terrorizing your enemys [sic]...
Stand up for the Call to Jihad, because it’s a glory if we answer it and an honor.

Lyrics refer to ‘jihad’ and ‘shahada’, both terms that are open to misinterpretation. Both the Defence submission and the consultees discussed the common misinterpretation of the term ‘jihad’, which means ‘to strive, exert or fight’⁶. The consultees we spoke to were consistent in

⁶ Defence submission quoting from Oxford Islamic Studies Online

their views, noting that war violence is the ‘lowest’ form of jihad, and defining the concept of jihad as a struggle with oneself. However, a common layperson’s interpretation of Jihad has come to be equated with terrorist violence against non-believers.

The Defence also discuss the concept of ‘shahada’ (‘to witness’), which in this context appears to refer to dying for a noble cause and for God. They argue that the concept of shahada encompasses not only violent death but also, for example, a mother dying in childbirth or a non-combatant civilian killed in war. They state, “This central theme, of a noble death or martyrdom, while consistent with ISIL messaging, is also arguably consistent with other messaging which would be considered non-objectionable. This theme is reflected, for example, in Great War poetry”⁷ (para 39).

One of the consultees noted that this nasheed uses texts from the Quran and prophetic traditions, but in this case it is out of the correct context. They felt that one of the main messages here is that if one ‘joins the fight’ and gets killed in the process, they will be rewarded with a shortcut to Heaven. According to the consultee, this concept is not in line with the Quran, and that those deeply familiar with the Quran/prophetic traditions will understand this (other consultees agreed with this statement). The promises/rewards offered by these lyrics are essentially to encourage soldiers to fight, as a reward needs to be offered to encourage men to risk their lives.

In the context of this video, the interpretation of ‘jihad’ appears to be on the more radical end of the spectrum by encouraging listeners to partake in religiously-motivated violence as a noble cause (“pack up to the jihad in hope of getting killed in Allah’s cause”, “Stand up for the Call to Jihad, because it’s a glory if we answer it and an honor”). Similarly, the use of ‘shahada’ in this case essentially offers reward in the afterlife for committing violence (“What a victory for he who got martyrdom (shahada) with sincerity, sins will disappear when the bloods dripping [sic]...their souls live within them ensure, they have houses in the paradise and companions, and a spring of all goods in increase”). Whatever the original meaning, the lyrics have now been placed into a context associated with terrorism by virtue of the prominent image of the ISIL flag.

We came to fill the horror everywhere

This video features imagery of men aiming rifles and a building erupting with smoke. It also shows ISIL flags being flown from armoured vehicles and being carried by soldiers in uniform. This depiction of ISIL flags is promotional of the terrorist organisation. The video has an air of bravado. Lyrics refer to warfare and killing enemies, for example:

We are the judgement of Allah so there is no safety for [he] who did not accept Allah as his lord...
We will make the countries of disbelief rain with fire, and strikes on their streets and attacks...
We have lions who if they roar in an area, the fire will break out everywhere,
so let the bastards know that we are tough men who establish the religion by force.
If the people want to drink from the cup of humiliation, we will drink from the blood of the disbelievers.
We took it forcibly at the point of the blade.

The Police submit that this video employs symbolism typical of ISIL anāshīd, in particular the depiction of fighters as ‘lions’ and persistent reference to the sword. It also includes exceptionally violent content (eg “we ripped apart their veins and hearts”, “we will drink from the blood of disbelievers”) and explicitly encourages terrorist attacks in nations of ‘disbelievers’. The Police also argue that the composers of this nasheed want to establish Islam by force of arms (para 3.7).

⁷ The WWI poem *The Call* by Jessie Pope was provided as a comparison.

Generally the consultees felt that this nasheed was hateful, threatening and intimidating. They agreed that the lyrics that talk of causing violent death are ‘not Islamic’. One noted that ‘deviant sects’ will latch on to a legitimate phrase and twist its meaning to further their cause. Another noted that this video has no apparent cultural context other than to encourage extremists. It was also suggested that this video is probably not intended to *recruit* extremists, but to encourage *existing* ISIL fighters to advance, particularly those who may be starting to doubt the cause.

The Defence submits that the extent and degree to which both videos deal with ss3(3)(a)(i) and 3(3)(d) is at the lower end of the scale as these matters are dealt with only in text rather than with images or graphic depictions. Further, the text is often framed in archaic, highly formal Arabic terminology. They argue the extent of the link to ISIL being is simply the use of a logo or flag. They argue that the themes in the lyrics are synonymous not only with ISIL but with other religious texts (namely from the Bible – several passages quoted) and other forms of war-related media and World War I poetry (paras 48-50).

Overall, the Classification Office considers that the manner in which both videos combine violent lyrics with ISIL branding promotes and encourages terrorism to a high extent and degree. While the lyrics are sung in Arabic they are subtitled in English, which New Zealand-based viewers will understand. While the lyrics alone may be traditional and/or about warfare in general, when coupled with ISIL branding and imagery of violence synonymous with terrorist warfare, they are appropriated as recruitment tools. They justify terrorist violence in the name of religion and glorify this cause with the promise of reward. The apparent intention is to motivate consumers of the video toward criminal violence.

Additional matters to be considered:

Under s3(4), the Classification Office must also consider the following matters:

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

The Classification Office considers that the dominant effect of these videos is the promotion of terrorist violence. The combination of ISIL branding alongside traditional-style lyrics that speak of violent warfare are clearly designed to develop or encourage extremist ideation and encourage these listeners/viewers to participate in terrorist activity.

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

The Defence argues that the impact of the medium in which the videos are submitted is low. However, the digital nature of these videos mean that they are able to be shared online and watched repeatedly. If these videos were to be shared amongst at-risk radicals, the ripple effect is likely to perpetuate terrorist ideology.

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 Classification Office considers that while the *lyrics* of these anāshīd may have cultural and religious significance, it is the *combination* of these violent lyrics with ISIL branding that renders them to be promotional of terrorist violence. Any cultural merit is misappropriated when combined with ISIL branding.

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.*

and

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

The Police submit that the purpose and intended use of these publications is to promote ISIL with an intended audience of current and prospective members both Arabic and English speaking (para 3.16).

The Defence submit that the audience for these publications is limited, with little penetration to the general public and that the videos are likely to be viewed only by those actively searching for such material (para. 53). They submit that the intended purpose is unclear, and that while anāshīd may play a role in propagandising efforts by extremist organisations, it is important not to overstate this role or to ignore the general significance of anāshīd in Islam. They state common anāshīd themes include charity, empowering women and spreading goodwill (para 34), and that anāshīd are typically used by individuals to reflect on matters, or merely for personal enjoyment (para 54).

The consultees discussed the use of the ISIL flag as a recruiting tool, and felt that the combination of these lyrics and ISIL branding would likely encourage vulnerable individuals toward dangerous behaviour. They were generally concerned that these videos could ‘add fuel to the fire’ of disenfranchised individuals who may desire to be aligned with such cause for numerous reasons, such as the perceived benefits of a sense of belonging or identity, or simply a cause to live for.

One of the consultees noted that these types of anāshīd have been used by militant jihadists over recent years, as social media has become a form of disseminating terrorist ideology. They believe that anāshīd such as these misuse accepted traditions to normalise violence as an integral part of practicing one’s religion. Anāshīd that glorify martyrs and violence can be subtle, but form part of a larger narrative of radicalisation. Anāshīd such as these are constructed to be emotive for the listener⁸ and that even subtle messaging can have a strong influence on vulnerable listeners who want to prove themselves by being ‘somebody’ and ‘doing something’. Early radicalisation begins with a search for answers or further information, and seekers are then exposed to text and media, forming part of a slow indoctrination. At-risk persons usually end up sharing such material with like-minded individuals across their own online networks.

Considering all information, it is the view of the Classification Office that the videos are intended to attract and influence terrorist recruits. These videos have clearly been manufactured for a wider, and more Westernised audience than each nasheed alone was originally intended. It is the combination of these violent traditional-style lyrics, and the ISIL branding that is likely to motivate recruits toward criminal violence.

Conclusion:

These videos are classified as objectionable as they promote and encourage acts of violence and terrorism to a high extent and degree, and in a manner that renders their availability injurious to the public good. They encourage the violent killing of ‘unbelievers’ and glorify acts of terrorism with the promise of noble martyrdom and reward. When combined with the ISIL symbolism and

⁸ in line with arguments made by Gråtrud, 2016

other violent imagery, the lyrics of these anāshīd are decoupled from any traditional context, and the combined material has been appropriated as a recruitment and motivational tool for ISIL.

It is important to note that it is the *combination* of lyrics and imagery that renders these videos objectionable. Most New Zealanders would not be familiar with any historical significance and would likely take the English-subtitled lyrics and violent imagery at face value. There is a real risk that exposure to these videos would contribute to extremist ideation by susceptible persons. The combination of violent warfare lyrics and ISIL imagery is likely to desensitise audiences, radicalize recruits and persuade potential converts toward ISIL's cause. This poses risk to the safety of New Zealand society.

The right to freedom of expression, as affirmed by the NZBORA, has been considered. Political and religious speech are arguably the most protected forms of expression in a democratic society. The role of the Classification Office is to determine whether the likelihood of injury to the public good arising from the availability of a publication outweighs the right to freedom of expression and therefore constitutes a reasonable limitation of this right. In this case, the likelihood of injury to the public good is high, and the classification of objectionable is a reasonable and demonstrably justifiable limitation on the right to freedom of expression.

Date: 09 April 2019

For the Classification Office (signed):

Note:

You may apply to have these publications reviewed under s47 of the FVPC Act if you are dissatisfied with the Classification Office's decision.

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