

## NOTICE OF DECISION UNDER SECTION 38(1)

TO: Commissioner of Police

**Titles of publications:** Flames of War  
Come on immerse

**Other known title(s):** Not stated

**OFLC ref:** 1800412.003  
1800412.004

<b>Classification:</b>	Unrestricted.
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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 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 two publications are videos containing Arabic 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.<sup>1</sup> Anāshīd can be produced in physical formats such as CDs, or found online 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.

*Flames of War* (OFLC Ref: 1800412.003) is two min 18 sec duration. Visually, the video shows the phrase “Flames of War, Fighting has Just Begun” in large lettering that is stylised with flickering flames. After a brief sound of gunfire, the nasheed plays for the duration of the video. Lyrics are sung in Arabic with English subtitles displayed. The production studio’s logo features at the top right of the screen. This nasheed is about warfare and contains lyrics such as “We force their heads to fall off the edge of our swords”.

*Come on immerse* (OFLC Ref: 1800412.004) is three min 34 sec duration. A black silhouette of a person aiming a rifle contrasts against an orange skyline. Smoke billows in the distance. The words ‘Come on immerse “Haya Inghamiss”’ feature at the top left of the screen. Lyrics are sung in Arabic with English subtitles displayed. This nasheed is also about warfare and contains lyrics such as “we will cut the necks striking by sword.”

### **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 article<sup>2</sup> 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 tool.

The Defence submission discusses the publications in general, and submits that the videos are not likely to be injurious to the public good due to the religious and cultural significance of anāshīd. They argue the extent of the link to ISIL is insignificant. They draw comparisons

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<sup>1</sup> Wikipedia

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

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.<sup>3</sup>

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

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

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*

Lyrics in these videos speak of violent acts, and the Police submit that they promote and encourage criminal terrorist activity. The content is further discussed under ss3(2)(f), (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.

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 in these videos speak of the infliction of violence and cruelty. However they are arguably no more violent or graphic than lyrics used in some popular western songs (certain rap songs, for example). The videos contain no real instructional elements, and the video imagery is restrained. Accordingly 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 in terms of how they may deal with violence and terrorism.

### **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.*

Both publications contain violent lyrics as well as low-level violent imagery.

### ***Flames of War***

This video opens with the sound of gunfire. Lyrics extensively refer to inflicting violence and death on the kuffaar (non-believers), and dying with honour for doing so. For example:

If war comes with the sound of bullets, we shall storm into the kuffaar seeking retribution.  
They are taken to death, there's no way out (for them)...  
We force their heads to fall off the edge of our swords  
We heal the [hearts] of Muslims by striking the enemy...  
Our shiny swords slice through the enemy.

...And we proceed on this path until death takes us  
With the tawhed of my lord and an aware and conscious sword  
...Life is nothing if not spent under the shades of death (Jihad)  
We die with honour while we are standing

Some of the consultees the Office spoke to, compared this nasheed to a haka, or a rap song with violent lyrics, stating that its purpose was to energise the listener, but not necessarily to encourage them to commit violence for themselves.

### ***Come on Immerse***

Lyrics in this video also refer to warfare against non-believers. The video also has imagery of a man aiming a rifle in a situation that appears to be desert warfare. Lyrics include:

Come on immerse in the dark disbeliever troops  
Thrust your weapon in the heart of the criminal  
...mother of disbelievers will cry in funeral  
We will cut the necks striking by sword

The Police submit that this publication “focuses on encouraging ‘immersion’ within the dark disbeliever troops” (para. 3.9).

The Defence submit that this publication deals only abstract concepts of conflict and martyrdom rather than the depiction or detailed description of actual violence or cruelty in a manner likely to be injurious to the public good, and that it lacks any direct link to ISIL” (para 45d).

The consultees noted the traditional motifs and themes used in the nasheed. One mentioned that this nasheed was used in Africa as a motivational song. While some of the consultees felt that the nasheed could potentially entice vulnerable persons to extremist ideology, others compared its mentions of violence to the violence that is depicted in mainstream Western horror films and video games.

Without visual imagery of violence, the lyrics themselves do not have an overly strong impact.

*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.*

The Police submit that these videos are linked to ISIL through themes and imagery typical of ISIL anāshīd:

- *Flames of War*'s title references a prominent ISIL propaganda video of the same name
- The lyrics adopt symbolism, e.g. depicting fighters as lions and a focus on the sword
- The glorification of brutality, war, victimhood, and Islamists versus disbelievers

The Defence submit that the suggested connections to ISIL are ‘tenuous at best’. They note that the above themes are common to anāshīd generally, and may be shared by many forms of media both within Islam and without, such as the glorification of war...or harsh imagery bearing similarities to the Old Testament of the Bible (para 29).

### **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 dominant effect of these videos is of traditional-style anāshīd about warfare juxtaposed with low-level images of violence.

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

The digital format of the videos allow them to be shared online and watched repeatedly.

*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 publications are composites of video and audio, with the soundtrack being provided in both cases by renditions of traditional-style anāshīd. The Classification Office acknowledges the cultural and religious significance of the anāshīd in these videos, as confirmed by our consultees.

*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 they are likely to be viewed only by those actively searching for such material (para. 53). The Defence submit that the intended purpose is unclear, and that while a nasheed 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 nasheed 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 warned of blanket bans on videos such as these as they are likely to have little impact on sound-minded people, especially as the themes are out of context for the average New Zealander. They did, however, have concerns as to how these videos would be received by persons at risk of succumbing to extremist ideology – vulnerable listeners who want to prove themselves by being ‘somebody’ and ‘doing something’.

Considering all available information, it is the view of the Classification Office that in the absence of clear promotional messages or terrorist branding, the purpose and intended audience of these videos is unclear. There is no clear evidence to suggest that these videos are intended to attract and encourage terrorist recruits.

## **Conclusion:**

The Classification Office considers that neither of these videos deals with violence and cruelty, or acts of violence or terrorism to an extent or degree or in a manner that is likely to be injurious to the public good.

While the lyrics may to some degree celebrate violence, their context lies within wartime songs, comparable to a wide variety of religious texts, wartime poetry and mainstream entertainment media violence. They lack strong images or graphic descriptions of violence and thus they are not overly shocking or disturbing. They do not contain any direct reference to terrorist organisations or activity, so they cannot be said to promote and encourage acts of terrorism. Nor do the videos deal with other matters of concern to the FVPC Act. They must, therefore, be classified unrestricted. This classification is consistent with the right to freedom of expression as provided by the NZBORA.

**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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