

## NOTICE OF DECISION UNDER SECTION 38(1)

TO: Commissioner of Police

**Title of publication:** Watch-new-isis-video-you-must-fight-them-O-muwahhid-is-how-to-on-killing-non-muslims

**Other known title:** Not stated

**OFLC ref:** 1800412.000

**Medium:** Video File

**Director:** Not stated

**Country of origin:** Not stated

**Language:** English, French, Arabic

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

**Descriptive note:** None

**Display conditions:** None

	Components	Running time
Timed component(s):	Watch-new-isis-video-you-must-fight-them-O-muwahhid-is-how-to-on-killing-non-muslims	7:06
Total running time:		7:06

### 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 video was 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.

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.

## **Description of the publication:**

*Watch-new-isis-video-you-must-fight-them-O-muwabbid-is-how-to-on-killing-non-muslims* is a professionally edited promotional video for terrorist activity. It is seven minutes six seconds in duration. It features music and lyrics in English, French and Arabic, with customised title cards in English and Arabic. Visual content includes images of violence such as cars and buildings exploding, a masked man slitting a prisoner's throat, a man being shot in the head, and a man being shot at and blown up. There is text about killing 'crusaders' and about creating fear in 'unbelievers', on religious grounds. There is brief commentary about US military involvement in Iraq, and basic instructional information on how to detonate a bomb. The ISIL flag and a logo for Ar Raqqah (a Syrian city) appear in the top left corner throughout the video. Images of *Rumiyah* magazines<sup>1</sup> are displayed at the end of the video.

The video was originally sourced online and was examined as an MP4 file as provided by the NZ Police. It was originally found on a website that specialised in shocking video content.

## **Synopsis of written submission(s):**

The Police submit that the video is objectionable pursuant to s3(2)(f) of the FVPC Act. Their submission states:

[this video is] promotional in its design and effect, intended to not only engender fear but to celebrate and glorify those acts which make it objectionable, namely the graphic torture and murder of victims who are powerless to resist (para 2.4).

The video depicts, amongst other acts, the murder of defenceless human beings. The purpose and consequent focus of the video, which has been edited to emphasise its most graphic content, is to celebrate the cruelty and

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<sup>1</sup> *Rumiyah* is published by the Al Hayat Media Centre, the publishing wing of ISIL. The magazines are recruitment tools that promote terrorist activity, and many editions have been classified objectionable in New Zealand (see OFLC Ref. 1800211 series, for example).

violence exhibited and to glorify its perpetrators [ISIL]. In doing so, it degrades, dehumanises and demeans its victims, both before and after their death, while promoting the activities and aims of ISIL, a designated terrorist entity, and encouraging and instructing others of a like mind to act in a similar fashion (para 2.5).

The dominant effect of *Watch-new-isis-video-you-must-fight-them-O-muwabbid-is-how-to-on-killing-non-muslims* is of a well-produced propaganda video. It is clearly designed to promote, celebrate and justify the cause and activities of ISIL, while explicitly encouraging and instructing others (French, Arabic and English speaking) to act in a similar fashion. The video is in digital format and can therefore be easily stored, shared or copied. (para 2.6)

The owner's legal counsel did not make a specific submission in relation to this publication.

As the Defence did not challenge the submission of this publication, the Classification Office did not seek external consultation on it as we did with the other videos in the submission.

### **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>2</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:

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<sup>2</sup> *Living Word Distributors v Human Rights Action Group (Wellington)* [2000] 3 NZLR 570 at paras 27-29.

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

The video contains horrific imagery of executions, terrorist warfare and dead bodies, in combination with violent lyrics and branding for the terrorist organisation ISIL. See s3(2)(f) and s3(3)(d) for further discussion.

### **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>3</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:

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>4</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. Stronger scenes include:

- A masked man slits the throat of a restrained prisoner. The prisoner tries to breathe and screams as blood spills from the cut. He is clearly in a great deal of pain. The masked man addresses the camera, "The kufir (unbeliever) fight us and you for our religion. So kill them. France's history is up to you." The hostage is later shown dead.
- A young man is made to run through a desert while wearing a backpack and dodging bullets that are coming from off screen. The bomb inside his backpack detonates, killing him and mutilating his body. We then see a close-up of his face and body that has been split in half.

These executions and the resulting dead bodies are shown in close detail which is graphic and disturbing. The video also contains instructional information on how to detonate a bomb, clearly with the intention of causing extreme harm.

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<sup>3</sup> *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9 at para 27.

<sup>4</sup> Above n2 at para 29.

The Classification Office agrees with the Police submission that this video is promotional in its design and effect, intended to not only engender fear but to celebrate and glorify the acts of extreme violence and cruelty depicted, namely the graphic torture and murder of victims who are powerless to resist. There is no other explanation for the content of this video, and 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 videos can also be considered objectionable under s3(3)(d) as set out below.

### **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 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 executions previously mentioned, notable content includes:

- Images of a person holding a knife to another person's back, a car blowing up, and a person carrying a briefcase, accompanied by the caption, "The Simplest Weapon".
- Commentary on "killing crusaders", including discussion on creating fear "in the nations of kufir (unbelief)" by "casting dread into their souls, and filling their hearts with panic."
- Brief commentary on US military involvement in Iraq, alongside footage of a man being shot in the head and bombs exploding inside buildings.
- Instructions appear about how to detonate a bomb before commentary states, "support and defend your brothers while you are behind enemy lines...Send upon them ruin and destruction."
- The ISIL flag is present throughout the video, clearly promoting the terrorist organisation.
- The presentation of *Rumiyah* magazines, which promote terrorist activity, many of which have been classified as objectionable in New Zealand.

This material promotes and encourages terrorist activity to a high extent and degree.

### **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 professionally edited video that promotes terrorist activity and showcases shocking and disturbing scenes of extreme violence and physical harm.

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. If it were to be shared amongst extremists and at-risk radicals it would further 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 video is high in shock value. It has no particular merit with regard to the above criteria.

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.*

Given the branding for ISIL and *Rumiyah*, the video is clearly a work of propaganda designed to recruit people into an extremist organisation. It features messaging which is promotional of extreme violence against others. It is evidently aimed toward viewers who are sympathetic to the ISIL cause, and other disenfranchised individuals who could become potential ISIL recruits.

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

No other relevant circumstances have been identified.

### **Conclusion:**

*Watch-new-isis-video-you-must-fight-them-O-muwahhid-is-how-to-on-killing-non-muslims* is classified as objectionable as it promotes and supports the infliction of extreme violence and cruelty, and promotes and encourages acts of terrorism to a high extent and degree.

The video is clearly designed to promote, celebrate and justify the cause and activities of ISIL, while explicitly encouraging and instructing others to act in a similar fashion. The presence of the ISIL flag, and advertisements for ISIL-manufactured *Rumiyah* magazines further support the conclusion that this is an ISIL propaganda tool.

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. However, the strong protections applying to political and religious speech are subject to reasonable limitations prescribed by law, and in New Zealand there are limitations on the promotion of extreme violence, cruelty and terrorism.

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 this publication reviewed under s47 of the FVPC Act if you are dissatisfied with the Classification Office's decision.

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