

## NOTICE OF DECISION UNDER SECTION 38(1)

TO: Chief Censor

**Title of publication:** Halle Attack Livestream  
**Other known title:** "20191009\_492207255\_unknown"  
**OFLC ref:** 1900538.000  
**Medium:** Video File  
**Maker:** Not stated  
**Country of origin:** Germany  
**Language:** German, 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>	Halle Attack Livestream	35:53
<b>Total running time:</b>		35:53

### 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 Thursday 10 October 2019 under s13(3) of the Films, Videos, and Publications Classification Act 1993 (FVPC Act). The Department of Internal Affairs provided the Classification Office with an official transcript and translation of the dialogue contained in the video.

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 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. The potential for the video to be widely and rapidly distributed means there is clear public interest in a classification decision being made as soon as possible.

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

*Halle Attack Livestream* is a video of a terrorist attack in Halle, Germany, by a lone gunman. It is 35 minutes and 53 seconds long and is filmed from the 'first person' perspective of the gunman by a camera that appears to be fixed to his helmet. The audio records him speaking in German and English. Music and German radio are also heard in his car during the video.

The video begins in a nondescript parking lot with the gunman in his car. He turns the camera on himself and provides a brief statement in English that explains his motives. The gunman then drives a short distance to his destination, a synagogue. The car has a large cache of improvised weapons and explosives. The synagogue is surrounded by a high brick wall and has a thick wooden door and gates as the only access points. The gunman attempts to blast his way through the door with a shotgun and blow up the gate but fails. He also appears to lob several explosives over the wall (all of which fail to explode). In his increasingly frustrated state the gunman shoots and kills a woman who walks past him on the street.

Having failed to enter the synagogue the gunman drives to a busy main road and attacks a kebab shop. He shoots at several people on the street at this location. Inside the kebab shop he shoots at the same man on two occasions with different weapons. The gunman ends up in a brief shootout with the Police before he manages to escape in his car. He turns the camera on himself at this point and declares he will discard the smartphone [camera]. There is evidence he has been injured in the shootout with blood seen on his neck and collar. The camera appears to be tossed on to the road where it remains for several minutes before the video ends.

The video was originally live-streamed on Twitch.tv where it was reportedly viewed by five user accounts as it was being live-streamed.<sup>1</sup> The video was then reported to have been viewed by approximately another 2200 accounts in the 30 minutes it was available before being removed from the site.

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<sup>1</sup> [https://www.cbc.com/2019/10/09/the-german-synagogue-shooting-was-streamed-on-twitch.html?\\_\\_source=twitter%7Cmain](https://www.cbc.com/2019/10/09/the-german-synagogue-shooting-was-streamed-on-twitch.html?__source=twitter%7Cmain)

## **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:

*Matters such as crime, cruelty and violence.*

The video *Halle Attack Livestream* deals with matters of crime, cruelty and violence. It documents events immediately prior to, during, and after a real-life attack on a synagogue and a kebab shop. Two people are killed by gunfire at close range. Several other people are targeted by the gunman but manage to escape.

The gunman has reportedly confessed and has been charged with two counts of murder and several counts of attempted murder by the German Federal Prosecutor's Office.<sup>3</sup>

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

<sup>3</sup> <https://www.dw.com/en/germany-halle-suspect-confesses-to-yom-kippur-shooting/a-50791324>

## 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>4</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>5</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 real-life violence and cruelty on several occasions.

The gunman cruelly shoots a woman in the back as she walks away from him by the synagogue. She collapses beside the driver's door of his car. Soon after, the gunman shoots repeatedly at her body on the ground. He is clearly agitated at his inability to get into the synagogue and appears to take his frustrations out on the woman's lifeless body. He further dehumanises her by calling her a "schwien" (pig) on at least two occasions.

At the kebab shop the gunman targets two men who are hiding behind a bank of drinks chillers but his weapon malfunctions. One of the men escapes but the other remains behind the chillers (possibly wounded or immobilised). He pleads for his life in English and German and is heard crying as the gunman attends to his weapons:

"I am finished...finished . . . Please don't! Please don't! Please don't! . . . Please don't! . . . No, no, please don't! Please!"

Despite his pleas the gunman shoots the man with a pistol through the gap between two chillers. He leaves the shop but returns several minutes later to find the man still behind the chillers. It is unclear whether the man is still alive but the gunman shoots him repeatedly at point blank range with a shotgun to make certain he is dead. Once again it appears as if the gunman takes out his frustrations on this unfortunate victim.

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

<sup>5</sup> Above n2 at para 29.

The gunman targets several other people who appear to escape (though two were subsequently reported to have been hospitalised with bullet injuries).<sup>6</sup> A man who stops to investigate the dead woman manages to escape as the gunman's weapon fails to fire. Another man manages to run away across the street as the gunman fires at him with his shotgun. Two men run from the gunman down the street as he chases after them and shoots at them twice.

The first-person perspective of the camera depicts the action from the viewpoint of the gunman. While this is likely to be incredibly disturbing for most viewers, the gunman's intended audience may well experience the vicarious thrill of feeling like they are carrying out the attack themselves. The only reason for filming an event in such a manner is to promote the gunman's actions. He quite literally brings the viewer along for the ride and addresses his intended audience as if they are right there with him.

The main, and arguably only, purpose of the video is to glorify and promote a real-life attack on a synagogue and a kebab shop. The callous murders and dehumanisation of two defenceless victims are captured on screen for the entertainment of the gunman's intended audience. There is nothing present that denounces his conduct, or supports an alternative reading of the video. 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:**

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 most 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 promotional acts of extreme violence and cruelty already discussed, the deliberate targeting of a synagogue and a kebab shop marks the violence and conduct depicted in the video as acts of racist extremism.

The gunman clearly outlines his anti-Semitic and anti-immigration views in a brief statement in English at the beginning of the video:

“Hi my name is Anon. And I think the Holocaust never happened. Human race is a species. Feminism is the cause of the decline of the West, which acts as a scapegoat for mass-immigration. And the root of all the problems is the Jew. Would you like to be friends?”

The day he chose to attack the synagogue is significant for being Yom Kippur, the holiest day of the Jewish calendar. Many adherents of the Jewish faith are likely to spend the day in prayer at the

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<sup>6</sup> <https://www.theguardian.com/world/2019/oct/09/two-people-killed-in-shooting-in-german-city-of-halle>

synagogue. News reports indicate there were at least 50 people inside the synagogue at the time of the attack.<sup>7</sup> The gunman is clearly determined in his efforts to access the synagogue as he attempts to blow open the gate and then shoot his way through the door. His frustrations boil over into the senseless murder of the woman passing by. When the gunman fails to gain access he appears to lob explosives over the perimeter wall – presumably to lure the occupants out, or to randomly injure and kill them. When it is clear he is going to be unsuccessful he leaves and apologises repeatedly to his audience. He calls himself a “loser” for failing to carry out a terrorist atrocity on the scale he had presumably envisaged.

The kebab shop appears to have been targeted as it is likely to be owned by immigrants. It is uncertain whether this choice was opportunistic or planned. Regardless, it will likely resonate with the gunman’s intended audience. The phrases ‘Remove Kebab’ and “Kebab Remover” are popular online anti-Muslim slogans and memes amongst those with extremist views. This audience is likely to celebrate the cruel murder of a young man in a kebab shop.

The gunman’s cache of guns and explosives along with the other equipment he has in his car emphasises the amount of planning he has put into the attack. His weapons are clearly improvised and homemade indicating a lack of access to conventional weapons need not be a barrier to carrying out terrorism and mass murder. A document reportedly released by the gunman in the lead up to the attack describes the weapons and explosives he has with him. This document states the author intends to prove the viability of improvised weapons. The gunman comments on the performance of his weapons in a manner that is likely to be educative to viewers who may seek to emulate him.

Despite the failure of the gunman’s attack on the synagogue and the low number of casualties, the publication can still be considered promotional and instructional. The gunman’s intentions are clear and his self-professed failure may well be motivating for impressionable viewers who share his views. The numbers of casualties that result from these attacks are recognised as ‘scores’ and ‘high scores’ on messaging forums that other attackers may seek to surpass.<sup>8,9</sup> The gunman’s failures, whilst fortunate in preventing mass casualties, are likely to be seen as teaching points for individuals who wish to emulate him, just as he appears to have emulated the Christchurch mosque shooter.

The video is not only a record of a terrorist atrocity but also presents clearly as a propaganda piece that has been created to promote the anti-Semitic and anti-immigration agenda of the gunman. The gunman was proclaimed a ‘Saint’ in the immediate aftermath of the attack on certain messaging forums that are popular with white extremists.<sup>9</sup> The promotional nature of the video creates a risk of further emulation of this sort of attack (at worst), and (at least) a risk that dehumanising racist hatred and intimidation will continue to be perpetuated. It is therefore clear that the content contained in this video promotes and encourages terrorist activity to a high extent and degree and is presented in a manner that is likely to be injurious to the public good.

#### **Additional matters to be considered:**

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

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<sup>7</sup> <https://www.bbc.com/news/world-europe-50011898>

<sup>8</sup> <https://thespinoff.co.nz/media/05-08-2019/how-christchurch-became-a-high-score-for-the-el-paso-shooter-to-aspire-to/>

<sup>9</sup> [https://www.vice.com/en\\_us/article/j5ybz4/white-nationalists-on-telegram-are-hailing-the-germany-synagogue-shooter-as-a-saint](https://www.vice.com/en_us/article/j5ybz4/white-nationalists-on-telegram-are-hailing-the-germany-synagogue-shooter-as-a-saint)

The dominant effect of the publication is a self-made video that seeks to promote the violent racist ideology of a white extremist gunman. It contains two notable acts of callous and fatal violence. The livestreaming of such attacks are becoming a hallmark of white extremists in order to glorify the perpetrator and to promote their ideological agenda.<sup>10</sup>

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

*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 digital nature of the video means it is capable of being shared online. It was clearly created with the intent that it would be shared widely and the document reportedly released by the gunman encourages his audience to do so. The gunman even refers to himself as “Anon” the standard contraction for an anonymous user on the messaging forums and applications that will be used to distribute the video. The available evidence suggests that the gunman’s audience has heeded this request with copies, clips and stills of the video being exchanged freely on one encrypted messaging application in particular that is popular with white extremists.<sup>9</sup>

The unrestricted availability of the video constitutes a high probability of significant injuries to the public good. It is likely to perpetuate terrorist methods and extremist ideology, and also serves to profoundly intimidate selected groups of people. The cruel deaths of two civilians are presented as a public spectacle and will likely be celebrated by the intended audience. The ongoing circulation and availability of the video provides the gunman with notoriety and recognition he is clearly seeking, thereby establishing him as an example for those who may also seek notoriety through violent action and terrorism.

The first person perspective gives the gunman’s intended audience the impression that they are carrying out the attack themselves. Other viewers will view it as a disturbing and potentially traumatic spectacle. Children and young people are particularly prone to the negative neurological effects of violent media, but adults may also be negatively affected by real-life videos such as this. Many are likely to be significantly shocked by the confronting murders of two civilians. There may well be a risk of psychological disturbance for viewers, particularly younger viewers, the extent and degree of which may take months, if not years, to realise. The ongoing availability of the video in New Zealand is only likely to sustain and expand these harms. An age restriction is inadequate as it will only mitigate the potential harms of this video for young people (and even then only in a limited way given the limited effectiveness of age-restrictions on internet content).

*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 is clearly newsworthy and may well have some academic value for New Zealand researchers and analysts who study extremism.

An objectionable classification is unlikely to be of manifest interest to the wider New Zealand public given the available media reporting and commentary. Any ongoing interest in the

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<sup>10</sup> See *Christchurch Mosque Attack Livestream* (OFLC Ref: 1900148.000) and <https://abcnews.go.com/US/suspect-deadly-san-diego-synagogue-shooting-linked-mosque/story?id=62685051>

unfettered availability of the video will largely be amongst supporters of the gunman and those wishing to promote extremist ideologies.

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

There has been a vast amount of media and official comment on the events in Halle and other recent extremist attacks but the Classification Office has sought to focus on factors immediately relevant to the classification of this video.

### **Conclusion:**

The video promotes and supports the infliction of extreme violence and cruelty. The first-person view records the actions of the gunman creating the disturbing effect of seeing the attack from his perspective. The video is clearly intended to record, share and glorify the acts of the gunman which includes the cruel murder of two defenceless civilians. There is nothing present that denounces the activity depicted.

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 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 value for governmental enforcement agencies who are seeking to tackle violent extremism. These parties are already permitted to possess the video for these and other purposes under s131(4) of the FVPC Act. Other organisations and members of the New Zealand public who feel they have a legitimate reason for accessing the video can make an application to the Chief Censor for an exemption under s44 of the Act.

**Date:** 16 October 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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