### SUMMARY OF REASONS FOR DECISION

Under the Films, Videos, and Publications Classification Act 1993 (FVPC Act)

HEADNOTE

Title of publication:

Call Of Duty: Black Ops III

Other known title(s):

Not stated

OFLC ref:

1500623.000

Medium:

Console Game

Classification:

Objectionable except if the availability of the publication is restricted

to persons who have attained the age of 16 years.

Descriptive note:

Violence, offensive language and horror.

Display conditions:

None

Call Of Duty: Black Ops III is the twelfth instalment in the popular Call Of Duty military combat game. The game is played from a first-person perspective. It is set in an anarchical, chaotic world where elite forces employed by democratic governments battle dictators and their mercenaries. The year is now 2065 and technology is irrevocably embedded on the battlefield. Elite Black Ops soldiers have implanted neural interfaces that let them communicate with combat robots and Internet-connected weaponry, in addition to other cybernetic bio-augmentations such as superpowered prosthetic limbs. While the player's Black Ops squad member engages numerous enemies in the same constant shoot-and-kill manner as in the other games, there are also is a new zombie mode. In this mode that is loosely related to the back history of previous games, the character kills numerous zombies. In the main gameplay the new movements systems allows the character to run along walls and traverse high buildings. The multiplayer modes are more extensive than before. Also featured is a "safe house" where characters congregate between campaign missions and gather and display their rewards for the number of enemy exterminated, which is the main goal of the game.

The game's treatment of matters of horror, cruelty and violence bring it within the s3(1) subject gateway criteria. There is nothing that requires discussion under s3(2) of the FVPC Act.

Much of the horrific content is contained in the three storylines in the zombie mode. They are loosely connected to main gameplay mode in that they give a back history to some characters from the previous games. They are set in twentieth century cities and have a noir tone. The player's character use a variety of guns to shoot and kill numerous zombies, and boards off city streets to stop them spreading. The most efficient manner of execution requires the player to shoot off the zombies' heads, resulting in large blood bursts. The victims are only vaguely human in appearance with a shambling gait and yellow-lit eyes. There is little time to focus on their decapitated bodies in frantic gameplay.

The extent and degree to which, and the manner in which, the game deals with violence and cruelty is discussed under s3(3)(a)(i).

The game's main premise is shooting and killing the enemy using a degree of strategy while avoiding being killed. Missions are introduced by cut scenes of cinematic quality. Gameplay is frenetic with the constant sound of explosions, gunfire and radio communication. In-game dialogue gives the impression of real people involved in battle. Shooting the enemy results in blood spraying in the air but this does not affect the environment and generally there is no injury presented. Once killed, they collapse realistically to the ground with a pool of blood underneath. However it is possible to dismember some opponents using grenades. Although antithetical to the constant combat required to advance in the game, it is possible to stop and view, and take screenshots of, severed limbs and tendons.

The high extent of combat violence in the game is partly mitigated by the sci-fi context. This is particularly so of this game where the elite soldiers, including the central character, are now more machine than human. An early cut scene depicts the central character being captured by robots who cut off his arms. Rescued by his comrades he is fitted with sophisticated prosthetic limbs that greatly increase his power and strength. The cybernetic implants also improve his communications skills, such as the ability to scan the memories of captured enemies.

The strongest instances of realistic cruelty occur in the cut scenes. These contain fleeting sequences of water torture, knife violence amongst mercenaries, and throat cutting. These scenes are quickly-edited.

Regarding s3A, the publication contains a considerable amount of highly offensive language, mainly "fuck" and its variations. Used aggressively by the heroic soldiers it is likely to be emulated by impressionable young players.

The game's dominant effect is of a gritty, frenetic console game based on modern and futuristic warfare techniques. The game is inherently violent. Children and younger teenagers will be shocked and disturbed by its violent content, particularly the more cruel and bloody parts in the zombie mode and in the cut scenes. Repeated exposure to the exciting and rewarding killing for entertainment's sake, in which the player is an active participant, is likely to play a part in inuring impressionable younger teenagers to violence more generally, and may lead to a desensitisation in attitudes towards violent behaviour and its consequence in real life. Older teenagers and adults are more likely to have the analytical ability to make sense of the science fiction storylines and distance themselves from the stronger material. The classification of R16 limits the right to freedom of expression as provided by the New Zealand Bill of Rights Act 1990. However, given the considerations above, the availability of *Call Of Duty: Black Ops III* at a lower classification is likely to be injurious to the public good.

#### Note:

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# **CONSIDERATION SHEET**

OFLC ref:

1500623.000

Submission channel:

s12(1)

Title of publication:

Call Of Duty: Black Ops III

Other known title:

Not stated

Medium:

Console Game

Distributor:

Total Interactive

Country of origin:

United States

Language:

English

Applicant:

Film & Video Labelling Body

Examination transcript No:

667 p227

Examination date:

02 September 2015

Classification Officer(s):

18 State of State of

Other identifying information:

# **COMPONENTS OF FILM**

# Components of film originally examined:

	Components	Running time
Game:	Call Of Duty: Black Ops III	-
Total running time:		

Components of film excised:

#### **EXAMINATION**

#### Section 23 Examination and classification:

...the Classification Office shall examine the publication to determine the classification of the publication.

#### Section 24 Soundtrack to be considered:

Where a film is intended to be viewed with an accompanying soundtrack (whether or not the soundtrack is an integral part of the film), an examination of the film under s23 of the Act shall also take into account the content of the soundtrack and its relationship to the film.

### Description of Publication:

Call Of Duty: Black Ops III is the twelfth instalment in the popular Call Of Duty military combat game. The game is played from a first-person perspective. It is set in an anarchical, chaotic world where elite forces employed by democratic governments battle dictators and their mercenaries. The year is now 2065 and technology is irrevocably embedded on the battlefield. Elite Black Ops soldiers have implanted neural interfaces that let them communicate with combat robots and Internet-connected weaponry, in addition to other cybernetic bio-augmentations such as super-powered prosthetic limbs. While the player's Black Ops squad member engages numerous enemies in the same constant shoot-and-kill manner as in the other games, there are also is a new zombie mode. In this mode that is loosely related to the back history of the current game, the character kills numerous zombies. In the main gameplay the new movements systems allows the character to run along walls and traverse high buildings. The multiplayer modes are more extensive than before. Also featured is a "safe house" where character's congregate between campaign missions and show off their rewards for the number of enemy exterminated, which is the main goal of the game.

# Statutory Submissions

# Section 20 – Synopsis of Written Submissions

Not Applicable X

# Section 21 Other Assistance

None Requested	
See Record of Assistance	

# Other Relevant Information

N	one	Considered	
	OIL	COMBIGUE	

In reaching a classification decision the Classification Office may consider a variety of information including previous decisions of the Classification Office or other censorship bodies, research, books, articles, reviews, and information obtained from the Internet. If you have used any of this information please record this below.

Previous decisions			
Classification Body	OFLC	VRA	
	Chief Censor of Film	IPT	
Title:			
Publication/Certificate/D	Pecision No.		
Other Sources (please sp	ecify and reference):		
Wikipedia			
		-	

# **CLASSIFICATION**

#### 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".

## Section 3 Meaning of "objectionable":

s3(1) ... 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.

#### Subject Matter Gateway:

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)* [2000] 3 NZLR 570; (2000) 6 HRNZ 28, must also be taken in to 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.

The content of the publication must bring it within the "subject matter gateway". In classifying the publication therefore, the question is whether or not it deals with the following:

Matters such as sex

Included as a "matter such as sex" is any publication that in terms of s3(1A) -

(a) ... is or contains 1 or more visual images of 1 or more children or young persons who are nude or partially nude; and

(b)

those 1 or more visual images are, alone, or together with any other contents of the publication, reasonably capable of being regarded as sexual in nature.

N/A

Matters such as horror

Much of the horrific content is contained in the three storylines in the zombie mode. They are loosely connected to main gameplay mode in that they give a back history to some characters from the previous series. They are set in twentieth century cities and have noir tone. The player's character use a variety of guns to shoot and kill numerous zombies, and board off city streets to stop them spreading. The most efficient manner of execution requires the player to shoot off the zombie's heads, resulting in large blood bursts. The victims are only vaguely human in appearance with a shambling gait and yellow-lit eyes. There is little time to focus on their decapitated bodies in frantic gameplay.

Matters such as crime N/A Matters such as cruelty See s3(3)(a)(i) below

Matters such as violence See s3(3)(a)(i) below

Or – The content of the publication does not bring it within any "subject matter gateway".

For publications that fall outside the "subject matter gateway" go to s3A and s3B

### Section 3(2) 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" in order to be consistent with the NZBORA. 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>2</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

<sup>1</sup> Moonen v Film and Literature Board of Review [2000] 2 NZLR 9 at para 27.

<sup>&</sup>lt;sup>2</sup> Above n2 at para 29.

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.

s3(2)(a) The exploitation of children, or young persons, or both, for sexual purposes.

In Moonen v Film and Literature Board of Review (Moonen II) [2002] 2 NZLR 754, the Court of Appeal stated that the absence of definitions of "young persons" and "children" in s3(2)(a) was deliberate. The provision does not require proof of the models' ages; it requires an assessment of whether or not the publication in which the models appear promotes or supports the exploitation of children or young persons for sexual purposes:

The legislation is concerned with the vulnerability of young people and with the corrosive injury to the public good of depicting persons perceived to be children or young people as subjects for exploitation. The Board properly assessed whether the publication of the photographs would tend to promote or support the exploitation of children or young persons, not limited to the impact on the particular persons photographed. The inquiry under s3 does not require the ascertainment of the precise age of the person photographed.<sup>3</sup>

It was Parliament's intention therefore that s3(2)(a) should apply to any publication as defined in the Act, that promotes, supports, or tends to promote or support, the exploitation of children or young persons for sexual purposes. As long as a publication at least tends to promote or support such exploitation, whether or not it depicts underage models, no underage models or no models at all is irrelevant to the proper application of s3(2)(a). The issue is whether, on the evidence presented by the publication itself, the publication at least tends to promote or support the exploitation of children or young persons for sexual purposes.

N/A

The use of violence or coercion to compel any person to participate in, or submit to, sexual conduct.
Sexual conduct with or upon the body of a dead person.
The use of urine or excrement in association with degrading or dehumanising conduct or sexual conduct.
Bestiality.
Acts of torture or the infliction of extreme violence or extreme cruelty.

If the publication promotes and supports, or tends to promote and support, any of the 3(2) provisions above and is deemed objectionable go to <u>Conclusion</u>.

However, section 32 of the FVPC Act directs the Classification Office to consider whether it would classify the publication differently if the material falling under s3(2) were excised or altered. If an excision were made, the publication would no longer fall under 3(2) of the FVPC Act. If the

<sup>&</sup>lt;sup>3</sup> Moonen v Film and Literature Board of Review [2002] 2 NZLR 754 at para 40.

publication contains material that falls under 3(2) which can be excised or altered, go the Excisions section and then return to s3(3) and 3(4) below.

Otherwise, if the publication does not fall under s3(2) consider the following matters:

# Section 3(3) Matters to be given particular weight:

In determining, for the purposes of the Act, whether or not any publication (other than a publication to which subsection 3(2) of this section applies) is objectionable or should in accordance with section 23(2) be given a classification other than objectionable, the following matters shall also be considered:

...particular weight shall be given to the **extent** and **degree** to which, and the **manner** in which, the publication describes, depicts, or otherwise deals with...

s3(3)(a)(i) Acts of torture, the infliction of serious physical harm, or acts of significant cruelty. The game's main premise is shooting and killing the enemy using a degree of strategy while avoiding being killed. Missions are introduced with cut scenes of cinematic quality. Gameplay is frenetic with the constant sound of explosions, gunfire and radio communication. In-game dialogue gives the impression of real people involved in battle. Shooting the enemy results in blood spraying in the air but this does not affect the environment and generally there is no injury presented. Once killed, they collapse realistically to the ground with a pool of blood underneath. However it is possible to dismember some opponents using grenades. Although antithetical to the constant combat required to advance in the game, it is possible to stop and view, and take screenshots of, severed limbs and tendons.

The high extent of combat violence in the game is partly mitigated by the sci-fi context. This is particularly so of this game where the elite soldiers, including the central character, are now more machine than human. An early cut scene depicts the central character being captured by Robots who cut off his arms. Rescued by his comrades he is fitted with sophisticated prosthetic limbs that greatly increase his power and strength. The cybernetic implants also improve his communications skills, such as the ability to scan the memories of captured enemies.

The strongest instances of realistic cruelty occur in the cut scenes. These contain fleeting sequences of water torture, knife violence amongst mercenaries, and throat cutting. These scenes are quickly-edited.

s3(3)(a)(ii)	Sexual violence or sexual coercion, or violence or coercion in association with sexual conduct.
N/A	
s3(3)(a)(iii)	Other sexual or physical conduct of a degrading or dehumanising or demeaning nature.
N/A	
s3(3)(a)(iv)	Sexual conduct with or by children, or young persons, or both.
N/A	0 01
s3(3)(a)(v)	Physical conduct in which sexual satisfaction is derived from inflicting or suffering cruelty or
( ) ( ) ( )	pain.
3.T / A	1

N/A

...particular weight shall be given to the **extent** and **degree** to which, and the **manner** in which, the publication

s3(3)(b)	Exploits the nudity of children or young persons, or both.
N/A	
s3(3)(c)	Degrades, dehumanises or demeans any person.
N/A	
s3(3)(d)	Promotes or encourages criminal acts or acts of terrorism.
N/A	
s3(3)(e)	Represents (whether directly or by implication) that members of any particular class of the public are inherently inferior to other members of the public by reason of any characteristic of members of that class, being a characteristic that is a prohibited ground of discrimination specified in
N/A	section 21(1) of the Human Rights Act 1993. <sup>4</sup>

N/A

### 3A Publication may be age-restricted if it contains highly offensive language likely to cause serious harm:

3A(1) A publication to which subsection 3A(2) applies may be classified as a restricted publication under section 23(2)(c)(i).

This subsection applies to a publication that contains highly offensive language to such an extent 3A(2)or degree that the availability of the publication would be likely, if not restricted to persons who have attained a specified age, to cause serious harm to persons under that age.

3A(3)In this section, highly offensive language means language that is highly offensive to the public in general.

The publication contains a considerable amount of highly offensive language, mainly "fuck" and its variations. Used aggressively by the heroic soldiers it is likely to be emulated by impressionable young players.

#### 3B Publication may be age-restricted if likely to be injurious to public good for specified reasons:

3B(2) This subsection applies to a publication that contains material specified in subsection (3) to such an extent or degree that the availability of the publication would, if not restricted to persons who have attained a specified age, be likely to be injurious to the public good for any or all of the reasons specified in subsection (4).

3B(3)	The material referred to in subsection (2) is material that
3B(3)(a)	describes, depicts, expresses, or otherwise deals with—
3B(3)(a)(i)	Harm to a person's body whether it involves infliction of pain or not (for example, self- mutilation or similarly harmful body modification) or self-inflicted death.
N/A	
3B(3)(a)(ii)	Conduct that, if imitated, would pose a real risk of serious harm to self or others or both.
N/A	

<sup>4</sup> The grounds of discrimination prohibited by \$21(1) of the Human Rights Act 1993 are sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status and sexual orientation.

3B(3)(a)(iii) N/A	Physical conduct of a degrading or dehumanising or demeaning nature.
3B(3)(b)	is or includes 1 or more visual images—
3B(3)(b)(i)	of a person's body; and
3B(3)(b)(ii)	that, alone, or together with any other contents of the publication, are of a degrading or
NI/A	dehumanising or demeaning nature.

N/A

3B(4) The reasons referred to in subsection (2) are that the general levels of emotional and intellectual development and maturity of persons under the specified age mean that the availability of the publication to those persons would be likely to—

3B(4)(a)	Cause them to be greatly disturbed or shocked; or
3B(4)(b)	Increase significantly the risk of them killing, or causing serious harm to, themselves, others, or both; or
3B(4)(c)	Encourage them to treat or regard themselves, others, or both, as degraded or dehumanised or demeaned.
N/A	

#### **3C** Procedure for classification under sections 3A and 3B:

In determining whether to classify a publication as a restricted publication in accordance with section 3A or section 3B, the Classification Office must consider the matters specified in paragraphs (a) to (f) of section 3(4).

### Section 3(4) Additional matters to be considered:

In determining, for the purposes of the Act, whether or not any publication (other than a publication to which subsection 3(2) of this section applies) is objectionable or should in accordance with section 23(2) be given a classification other than objectionable, the following matters shall also be considered:

The dominant effect of the publication as a whole. The game's dominant effect is of a gritty, frenetic console game based on modern and futuristic warfare techniques.

53(4)(b) The impact of the medium in which the publication is presented. The game is played on a game console and commonly viewed on a large monitor. The impact of the medium may be increased by its interactive nature that gives the player complete control, including when to commit violence. However, the main game requires considerable skill to reach advanced levels and it is arguable that the fast paced interactive nature of the game results in the player focussing on manipulating the controls in order to win the game rather than focussing on the depictions of violence.

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 popular game has high technical merit.

The persons, classes of persons, or age groups of the persons to whom the publication is intended or is likely to be made available.

Due to the depictions of horror, violence and cruelty the publication is intended for mature players.

The purpose for which the publication is intended to be used. The publication is intended for the purpose of entertainment.

s3(4)(f) Any other relevant circumstances relating to the intended or likely use of the publication. The game will be available in a variety of game formats.

# CONCLUSION (INCLUDING NZBORA CONSIDERATIONS)

If s3(1) applies to the publication the question is whether or not it deals with the matters discussed in a manner that the availability of the publication is likely to be injurious to the public good. In discussing injury consider the nature and severity of that injury, the likelihood of it occurring and who would be injured by the publication's availability. The classification recommended must remedy the injury identified.

If s3B applies to the publication, the injury to the public good must be explained in terms of s3B(4) of the FVPC Act.

If s3A applies to the publication, explain the age restriction in terms of how the language is likely to cause serious harm to persons under the age of the restriction.

Any classification that limits the right to freedom of expression affirmed by s14 of the NZBORA must be reasonable and demonstrably justifiable.

Classification:	R16		

The game is inherently violent. Children and younger teenagers will be shocked and disturbed by its violent content, particularly the more cruel and bloody parts in the zombie mode and in the cut scenes. Repeated exposure to the exciting and rewarding killing for entertainment's sake, in which the player is an active participant, is likely to play a part in inuring impressionable younger teenagers to violence more generally, and may lead to a desensitisation in attitudes towards violent behaviour and its consequence in real life. Older teenagers and adults are more likely to have the analytical ability to make sense of the science fiction storylines and distance themselves from the stronger material. The classification of R16 limits the freedom of expression as provided by the New Zealand Bill of Rights Act 1990. However, given the considerations above, the availability of *Call Of Duty: Black Ops III* at a lower classification is likely to be injurious to the public good.

# **EXCISIONS/ ALTERATIONS**

#### Section 32 - Excisions from and alterations to film -

In the case of a film submitted for classification under any part of the Act other than s29(1) and 41(3) (court referrals), if the Classification is of the opinion that it would classify the film differently according to whether any specified part or parts of the film are excised from or left in the film, it shall, before making a final determination in respect of the classification of the film, follow the procedure prescribed by section 33.

Section 33(1) directs the Classification Office to notify the authorised distributor of the film of the classification that would be given if part or parts of the film were excised or altered, and, the classification that would be given if the specified part or parts were not excised or altered.

Section 33(5) provides that, in deciding whether or not to propose excisions or alterations, the Classification Office may consider the effect that any such excision or alteration may have on the continuity of the film or on its overall effect.

EXCISIONS SUMMARY		
None (for non-moving image and s29(1) / 41(3) publications)		
No excisions recommended (for all other moving image publications)	x	
Excisions/alterations recommended		
Number of Excisions/Alterations:		
Brief Description:		

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### PUBLIC DISPLAY CONDITIONS

Not Applicable	
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### Section 27 Conditions relating to the display of restricted publications -

Where the Classification Office classifies any publication as restricted, the Office shall in every case consider whether or not to impose conditions on the public display of that publication, and may impose such conditions at the time of classifying the publication.

In determining whether or not conditions in respect of public display should be imposed, the Classification Office must have regard to:

s27(2)(a) The reasons for classifying the publication as a restricted publication. The publication contains depictions of horror, violence and cruelty

s27(2)(b) The terms of the classification given to the publication. R16

s27(2)(c) The likelihood that the public display of the publication, if not subject to conditions or, as the case may be, any particular condition, would cause offence to reasonable members of the public.

Public display of the publication is unlikely to offend reasonable members of the public.

Section 27(3) directs that where the Classification Office considers that the public display of the publication, if not subject to conditions under this section, would be likely to cause offence to reasonable members of the public, the Classification Office shall, at the time of classifying the publication, impose such conditions under this section in respect of the public display of that publication as it considers necessary to avoid the causing of such offence.

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