

**NOTICE OF DECISION
UNDER SECTION 38(1)**

TO: Secretary for Internal Affairs
Department of Internal Affairs
PO Box 805
Wellington



Title of Publication: 50 Cent: The Massacre
50 Cent: The Massacre

Other Known Title(s): 50 Cent The Massacre Special Edition CD/DVD
50 Cent The Massacre Special Edition CD/DVD

Director(s): Dan "The Man" Melamid
Not Applicable

Producer(s): Dan "The Man" Melamid
Dr. Dre, et al.

Format: DVD
Compact Disc Sound Recording

Country of Origin: USA

Language(s): English



Components of Film:

| | Component | Running time |
|--------------------------------|--------------------------------------------|---------------------|
| Menu: | Play All Video List Bonus Credits | |
| Feature: | 50 Cent: The Massacre | 77.27 |
| Other timed components: | FBI Copyright Warning Notice | 0.04 |
| | Parental Advisory Notice | 0.04 |
| | Get Rich Or Die Tryin' | 1.09 |
| | 50 Cent: Bulletproof | 2.43 |
| | Credits | 1.44 |
| Total running time: | | 83.11 |

... Please turn over

Decision:

Objectionable except if the availability of the publication is restricted to persons who have attained the age of 16 years.

Descriptive Note

Contains violence, sexual references and offensive language.

Display Conditions:

Nil.

Direction to issue a label has been given.



REASONS FOR DECISION

Submission procedure:

The two publications (a compact disc sound recording and DVD) that are the subject of this decision were submitted to the Office of Film and Literature Classification (Classification Office) by the Secretary for Internal Affairs under 13(1)(b) of the FVPC Act on 11 October 2006.

In a letter accompanying the submission of the publications, an Inspector of Publications from the Department of Internal Affairs (Internal Affairs) informed the Classification Office that a member of the public had complained to Internal Affairs about the CD "The Massacre" and that when Internal Affairs went to acquire a copy of this CD they found the "Special Edition CD/DVD" set and decided to submit both publications for classification. The Inspector expresses concern that the "Special Edition CD/DVD" set appears to have been classified as MA15+ in Australia and "cross rated as an 'M' offensive language". Copies of the lyrics for two songs identified by the complainant as being of particular concern were attached to the submission, as well as contact information for the distributor, Universal Music NZ Ltd.

In letters dated 11 October 2006 Internal Affairs advised the complainant and the distributor that the publications had been submitted for classification and of their right to make written submissions to the Classification Office.

In letters dated 16 October the Classification Office reminded Internal Affairs, the distributor and the complainant of their right to make a written submission in regard to the publications under s20(1) of the FVPC Act. The closing date for submissions was 03 November 2006. In a letter also dated 16 October 2006, the Chief Censor directed Internal Affairs to notify the distributor and the complainant of their right to make a submission on the classification of the publications.

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 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 submissions:

The distributor of the publications did not make a submission, and no further submission was received from Internal Affairs.

In a letter dated 17 October 2006, the original complainant states that "having read through the words as posted on the net [he] found these 'songs' to be without any merit whatsoever", and that "the words glorify violence and crime and display a perverted attitude to women". He goes on to claim that he thinks that the "only influence that these 'songs' can have is negative" and that he also thinks that they "contribute to the increasing crime and lawlessness." Expressing concern that "many young adults are not old enough to discern this material", and that they may "look up to these Rap Gangsters", the submitter concludes that he hopes that the Classification Office is "able to prevent this material from being sold in New Zealand."

Description of the publications:

The two publications were examined and considered separately as publications in their own right, but they are discussed together in this decision for convenience purposes.

50 Cent: The Massacre (OFLC No. 602404) is a compact disc sound recording (CD), comprising an album of 20 tracks by US rapper 50 Cent. The CD was released in March 2005. The CD was examined on a PC using Windows Media Player. A copy of the lyrics for each of the tracks was obtained from internet site *The Original Hip-Hop Lyrics Archive* (www.ohhla.com).

50 Cent's music falls in the subgenre of hip hop music known as gangsta rap. Some of the tracks on the CD feature other artists, including Eminem, Tony Yayo, Mobb Deep and Olivia. The CD is produced by Dr Dre and Eminem, among others.

Many of the tracks on this album focus on 50 Cent's hip-hop lifestyle. He brags about his rapping ability, his wealth, and his prowess with women, and he issues threats to enemy rappers and anyone else who should cross him and his crew, G-Unit. A number of songs include references to the violent nature of life in the hood where he comes from, and his previous incarnation as a hustler and drug dealer. The language is full of slang phrases and colloquialisms and a number of the lyrics are likely to be difficult to understand for those not familiar with it. 50 Cent refers to himself and others as a "nigga" or "niggaz", as well as "homies", "thugs" and "hustlers". Women are often referred to as "bitches", "girls" and "shorties". There is frequent use of offensive language.

50 Cent: The Massacre (OFLC No. 602403) is a DVD containing 21 music videos by US rapper 50 Cent. The music videos each correspond to a track on the related CD described above. A main menu screen allows the viewer to watch all of the videos together or to select individual titles from a *Video List*. The combined running time of the videos is 77 mins 27 secs. A *Bonus* menu offers a trailer for 50 Cent's *Get Rich Or Die Tryin'* movie and for his video game *50 Cent: Bulletproof*.

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.¹

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 the following matters in such a manner that the availability of the publications is likely to be injurious to the public good:

Matters such as sex

There are references to sex in a number of songs, often in the context of bragging about sexual prowess. Some references are fleeting while others are in the context of detailed descriptions of sexual encounters. Some of the references to sexual activity are fairly express and use colloquial references for sex acts and body parts, such as, "suck cock", "fuck", "suck on some dick" and "sexing". One of the songs (*Candy Shop*) is a duet between 50 Cent and Olivia who sing about sexual activity together. This song relies more strongly on euphemisms than on graphic descriptions of sexual acts, with lyrics such as "I'll let you lick my lollipop".

Sexual imagery in the DVD is fairly limited. *Candy Shop* includes a depiction of a couple kissing on a bed, a woman in a latex nurse's uniform on top of a man on a bed, a woman using a whip to remove a man's top, and a woman pouring chocolate sauce over a bikini-clad woman in a bathtub. *Disco Inferno* shows bare-breasted women at a club; some kissing each other and sitting on each other's laps. A woman licks alcohol off another woman's body and another woman rubs

¹ *Living Word Distributors v Human Rights Action Group (Wellington)* [2000] 3 NZLR 570 at paras 27-29.

a man's crotch. In *Just A Lil' Bit*, a lingerie-clad woman climbs on top of a man in bed and ties him up.

Matters such as crime

A number of songs include passing references to drug use and drug dealing, generally in the context of the "gangsta" lifestyle. Cocaine, heroin, ecstasy and marijuana are referred to, sometimes by street names such as "Peruvian flake", "bricks", "weed", "X" and "H".

The song *A Baltimore Love Thing* tells a story about a heroin addiction and the inability of a junkie to resist the temptation of the drug:

The friends need me, I ain't around, they bones ache,
Detox, rehab, cold sweats, watch 'em shake,
...
Tie your arm up; put that lighter under that spoon,
Now put that needle to your arm princess'
Stick it in, relapse.

There is only one depiction of drug use in the DVD. This is unrelated to the lyrics and involves rapper Snoop Dogg rolling and smoking a marijuana joint while at a recording studio with 50 Cent.

There are numerous references to violent activities that would constitute crimes such as murder and assault. These are discussed below in conjunction with matters of violence.

Matters such as violence

The publications contain numerous references to and (in the case of the DVD) images of violent crimes. The "massacre" in the title refers to the infamous St. Valentine's Day Massacre. The *Intro* track on the CD includes sound of semi-automatic gunfire, glass smashing, and somebody yelling "Happy Valentine's Day". This is incorporated into the looped sequence that precedes the DVD's main menu screen, which is an animated depiction of a drive-by shooting.

Guns and gunplay are a recurrent motif throughout both publications. Menu screens incorporate guns arranged in patterns. 50 Cent is often seen holding guns. Sounds of guns being cocked and bullets fired form part of the backing track in some songs. There are constant references to weapons and ammunition in songs, generally using colloquial references such as "gats", "shanks", "9's", "macs", "hollow-tips", "fo'-fo'", "clips" and "straps".

References to and depictions of violent crime are discussed below under ss3(3)(a)(i) and s3(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"² in order to be consistent with the Bill of Rights. The

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

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.³

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 Classification Office has considered all of the matters in s3(2). Although the publications deal with a matter listed in s3(2), the publications are not deemed to be objectionable because, on the definitions set out above, they cannot fairly be said to promote, support, or tend to promote or support, that matter.

The publications have been examined in relation to s3(2)(f), which is discussed below in conjunction with s3(3)(d).

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 matters that it considers relevant to these publications 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.

There are numerous references to the infliction of serious physical harm in the lyrics; in many cases consisting of threats to 50 Cent's enemies and boasting about his reputation as a "killa". Some lyrics simply reflect on the gang violence that is prevalent on the streets of New York and other US cities.

Examples of threats and other references to the infliction of serious physical harm and murder include:

Man I'm tired of telling niggaz over and over,
I won't hesitate to pop or shank ya.
(*This Is 50*)

³ Above n2 at para 29.

But dude if you try me, I'll have ya ass hooked up to an IV,
I'll leave no witnesses when I ride, B,
You fuck with me, you'll see,
I'll react like an animal, I'll tear you apart,
If a masterpiece was murder, I'd major in art
(*Gatman and Robin*)

You try to touch me, I put out ya get ya brains blown,
You go against the grain, pussy and you on ya own
...
You see me in ya projects, 187's in progress,
Hard niggaz finna' soften up when the lead touch 'em,
You cut 'em once and keep fight, fuck it just keep cuttin' em,
It's real killa instinct, kill or be killed.
(*Gunz Come Out*)

I got two shooters now on the run from the fuzz,
You get the same shit from 10 bodies you get from one cuz
(*Position Of Power*)

The most explicit references to violence in the context of gang warfare occur in *Toy Soldiers*, with lyrics dealing with the lack of value placed on human life and the dispensability of young gang members:

I put that battery in his back, I'm the reason why he move like that
That's my muh'fuckin toy soldier,
I tell him pop that gat, he gon' pop that gat,
You don' wanna play with my toy soldier,
I say it's on then it's on until your life is over,
Fuckin with my toy soldier,
If youse a casualty of war, trust me I got more,
You don't want it with my toy soldiers
...
Shoot, stab, kill, muh'fucker,
If you ain't 'bout it I don't want you around cocksucker,
Every word out my mouth is felt; that oo-wop pop,
Them hollows so hot, yo' ass'll melt,
Barber razor in the club, stunner get you an' shit,
Right by your ass stitch, gored, your head all taped up.

The video for *Ski Mask Way* depicts a series of armed robberies and muggings by masked men. The violence is clearly staged but it increases the impact of the corresponding lyrics about making a living "the ski mask way".

The strongest imagery is in the video for *My Toy Soldier*. Parts of this video are in the style of a violent video game involving various characters being shot in the head, resulting in profuse blood spray. The dominant effect of the footage is of frenetic semi-automatic gunfire bloodletting.

The two trailers also include violent footage. The trailer for *Get Rich Or Die Tryin'* has a scene of armed robbery, followed by characters arguing about whether they should have killed people during the commission of the robbery, while the *50 Cent: Bulletproof* trailer incorporates shootouts from the video game.

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 references to drug use and drug dealing are not considered to promote and encourage these activities to any real degree, but nor do they condemn drug use. They are presented as an accepted part of the lifestyle of 50 Cent and of the people he sees around him, some of whom have struggled with addiction

There are frequent references to, and some depictions of, violent activities that would constitute crimes such as murder and assault (as detailed above). The publication as a whole is not considered to promote or encourage criminal acts; however, the constant references to guns and other weapons and to serious violent crimes have the potential to glamorise a violent lifestyle. It is widely known that 50 Cent was a drug dealer before he became a successful rapper, and that he was shot several times and survived. There is a worry that younger listeners and viewers may not think about the consequences of emulating the attitudes espoused in the lyrics and the imagery in these publications.

The DVD's depictions of violent crimes, particularly in *Toy Soldier* and *Ski Mask Way*, contributes to the extent and degree to which the publication has the effect of glorifying violent criminal activity.

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 the CD is of a compilation of tuneful, catchy hip-hop tracks, some of which have a focus on macho violence and aggression, ostentatious materialism and sexual prowess. The DVD is of a compilation of music videos, showcasing tracks from said CD.

s3(4)(b)

The impact of the medium in which the publication is presented.

CD – Although there is a great deal of new technology available in terms of music listening media (e.g. MP3 players) CDs are still a very popular medium (even those who listen to music exclusively on their MP3 player may still purchase and borrow CDs for the purpose of downloading the tracks onto their MP3 player). CDs are portable and easily shared among groups of peers, and can be played at home, work, in cars or on portable devices. They can also be played, downloaded and reproduced on personal computers.

DVD – A DVD can be made widely available in rental outlets and stores. It is likely to be viewed in the privacy of viewers' homes, by individuals or small groups. Viewers' have considerable control over how a DVD is viewed on screen through the use of functions such as scene selection, zoom, slow/fast forward and rewind, and pause.

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.

50 Cent is a popular and commercially successful rapper. This album did not receive as wide critical acclaim as previous albums, but was nonetheless very successful, and produced a number of hit singles.

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.*

The publications will primarily appeal to fans of 50 Cent and the other musicians featured on the various tracks. They may have wider appeal as a number of the tracks have been released as highly successful singles and will have been heard by a wide audience on the radio, on music channels on TV and in bars and nightclubs.

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

The main purpose of the publications is entertainment.

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

The CD was released in March 2005, the DVD later in the same year.

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

Section 3A provides that a publication may be classified as a restricted publication under section 23(2)(c)(i) if it

contains highly offensive language to such an extent 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.

"Highly offensive language" is defined in s3A(3) to mean language that is highly offensive to the public in general.

The lyrics include frequent use of offensive language, particularly "motherfucker" (and variations such as "muh'fuckin". While this is a part of the "gangsta" persona of 50 Cent emulation of this level of use, particularly by children and younger teenagers, would cause alienation to users, and be highly offensive to most listeners.

Publication may be age-restricted if likely to be injurious to public good for specified reasons

Section 3B provides that a publication may be classified as a restricted publication under section 23(2)(c)(i) if it

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).

Although the publication contains material specified in s3B(3) to such an extent or degree that its availability is likely to be injurious to the public good for reasons specified in s3B(4), it also describes, depicts, expresses or otherwise deals with matters in s3(1) in such a manner that it is likely to receive a restricted classification.

New Zealand Bill of Rights Act 1990:

Section 14 of the New Zealand Bill of Rights Act 1990 (NZBR Act) 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 NZBR Act, 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 NZBR Act 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".

Conclusion:

The unrestricted availability of the publications is likely to be injurious to the public good. This is primarily due to the manner in which the publications deal with matters of crime and violence, and to a lesser degree matters of sex. The level of offensive language has also been considered. The publications' treatment of violent crime is of particular concern because of its potentially glamorising effect, due to the fact that violence is a large element of the image of himself that 50 Cent presents to the public. The lyrics might encourage impressionable young listeners and viewers to adopt the aggressive attitudes espoused in the songs and possibly express these in violent behaviour. In the DVD this effect is compounded by the depictions of violent crimes being committed. The fact that many of the lyrics (and corresponding imagery) are exaggerated and not intended to be taken at face value but rather fit into the "boasting" style of gangsta rap may take some maturity to discern, which children and younger teenagers may not have.

The Classification Office has considered the effects of the NZBR Act on the application of the classification criteria elsewhere in these reasons. Given the manner in which the publication deals with matters of sex, crime and violence, along with extensive use of offensive language, a limit on its availability to older teenagers and adults is considered to be a reasonable and demonstrably justifiable restriction. A limitation on the publication's availability to an audience of older teenagers and adults is the minimum restriction that can be applied in order to prevent likely injury to the public good.

Classification:

Both the CD and DVD entitled *50 Cent: The Massacre* are classified as:

Objectionable except if the availability of the publication is restricted to persons who have attained the age of 16 years.

Display conditions:

Where the Classification Office classifies any publication as a restricted publication, it is required under s27(1) of the FVPC Act to consider whether or not conditions in respect of the public display of the particular publication should be imposed.

In considering the issue of public display, the Classification Office must have regard to the matters set out in s27(2) of the FVPC Act, namely:

- (a) The reasons for classifying the publication as a restricted publication;
- (b) The terms of the classification given the publication;
- (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.

These two publications are classified as objectionable except if the availability of the publication is restricted to persons who have attained the age of 16 years because of the manner in which they deal with matters of sex, crime and violence, with consideration also given to the level of offensive language.

The title refers to violence, but not in such a manner that it is likely to be offensive in and of itself. As such display conditions are considered unnecessary and are not imposed on either publication.

Date: 13 December 2006

For the Classification Office (signed):

OFLC No: 602403, 602404



Note:

You may apply to have this publication (or these publications) reviewed under section 47 of the Films, Videos, and Publications Classification Act 1993, if you are dissatisfied with the Classification Office's decision.

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