

**IN THE MATTER** of The Films, Videos, and  
Publications Classification Act  
1993 ("The Act")

**AND**

**IN THE MATTER** of an application under Section  
47 by the Society for the  
Promotion of Community  
Standards Inc ("The Society")  
for a review of a console game  
distributed by First Games Ltd  
entitled *Grand Theft Auto IV*  
(Unedited Version)

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**DECISION OF THE PRESIDENT OF THE FILM AND  
LITERATURE BOARD OF REVIEW  
DECISION NUMBER ONE**

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**THE BOARD**

1. Claudia Elliott, President
2. Dr Jo Baddeley, Deputy President
3. Mark Andersen
4. Judy Callingham
5. Judith Fyfe
6. Andrea Haines
7. Ani Waaka

Meeting at Wellington on Friday 5 September 2008

**APPEARANCES**

1. Mr Lane for the Society.
2. Mr Calif for First Games Limited.
3. Owen Davie, Secretary to the Film and Literature Board of  
Review ("the Board") present for the submissions only.  
Ms Bolland, a student, observed as a member of the public.

**THE CONTRIBUTORS**

- [1] The Society.

- [2] First Games Ltd.
- [3] The Office of Film & Literature Classification (the "OFLC").

## **BACKGROUND**

- [4] The Society made application for review of the Decision of the OFLC of *Grand Theft Auto IV (Unedited Version)* pursuant to section 47 of the Act.
- [5] The OFLC classified *Grand Theft Auto IV (Unedited Version)* R18 with the note "*contains violence, offensive language and sex scenes*".
- [6] The application to the Board was received by the Department of Internal Affairs ("the Department") on 28 July 2008. The application is within time.
- [7] Pursuant to section 52 of the Act, the Board examined the publication without regard to the Decision of the OFLC.

## **DESCRIPTION**

- [8] *Grand Theft Auto IV (Unedited Version)* is a console game. The game is plot-driven and is an action drama with satire. The main character is Niko Bellic, a recent Eastern European immigrant to Liberty City. Niko stays with his cousin Roman who is sought by various people for unpaid gambling debts. Niko has come to Liberty City to try and find a man who betrayed his friends.

Using a third person perspective, the story line moves through a series of missions to be achieved. The cinematics are sophisticated and realistic with changes from day to night, weather and seasons.

## **THE SUBMISSIONS**

### **The Society**

- A. Application for Review*
- B. Submission dated 28 May 2008*
- C. Email dated 31 May 2008*

- A. Application for Review*

- [9] Application is made pursuant to section 47 of the Act.

- B. Submission dated 28 May 2008*

- [10] Leave has been sought to apply to the Board for a review.

- [11] The current classification is R18.
- [12] An earlier version of the game was also classified R18.
- [13] The reasons for seeking a reclassification are:
- (a) A prima facie case for reclassification can be established.
  - (b) The game should be classified objectionable under ss3(2)(f), 3(3)(a)(i), 3(3)(d) and 3(4)(a)-(f) of the Act. Submissions should be sought from those working with at risk youth and young adults, mental health services, police legal services, drug law enforcement, and the Prostitutes Collective on the risk of encouraging vulnerable, at risk individuals to commit criminal acts.
  - (c) It is in the public interest for a thorough review to be undertaken.

#### *Introduction*

- [14] Describes the game.
- [15] The unedited version of the game differs from the edited version in that *“a number of features including the more explicit content contained in the sex scenes involving prostitutes. Players are able to manipulate the main character allowing him to visit brothels, etc. engage in sexual acts with prostitutes and then kill them using a range of techniques, including garrotting them. Innocent victims can be disposed of by incineration using a Molotov cocktail. The audio and visual presentation of the sex scenes are graphic and gratuitous – utilising camera angles and sound effects one would expect to see in large budget films.”*

#### *Subject Matter Gateway*

- [16] The gateway matters of sex, violence and cruelty are met.
- [17] Section 3(2)(f) is met. *“The game rewards players for engaging in criminal activity that involves such extreme activities. The freedom players are given to repeat such atrocities and the nature of the reward system has the potential to promote sado-masochism, violence, sexual violence and perversions, the abuse of women etc.”*
- [18] Section 3(3)(d) includes hijacking, killing civilians and police with an array of offensive weapons, shake-downs of business owners who refuse to pay protection money and killing other criminals.
- [19] *“The player is encouraged to wantonly breach the criminal law and commit acts that are crimes against persons and property.*

*Furthermore, this is done to entertain, titillate and amuse the player. ”*

*Section 3A*

- [20] The publication uses coarse language. *“This constant stream of obscenities advances misogyny, and demeans, degrades and dehumanises women in particular.”*

*Section 3(4)*

*Section 3(4)(a)*

- [21] The dominant effect is to *“titillate, entertain and engage players within the mindset of an action drama that glamorises: criminal activities, the infliction of extreme violence or extreme cruelty, drug-taking, the killing of law enforcement officers and innocent members of the public etc.”*

*Section 3(4)(b)*

- [22] The highly interactive nature of the game will impact significantly on the minds of young adults and adults with a propensity for crime and anti-social behaviour.

*Section 3(4)(c)*

- [23] The publication has no merit.

*Section 3(4)(d)*

- [24] The publication is aimed at young adult gamers.

*Section 3(4)(e)*

- [25] The publication is for entertainment.

*Bill of Rights Considerations*

- [26] *“Given the manner in which the game treats matters of extreme violence, extreme cruelty and criminal activities, the classification imposed on this game – as objectionable - is a reasonable limitation on the freedom of expression contained in the Bill of Rights, and is demonstrably justified in a free and democratic society.”*

- [27] Any age classification would have minimal effect.

*Conclusion*

*Injurious to the Public Good*

- [28] *“The banning of this publication that is so injurious to the public good is well justified given the manner in which it deals*

*with matters of violence, cruelty and crime.* ... *The likelihood of injury to the public good is avoided by banning this game.*"

**C. Email dated 31 May 2008**

[29] Attaches media comment.

**First Games Ltd**

**A. Submission dated 21 August 2008**

[30] Opposes the Society's application for *Grand Theft Auto IV (Unedited Version)* to be banned: "*we believe this game does not harm the public*".

[31] The unedited version of the game that has been classified in New Zealand is the UK version which differs from the US version which the Society seeks to have reclassified. "*Rock Star Games, the developers of the game, have stated that the edited and the unedited versions of the game have 'minor differences' only which are not significant.*"

[32] All groups are free to make submissions on the classification of the game but they should play the unedited version of the game before "*they can fairly judge the 'crime-promoting' potential of the game.*"

[33] The Society only seeks to have the unedited version reclassified, "*so we assume that they believe the edited version is not harmful in any way.*"

[34] As there are only minor differences between the two games, "*there is no reason to believe that one version is 'crime-promoting' while the other is acceptable because of these minor differences. Neither version of Grand Theft Auto IV should be seen to be 'crime-promoting' as many millions adults and responsible men and women all over the world have bought and played this game without having it affect their lives and society as a whole.*" These people should be asked to make submissions.

[35] If the Society as a minority group finds the game unacceptable, it should not play it. The game is a game of choices. "*The player chooses which missions to complete and which not to complete. The player is not forced to hire prostitutes. If the player chooses to kill anyone, there are always consequences.*" "*The targets of the game are not innocent bystanders, police officers or prostitutes; the player chooses to make these groups the objectives. The targets of the game are actually drug dealers, thieves, gang members and corrupt officials.*"

- [36] There are many publications classified R18 which display much more sexual content than *Grand Theft Auto IV(Unedited Version)*.
- [37] The aim of the game is “to entertain the player and escape reality”.
- [38] In respect to violence, the R18 restriction will restrict the game “where only those who can differentiate between fiction and reality – adults – have access to the game”.
- [39] There is no difference in the violent content between the edited and unedited version.
- [40] An R18 classification would cover the offensive language. There is little difference between the offensive language in the edited and unedited versions of the game.
- [41] The makers of the game cannot be responsible for people outside of the classification conditions accessing the game.
- [42] “*Grand Theft Auto IV is satirical in nature. As we said earlier, it discourages the actions the player takes as the protagonist as each criminal activity undertaken is met with a consequence and the underlying aim is to escape from these unlawful activities, not to kill everyone you see.*”
- [43] The game cannot be held responsible for criminal or violent activity. “*The biggest evidence of this are the millions of adults currently playing this game who are unaffected by it and have not had violent outbursts. We fail to see how this game is injurious to the public good and believe that the portrayal of the game in the media is much more exaggerated than the truth as it happens with all controversial publications. Grand Theft Auto IV is a game and nothing more and should not be taken with any more sincerity than any other game.*”

#### **Submission of Office of Film & Classification dated 29 August 2008**

- [44] The OFLC has received the submissions of First Games Limited dated 21 August 2008 but not those from the Society.
- [45] The game has been classified R18 with the note “*Contains violence, offensive language and sex scenes*”.
- [46] There classification and other jurisdictions includes:
- (a) Norway 18;
  - (b) Germany 18;
  - (c) United Kingdom 18;
  - (d) Singapore 18;

(e) USA M.

- [47] The OFLC is not aware of any jurisdiction that has banned the game. In Australia it was classified MA 15+ to comply with its classification system.
- [48] *Grand Theft Auto IV (Unedited Version)* is the ninth in a series of console games, all of which have been classified R18. *“They, and the edited version of Grand Theft Auto IV, are restricted to adults, generally because of the extent and degree to which, and the manner in which, the players character is able to inflict violence, commit crime, and use highly offensive language. The additional sexual content available in the unedited version of Grand Theft Auto IV is consistent with a R18 classification and was noted by the addition of ‘sex scenes’ to the descriptive note.”*
- [49] The sexual content in the unedited version includes visiting a prostitute to increase the player’s character’s health. *“It is unlikely that a player would want to visit prostitutes more than once or twice in a game, or be able to derive any degree of arousal from the sex scenes. The sex scenes occupy a miniscule amount of game play, have no bearing on the story line, are of little advantage to the player, and sit consistently with the edited game’s current classification.”*
- [50] *“Raising a classification will do nothing to remedy its non-enforcement.”* Enforcement should not be a factor the Board takes into account.
- [51] *“The Classification Office submits that there are no differences between the edited and unedited versions of Grand Theft Auto IV that would warrant a higher classification of the unedited version. The Office submits that the unrestricted availability of the publication would be injurious to the public good given the manner in which it deals with matters of sex, violence, cruelty and crime. This content is potentially disturbing to anyone under the age of 18 years. Its restricted availability also risks injury to the public good through children and young persons becoming desensitised or inured over the long term to this type of behaviour. The additional sexual content in the unedited version of the game also points to its intended adult audience, who are more capable of putting this material in the context of a sophisticated and popular console game.”*

## THE APPLICABLE LEGISLATION

- [52] In making its decision the Board is bound by the Act. The applicable sections in order are:

### 3. Meaning of “objectionable” —

- (1) For the purposes of this Act, 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.

(2) A publication shall be deemed to be objectionable for the purposes of this Act if the publication promotes or supports, or tends to promote or support,—

(f) Acts of torture or the infliction of extreme violence or extreme cruelty.

(3) In determining, for the purposes of this Act, 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, particular weight shall be given to the extent and degree to which, and the manner in which, the publication—

(a) Describes, depicts, or otherwise deals with—

(i) Acts of torture, the infliction of serious physical harm, or acts of significant cruelty:

(ii) Sexual violence or sexual coercion, or violence or coercion in association with sexual conduct:

(iii) Other sexual or physical conduct of a degrading or dehumanising or demeaning nature:

(c) Degrades or dehumanises or demeans any person:

(d) Promotes or encourages criminal acts or acts of terrorism:

(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 section 21 (1) of the Human Rights Act 1993.

(4) In determining, for the purposes of this Act, 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 following matters shall also be considered.

- (a) The dominant effect of the publication as a whole:
- (b) The impact of the medium in which the publication is presented:
- (c) The character of the publication, including any merit, value, or importance that the publication has in relation to literary, artistic, social, cultural, educational, scientific, or other matters:
- (d) The persons, classes of persons, or age groups of the persons likely to be made available:
- (e) The purpose for which the publication is intended to be used:
- (f) Any other relevant circumstances relating to the intended or likely use of the publication:

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

- (1) A publication to which subsection (2) applies may be classified as a restricted publication under section 23(2)(c)(i).
- (2) This subsection applies to a publication that 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.
- (3) In this section, “highly offensive language” means language that is highly offensive to the public in general.

**THE NEW ZEALAND BILL OF RIGHTS ACT 1990**

[53] The following sections of the New Zealand Bill of Rights Act 1990 (“The Bill of Rights Act”) apply.

- 4. Other enactments not affected** – No court shall, in relation to any enactment (whether passed or made before or after the commencement of this Bill of Rights), -
- (a) Hold any provision of the enactment to be impliedly repealed or revoked, or to be in any way invalid or ineffective; or
  - (b) Decline to apply any provision of the enactment –
- by reason only that the provision is inconsistent with any provision of this Bill of Rights.

5. **Justified limitations** – Subject to section 4 of this Bill of Rights, the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.
6. **Interpretation consistent with Bill of Rights to be preferred** – 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.
14. **Freedom of expression** – 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.

## THE DECISION

### Versions of *Grand Theft Auto IV*

- [54] The Board received submissions on various versions of *Grand Theft Auto IV* which included variously the UK, US and Australian versions. The Board accepts that the unedited US and UK versions of the game are very similar. It is the unedited version which is the subject of this decision.
- [55] The Board classifies the console game *Grand Theft Auto IV (Unedited Version)* as objectionable except if the availability of the publication is restricted to persons who have attained the age of 18 years.

### Section 3(1)

#### *Gateways*

- [56] In the Court of Appeal decision of *Living Word v Human Rights Action Group* (2000) 3 NZLR 570, (the *Living Word decision*) it was determined that the Board must consider whether the publication passes through one of the “gateways” in s.3(1) of the Act, and then whether it is considered to be injurious to the public good.
- [57] The Board finds *Grand Theft Auto IV (Unedited Version)* passes through the gateways of sex, crime, cruelty and violence in that it “describes, depicts or expresses, or otherwise deals with” those matters in such a manner that the unrestricted availability of the publication is “likely to be injurious to the public good”.
- [58] The Act does not define the phrase “injurious to the public good” so case law is relied upon to assist.
- [59] The decisions of *Collector of Customs v Lawrence Publishing Co Limited* (1986) 1 NZLR 404 (“the Lawrence Publishing decision”) assists in defining “injurious to the public good”. At p 409 Woodhouse P states:

*“The statutory concept requires demonstration that any relevant material has a capacity for some actual harm in order to justify the contemplated censorship”.*

- [60] In *The Society for the Promotion of Community Standards Inc v Everard* (1987) 7 NZLR 33 pg 57 (“the Everard decision”), the issue of likelihood of injury to the public good is addressed as follows:

*“These extracts must now be read in the light of the point very clearly made by the full Court in Gordon & Gotch that requirements for discernible injury and capacity for some actual harm do not impose a procedural or evidential necessity for actual evidence to that effect. They are matters which an expert body can establish from its own judgment if necessary ... When one considers the likelihood of injury to the public good, one looks for a likelihood sufficiently real to be discernible or actual. Mere paranoid possibilities do not suffice... in the end indecency and within that concept any necessary prerequisites of injury to the public good to a large extent are less matters of fact than of judgment. While not quite in the league of the search for love, beauty, or the meaning of life, the search of injury to the public good in the end involves a very considerable message of value judgment. That rider as to mode of proof, which with respect obviously is necessary in the real world of adjudication, does not destroy the initial thesis identifying that which must be proved”*

### **Sex**

- [61] The Board finds that matters of sex are dealt with in the game when Niko picks up a prostitute. He has options for services including masturbation, fellatio and intercourse at different prices. Masturbation is represented by the woman’s hand moving up and down over Niko’s lap, fellatio is represented by the woman moving her head up and down over Niko’s lap, and intercourse is indicated by the woman sitting on Niko’s lap and moving up and down.

The sexual activity is accompanied by explicit sexual verbal cues, some of which are delivered in a monotone for satirical effect.

The purpose of visiting the prostitute is to increase the player’s health, and has no bearing on the story beyond that. The sexual content is unlikely to cause significant arousal it is seen at a distance and genitals are not displayed.

The player is able to visit a strip club with pole dancers, and lap dancers. Niko has a private audience with a woman in a bikini gyrating her buttocks in front of him.

The sexual content is limited and not explicit, but it is appropriate to be restricted to adults.

There are no close-up views of the sexual acts. The player is able to observe only from a position outside the motor vehicle in

which the action takes place. Visibility is further reduced by subdued lighting.

### ***Crime***

- [62] The publication deals extensively with matters of crime including murder, manslaughter, dangerous driving, misuse of firearms, kidnapping, assault, drug use and dealing, illegal immigration, car conversion, drunk driving and wilful damage.
- [63] The player is able to explore the city at will and commit numerous crimes incidental to the missions.

### ***Cruelty and Violence***

- [64] There are significant depictions of infliction of serious physical harm and acts of significant cruelty. This includes the player's ability to attack civilians and police at will, using pistols, shotguns, sniper rifles, rocket launchers and grenades. There is also the use of a baseball bat and knife. The subject's bodies spurt blood and flail about, depending on the extent of the weaponry used and the closeness.

Matters of cruelty include shooting and maiming people, blowing up vehicles which clearly have people inside them and setting fire to people with Molotov cocktails. There is one particular incident where a person is hit by a Molotov cocktail and runs around on fire before collapsing.

### **Section 3(2)**

- [65] The Board considered section 3(2)(f) of the Act which requires the publication to be deemed objectionable if the publication promotes or supports or tends to promote or support the infliction of extreme violence or extreme cruelty.
- [66] The Board finds that there are acts of extreme violence or extreme cruelty which include murder, shooting, maiming and, in particular, the incident where a person is set alight with a Molotov cocktail and runs around before collapsing. The time it takes for the figure to "die" adds to the cruelty aspect.
- [67] For activities to come within section 3(2)(f) they cannot simply be described. In the decision of *Moonen v Film & Literature Board of Review* [2000] 2 NZLR 9 ("Moonen I") it states "*that a publication must advance, encourage, uphold or strengthen, rather than merely describe, depict or deal with torture or the infliction of extreme violence or cruelty for it to be deemed to be objectionable under that provision*".
- [68] The Board finds that there are always adverse consequences for the infliction of extreme violence or extreme cruelty with the police often quickly on the scene, attempting to arrest the

perpetrator. The police appear to be called by bystanders. The Board therefore does not find that the publication promotes or supports or tends to promote or support the infliction of extreme violence or extreme cruelty, and consequently finds that s.3(2)(f) does not apply to *Grand Theft Auto IV (Unedited Version)*.

### **Section 3(3)**

[69] In considering if a classification of other than objectionable is appropriate for *Grand Theft Auto IV (Unedited Version)* the Board must consider s.3(3). The appropriate sections in respect to the publication are ss.3(3)(a)(i)(ii) and (iii), (c), (d) and (e).

#### ***Section 3(3)(a)(i)***

[70] The Board has to consider the extent and degree to which, and the manner in which the publication describes, depicts or otherwise deals with the infliction of serious physical harm or acts of significant cruelty.

[71] The extent and degree to which the publication depicts or otherwise deals with the infliction of serious physical harm or acts of significant cruelty is high. Previous examples such as setting fire to one character, shooting others to kill and maim, blowing up vehicles in which there are characters as well as other examples provided earlier in the decision. The Board considers that an age restriction is necessary because of the extent and degree of the infliction of serious physical harm and acts of significant cruelty.

#### ***Section 3(3)(a)(ii)***

[72] The Society made significant submissions regarding the activities of Niko with the prostitute whom he later killed. The Board finds that the killing of the prostitute was unrelated to sex. The purpose was to reclaim the money that Niko had paid to her for her services. The Board therefore finds that s3(3)(a)(ii) does not apply.

#### ***Section 3(3)(a)(iii)***

[73] There is no definition within the Act of the terms degrading, dehumanising, or demeaning. The Concise Oxford Dictionary definition of:

**degrading** is: “*degrade – reduce to lower rank, esp., as punishment; bring into dishonour or contempt*”

**dehumanising** is: “*dehumanise – divest of human characteristics; make impersonal or machine-like*”

**demeaning** is: “*demean – lower the dignity of*”.

[74] The Board did not find the sexual conduct to be degrading, dehumanising or demeaning. The use of a prostitute was legal and the contract was entered into consensually. There was no activity undertaken which appeared to degrade, demean or dehumanise either of the participants. The fact that the use of a prostitute may not be acceptable to some members of our society does not mean that the activity is degrading, demeaning or dehumanising.

[75] In respect to physical conduct of degrading, dehumanising or demeaning nature, the Board accepts that people were killed and maimed but that this was undertaken in a straightforward manner without any additional activity which could have been interpreted as degrading, dehumanising or demeaning of the characters involved.

### ***Section 3(3)(c)***

[76] Section 3(3)(c) was considered by the Board which did not find that the criminal activity or violence or sexual activity was undertaken in a way which was degrading, dehumanising or demeaning. The characters were portrayed as physically similar to humans, but were clearly not human. The player was unlikely to form a close identification with the characters which were clearly non-human.

### ***Section 3(3)(d)***

[77] The Board has to consider if the publication promotes or encourages criminal acts. Neither “*promotes*” or “*encourages*” are defined in the Act.

**Promotes** is defined in the Concise Oxford Dictionary as: “*promotes – help forward or encourage*”.

**Encourage** is defined in the Concise Oxford Dictionary as: “*encourage – urge, advise, stimulate by help*”.

[78] The Board accepts that there are a number of criminal acts depicted in *Grand Theft Auto IV (Unedited Version)* including murder, assault, car conversion, kidnapping, drunk driving, the sale and use of drugs and likely breaches of the immigration legislation, to name but a few.

[79] The issue for the Board is whether the publication promotes or encourages these criminal acts.

[80] The Board finds that *Grand Theft Auto IV (Unedited Version)* does not promote or encourage criminal acts. To the contrary there is frequent police intervention when crimes are committed, and Niko has to try to escape from the police. The police are armed and active. The Board accepts the distributor’s submission: “*the punishment is always enforced when a crime is committed with the character, Niko Bellic, being chased by the police which*

*often either results in being hospitalised or delay in completing missions.”*

- [81] The Board therefore finds that the publication does not promote or encourage criminal acts.

***Section 3(3)(e)***

- [82] The Board considered whether the negative comments about Albanians and others, made particularly by Niko’s cousin Roman, offended against s3(3)(e) by representing that members of any particular class of the public are inherently inferior to other members of the public by reason of race, ethnic or national origins. These are prohibited grounds of discrimination specified in section 21(1) of the Human Rights Act 1993.

- [83] The Board considered that the comments made by Roman and others were directed at the men’s activities (as loan sharks and enemies) rather than a particular prohibited ground of discrimination in the Human Rights Act. The Board therefore did not find that s3(3)(e) applied.

***Section 3(4)***

- [84] In determining whether a publication is objectionable or should be given a classification other than objectionable, the factors in s3(4) of the Act must be considered.

*(a) Dominant Effect*

- [85] The dominant effect of the publication is a dramatic and violent video game with a story line and narrative. The characters are represented as caricatures rather than real people, thereby not inviting empathy or engagement with them.

*(b) Impact of the Medium*

- [86] The impact of the medium is high as it is interactive, with the player having decision-making powers. The repetitive nature and stylised artificial environment in which the action takes place lessens its impact. The degree of parody lessens the impact of the violent acts.

*(c) Character including Merit*

- [87] The production and sound quality are very high.

- [88] The publication does not pretend to have literary artistic, social, cultural, educational, scientific or other merit or importance.

*(d) Persons, Classes or Age Groups to Whom the Publication is Intended, or Likely to be Made Available to*

[89] The publication is intended for adults. It is likely to be appealing to teenage males.

(e) *The Purpose of the Publication*

[90] The publication is intended for entertainment.

(f) *Any Other Relevant Circumstances*

[91] There are no other relevant circumstances.

**Section 3A**

[92] The Board must consider if a publication should be age restricted if it contains highly offensive language likely to cause serious harm.

[93] The Board finds that some language in the publication is highly offensive, and is used to such an extent and degree that if the publication were not restricted by age, it is likely to cause serious harm to persons under that age.

[94] There is significant use of the term "*mother fucker*" and other expletives. The Board finds that, if not restricted to persons 18 years and above, younger persons may be caused serious harm. The OFLC's research finds that "*mother fucker*" is a term which has limited acceptance in New Zealand. (Public Perceptions of Highly Offensive Language November 2007).

**BILL OF RIGHTS ACT 1990**

[95] In making its decision in respect to *Grand Theft Auto IV (Unedited Version)*, the Board has considered the *Living Word* decision which states:

*"The balancing required by s 3 must be infused by due consideration of the application of the Bill of Rights."*

[96] The Board finds that the decision it has made is the least restrictive available to it, in accordance with the considerations it must have regard to under the various sections of the Act and the Bill of Rights.

[97] In *Moonen 1*, the Court of Appeal suggested that it may be helpful to the Board in performing its functions to follow a 5-step process. In a later decision *Moonen v Film & Literature Board of Review* (2002) 2 NZLR 754, 760 ("*Moonen 2*") the Court of Appeal did, however, emphasise that the 5-step approach was not intended to be prescriptive and that other approaches are open. The Board notes that it does not find the application of the 5-step approach altogether easy, and notes that aspects of the approach would appear to require the Board to make judgements on the consistency with the Bill of Rights of the 1993 Act. The Board

further notes that the Court of Appeal did say in *Moonen 1* that the approach was potentially difficult, and that the full Court of the High Court in *Moonen 2* (*Moonen v Film & Literature Board of Review* (No. 2) (2002) NZLR 385, 366) echoed these sentiments saying that:

*"We have not exactly found the approach easy of practical application."*

- [98] The Board would prefer a simpler approach which recognised that in interpreting and applying various concepts such as "*promotion and support*" and "*injurious to the public good*", freedom of expression is required to be considered together with the reasonable limits on that freedom that the 1993 Act provides for. In the earlier part of this decision, the Board has emphasised that in classifying this publication it has been conscious of the importance of freedom of expression and has attempted to limit that freedom only to the extent that it is permitted by the 1993 Act, and in a manner that is proportionate to the harm that an unrestricted classification would cause. Nonetheless, it appears sensible for the Board to continue to utilise the 5-step approach for the present.
- [99] In the *Moonen 1* decision, the Court of Appeal held that a 5-step approach may assist in reconciling the relevant provisions of the Bill of Rights Act with those of the Classification Act.
- [100] The first two steps are to identify the different possible interpretations of the word or words in the Act and if only one meaning is properly open to adopt it. The phrases in section 3 of "*promotion and support*" and "*injurious to the public good*" have been defined and the Board is bound to apply the definitions of the appropriate words in the sections in the Act, and in case law, and has done so.
- [101] Step 3 of *Moonen 1* involves identifying the extent if any to which "*the meaning adopted limits*" the "*relevant right or freedom*". It is acknowledged that the meaning identified in respect to important phrases defined in the Act, in case law and dictionary definition does limit rights and freedoms under the Bill of Rights Act, especially section 14. Section 14 provides for the right to freedom of expression, including the right to play or watch games in any form. This freedom includes the right to produce and play or watch games involving sex, crime, cruelty or violence as seen in *Grand Theft Auto IV (Unedited Version)*. As the Act under which this publication is reviewed is a Classification Act, it is acknowledged that it limits the scope of the right of freedom of expression by defining publications objectionable pursuant to section 3 of the Act. The rights of free expression of producers, distributors and players or watchers are all restricted by the definition of words within the Act and the objectives of the Act. The extent to which these rights are

restrictive is commensurate with the type of restriction placed on the game, in this case a restriction to persons aged 18 years or over. Potential players or viewers under the age of 18 years are restricted in their right to play or watch *Grand Theft Auto IV (Unedited Version)*. All those involved in production, distribution, promotion and playing or watching *Grand Theft Auto IV (Unedited Version)* are restricted from having persons under the age of 18 years use the publication.

[102] The Board is then required to consider whether the extent of such limitation, if found, can be demonstrably justified in a free and democratic society. The objective of the Act is to provide a classification and censorship system in respect to publications, as set out in the long and short titles of the Act. The way in which the objective is achieved must be reasonable in proportion to the importance of the objective, and interfere as little as possible with the right or freedom affected. The Board has had to balance the value of freedom of expression against the need for protection of persons under 18 years from being exposed to cruelty and violence.

[103] Pursuant to the 5<sup>th</sup> step in *Moonen I*, the Board considers the limitations it has placed on *Grand Theft Auto IV (Unedited Version)* are justified on balance, taking into account the intention of the Act under which the Board is required to make its decision. It is the Board's view that its decision can be demonstrably justified in a free and democratic society.

### **THE AGE RESTRICTION**

[104] It is the Board's opinion that restriction on playing or watching *Grand Theft Auto IV (Unedited Version)* by persons under 18 years is justified, due to society's wish to protect children and young persons from likely injury, yet provides the minimum interference with the rights under the Bill of Rights Act.

[105] The Board cites the comments made in the Board's decision dated 8 September 2000 in response to the Court of Appeal's direction to the Board in *Moonen I* (p 10). The Board, in that decision, makes reference to the intent shown by Parliament in passing the Act to balance the right of freedom of expression against the need to protect the vulnerable in society.

*"It is clear that the House was well aware of the necessity of considering other rights in this context, particularly the right to freedom of expression, and of achieving an appropriate balance. It is also clear, however, where they considered that that balance should be:*

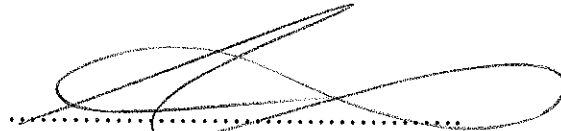
*That gets to the heart of this legislation. How does one achieve that balance between on the one hand the rights of people to do what they see fit in the privacy of their own homes, and on the other hand the greater public good? I think that the answer to that question is that we have to look at the harm that activities,*

*even those ostensibly conducted in private, have the potential to do to innocent victims in particular. I think that for my part I would certainly err on the side of the public good, and if that means at least in a literal sense restricting individual rights, then I think the cause here is so important that we should be prepared to do that." John Blincoe (1992) NZPD p 12775.*

**DESCRIPTIVE NOTE**

[106] The Board requires the following descriptive note "*contains violence, offensive language and sex scenes*".

Dated at Auckland this 17<sup>th</sup> day of September 2008.

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the bottom.

**Claudia Elliott**  
President, Film and Literature Board of Review