

NOTICE OF DECISION UNDER SECTION 38(1)

TO: Secretary for Internal Affairs

Title of publication: A Serbian Film
Other known title: Srpski Film
OFLC ref: 1200259.000
Medium: DVD
Distributor: Fishpond Limited
Director: Srđan Spasojević
Producer: Srđan Spasojević
Dragoljub Vojnov
Country of origin: Serbia
Language: Serbian

Classification:	Objectionable.
------------------------	----------------

Excisions: No excisions recommended

Descriptive note: None

Display conditions: None

	Components	Running time
Menu:	Play Film Scene Selection Set Up Filmmaker's Insight	
Feature(s):	A Serbian Film	95:23
Timed component(s):	Introduction Filmmaker's Insight Notices	3:40 9:38 0:13
Total running time:		108:54

REASONS FOR THE DECISION

The Office of Film and Literature Classification (Classification Office) examined the publication and recorded the contents in an examination transcript. A written consideration of the legal criteria was undertaken. This document provides the reasons for the decision.

Submission procedure:

The Secretary for Internal Affairs submitted this publication for classification on 5 April 2012 under s13(1)(b) of the Films, Videos, and Publications Classification Act 1993 (FVPC Act).

The distributor was notified of the submission of the publication. As persons with an interest in the publication they were informed of their right to make a written submission on the classification.

Under s23(1) of the FVPC Act the Classification Office is required to examine and classify the publication.

Under s23(2) of the FVPC Act the Classification Office must determine whether the publication is to be classified as unrestricted, objectionable, or objectionable except in particular circumstances.

Section 23(3) permits the Classification Office to restrict a publication that would otherwise be classified as objectionable so that it can be made available to particular persons or classes of persons for educational, professional, scientific, literary, artistic, or technical purposes.

Synopsis of written submission(s):

A written submission has been received from the distributor, an online DVD store. In it they concede it is "quite likely" that the uncut version of the film contains objectionable material.

The remainder of the submission gives background information on their business operations, in particular how the publication came to be listed on their website. This material has no bearing on the interpretation of s3 of the FVPC Act.

Description of the publication:

The publication is a DVD entitled *A Serbian Film*. Retired porn star Milos is offered one last role starring in an "art-porn" film by former co-star Veja. The film is being produced by Vukmir who offers Milos a very large fee, on condition he forgo any knowledge of the script in advance. Milos initially refuses, but is persuaded to take the role by his wife Marija as the money would be enough to set them and their son Petar up for life.

For the shooting of the first scene Milos is taken to a home for war orphans. He is given an earpiece through which he is given instructions. He enters and is followed by two cameramen dressed as security personnel. He sees Jeca, a young teenage girl, sitting on steps. In puzzlement he witnesses an altercation between a nurse and Jeca's mother, the widow of the war hero Raiko. Milos is then filmed performing a sex act with a woman. After the shoot he asks his

police officer brother Marko to investigate Vukmir. Marko discovers Vukmir is a former child psychologist who works for the security service. The second day's shooting becomes increasingly violent and disturbing for Milos. Afterwards Milos attempts to resign from the film over the violence and the involvement of children. Vukmir shows him a shocking film in which his driver Rasa rapes a newborn baby. Milos walks out in disgust, however Vukmir had spiked his drink with a powerful aphrodisiac and cocktail of drugs to place him in a suggestible state. After leaving the studio he is brought back by Vukmir's doctor, an attractive young woman.

After three days Milos comes to, injured and disoriented, with no memory of the events of the intervening time. He returns to the filming location and the shocking events of the intervening three days start to return to his memory. Milos finds a series of tapes which enable him to reconstruct these events which include brutal rapes, murders and torture. Milos returns to the shooting location and another memory flashback is triggered; he remembers taking part in a final series of atrocities including the rape of Marija and Petar by Marko and himself. Milos kills Vukmir and Marija kills Marko. The film ends with Milos, brutalised by his experiences, and reunited with Marija and Petar. He sees death as the only dignified end for them so kills both them and himself with a single gunshot. Shortly after their death another film crew arrives to film the violation of their corpses.

The version of the film examined has already received 49 excisions removing 4 min and 12 sec of footage. The excisions were required by the BBFC to receive its '18' classification¹.

The publication also includes a short introduction by the director, and a longer "Filmmaker's Insight" showing the director and two other crew members talking about the film after a screening. These components discuss the excisions that have been made to the film and the film's interpretation. In these the director states the film is symbolic of the moral and political nightmare that Serbian society has become over the last two decades. The film's major metaphor is to treat real life as pornography. This is to highlight the exploitative nature of life in Serbia. The filmmakers state that in order to feed your family you are viciously exploited by your employer and the rulers of the country. You are raped from birth and the raping continues after your death. The filmmakers describe the film as a "tough work" which is a result of an honest approach to their views about Serbia.

The filmmakers state the film is also intended to address social problems in Serbia, saying that in some parts of Serbia women and children are regarded as men's property. The filmmakers' stated intention for the film is for it to be part of a struggle against these problems – especially violence in the family. They go on to state that the film is also a critique of the way filmmaking is funded in Eastern Europe at present.

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.

¹ <http://www.bbfc.co.uk/AVV272236/>

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.²

The content of the publication must bring it within the "subject matter gateway". In classifying the publication therefore, the main question is whether or not it deals with the following matters in such a manner that the availability of the publication is likely to be injurious to the public good:

Matters such as sex

The publication deals extensively with matters of sex, in particular pornography. The publication takes its major metaphor as treating real life as pornography. Sections of Milos's earlier pornographic films are shown at various points during the publication. The film opens with Milos' son Petar watching one of these films. The pornography shown on the screen is inexplicit. Marija objects to Petar watching the film, Milos replies that he watched his first "porno" at that age. A little later Milos and Marija are in bed with one of Milos's pornographic films in the background. While watching the film Marija comments, "Why don't you do me like all these women you throw away like condoms?" Milos grabs Marija tearing her clothing and vigorously has sex with her, violently thrusting into her in the rear entry and missionary positions. Afterwards they kiss tenderly.

Later still Marko is shown watching one of Milos' pornographic films while a woman performs fellatio on him. Marko muses about how Milos manages to maintain such an erection and satisfy so many women.

Matters such as horror

There is much about the publication that has the effect of horrifying the viewer. Some of the filming takes place in darkened grimy and dungeon-like environments. The scenario itself, which involves Milos being ensnared and manipulated into participating in a catalogue of atrocities against his will, is also horrific. The extreme onscreen violence and sexual violence has an obviously horrific effect on the viewer. This material will be discussed under s3(2) and s3(3).

Matters such as crime

The publication deals with numerous criminal activities. These include rape, child rape, murder, and necrophilia. They will be discussed in full under s3(2) and s3(3).

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

Matters such as cruelty and violence

The publication is extensively concerned with cruelty and violence. These will be fully discussed under s3(2) and s3(3).

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"³ in order to be consistent with the Bill of Rights. The Court then set out how a publication may come within a definition of "promotes or supports" in s3(2) that impinges as little as possible on the freedom of expression:

Description and depiction ... of a prohibited activity do not of themselves necessarily amount to promotion of or support for that activity. There must be something about the way the prohibited activity is described, depicted or otherwise dealt with, which can fairly be said to have the effect of promoting or supporting that activity.⁴

Mere depiction or description of any of the s3(2) matters will generally not be enough to deem a publication to be objectionable under s3(2). When used in conjunction with an activity, the Classification Office defines "promote" to mean the advancement or encouragement of that activity. The Classification Office interprets the word "support" to mean the upholding and strengthening of something so that it is more likely to endure. A publication must therefore advance, encourage, uphold or strengthen, rather than merely depict, describe or deal with, one of the matters listed in s3(2) for it to be deemed to be objectionable under that provision.

The Classification Office has considered all of the matters in s3(2). The relevant matters are:

- s3(2)(a) The exploitation of children, or young persons, or both, for sexual purposes;*
 - s3(2)(b) The use of violence or coercion to compel any person to participate in, or submit to, sexual conduct;*
 - s3(2)(c) Sexual conduct with or upon the body of a dead person;*
 - s3(2)(e) Bestiality;*
- and
- s3(2)(f) Acts of torture or the infliction of extreme violence or extreme cruelty.*

The publication deals with sexual conduct with children and young persons, sexual violence, necrophilia, bestiality, extreme violence and extreme cruelty. In all instances the publication presents these activities as repugnant and sickening. The publication cannot therefore be said to promote or support, or tend to promote or support any of these activities. The extent and

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

⁴ Above n2 at para 29.

degree to which, and the manner in which, the publication describes, depicts, or otherwise deals with all of this material will be fully considered under s3(3).

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 relevant to the publication 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.

The publication contains extensive and extreme depictions of the infliction of serious physical harm, significant cruelty, and acts of torture. Almost without exception, these acts occur in association with form of sexual conduct. As such almost the entirety of this material will be discussed as violence in association with sexual conduct under s3(3)(a)(ii).

There are only two exceptions. The first is the beating Milos receives in an alleyway by two passers by, and even this is in response to the sight of Milos masturbating (see s3(3)(a)(iv) for more details). Rasa then comes up behind them and breaks both of the men's necks before taking Milos away to shoot the climactic sequence. The second exception is the murder suicide of Milos, Marija and Petar which occurs in the final scene. Milos kills them and himself with a single gunshot. This occurs offscreen, being implied by a flash from outside the house. Afterwards they are shown lying in a pool of blood as a different film crew arrives. (see s3(3)(a)(iii) for more details).

s3(3)(a)(ii) The extent and degree to which, and the manner in which, the publication describes, depicts, or otherwise deals with sexual violence or sexual coercion, or violence or coercion in association with sexual conduct.

When Milos is taken to his first day's shooting he is given an earpiece and told to enter a home for orphans. Once inside he sees the teenage girl Jeca being dragged away by her mother. A nurse and her mother fight over Jeca. Two security guards drag Jeca's mother away screaming. The nurse takes Milos into another room where she performs fellatio on him while Milos is made to watch a film of Jeca seductively eating an ice lolly. The scene ends with Vukmir entering and applauding the performance. On the second day of shooting Milos is confronted with the sight of one of Vukmir's security guards beating Jeca's mother. She is on her knees with the security guard holding her by the hair and slapping her across the face while saying, "If only Raiko knew about his wife's whoring – he would have killed both you, and that child of yours." Jeca's mother, whose face is smeared with tears, crawls towards Milos on all fours, unzips his pants and starts to perform fellatio on him. Suddenly Jeca appears seated a short distance away watching them. Milos pushes Jeca's mother away protesting that he can't work like this. A security guard grabs Milos by the neck and says "Hit the whore." Milos strikes her twice in the face. She vigorously masturbates Milos to orgasm. His ejaculate is shown landing on her face. Vukmir enters applauding the performance. Milos, disgusted at being manipulated

into such a position, punches the guard knocking him down and storms out. Vukmir follows Milos trying to talk him round.

That night Milos has a nightmare; he is naked in the same room the filming had occurred in. Jeca's mother is naked on the ground and covered in grime. She reaches up and grabs his genitals. Suddenly Petar appears behind Milos chanting, "Hit the whore – kick the whore – uncle Vukmir is shooting." Milos wakes suddenly from the nightmare.

The strongest scene in the film is occurs after Milos wakes, injured and disoriented, three days later. He has no memory of the intervening events. He returns to the now abandoned house. When he enters a room it triggers a flashback scene. Milos, deranged by a cocktail of drugs, is led handcuffed into a room by Vukmir's security guards. Jeca's mother is chained to a bed. The guards uncuff Milos and set him upon the woman. He rapes her in a frenzy, in the rear entry intercourse position. Inflammatory instructions are transmitted into his earpiece including, "She's a dirty junky cunt – she destroyed her child, the daughter of a war hero – she is scum – hit the whore!" Milos becomes more frenzied hitting the woman several times hard on her back with his fist. These blows are focused on in close up. One of the guards hands Milos a large machete and he decapitates the woman while continuing to rape her. The scene is grisly with a large amount of blood and gore splashing around the room. The scene ends back in the present with Milos vomiting at the memory of the atrocity he committed.

Milos then finds and starts to watch video tapes of the last three days' events. He sees himself lying naked and unconscious face down on a bench. One of Vukmir's security guards looks at the camera and says, "This one's on me." while starting to undo his pants. The guard then rapes the still unconscious Milos while lying on top of him. The focus remains on their heads and shoulders, and the guards maniacal expression as he makes thrusting movements.

The next scene is Vukmir arguing with Vejla about drugging Milos. Vejla says he has ruined a genius, and if he had only "cut his son's ear" he would be his old self again. The scene cuts quickly to the death of Vejla in a snuff film. She is chained naked in a dungeon, kneeling with her wrists chained above her head. There is a shot of a wrench and her teeth which are in a pool of blood on the floor in front of her. A naked hooded man approaches and forces his penis into her mouth, this is briefly and inexplicitly depicted. Vejla's death occurs off-screen. The scene cuts back to Milos watching the tape as Vejla is heard crying out for help, along with the sound of her choking, presumably on the man's penis.

Similarly extreme material is found in the climactic scene. Milos is drugged again by Vukmir's doctor, however part way through Milos grabs the syringe and injects the doctor with the same drugs. He is led into a room where Vukmir greets him with, "Welcome to a warm Serbian family home". He is ordered to start raping an unconscious person under a cover. The hooded man from earlier in the film starts raping another unconscious covered figure next to Milos. There are repeated shots of the two men in a frenzy raping their anonymous victims. These include full body shots, and close-ups of their heads and shoulders. Vukmir removes the man's hood to reveal it is Marko. Vukmir then removes the covers revealing that Marko is raping Marija and Milos is raping Petar. Marko orgasms (implied by facial expression) and looks across at Milos. The doctor then enters drugged and bleeding from her genitals. Milos attacks Vukmir, brutally battering his head against the floor sending blood flying. Marija, naked and covered with blood, brutally batters Marko to death with a heavy sculpture. Milos then kills Rasa by impaling his erect penis into the man's eye socket. He kills the rest of the guards in a hail of gunfire.

Turning to analysis of this material, the strongest scene, the brutal rape and murder of Jeca's mother, is likely to have an extreme impact on the viewer. The combination of extreme sexual violence and violence in association with sexual conduct is considerably stronger than other high level depictions such as those found in publications such as *Irreversible* (OFLC: 300049). In terms of impact the scene is stronger even than material found in *I Spit On Your Grave (2010)* which was classified as objectionable by the Classification Office in 2011 (OFLC: 1100104.000).

The climactic sequence involving the rape of two unconscious figures who are revealed to be family members also has a similarly high impact on the viewer. This scene fuses frenzied sexual violence with similarly extreme depictions of graphic violence. The death of Vejla fuses an extreme sexual violation with an act of torture and her death as part of the making of a snuff film.

It is notable that when these scenes are viewed in isolation there is nothing about them that is in any way eroticised or could be said to be titillating. Some viewers would find these scenes pornographic, as the camera lingers on their bodies and the scene is taken all the way through to orgasm as in porn, and there are several angles and close-ups. However, a reasonable viewer would be likely to have the very opposite reaction, being shocked, repulsed and even traumatised by them. However, placing such extreme sexually violent material within a publication whose primary metaphor is to treat everyday life as pornography remains problematic – in particular as the metaphor is not clear from viewing the film alone. Pornography is primarily concerned with sexually arousing the viewer and some viewers may perceive scenes such as these in an eroticised light. Viewers with a predilection for sexually violent erotica are presented, in effect, with relatively detailed “snuff” scenes that graphically combine rape and torture with murder, to an extent and degree never available to a New Zealand audience before. However, most reasonable members of society are far more likely to be shocked and disturbed than to apprehend any eroticised component.

Nonetheless, placing the issues of eroticisation to one side, serious concerns remain with this material. Psychological research has repeatedly shown that depictions of sexual violence and violence in association with sexual conduct against women are more likely than depictions of sex or violence alone to be injurious to the public good. Such depictions reinforce negative attitudes towards women in a number of ways. They have been shown to desensitise viewers to real-life violence⁵, to reduce empathy with victims of sexual violence amongst both men and women⁶, to increase rape myth acceptance⁷, and to increase women's fear of sexual assault.⁸ The extensive fusion of sex and violence in the movie, and the strongest scene in particular, sets it apart from the other such depictions which may be found in the wider "torture porn" or "rape revenge" genres of film. In this instance while none of this material is overtly eroticised, it is sheer extent and degree of the material that remains of serious concern to the Classification Office.

⁵ E.I. Donnerstein and D.G. Linz. 1986. "Mass Media Sexual Violence and Male Viewers: Current Theory and Research," *American Behavioral Scientist* 29(1):601-618; D.G. Linz,, E.I. Donnerstein and S.M. Adams. 1989. "Physiological Desensitisation and Judgments About Female Victims of Violence," *Human Communication Research* 15:509-522.

⁶ C.Krafka, D. Linz, E.I.Donnerstein and S. Penrod. 1997. "Women's Reactions to Sexually Aggressive Mass Media Depictions," *Violence Against Women* 3(2):149-181.

⁷ T.M Emmers-Sommer, P. Pauley, A Hanzel and L. Triplett. 2006. "Love, Suspense, Sex, and Violence: Men's and Women's Film Predilections, Exposure to Sexually Violent Media, and their Relationship to Rape Myth Acceptance," *Sex Roles* 55:311-320.

⁸ C. Krafka, D. Linz, E. Donnerstein, and S. Penrod. 1997. "Women's Reactions to Sexually Aggressive Mass Media Depictions," *Violence Against Women* 3(2):149; "The Research Base on the Impact of Exposure to Sexually Explicit Material: What Theory and Empirical Studies Offer" in D. Thornburgh and H.S.Lin eds., *Youth, Pornography and the Internet* (2002, National Academy Press, Washington DC).

s3(3)(a)(iii) *The extent and degree to which, and the manner in which, the publication describes, depicts, or otherwise deals with other sexual or physical conduct of a degrading or dehumanising or demeaning nature.*

There is a small amount of other sexual or physical conduct of a degrading, dehumanising or demeaning nature. The strongest of this material occurs in the final scene where another film crew arrives to film the sexual violation of the recently dead Milos, Marija and Petar. They are then shown lying in a pool of blood with another film crew in attendance. The director tells another man who is starting to unzip his pants to "start with the little one" implying that the man is about to be filmed performing an act of necrophilia with Petar. The film ends before any necrophilia appears onscreen. While the violation is not shown onscreen, the filming of the violation of a corpse is an intensely degrading act.

The publication deals with bestiality at two points. After his first day of shooting with Vukmir Milos discusses the film with Lejla, commenting that he hopes he doesn't have to perform fellatio on a donkey for money. Lejla responds that it is not too bad. Later there is a shot of a woman walking towards a donkey while caressing herself in a sexual manner. While the acts of bestiality do not appear onscreen, the filming of such acts for the purpose of appearing in pornography is in itself intensely degrading.

s3(3)(a)(iv) *The extent and degree to which, and the manner in which, the publication describes, depicts, or otherwise deals with sexual conduct with or by children, or young persons, or both.*

The strongest material occurs when Milos tells Vukmir he wants to retire from the film. He tells Vukmir that the children bother him. Vukmir responds with one of his trademark pompous speeches including the claim that "kids are my life". Vukmir then shows Milos a film of a woman giving birth. The baby is seen emerging from the woman's vagina. Rasa is seen holding the baby after he has delivered it. The shot then cuts to Milos and Vukmir watching while the baby is heard crying. Milos averts his eyes as it is implied that Rasa sexually violates the newborn baby. Milos storms out in disgust as Vukmir proclaims the birth of a new genre, "newborn porn". This scene has an extremely high impact on the viewer. While the scene can hardly be considered promotional of sexual exploitation, and the violation of the baby is not shown onscreen, the scene remains one of the most shocking in the film. A reasonable viewer is likely to be disturbed or even traumatised by the scene.

Other material deals with and describes sexual conduct with or by children. This includes the theme that deals with Petar's sexual awakening. Early in the film, after watching one of his father's pornographic films, Petar tells his parents that it makes him feel like there is a "family of wheels spinning in his stomach". Milos and Marija reassure him that it is normal. The film juxtaposes normal sexual awakening with the absolute inappropriateness of viewing pornography by a child, let alone pornography made by his father. At a later point Milos is made to watch sexualised films of Jeca while her mother performs fellatio on him. In these films Jeca is shown wearing heavy makeup while seductively licking an ice block.

While watching the tapes which enable him reconstruct his lost three days Milos comes across one scene where he sees himself with Jeca and her paternal grandmother who says, "God sent you to deliver us from that whore – she was a shame on this house." The woman offers Jeca to Milos saying, "Prove to Jeca that he's not only a father but a man too – just like my late father did to me." Milos is still heavily under the influence of drugs during this scene, he appears to be struggling to comprehend the situation, and does not want to have sex with the underage Jeca.

Suddenly he takes his penis out of his pants and holds a knife against the shaft saying he is going to cut it off. Vukmir tells him no and Milos escapes by jumping out a window. The filmmakers refer to this scene claiming that their intention for the scene is for it to address the problems of sexual abuse in Serbian families.

In the next scene Milos is slumped disheveled in an alleyway. He sees a teenage girl dressed up for a night out being harassed by two men. The men say, "Out naked yet won't take a dick". The other cautions the first saying she is underage. The girl turns on the men saying, "So what if I am underage." Still under the influence of drugs and unable to control his arousal Milos starts to masturbate on the street. The men start to beat and kick Milos. Rasa comes up behind them and breaks both of their necks by twisting them. Milos is taken to the final film shoot.

s3(3)(a)(v) The extent and degree to which, and the manner in which, the publication describes, depicts, or otherwise deals with physical conduct in which sexual satisfaction is derived from inflicting or suffering cruelty or pain.

While nothing in the film is recognisable as sadomasochistic (SM) conduct, some of the material that encompasses violence in association with sexual conduct also incorporates physical conduct in which sexual satisfaction is derived from inflicting or suffering cruelty or pain. The most prominent example of this is the death of Vejla who is killed while being tortured and sexually violated by the hooded figure. Other examples of atrocities committed by Milos involve him being tricked, manipulated and drugged into committing extreme acts which are against his will. While these scenes are extreme, there is less in the way of actual sexual satisfaction evident, although he does experience arousal and orgasm.

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 publication has a small amount of highly offensive language. When discussing the "art-porn" project Vukmir says to Milos, "You must be sick of kissing wretched cunts with the same mouth you use to kiss your kids."

Additional matters to be considered:

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

The publication is technically accomplished film containing somewhat surreal symbolism, the meaning of which is largely opaque. However, the publication gains its dominant effect from

the significant amount of extreme and brutal violence and sexual violence it contains. These images of extreme onscreen brutality have a similarly brutalising effect on the viewer.

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

The publication is a DVD, which as a medium is potentially widely available and easily accessible. DVD is a medium which is suitable for viewing in private homes. A DVD allows a viewer a great deal of control over the medium in that it may be played, paused and replayed at will, or even copied. Images on the DVD may be saved on personal computer or to disc, and transmitted over the internet.

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.

There is a substantial amount of controversy about the film's character, in particular any merit, value and importance it possesses. The film features well known Serbian actors, strong performances, along with accomplished cinematography and high production values. The filmmaker claims the film should be interpreted allegorically, as a critique of state corruption of the last two decades and the horrors of the Balkans War, and as social criticism. Whether the film achieves these goals is a matter of significant dispute with respected commentators weighing in on both sides of the debate. The Classification Office acknowledges that this publication is characterised by an unusual level of controversy and dispute over its character, including the amounts of merit, value and importance it lays claim to.

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 film is likely to appeal to two distinct yet overlapping groups. The first group are those with a special interest in Serbia, film festival audiences, and those with an interest in extreme and sophisticated cinema. This audience group is likely to be limited to special interest groups such as film festival audiences and tertiary institutions.

The second group are likely to be fans of the "torture porn" genre of films. The publication is likely to be marketed directly to this group as part of this genre, even though the extreme material it contains goes well beyond the conventions of this genre. Due to its likely marketing as part of the "torture porn" genre it is notable that this group might view the film without any prior knowledge of the extreme nature of the material it contains.

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

The publication is intended to be used as shocking entertainment. The filmmakers have stated the publication is also intended as social criticism, political allegory, and criticism of the film industry in Eastern Europe.

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 publication is classified as objectionable.

In considering likely injury to the public good the extreme sexual violence and violence in association with sexual conduct, along with the sexual exploitation of a newborn baby, is of key importance. There is a high likelihood that viewers would be greatly shocked and disturbed by this material regardless of age. Given the likelihood that the publication would be marketed alongside "torture porn" titles, this likelihood is compounded as many viewers would simply view this publication as part of that genre of films, without the knowledge that the extreme material it contains goes significantly beyond the conventions of that genre.

The publication's sexual violence and violence in association with sexual conduct is concerning in a different area. Research has repeatedly shown that such depictions are likely to reinforce negative attitudes towards women in a number of ways. They have been shown to desensitise viewers to real-life violence, to reduce empathy with victims of sexual violence amongst both men and women, to increase rape myth acceptance, and to increase women's fear of sexual assault. In the current publication this material is so extensive and extreme that these injuries to the public good are likely to occur regardless of the age of the viewer.

The publication is characterised by a significant level of dispute over its claims to merit, value and importance. The publication also has a small but legitimate audience which is likely to be limited to special interest groups. For these reasons the Classification Office may consider an exemption under s44 of the FVPC Act in response to requests by special interest groups. Such groups are likely to approach the film with significant foreknowledge of the extreme material it contains, along with knowledge of the publication's allegorical interpretation, and its claims to function as social criticism. Knowledge of the film's content and interpretation is likely to result in a significantly improved viewing decision, which allay a significant number of our concerns regarding the publication greatly shocking and disturbing the viewer. Having an interpretive framework in place is also likely to help viewers contextualise the extreme sexually violent material as allegory, thus reducing harmful attitudinal shifts.

The Classification Office has considered the effects of the Bill of Rights on the application of the classification criteria. The classification is a reasonable limitation on the freedom of expression that reflects the concern of "a free and democratic society" to limit the availability of publications that depict acts of sexual violence and violence in association with sexual conduct, along with the sexual exploitation of children.

Date: 24 May 2012

For the Classification Office (signed):

Note:

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

Copyright Office of Film and Literature Classification. This document may not be reproduced in whole or in part by any means in any form without written permission except for brief quotations embodied in articles, reports or reviews.

CONSIDERATION SHEET

OFLC ref: 1200259.000

Submission channel: s13(1)(b)

Title of publication: A Serbian Film

Other known title: Srpski Film

Medium: DVD

Distributor: Fishpond Limited

Director: Srđan Spasojević

Producer: Srđan Spasojević
Dragoljub Vojnov


Country of origin: Serbia

Language: Serbian

Applicant: Secretary for Internal Affairs

Examination transcript No: 577, p159

Examination date: 17 April 2012

Classification Officer(s): 

**Other identifying
information:**

COMPONENTS OF FILM

Components of film originally examined:

	Components	Running time
Menu:	Play Film Scene Selection Set Up Filmmaker's Insight	
Feature(s):	A Serbian Film	95:23
Timed component(s):	Introduction Filmmaker's Insight Notices	3:40 9:38 0:13
Total running time:		108:54

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:

The publication is a DVD entitled *A Serbian Film*. Retired porn star Milos is offered one last role starring in an "art-porn" film by former co-star Vejla. The film is being produced by Vukmir who offers Milos a very large fee, on condition he forgo any knowledge of the script in advance. Milos initially refuses, but is persuaded to take the role by his wife Marija as the money would be enough to set them and their son Petar up for life.

For the shooting of the first scene Milos is taken to a home for war orphans. He is given an earpiece through which he is given instructions. He enters and is followed by two cameramen dressed as security personnel. He sees Jeca, a young teenage girl, sitting on steps. In puzzlement he witnesses an altercation between a nurse and Jeca's mother, the widow of the war hero Raiko. Milos is then filmed performing a sex act with a woman. After the shoot he asks his police officer brother Marko to investigate Vukmir. Marko discovers Vukmir is a former child psychologist who works for the security service. The second day's shooting becomes increasingly violent and disturbing for Milos. Afterwards Milos attempts to resign from the film over the violence and the involvement of children. Vukmir shows him a shocking film in which a man rapes a newborn baby. Milos walks out in disgust, however Vukmir had spiked his drink with a powerful aphrodisiac and cocktail of drugs to place him in a suggestible state. After leaving the studio he is brought back by Vukmir's doctor, an attractive young woman.

After three days Milos comes to, injured and disoriented, with no memory of the events of the intervening time. He returns to the filming location and the shocking events of the intervening three days start to return to his memory. Milos finds a series of tapes which enable him to reconstruct these events which include brutal rapes, murders and torture. Milos returns to the shooting location and another memory flashback is triggered; he remembers taking part in a final series of atrocities including the rape of Marija and Petar by Marko and himself. Milos kills Vukmir and Marija kills Marko. The film ends with Milos, brutalised by his experiences, and reunited with Marija and Petar. He sees death as the only dignified end for them so kills both them and himself with a single gunshot. Shortly after their death another film crew arrives to film the violation of their corpses.

The version of the film examined has already received 49 excisions removing 4 min and 12 sec of footage. The excisions were required by the BBFC to receive its '18' classification¹.

The publication also includes a short introduction by the director, and a longer "Filmmaker's Insight" showing the director and two other crew members talking about the film after a screening.

¹ <http://www.bbfc.co.uk/AVV272236/>

These components discuss the excisions that have been made to the film and the film's interpretation. In these the director states the film is symbolic of the moral and political nightmare that Serbian society has become over the last two decades. The film's major metaphor is to treat the real life as pornography. This is to highlight the exploitative nature of life in Serbia. The filmmakers state that in order to feed your family you are viciously exploited by your employer and the rulers of the country. You are raped from birth and the raping continues after your death. The filmmakers describe the film as a "tough work" which is a result of an honest approach to their views about Serbia.

The filmmakers state the film is also intended to address social problems in Serbia. In some parts of Serbia women and children are regarded as men's property. The filmmakers' stated intention for the film is for it to be part of a struggle against these problems – especially violence in the family. They go on to state that the film is also a critique of the way filmmaking is funded in Eastern Europe at present.

Section 20 – Synopsis of Written Submissions

Not Applicable	<input type="checkbox"/>
----------------	--------------------------

A written submission has been received from the distributor. In it they concede it is "quite likely" that the uncut version of the film contains objectionable material.

The remainder of the submission gives background information on their business operations, in particular how the publication came to be listed on their website. This material has no bearing on the interpretation of s3 of the FVPC Act.

Section 21 Other Assistance

None Requested	<input checked="" type="checkbox"/>
See Record of Assistance	<input type="checkbox"/>

Other Relevant Information

None Considered

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	<input type="checkbox"/>	VRA	<input type="checkbox"/>
	Chief Censor of Film	<input type="checkbox"/>	IPT	<input type="checkbox"/>
Title:				
Publication/Certificate/Decision No.				

<p>Other Sources (please specify and reference):</p> <p>Research, and previous OFLC decisions have been referred to, and are referenced in footnotes in the decision.</p>
--

CLASSIFICATION

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.*

The publication deals extensively with matters of sex, in particular pornography. The publication takes its major metaphor as treating real life as pornography. Sections of Milos's earlier pornographic films are shown at various points during the publication. The film opens with Milos' son Petar watching one of these films. The pornography shown on the screen is inexplicit. Marija objects to Petar watching the film, Milos replies that he watched his first "porno" at that age. A little later Milos and Marija are in bed with one of Milos's pornographic films in the background. While watching the film Marija comments, "Why don't you do me like all these women you throw away like condoms?" Milos grabs Marija tearing her clothing and vigorously has sex with her. Violently thrusting into her in the rear entry and missionary positions. Afterwards they kiss tenderly.

Later still Marko is shown watching one of Milos' pornographic films while a woman performs fellatio on him. Marko muses about how Milos manages to maintain such an erection and satisfy so many women.

Matters such as horror

The publication is not located in the horror genre. However, there is much about the publication that has the effect of horrifying the viewer. Some of the filming takes place in darkened grimy and dungeon-like environments. The scenario itself, which involves Milos being ensnared and manipulated into participating in a catalogue of atrocities against his will, is also horrific. Finally the extreme onscreen violence and sexual violence has an obviously horrific effect on the viewer. This material will be discussed under s3.

Matters such as crime

The publication deals with numerous criminal activities. These include rape, child rape, murder, and necrophilia. The publication does not promote or encourage any of these activities. They will be discussed in full under s3.

Matters such as cruelty

The publication is extensively concerned with cruelty and violence. These will be fully discussed under s3.

Matters such as violence

See matters of cruelty.

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"² in order to be consistent with the Bill of Rights. The Court then set out how a publication may come within a definition of "promotes or supports" in s3(2) that impinges as little as possible on the freedom of expression:

Description and depiction ... of a prohibited activity do not of themselves necessarily amount to promotion of or support for that activity. There must be something about the

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

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.

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.⁴

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.

The publication deals with sexual conduct with children and young persons at various points. The scenes in question do not present this conduct in a manner which is in any way appealing. The publication does not tend to promote and support the exploitation of children or young persons for sexual purposes. This material will be fully discussed under s3(3)(a)(iv).

s3(2)(b) The use of violence or coercion to compel any person to participate in, or submit to, sexual conduct.

The publication depicts the use of violence or coercion to compel a person to participate in, or submit to, sexual conduct. However, the publication does not reach the threshold of tending to promote and support this activity. This material will be fully discussed under s3(3)(a)(ii).

³ Above n2 at para 29.

⁴ *Moonen v Film and Literature Board of Review* [2002] 2 NZLR 754 at para 40.

s3(2)(c) *Sexual conduct with or upon the body of a dead person.*

The publication deals with sexual conduct with or upon the body of a dead person. However, the publication does not tend to promote and support this activity. This material will be discussed under s3(3)(a)(iii).

s3(2)(d) *The use of urine or excrement in association with degrading or dehumanising conduct or sexual conduct.*

N/A

s3(2)(e) *Bestiality.*

The publication deals with bestiality at two points. After his first day of shooting with Vukmir Milos discusses the film with Lejla, commenting that he hopes he doesn't have to perform fellatio on a donkey for money. Lejla responds that it is not too bad. Later there is a shot of a woman walking towards a donkey while caressing herself in a sexual manner. This material does not meet the threshold for tending to promote and support bestiality, however the material continues to have relevance under s3(3)(a)(iii) and will be further discussed there.

s3(2)(f) *Acts of torture or the infliction of extreme violence or extreme cruelty.*

The publication depicts extreme violence and extreme cruelty. However, the publication does not tend to promote and support this activity. This material will be discussed under s3(3)(a)(i) and s3(3)(a)(ii).

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 the Bill of Rights section.

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 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 publication contains extensive and extreme depictions of the infliction of serious physical harm, significant cruelty, and acts of torture. However, almost without exception, these acts are presented

in association with some sort of sexual conduct. As such almost the entirety of this material will be discussed as violence in association with sexual conduct under s3(3)(a)(ii).

There are only two exceptions. The first is the beating Milos receives in an alleyway by two passers by, and even this is in response to the sight of Milos masturbating (see s3(3)(a)(iv) for more details). Rasa then comes up behind them and breaks both of the men's necks before taking Milos away to shoot the climactic sequence. The second exception is the murder suicide of Milos, Marija and Petar which occurs in the final scene. Milos kills them and himself with a single gunshot. This occurs offscreen, being implied by a flash from outside the house. Afterwards they are shown lying in a pool of blood as a different film crew arrives. (see s3(3)(a)(iii) for more details).

s3(3)(a)(ii) *Sexual violence or sexual coercion, or violence or coercion in association with sexual conduct.*

When Milos is taken to his first day's shooting he is given an earpiece and told to enter a home for orphans. Once inside he sees the teenage girl Jeca being dragged away by her mother. A nurse and her mother fight over Jeca. Two security guards drag Jeca's mother away screaming. The nurse takes Milos into another room where she performs fellatio on him while Milos is made to watch a film of Jeca seductively eating an ice lolly. The scene ends with Vukmir entering and applauding the performance.

On the second day of shooting Milos is confronted with the sight of one of Vukmir's security men beating Jeca's mother. She is on her knees with the security guard holding her by the hair and slapping her across the face while saying, "If only Raiko knew about his wife's whoring – he would have killed both you, and that child of yours." Jeca's mother, whose face is smeared with tears, crawls towards Milos on all fours, unzips his pants and starts to perform fellatio on him. Suddenly Jeca appears seated a short distance away watching them. Milos pushes Jeca's mother away protesting that he can't work like this. A security guard grabs Milos by the neck and says "Hit the whore." Milos strikes Jeca's mother twice in the face. She vigorously masturbates Milos to orgasm. His ejaculate is shown landing on her face. Vukmir enters applauding the performance. Milos, disgusted at being manipulated into such a position, punches the guard knocking him down and storms out. Vukmir follows Milos trying to talk him round.

That night Milos has a nightmare he is naked in the same room the shooting had occurred in. Jeca's mother is naked on the ground and covered in grime. She reaches up and grabs his genitals. Suddenly Petar appears behind Milos chanting, "Hit the whore – kick the whore – uncle Vukmir is shooting." Milos wakes suddenly from the nightmare.

The strongest scene in the film is occurs after Milos wakes, injured and disoriented, three days later. He has no memory of the intervening events. He returns to the now abandoned house. When he enters a room it triggers a flashback scene. Milos, deranged by a cocktail of drugs, is led handcuffed into a room by Vukmir's security guards. Jeca's mother is chained to a bed. The guards uncuff Milos and set him upon the woman. He rapes her in a frenzy, in the rear entry intercourse position. Inflammatory instructions are transmitted into his earpiece including, "She's a dirty junky cunt – she destroyed her child, the daughter of a war hero – she is scum – hit the whore!" Milos becomes more and hitting her back with his fist. One of the guards hands Milos a large machete and he decapitates the woman while continuing to rape her. The scene is grizzly with a large amount of blood and gore splashing around the room. The scene ends back in the present with Milos vomiting at the memory of the atrocity he committed.

Milos then finds and starts to watch video tapes of the last three days' events. Milos then sees himself lying naked and unconscious face down on a bench. One of Vukmir's security guards looks at the camera and says, "This one's on me." while starting to undo his pants. The guard then rapes the still unconscious Milos while lying on top of him. The focus remains on their heads and shoulders, and the guards maniacal expression as he makes thrusting movements.

The next scene is Vukmir arguing with Vejla about drugging Milos. Vejla says he has ruined a genius, and if only he had only "cut his son's ear" he would be his old self again. The scene cuts quickly to the death of Vejla in a snuff film. She is chained naked in a dungeon, kneeling with her wrists chained above her head. There is a shot of a wrench and her teeth which are in a pool of blood on the floor in front of her. A naked hooded man approaches and forces his penis into her mouth, this is briefly and inexplicitly depicted. Vejla's death occurs off-screen. The scene cuts back to Milos watching the tape as Vejla is heard crying out for help, along with the sound of her being choked and having her throat cut.

Similarly extreme material is found in the climactic scene. Milos is drugged again by Vukmir's doctor, however part way through Milos grabs the syringe and injects the doctor with the same drugs. He is led into a room where Vukmir greets him with, "Welcome to a warm Serbian family home". He is ordered to start raping an unconscious person under a cover. The hooded man from earlier in the film starts raping another unconscious covered figure next to Milos. Vukmir removes the man's hood to reveal it is Marko. Vukmir then removes the covers revealing that Marko is raping Marija and Milos is raping Petar. Marko orgasms (implied by facial expression) and looks across at Milos. The doctor then enters drugged and bleeding from her genitals. Milos attacks Vukmir, brutally battering his head against the floor sending blood flying. Marija, naked and covered with blood, brutally batters Marko to death with a heavy sculpture. Milos then kills Rasa by impaling his erect penis into the man's eye socket. He kills the rest of the guards in a hail of gunfire.

Turning to analysis of this material, the strongest scene, the brutal rape and murder of Jeca's mother, is likely to have an extreme impact on the viewer. The combination of extreme sexual violence and violence in association with sexual conduct is considerably stronger than other high level depictions such as those found in publications such as *Irreversible* (OFLC: 300049). In terms of impact the scene is stronger even than material found in *I Spit On Your Grave (2010)* which was classified as objectionable by the Classification Office in 2011 (OFLC: 1100104.000).

The climactic sequence involving the rape of two unconscious figures who are revealed to be family members also has a similarly high impact on the viewer. This scene fuses frenzied sexual violence with similarly extreme depictions of graphic violence. The death of Vejla fuses an extreme sexual violation with an act of torture and her death as part of the making of a snuff film.

It is notable that when these scenes are viewed in isolation there is nothing about them that is in any way eroticised or could be said to be titillating. A reasonable viewer would be likely to have the very opposite reaction, being shocked, repulsed and even traumatised by them. However, placing such extreme sexually violent material within a publication whose primary metaphor is to treat everyday life as pornography remains concerning – in particular as the metaphor is not clear from viewing the film alone. Pornography is primarily concerned with sexually arousing the viewer. As such some viewers may perceive scenes such as these in an eroticised light, however most reasonable members of society are far more likely to be shocked and disturbed than to apprehend any eroticised component.

However, placing the issues of eroticisation to one side, serious concerns remain with this material. Psychological research has repeatedly shown that depictions of sexual violence and violence in association with sexual conduct against women are more likely than depictions of sex or violence alone to be injurious to the public good. Such depictions reinforce negative attitudes towards women in a number of ways. They have been shown to desensitise viewers to real-life violence⁵, to reduce empathy with victims of sexual violence amongst both men and women⁶, to increase rape myth acceptance⁷, and to increase women's fear of sexual assault.⁸ The extensive fusion of sex and violence in the movie, and the strongest scene in particular, sets it apart from the other such depictions which may be found in the wider "torture porn" or "rape revenge" genres of film. In this instance while none of this material is overtly eroticised, it is sheer extent and degree of the material that remains of serious concern to the Classification Office.

s3(3)(a)(iii) Other sexual or physical conduct of a degrading or dehumanising or demeaning nature.

There is a small amount of other sexual or physical conduct of a degrading, dehumanising or demeaning nature. The strongest of this material occurs in the final scene where another film crew arrives to film the sexual violation of the recently dead Milos, Marija and Petar. They are then shown lying in a pool of blood with another film crew in attendance. The director tells another man who is starting to unzip his pants to "start with the little one" implying that the man is about to be filmed performing an act of necrophilia with Petar. The film ends before any necrophilia appears onscreen. While the violation is not shown onscreen, even the reference to filming of the violation of a corpse is an intensely degrading act. Other degrading acts include reference to acts of bestiality (see s3(2)(e)) which are to appear in pornography. While the actual acts do not appear onscreen, the filming of such acts for the purpose of appearing in pornography is also an intensely degrading act.

s3(3)(a)(iv) Sexual conduct with or by children, or young persons, or both.

The strongest material occurs when Milos tells Vukmir he wants to retire from the film. He tells Vukmir that the children bother him. Vukmir responds with one of his trademark pompous speeches including the claim that "kids are my life". Vukmir then shows Milos a film of a woman giving birth. The baby is seen emerging from the woman's vagina. Rasa is seen holding the baby after he has delivered it. The shot then cuts to Milos and Vukmir watching while the baby is heard crying. Milos averts his eyes as it is implied that Rasa sexually violates the newborn baby. Milos storms out in disgust as Vukmir proclaims the birth of a new genre, "newborn porn". This scene has an extremely high impact on the viewer. While the scene can hardly be considered promotional of sexual exploitation, and the violation of the baby is not shown onscreen, the scene remains one of

⁵ E.I. Donnerstein and D.G. Linz. 1986. "Mass Media Sexual Violence and Male Viewers: Current Theory and Research," *American Behavioral Scientist* 29(1):601-618; D.G. Linz., E.I. Donnerstein and S.M. Adams. 1989. "Physiological Desensitisation and Judgments About Female Victims of Violence," *Human Communication Research* 15:509-522.

⁶ C.Krafka, D. Linz, E.I.Donnerstein and S. Penrod. 1997. "Women's Reactions to Sexually Aggressive Mass Media Depictions," *Violence Against Women* 3(2):149-181.

⁷ T.M Emmers-Sommer, P. Pauley, A Hanzel and L. Triplett. 2006. "Love, Suspense, Sex, and Violence: Men's and Women's Film Predilections, Exposure to Sexually Violent Media, and their Relationship to Rape Myth Acceptance," *Sex Roles* 55:311-320.

⁸ C. Krafka, D. Linz, E. Donnerstein, and S. Penrod. 1997. "Women's Reactions to Sexually Aggressive Mass Media Depictions," *Violence Against Women* 3(2):149; "The Research Base on the Impact of Exposure to Sexually Explicit Material: What Theory and Empirical Studies Offer" in D. Thornburgh and H.S.Lin eds., *Youth, Pornography and the Internet* (2002, National Academy Press, Washington DC).

the most shocking in the film. A reasonable viewer is likely to be disturbed or even traumatised by the scene.

Other material which deals with and describes sexual conduct with or by children includes One theme deals with Petar's sexual awakening. Early in the film, after watching one of his father's pornographic films, Petar tells his parents that it makes him feel like there is a "family of wheels spinning in his stomach". Milos and Marija reassure him that it is normal. The film juxtaposes normal sexual awakening with the absolute inappropriateness of viewing pornography by a child, let alone pornography made by his father.

While watching the tapes which enable him reconstruct his lost three days he comes across one scene where he sees himself with Jeca and her paternal grandmother who says, "God sent you to deliver us from that whore – she was a shame on this house." The woman offers Jeca to Milos saying, "Prove to Jeca that he's not only a father but a man too – just like my late father did to me." Milos is still heavily under the influence of drugs during this scene, he appears to be struggling to comprehend the situation, and does not want to have sex with the underage Jeca. Suddenly he takes his penis out of his pants and holds a knife against the shaft saying he is going to cut it off. Vukmir tells him no and Milos escapes by jumping out a window. This scene is referred to in the "Filmmaker's Insight" as being intended to address the problems of sexual abuse in Serbian families.

In the next scene Milos is slumped disheveled in an alleyway. He sees a teenage girl dressed up for a night out being harassed by two men. The men say, "Out naked yet won't take a dick". The other cautions the first saying she is underage. The girl turns on the men saying, "So what if I am underage." Still under the influence of drugs and unable to control his arousal he starts to masturbate on the street. The men start to beat and kick Milos. Rasa comes up behind them and breaks both of their necks by twisting them. Milos is taken to the final film shoot.

s3(3)(a)(v) Physical conduct in which sexual satisfaction is derived from inflicting or suffering cruelty or pain.

While none of the conduct depicted in the publication is recognisable as sadomasochism (SM), some of the material that encompasses violence in association with sexual conduct also incorporates physical conduct in which sexual satisfaction is derived from inflicting or suffering cruelty or pain. The most prominent example of this is the death of Vejla who is killed while being sexually violated by the hooded figure. Other examples of atrocities committed by Milos involve him being tricked, manipulated and drugged into committing extreme acts which are against his will. While these scenes are extreme, there is less in the way of actual sexual satisfaction evident.

...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 section 21(1) of the Human Rights Act 1993.*⁹

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).

3A(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.*

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

The publication has a small amount of highly offensive language. When discussing the "art-porn" project Vukmir says to Milos, "You must be sick of kissing wretched cunts with the same mouth you use to kiss your kids."

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.*

Discussed elsewhere

3B(3)(a)(ii) *Conduct that, if imitated, would pose a real risk of serious harm to self or others or both.*

3B(3)(a)(iii) *Physical conduct of a degrading or dehumanising or demeaning nature.*

Discussed elsewhere

3B(3)(b) *is or includes 1 or more visual images—*

3B(3)(b)(i) *of a person's body; and*

⁹ The grounds of discrimination prohibited by s21(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)(b)(ii) *that, alone, or together with any other contents of the publication, are of a degrading or dehumanising or demeaning nature.*

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.*

See conclusion

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:

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

The dominant effect of the publication is of technically accomplished film containing somewhat surreal symbolism, the meaning of which is largely opaque. The film has significant amount of extreme and brutal violence and sexual violence. These images of extreme onscreen brutality have a similarly brutalising effect on the viewer.

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

The publication is a DVD, which as a medium is potentially widely available and easily accessible. DVD is a medium which is suitable for viewing in private homes. A DVD allows a viewer a great deal of control over the medium in that it may be played, paused and replayed at will, or even copied. Images on the DVD may be saved on personal computer or to disc, and transmitted over the internet.

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.*

There is a substantial amount of controversy about the film's character, in particular any merit, value and importance it possesses. The film features well known Serbian actors, strong performances,

along with accomplished cinematography and high production values. The filmmaker claims the film should be interpreted allegorically, as a critique of state corruption of the last two decades and the horrors of the Balkans War, and as social criticism. Whether the film achieves these goals is a matter of significant dispute with respected commentators weighing in on both sides of the debate. The Classification Office acknowledges that this publication is characterised by an unusual level of controversy and dispute over its character, including the amounts of merit, value and importance it lays claim to.

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 film is likely to be made available to two distinct yet overlapping groups. The first group are those with a special interest in Serbia, film festival audiences, those with an interest in extreme and sophisticated cinema. This audience group is likely to be limited to special interest groups such as film festival audiences and tertiary institutions.

The second group are likely to be fans of the "torture porn" genre of films, even though the publication is well outside the conventions of this genre. It is notable that this group might view the film without any prior knowledge of the extreme nature of the material it contains.

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

The publication is intended to be used as shocking entertainment. The filmmakers have stated the publication is also intended as social criticism, political allegory, and criticism of the film industry in Eastern Europe.

s3(4)(f) Any other relevant circumstances relating to the intended or likely use of the publication.
None

BILL OF RIGHTS CONSIDERATIONS

New Zealand Bill of Rights Act 1990

Section 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.

Section 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.

Section 6 Interpretation consistent with Bill of Rights to be preferred -

Wherever an enactment can be given a meaning consistent with the rights and freedoms contained in this Bill of Rights, that meaning shall be preferred to any other meaning.

Discussion of Bill of Rights Considerations:

The right to freedom of expression has been weighed against considerations under the FVPC act concerning the likelihood of injury to the public good. The publication will receive a restricted classification due to a fusion of extreme violence and sexual violence. This is considered to be a reasonable and justified limitation of freedom of expression consistent with a free and democratic society.

CONCLUSION

Injury

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**.

Classification:

<p>Objectionable</p>

The publication is classified as objectionable. In considering likely injury to the public good the extreme sexual violence and violence in association with sexual conduct, along with the sexual exploitation of a newborn baby, is of key importance. There is a high likelihood that viewers would be greatly shocked and disturbed by this material regardless of age. Given the likelihood that the publication would be marketed alongside "torture porn" titles, this likelihood is compounded as many viewers would simply view this publication as part of that genre of films, without the knowledge that the extreme material it contains goes significantly beyond the conventions of that genre.

The publication's sexual violence and violence in association with sexual conduct is concerning in a different area. Research has repeatedly shown that such depictions are likely to reinforce negative attitudes towards women in a number of ways. They have been shown to desensitise viewers to real-life violence, to reduce empathy with victims of sexual violence amongst both men and women, to increase rape myth acceptance, and to increase women's fear of sexual assault. In the current publication this material is so extensive and extreme that these injuries to the public good are likely to occur regardless of the age of the viewer.

The publication is characterised by a significant level of dispute over its claims to merit, value and importance. The publication also has a small but legitimate audience which is likely to be limited to special interest groups. For these reasons the Classification Office is prepared to consider granting exemptions under s44 of the FVPC Act in response to requests by special interest groups. Such groups are likely to approach the film with significant foreknowledge of the extreme material it contains, along with knowledge of the publication's allegorical interpretation, and its claims to function as social criticism. Knowledge of the film's content and interpretation is likely to result in a significantly improved viewing decision, which allay a significant number of our concerns regarding the publication greatly shocking and disturbing the viewer. Having an interpretive framework in

Conclusion

place is also likely to help viewers contextualise the extreme sexually violent material as allegory, thus reducing harmful attitudinal shifts.

The Classification Office has considered the effects of the Bill of Rights on the application of the classification criteria. The classification is a reasonable limitation on the freedom of expression that reflects the concern of "a free and democratic society" to limit the availability of publications that depict acts of sexual violence and violence in association with sexual conduct.

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)	<input type="checkbox"/>
No excisions recommended (for all other moving image publications)	<input checked="" type="checkbox"/>
Excisions/alterations recommended	<input type="checkbox"/>
Number of Excisions/Alterations:	
Brief Description:	

PUBLIC DISPLAY CONDITIONS

Not Applicable	X
----------------	---

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.

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

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.

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.

Date	16/4/12	OFLC Ref.	1200259	VR
Applicant	FULB			
Distributor	Fishpond NZ			
Title	A Serbian Film			
Other known name(s)	Srpski Film			
Director	Srdan Spasojevic			
Producer	Drago Vid Vojnov; Srdan Spasojevic			
Medium	DVD			
Country(ies)	Serbia		Serbian	
Disc Image?	Yes/No			

Classification	Descriptive note		
OBJ	/		
Cut/ban criteria	No. of excisions	Excisions made?	Time excisions cleared
/	/	/	/
Other information	/		
Total running time	Total running time after excisions		
106:54	/		

Components

menu:	Play Film Scene Selection Set Up Filmmaker's Insight	
feature:	A Serbian Film	95:23
OTC:	Introduction Filmmaker's Insight Notices	3:40 9:38 0:13
CR1		106:50

- 06 Copyright warning notice
 07 end
 00 Revolver notice
 06 end

Menu:

"A Serbian Film"

- 00 Int w director about cutting of film.
 Says film about moral + political nightmare.
- 2:00 metaphor Treat real life as pornography. I wonder if lead a normal life you have to sell your soul.
- 3:00 You are raped from birth and you are raped until continues after death.
- 3:40 ? End.

00 "SRPSKI Film"

Couple sex in alleyway Pentecost.

"Lady I'm going to fuck you up" Sex
 L. entry

Boy watches on TV. 00 brave film
 walks in. "I saw 1st born at
 his age"

3:00 wife asks Milosh for \$ bar Peter's
 singing lessons.

♀ offers M job from Ukraine.

♀ bites OD after suggests plastic surgery.

00:00 Boy says he felt "wheel spinning" while watching father's film.

M + wife watch film from bed. UZ in entry. Decker's got offer. ♀ asks all those girls had they always felt fondlers. Why didn't you do it like them.

M suddenly leaves to top and park. Sex. Voted thrusting. R. entry. more sex. M. focus on H+S. Kiss tenderly. an homage to

00:00 M being driven. Ukraine a welcome. seek an artist of peak.

5:30 Decker art in pornography. offered job. M unresponsive. type of mess. watched aunts with the same mouth you use to kiss your kids.

ready contract. Told he won't know what he is shooting.

7:00 Maria says to son. Both desire job. worth a lot of \$.

2:00 M + U. says M is best.

M naked. son visible briefly. running in park.

OD asks Maria about translation of contracts. looks at M buttons. most. pursuit. H+S only visible in mirror.

27:00 M + U as talking. U refuses to say what
grouped is about.
M tells story to son.

29:30 Driver gives M wine to wear in car.
OO films. Instructions on car floor.
Enters orphanage. ♀ beckons from door.
Indicates girl on stage steps ♀ says
I wish I had impaled myself on a fork.
rather than given birth to you.
It hurt our girl.

34:00 ♀ takes M to dark room. Kiss
OO film throughout ♀ hugs. Implied fel.
M puts both hands on head.
Mara calls. says taking Peter etc. ?
Miles call Moko. appears to check on
Zooms out to naked ♀ on all fours
performing fell. M watches pornography
♀ says time is passing in says blow harder
Sex v. enjoying swimming pool. + in scene...
M: Why is he not like like normal people?

39:00 M asks ♀ about boat.
Peter hits miles w balloon.

42:00 OO holds ♀ by hair + slaps face.
M: only he it new about his wife's
morning.
♀ crawls towards miles. fell
Miles in chair. OO grabs M from
behind. ♀ says Hit The Whore
M with ♀ most OO - semen hits
♀ face.
Venetia and dep. M looks angry.

Waits through corridors together.

45:30

Maria goes to briefs on U.
child psychologist.

M naked. sees penis poking up from floor.
M wakes from dream. Peter squats but it kicks it out.

48:00

Mito tells U he is retiring. Says "kid bothers him."

U speech about being backbones of economy.
"Vidman sells water" only one in film who is not a victim.

52:00

Archer descends. Naked? in pain.
In labour. The driver delivers a baby.

Child cries. Mito walks out. U exclaims "Newborn horn"

55:30

Mito has erection while driving.
U approaches car. M grabs her breasts. She grabs his erection.

M calls Maria. Unrates blood

58:00

Mito driving. Calls self + Maria.

1:00:00

Mito w wrench in studio.

U brought a friend cuffed. U tell him
also approached. Shook head.

02:00

Mito sex w handcuffed & to bed.
R. entry. In studio in car here.
"Ferry out when"

Mito starts to rot of white, hairy sex.
M hanted machete. Decan of white
hairy sex. Blood splatter.

01:05:00 M watching films. V making up bed
guard having sex w lead mites. ♀ injects

old rows w V about mites.

06:00 ♀ charged in dungeon on legs. Naked hooded
♂ approaches. M watches. ♂
♂ did as ♂ walks away.

♀ + daemons in room. M threatens to
cut penis off. Trucks through window
M being filmed. still
M watches

13:00 mites pigmented in store. Call marks
for sex.

♂ approaches ♀ out unbraced but won't
take a dick. so what is unbraced.

M runs laps at + state - to most in alleyway.
Driver returns + breeds that mites.

V says mites my "be-goal."

17:00 M bends blooded bed. FIB to heavy injects
then injecting ♀. Foam from mouth.
Guard takes M back.

M in room w ladies. (F/F).

M left into film set w bed. Having sex w brown
under covers.

Hooded ♂ hovers sex next to train.
V says FIB to spread marks. Hovers sex
w rear. ♀ alive. movie.

Blackstone ♀ reaches for M.

- 1:23 M. batters V. head against ground ^{repeated}.
 blood flies. Mibs. shoot guards.
 naked blooded & batters marks.
 Mibs. unfeeling guard's eye w. erect penis.
 Marie. threaten w. knife. Get away.
- 25:30 M. fires gun at forehead.
 M. bashes Markos head.
- 3:00 M. finds blooded & dented Maria +
 Peter in grungy room. embraces.
 M. covering in shower.
 M. - 3 lie down in bed together. Gunshot near
 bedside.
 Entering all on bloodstained mattress.
 Pumping fly. other says start with the
 little one. unfeeling newspaper.
 Credits.
- 1:35:23 End.

Filmmaker's Insight.

00 49 Cuts - BBFC producers discuss after
 screening.

Discusses - no children involved in filming.

2:30 Metaphor boy lost 2 decades of wars.
 Political and moral nightmare.

3:00 Message has been changed due to cuts.

3:30 *Business financing.*

Thought process behind allegory
I treat real life as pornography
In order to feed your family you
are vigorously exploited by ~~the~~ ^{the} rulers of country.
your employer
Pornography is normal life.

5:00 *Role of family.* Show perfect family
some parts of Serbia we consider +
children to be our own property +
so we can do whatever we want
with them.

This film is also a struggle against
these problems. Especially violence
in family.

6:30 *actors all 1st choice.*

Serbian society is also divided by film.

8:50 *Honest approach results in high work*

9:38 *End.*
