



## Video Games Consultation Questions

### Option 1 Hybrid classification system

The BBFC would rate all games that are 12+ or higher, with PEGI continuing to rate all 3+ and 7+ games.

The BBFC logos would appear on the front of all boxes, with the PEGI logos on the back.

This system will work best if BBFC and PEGI come to an agreement on their logos and age classifications so that a more integrated approach can be adopted. The BBFC would extend its statutory powers to cover games from 12+, bringing it into line with the classification system used for DVDs/videos and building on parental awareness and understanding of what those ratings mean.

**Q1: What is your overall assessment of whether this option would work and why?**

**In her Review, Dr Byron states that to be effective, any classification system in the UK must at its most basic include the following elements:**

- clear age ratings;
- clear accompanying descriptors which explain game content;
- trustworthiness;
- enforcibility where there are risks of harm, including the ability to block the release of some games.

**She goes on to state that to succeed, the system must rely on awareness amongst parents and carers, many of whom do not play games themselves. She also stresses that an effective rating system must work for the games industry; support retailers; be flexible and future proof; and reflect the evidence on potential harms.**

The Byron proposal for a co-regulation partnership between the BBFC and PEGI meets all these requirements. This is not surprising as it was designed specifically with these requirements in mind. For the consumer it offers an independent and robust classification system supported by clear and trusted ratings and content advice which is understood by both gamers and their parents. (PEGI is demonstrably not independent: the public could be forgiven for thinking that ELSPA has become PEGI's spokesman.) For the industry, partnership with the BBFC through PEGI Online offers an opportunity to provide much needed strengthening of online games classification both in the UK and across Europe. This need has been identified both by the Byron Review and the Commission.

For the Government, full implementation of the Byron package of recommendations will meet the policy goal of protecting children from inappropriate and harmful content in video games, both online and offline, by providing clear and trusted information to consumers, particularly parents.

The Byron package is the result of the most thorough and well-researched review of video game classification ever carried out in the UK. It has been strongly welcomed and supported by Government and many in the video game industry, including games retailers and individual publishers (eg Activision). According to the developers' trade body, TIGA, games developers too would be happy with the adoption of the Byron recommendations. Child protection groups would also welcome the greater role for the BBFC offered by the adoption of Dr Byron's co-regulation model.

The Byron co-regulation system builds on the strengths of both the BBFC and PEGI. Working together, both organisations have the ability to ensure appropriate ratings and provide effective content advice. Online, and working through PEGI mechanisms, the BBFC has the resources and expertise to ensure soundly based and independent initial classification, full information provision and properly resourced independent monitoring of self-regulated online game play for the UK, and if required, for Europe as a whole. The BBFC understands PEGI's political vulnerability across Europe and the desire of the video game industry to see PEGI survive. PEGI's long term future is best secured through full implementation of the Byron package which addresses commonly identified areas of weakness, especially in relation to PEGI Online (see Q31).

Since 2003, the BBFC has worked constructively with PEGI and under the Byron package would look forward to developing further that cooperation to strengthen PEGI, particularly in relation to its presently fledgling attempt to regulate online games across Europe.

The inadequacies of PEGI's methodology however, and the perverse

ratings that can result, mean that we could only accept a variant of this option which does not involve BBFC symbols being awarded by PEGI.

However, since the publication of Dr Byron's recommendations, several influential video game publishers, ELSPA, and NICAM's sub-contractor, the VSC have argued that Dr Byron's co-regulation model is unachievable. Although the BBFC disagrees with the substance of this assertion, the hostility of these players towards implementation of Dr Byron's recommendations and their refusal to engage with the BBFC on them in any meaningful way cast doubt as to whether in practice the Byron package is achievable without a strong push from Government.

Consequently, the BBFC supports Dr Byron's approach to video game classification, provided ELSPA and the VSC can be persuaded by Government to countenance anything other than thinly disguised self-regulation in the narrow interest of those whose overriding goal is to sell as many games as possible for the greatest profit.

**Q2: What are the key flaws with this option and how could it be adapted to overcome them?**

The BBFC sees five potential problems with Option 1. One is substantive. The remaining four are relatively minor and may be overcome without too much difficulty, based on a cooperative relationship between the BBFC and PEGI (though there has been scant evidence so far of cooperation from the PEGI side).

**(i) An effective mechanism for ensuring all potentially harmful games come to the BBFC for classification**

Option 1 would leave the industry to decide for itself which games are not harmful to under 12s. Games designated 'harmless' by the industry would receive no independent scrutiny by the BBFC. Given the history of some in the industry claiming dubious exemption for violent games (see Q31 (ii)) under the current VRA exemption criteria (which set a much higher test than is proposed under Option 1), it is doubtful whether giving the industry this discretion would prove to be a robust method of protecting children.

**(ii) Turning 3+ and 7+ ratings into U and PG**

Under the Byron package, the BBFC would be required to agree that its U and PG symbols be awarded to games which it will not have examined. This would be something entirely new to the BBFC. The BBFC shares Dr Byron's assessment that in general, lower rated games do not pose serious harm risks to younger children. However, doubts about PEGI's methodology in relation to lower rated games remain. Presently, PEGI testers check 3+ and 7+ games much less rigorously than higher rated

games. And they only check a random sample. NICAM's aim is to check 5% of these games (though this is not a contractual obligation) and only after they have gone on sale with a rating based purely on the questionnaire response. Although PEGI now plans to commit itself in future to "reviewing" 100% of games prior to release, the quality of its reviews is open to doubt. PEGI accepts that it could be improved and in an internal PEGI document for the 12 November PAB/ISFE meeting, proposes that "PEGI undertakes to monitor the review process to ensure it is robust and reliable". This is a welcome development if carried through. But it is a pity that it has taken over five years and considerable pressure resulting from the Byron Review to force PEGI finally to consider taking action in this area.

A key area of concern at these junior categories, which PEGI does not consider, is what the BBFC calls "imitable techniques" which are dangerous acts presented as safe and which may easily be copied by young children. The result of PEGI's inadequate testing has been that some games with inappropriate material have slipped through the net and gone on sale with unduly low ratings. For example, after a public complaint about a violent cutscene in which the player character is assaulted by a police officer, the 3+ rating of EA's Need for Speed - Most Wanted had to be amended to a 12+. Similarly after a public complaint about the presence of sexual intercourse (with no detail, called "making woohoo" in the game) the 7+ rating for The Sims was amended to 12+. The use by the game (not by the player) of strong language in Ubisoft's 3+ rated Scrabble caused the rating to be upgraded to a 16+ after many complaints were made to the BBC's Watchdog television programme. The brand new game Tiger Woods PGA Tour 09 is on sale with a PEGI 3+ rating despite the ability in the game deliberately to target and strike men, women and children with golf balls in various body parts - including the face and groin - and watch them double up in pain as a result. Had the PEGI coder correctly completed PEGI's questionnaire, and had the game been properly checked by NICAM, the rating would have been at least 12+ (and possibly even a rather ludicrous 18+ based on a strict reading of the questionnaire which takes no account of context).

In fact, PEGI's own database for 2007 identifies 243 titles which had to be rerated. This is almost 20% of all titles rated by PEGI that year. PEGI does not divulge the reasons for each of these, but generally games are rerated if the questionnaire was wrongly completed; if a publisher appeals against a rating; or if a member of the public complains about a rating.

Given demonstrably unsound PEGI ratings at the 3+ and 7+ level, the BBFC's Presidents and Director have reached the conclusion that they cannot agree to hand over the BBFC's reputation and intellectual property to another organisation, and one which in their view operates a flawed methodology; uses classification criteria which are out of step with UK

expectations; and is ultimately a front for the games industry itself. The BBFC sees two ways of addressing this issue:

(a) the BBFC could also classify the more junior games at the U/PG and 3+/7+ level. The BBFC has the resources and flexibility to deal with the increased volume of work which this would entail, both for online and offline games, or;

(b) PEGI could rate 3+ and 7+ games but these would not carry BBFC symbols. This is the solution proposed by the Culture Media and Sport Select Committee.

Either or these solutions would be acceptable to the BBFC, though it prefers (a) for the reasons set out elsewhere in this response.

The BBFC has considered carefully a third option of BBFC examiners both training PEGI testers and sampling PEGI 3+ and 7+ games to ensure that the classifications of these lower rated games fit UK law and the expectations and experience of the British public. This was a more realistic option a few months ago. However, the BBFC is not satisfied, in the light of the approach taken by ELSPA, that this option would adequately protect both the BBFC brand and UK consumers. Furthermore, the VSC has more or less explicitly ruled out this option by continuing to argue that PEGI testers will never apply any criteria other than PEGI's for the UK and will never take context into account.

#### **(iii) Handling differing age ratings for the same game**

A second potential issue under Option 1 is that, because of their different classification criteria and methodology, BBFC and PEGI ratings for 12 rated games and above may differ. Although the two systems frequently produce the same rating, it is not uncommon for the ratings to be different. Dr Byron addressed this issue in her Review, commenting that the differing criteria and methodology used by the BBFC and PEGI can lead to different ratings.

Sometimes the BBFC will award a higher rating. For example, PEGI rated at 15+/16+ the two sex games *Singles - Flirt Up Your Life* and *Singles 2 - Triple Trouble*, because although both games feature strong interactive sexual activity, the level of sexual detail did not include, for example, sight of actual penetration. However, the BBFC gave both games an 18 rating, not so much on grounds of detail, but because of the games' overall context. Their *raison d'être* was to offer the player the pleasure of engaging in interactive sex - including breast fondling, masturbation and full penetrative sex - with a potential to be used as a sexual stimulus. Similarly, PEGI awarded 12+ to the two *Destroy All Humans!* games. In these games, the player is an alien who tortures and kills humans. The

**BBFC considered that despite the comic context and lack of strong detail, there was an element of sadistic relish in burning human beings alive and watching as they screamed and their bodies disintegrated. This consideration led to the BBFC awarding 15 certificates to both games.**

**Sometimes PEGI will give a higher rating. For example PEGI gave the science fiction game Mass Effect a widely ridiculed 18+ rating for moderate violence and a sex scene. The violence in the game lacks detail and is only a small part of the game. The level of violence is on a par with that contained in an average episode of Star Trek. And the non-interactive sex cutscene contains no nudity and certainly no detail which would be out of place in any 12-rated linear work. Hence the BBFC awarded the game a more sensible 12 certificate.**

**A similar phenomenon is at play in Germany where different methodology (the USK examines games in a similar way to the BBFC) and criteria (the USK reflects German sensibilities) sometimes lead to different ratings between the USK and PEGI. PEGI's own research suggests that PEGI and USK ratings differ for about 40% of games. In roughly half these cases, the PEGI rating is higher and in the other half, the USK rating is higher.**

**The VSC has sought to argue that awarding a game an 18+ certificate is bound of itself to protect children. It has also suggested that by awarding a game a certificate lower than 18, the BBFC is endangering children. The BBFC strongly disagrees. So does Dr Byron. Dr Byron found evidence from her focus groups that unduly high ratings risked making classifications less meaningful to the British public and therefore made ratings more likely to be discarded (Byron, 7.17). The BBFC shares this concern.**

**And we and Dr Byron are not alone. A number of publishers are concerned by unduly high PEGI ratings, not so much because it may damage confidence in the ratings system, but for commercial considerations. Appeals by publishers against PEGI ratings, either to PEGI itself or national ratings bodies, are not uncommon. Indeed, in November 2008, ISFE circulated a document within PEGI which said "an increasing number of complaints heard by the PEGI Complaints Board are from publishers who feel a particular PEGI rating is too harsh. ... more noticeable in the case of games based on movie licenses where the content is in line with the movie but the game rating is much higher". Similarly, a number of countries already have national bodies which can (and do) override inappropriate PEGI ratings (eg Finland, Ireland). France too has just introduced a new national classification commission for video games (and other media) containing potentially harmful material. Italy seems certain to follow suit by adding a corrective national layer above PEGI.**

**With both BBFC and PEGI symbols and content advice appearing on**

packaging, there is the potential for confusion. The most effective way of addressing this problem is as the consultation document suggests in section 2.5 (ie allowing PEGI content advice but no age rating on the reverse of packaging where the PEGI rating is out of alignment with the BBFC rating). The section 2.5 solution would overcome any problems arising from different classification criteria and methodologies.

#### **(iv) Packaging**

PEGI may raise a concern in relation to packaging. Namely that a BBFC rating on the front of packaging with the PEGI rating on the reverse would encourage consumers to believe (as many already do) that PEGI ratings relate to ability, not suitability. At heart, this is a problem with the basic design of the PEGI symbols which remind many UK parents of the ability ratings on toys and board games. To further aid understanding of PEGI symbols, the BBFC would be prepared to work with PEGI, and Government, on packaging solutions which would make the PEGI ratings clear. Education would be a key part of this effort and the Government is already committed to educating consumers about any classification symbols emerging from this consultation.

Since their inception, DVDs have been sold in the UK with up to four different national classification symbols (usually UK, German, Dutch and Irish) stamped on the face of the disc itself. There has been no evidence of confusion.

In Germany since the birth of PEGI in 2003, all video games have been sold with both USK and PEGI symbols on the packaging (to save costs). Again, there has been no evidence of retailer or customer confusion where the USK and PEGI ratings match (see Annex A). Only where there is a discrepancy, where PEGI ratings have not reflected German expectations, has there been confusion (see Annex B).

A similar situation is at play in Portugal where the national rating and PEGI rating appear together on packaging.

The above provides real evidence that the packaging solution proposed by Dr Byron is workable - unless one takes the view that the British public is less intelligent than the German and Portuguese publics.

However, there is doubt as to whether customer confusion (rather than a mere desire to save money) is the real motivation behind potential industry objections to Dr Byron's packaging requirements. Otherwise, how would the industry defend the confusing practice of placing both PEGI and USK symbols on packaging for games sold in the UK, including where the USK and PEGI ratings disagree? Annex C contains a number of such examples, including a game which received a PEGI 12+ and a USK 0 (U equivalent).

**How many British consumers will understand these symbols and their juxtaposition?**

**(v) Online**

**PEGI supporters may argue that a national body such as the BBFC is not the appropriate mechanism for rating online games. They may argue that the geographical scope of PEGI Online is greater than that of BBFC.online and therefore is a more appropriate classification mechanism for online games and websites hosting games. ELSPA and EA Games are already suggesting that the BBFC cannot cope with the increased volume of work inherent in online game classification. ELSPA also argues, mistakenly, that the BBFC rates online games too low. In terms of responding to Dr Byron's recommendation that the BBFC and PEGI should work cooperatively in relation to online games, ELSPA has already argued publicly that such collaboration is impossible. The VSC too has suggested to the BBFC that although the Government can force publishers to behave responsibly in relation to boxed retail games by securing independent, expert classification of their games, in the online world, publishers can do what they want. (It is noteworthy however that others within PEGI seem to be more interested in developing such cooperation with the BBFC.)**

**None of these objections holds water. Dr Byron clearly did not accept them when she recommended that the BBFC classify all games rated 12 and above, both online and offline. Nor did the Culture Media and Sport Select Committee which went further than Dr Byron when it urged online games distributors to "take advantage of the BBFC.online scheme which should be promoted as offering greater confidence to parents about the nature of the game". Members of the Select Committee were clearly attracted to BBFC.online which takes full account of the different ways in which technology provides new opportunities for accessing and interacting with video game content. It establishes a robust code of conduct for the classification of games, including measures for self-certifying certain games with appropriate systematic compliance checks. Its requirements regarding warnings and reporting mechanisms are stringent. The BBFC will monitor compliance with the scheme at its discretion and on its own initiative. Failure by members to comply with the scheme's rules will be dealt with according to the severity of the failure. The attached paper on how the BBFC would classify online games sets out the details of how the scheme would work.**

**The BBFC would be prepared to work through PEGI Online, but there must be proper cooperation, with the real prospect of legislation if there isn't.**

**Online games are becoming an increasingly important part of the market. Within a few years, online gaming is likely to be the dominant way to play a video game. At the London "Games 3.0" Conference on 27 October, Parker**

Consulting estimated that between 2007-2012, online games sales would increase by 18% to overtake boxed games (which would decline by 5%) while downloaded games sales would increase by 120%.

As Dr Byron points out, online gaming contains all the risks of offline gaming, with a whole lot more new problems thrown into the mix. These include cyber bullying; inappropriate conduct and contact; games constantly evolving through mods and patches, generated by both publishers and users; and excessive playing.

Protecting children in the online games space presents more challenges than in the offline world. The BBFC has been carrying out research into the real challenges of the classification of games online by tracking a number of online games and virtual worlds. The games and worlds range from MMORPGs aimed squarely at adults, through social networking sites aimed at young teenagers, to virtual worlds with minigames aimed at young children. They include Age of Conan, World of Warcraft, Runescape, Second Life, Club Penguin and Habbo Hotel. A copy of the results of this research is at Annex D.

The BBFC's research supports Dr Byron's conclusions on the key issues in relation to protecting children from harmful material in online games, namely content, contact, conduct and excessive game play. However, it highlighted additional issues which require attention. These include gatekeeping; advertising; links to other sites; privacy and data collection issues; the behaviour of games hosting websites generally. In part using its experience from its work on the popular BBFC.online, the BBFC is developing systems to deal with all these challenges. Some are already in place. For example, BBFC.online has accredited a number of age verification systems. Under Option 1, the BBFC would bring these systems into PEGI Online. Indeed, all BBFC.online's strengths can be carried over to video game classifications.

Under Option 1, and as demanded by Dr Byron, the BBFC would work with PEGI to harmonise the requirements of the BBFC.online scheme for video games and the PEGI Online Safety Code (POSC). The two systems are already similar but the BBFC's requirements on its members are more stringent and crucially, the scheme includes regular compliance checks on BBFC.online members which the POSC lacks. Lack of monitoring and enforcement are significant weaknesses in PEGI Online and its safety code.

The BBFC has been in discussions with a number of PEGI stakeholders in Europe about classifying online games by working through a significantly strengthened PEGI Online, with the aim of achieving a sound initial classification; rich information provision to consumers; independent monitoring to back up strong, standardised self regulation dealing with issues such as user generated content and cyber bullying; and an effective

complaints mechanism. The response from those within the PEGI system in Europe has been positive, not least because such BBFC/PEGI cooperation would strengthen the robustness of PEGI Online, in particular when it comes to dealing with the evolution and moderation of individual games and making good the lack of resources from which PEGI Online suffers. For example, PEGI Online has no resources to carry out the sort of independent monitoring of online games which is necessary to reassure parents whether or not particular online games remain suitable for their children. Indeed, it leaves such monitoring to parents!

Such cooperation in the online sphere would build on the cooperation enjoyed between PEGI and the BBFC since PEGI's appearance in 2003. In the current climate however, ELSPA and the VSC have successfully prevented PEGI structures from working with the BBFC on how this might work. However, assuming that ELSPA and the VSC accept an eventual Government decision in favour of Option 1, and end their opposition to any BBFC/PEGI cooperation, with goodwill on both sides, and building on each other's strengths, the BBFC and PEGI can together make significant strides towards making the discrete online gaming space a more readily understandable place for parents and children.

Legislation may well be required to support such a system and thereby ensure the effective classification of online games. Without legally enforceable incentives and without the de facto compulsion that exists in the offline world (by means of the requirement set by console manufacturers that all games must have either PEGI or BBFC or USK ratings in order to play on the machines) games publishers and aggregators have shown a marked reluctance to submit voluntarily to classification of online content, either through PEGI Online or BBFC.online.

With the BBFC and PEGI working together under Option 1, there is a realistic possibility of securing a genuinely pan-European solution for online gaming. Currently, Germany (the second largest games market in Europe after the UK) is deeply sceptical about PEGI and has no current intention of joining it. Indeed, an official German paper on games classification states that "public confidence in a rating system requires that decisions are made free of commercial pressure by properly trained experts using appropriate methodology" - three characteristics which PEGI lacks. Germany has much more confidence in the classification methodology and capacity for monitoring and enforcement offered by the BBFC. If PEGI Online is strengthened through BBFC involvement under Option 1, it opens up the very real prospect of involving Germany in a solution which would be genuinely pan-European. Without BBFC involvement, all the evidence suggests that Germany would not engage in any meaningful way with PEGI Online.

As for the four possible and actual objections listed above, taking PEGI

Online's geographical scope first, this scope masks very poor take up by those publishing games online and an inability to effectively monitor or enforce compliance with the POSC. Only 18 publishers have so far signed up, compared with around 300 offline publishers which are members of PEGI Classic.

Greater geographical coverage is no substitute for the essential requirements of online video game classification as identified in the Byron Review: a robust initial classification; rich information provision to consumers; proper self regulation backed up by independent monitoring; and an effective complaints mechanism. Working through PEGI Online, the BBFC will provide all these services, with the geographical cover enjoyed by PEGI. The BBFC has plans to work with the German and US national video game classifiers on raising standards of safety in online games.

Second, those hostile to Dr Byron's conclusions have tried to argue that the BBFC could not cope with the volume of work involved in classifying online games. It is true that the nature of online gaming means that online classification will present a significant new workload for the BBFC (though some of the more extreme claims from publishers about exactly how much extra work need to be taken with a pinch of salt). The BBFC's strong track record of coping with hugely increased workloads; responding to industry demands by working with them to provide the best possible service; and adapting to new technological developments while simultaneously bringing down turnaround times and fees suggests that the BBFC would have no significant problems in working in partnership with the video game industry to absorb the submission of more video games and game elements in the growing online market. The BBFC has the resources to be able to continue to provide a high quality and efficient service to the video game industry, and looks forward to working with the industry to ensure an effective classification of online material in a way which would not compromise release schedules while simultaneously providing a classification in which consumers can have confidence.

Indeed, the BBFC can ramp up its resources far more effectively than PEGI. The BBFC increases resources to meet demand. PEGI cannot. NICAM has to clear all funding recommendations (including recruiting the extra testers who would be required for checking the questionnaire ratings for online games) with the industry for a decision. This can be a time consuming procedure. PEGI administrators may well find it difficult to keep up with demand, especially now PEGI has committed NICAM and the VSC to reviewing all games prior to release. This has not been an issue until now because of the lack of popularity of PEGI Online.

Third, ELSPA has sought to argue in public that if the BBFC were to rate an online game differently from PEGI – in particular if the BBFC were to classify an online game 12 and if PEGI were to rate it 18+ - this would put

**British 12 year olds in harm's way because these 12 year olds would not be aware that they were playing against adults in other European countries. This bizarre argument is nonsense for several reasons:**

**(a) Even if it were to happen – and it has not happened yet – the BBFC is bound by its contract with the British public and expressed in its Guidelines to classify a game according to the public's expectations as to what is appropriate at a category. It should not award a classification simply to fall in line with the category awarded by another ratings body which uses less robust methodology and criteria which do not reflect UK sensibilities.**

**(b) Second, a classification category indicates only whether the game is suitable for a particular age group. It does not restrict the game to that age group and prevent older, even adult gamers, from playing them. Given that the average age of a gamer is 28, and rising, but that the majority of games receive a PEGI 3+ or 7+ rating, it is reasonable to assume that many adults are playing games which are also suitable for children. The logic of ELSPA's argument is either that adults should not be allowed to play videogames such as chess or sudoku or that these games be awarded the adult rating.**

**(c) The foreign gamers encountered in online gameplay by British gamers are more likely to be American or Canadian, or Australian, or German than to be, say, Latvian or Dutch or Spanish. None of the gamers in the first group of countries will be affected by PEGI classifications.**

**Taking a couple of specific examples of online games, PEGI rated the very popular online games World of Warcraft 12+ and Star Wars: Galaxies 6+/7+. (For the purposes of comparison, the BBFC rated these games 12 and PG respectively.) Is ELSPA seriously suggesting that only children be allowed to play these games online? As the BBFC sees it, protecting children playing online games is achieved by a robust initial classification in line with UK expectations, followed by proper self moderation of online play backed up by independent monitoring, and supported by educating children and adults about the risks of online play, rather than simply by a ridiculous initial rating which would damage public confidence in the classification system. Indeed, Dr Byron found evidence that rating games unduly highly would damage confidence in the ratings system. A number of games publishers already believe that some PEGI ratings are unduly high. For example, in March 2007 Activision successfully appealed against a 12+ rating for Shrek 3, securing a 7+. In June 2007, Nintendo successfully challenged the 12+ rating for Scrabble Edition 2007, securing a 3+. In October 2007, Capcom successfully appealed the 12+ rating for Zack and Wiki: The Quest for Barbados Treasure from 12+ to 7+. Similar appeals in 2007 and 2008 resulted in other reduced ratings, including the lowering of the rating of Global Conflict Palestine from 16+ to 12+ and Lego**

Indiana Jones from 12+ to 7+. Companies which have formally appealed against what they perceived to be unduly high PEGI ratings include DTP Entertainment, Dreamcatcher, Emme, and Disney, as well as Activision, Nintendo and Capcom.

France too is concerned by PEGI ratings which do not match French notions of harm or offence. The Forum des Droits sur L'Internet cited the example of the game Kirikou which in its view received a PEGI rating which would have been regarded in France as unduly high. The future of PEGI in France is most uncertain following the decree of 24 June 2008 which appears to exclude PEGI from any role in classifying potentially harmful games. However, even if a role is found for PEGI in future, the generally pro-PEGI Forum believes that France should have a national body with the power to override inappropriate PEGI ratings, both online and offline.

Ensuring that children are protected in online games from inappropriate contact or conduct requires effective monitoring of game behaviour and enforcement of sanctions (including blocking access to the game) if harmful interaction occurs. PEGI Online does not provide such monitoring and enforcement. This may help explain why, as CEOP pointed out recently, very few games publishers provide the report button (for abuse, bullying) recommended by Dr Byron. Option 1 would see this service provided by the BBFC in conjunction with PEGI Online, thus providing much greater protection for children in the online gaming world.

The fourth objection - namely ELSPA's argument against BBFC/PEGI cooperation and promise to fight to the bitter end against Byron and such cooperation - should be discounted. Major players who are currently toeing the ELSPA line have indicated that as soon as the Government takes a decision, they will work towards implementing it, irrespective of what that decision is. And key figures withing PEGI itself point to good BBFC/PEGI cooperation. PAB Chairman Antonio Xavier wrote in PEGI's 2007/8 Annual Report about the "compatible synergy" between the two organisations and others have praised how PEGI can "morph into new combinations with national legislation, as exemplified in the UK".

**Q3: What are the key advantages with this option and why?**

The essence of Dr Byron's recommendation is:

(a) the statutory classification system be extended to include online and offline video games which would otherwise receive a PEGI rating of 12+ or above (these games are more likely to contain potentially harmful or otherwise inappropriate content for children);

(b) online and offline games which receive lower than a 12+ rating continue to be exempted from statutory classification (and rated by the industry

owned and controlled PEGI system).

This co-regulation system has a number of advantages.

**(i) It will extend child protection**

The Byron package would significantly extend statutory classification - and thereby effective protection of children and other vulnerable groups - to games which are not currently covered by the VRA. In July 2008, the Culture, Media and Sport Committee agreed with Dr Byron's proposal in this area, saying that "the BBFC should have responsibility for rating games with content appropriate for adults or teenagers as proposed by Dr Byron", indicating clear cross party support for the proposal of greater BBFC involvement in video game classification.

The distribution of all those games most likely to contain harmful or inappropriate material would be backed by criminal law sanctions, including fines and prison sentences, as at present. Compliance would be ensured by the action of Trading Standards officers who already use certificates of evidence from the BBFC to mount prosecutions against those who transgress. As a statutory regulator, the BBFC is tried and tested and has proven its ability to provide an effective and high quality service to the enforcement agencies, as evidenced by LACORS' submission of 6 November 2008 to DCMS which described BBFC to law enforcement officials as "invaluable".

**(ii) Public trust in video game classification is strengthened**

Research shows that the British public trusts the BBFC as an independent, expert, professional classification body which applies UK law, research findings and public (particularly parental) notions of harm and suitability. No-one disputes this. Many afford it an almost governmental status.

BBFC classifications not only take full account of context, but are derived from the application of criteria which have been developed in consultation with the UK public over many years. In addition to a continuous programme of UK public opinion research projects, major consultation exercises on the development of new classification guidelines are conducted in the UK every 4 to 5 years. The present consultation (for new guidelines in 2009) involves over 12,000 people. The BBFC has earned the trust that its classifications enjoy in the UK by ensuring that they are based on criteria which fit with UK notions of harm and appropriateness at different age groups (rather than with some lowest common denominator partial European aggregate).

The BBFC's classification work is backed up by a strong education effort which reached around 15000 young children, adolescents, teachers and

parents in 2007 through school and university visits. In addition to this the BBFC offers three dedicated educational websites.

These are Parents BBFC, ([www.pbbfc.co.uk](http://www.pbbfc.co.uk)), providing detailed information about film, video and video game classification decisions for parents and carers. This site received 6.23 million hits in its first year and in October 2008 alone received 800,000 hits. Students BBFC, ([www.sbbfc.co.uk](http://www.sbbfc.co.uk)), a website dedicated to students ages 12+ but with most focus on students on GCSE and AS/A2 and equivalent level courses has had 2.63 million hits so far in 2008 and Children's BBFC, ([www.cbbfc.co.uk](http://www.cbbfc.co.uk)), our website for under 12s, but more specifically, those aged 5 -11 years, has had 1.1 million.

All websites cover the classification of films, DVD and video games but this in itself further reinforces the already established public understanding of BBFC classification symbols, criteria and decisions more broadly, which in turn offers parents, carers and gamers themselves, (both child and adult), a detailed and familiar backdrop in which to understand and make informed choices about which video games to play.

All three sites contain specific tailored resources on video games. On [www.pbbfc.co.uk](http://www.pbbfc.co.uk) there is Extended Consumer Advice (ECA) about every game classified which offers detailed examples of the issues each game raises. The site also has a Parents Information Centre which has introductions to the categories, a guide to video games, and glossaries of gaming terms and genres. On [www.sbbfc.co.uk](http://www.sbbfc.co.uk) there is a dedicated Games Portal which collates case studies, timelines, news articles, research materials and other educational resources for teachers and students. On [www.cbbfc.co.uk](http://www.cbbfc.co.uk) there is information for parents and teachers alongside a dedicated Games Room which offers young site users the chance to play games, improve their gaming vocabulary, place the games they play in context and explore the issues raised by games, either alone or with parents and carers.

The BBFC, working with charity Film Education, has developed an interactive DVD ROM for use in the classroom. This resource offers teachers and pupils a hands-on introduction to how and why films, DVDs and video games are classified and empowers them as students and consumers. A copy of this DVD ROM is attached at Annex F.

Other BBFC education initiatives which cover video games include: in house seminars available to individuals and school groups; collaboration with other media education specialists including the Media Teachers Association, Film Education and the BFI; ad hoc talks and training with adult groups including professional groups (Local Authorities, INSET days for media teachers) and community groups (such as the Round Table); working with school tour providers such as NST to provide tailored

sessions in house.

As a result of the BBFC's education efforts, 89% of parents say that they recognise and understand BBFC symbols. New research carried out by Bernice Hardie in October 2008 shows a clear preference for BBFC classifications over PEGI ratings. 76% favoured the BBFC and only 24% favoured PEGI. Indeed, 77% of those questioned had never heard of PEGI. A copy of this research is at Annex E.

(iii) It retains the integrity of the reject power for the most extreme games

The Byron package would retain the BBFC's reject power, which is backed by 69% of the public. The industry is already producing games which feature violence which is graphic and sadistic in nature. Given the trend over the past few years, it is reasonable to speculate that even more violent and sadistic games will be produced in future. Furthermore, it is certain that, as the technology advances, such violence will be rendered with ever greater photo-realism, thus increasing its impact. At such a moment, it makes sense to retain the reject power for the most extreme games in the hands of the independent BBFC as part of the Byron package. No other organisation has - or is likely to gain any time soon - the experience, expertise, resources, independence or public trust required to exercise the reject function effectively. It is not credible to envisage the VSC exercising it, even with statutory backing, either independently of games industry lobbying or in a way which would survive legal scrutiny.

The reject power vested in the BBFC is used very sparingly (only three games have ever been rejected). But it also gives the BBFC leverage to ensure that the industry acts in a responsible manner with regard to games at the 'top end' of '18'. For instance, the fear of possible rejection led the developers of The Punisher to work with the BBFC and tone down prior to submission the torture sequences that are a significant feature of the game. In relation to 50 Cent Bulletproof, a very violent game suitable only for those over 18 but with an obvious appeal to adolescent fans of the US rapper on whose life it is based, the BBFC was able to insist on approving the key elements of the marketing strategy as a condition of classification. This ensured that the game was not actively marketed in a manner designed to increase or enhance its appeal to under 18s. More recently, in September 2008, the BBFC approved the marketing campaign for the violent video game Fallout 3 before awarding it an 18 certificate. The BBFC was concerned about a minor sequence in the game in which the gamer plays as a 10 year old boy who butchers his family and neighbours with a knife. It was concerned that the game should not fall into the hands of younger teens and so agreed with the publisher that the game's marketing should be directed exclusively at adults. These considerations simply do not come into play in the PEGI system which awarded the same game an 18+ without conditions.

**(iv) Public confidence in BBFC symbols and content advice ensures public support**

**Dr Byron was clear that a single consumer facing classification system is vital. She was equally clear that this should be the BBFC system with the well-recognised and trusted BBFC symbols. Only the BBFC age ratings are clear and trusted by the public and retailers. PEGI's ratings are misunderstood by the public both in the UK and across Europe. And there is scepticism about the impartiality of a ratings system which is owned and controlled by a profit-motivated industry.**

**The BBFC's classification symbols enjoy huge and unrivalled public recognition and trust. This is borne out by both quantitative and qualitative research commissioned by the BBFC:**

**- a 2007 TNS poll over 4,000 adults showed that 89% understood BBFC ratings**

**- according to research published in October 2008, 93% of 16-24 year olds' 92% of 25-44 year olds, and 79% of 45-64 year olds are familiar with BBFC symbols. Among gamers, the overall familiarity figure rises to 94%. 77% of people have never heard of PEGI.**

**- focus group work undertaken in 2008 reported that unlike PEGI "the BBFC classification system is unequivocally understood as referring to content. Respondents apply film classification 'rules' to computer games and immediately grasp that the [BBFC] classification is referring to key issues such as violence, sexual references and language".**

**The comparison between the BBFC as a respected brand and PEGI as a second or third rate alternative was common among respondents (for example, Marks and Spencer vs Primark).**

**The Culture Media and Sport Committee came out strongly in favour of the BBFC's symbols, saying that "the widespread recognition of the BBFC's classification categories ... offer[s] significant advantages which the industry's system lacks". Speaking for PEGI, Peter Darby of the VSC also conceded the BBFC's huge advantage over PEGI in this area in his evidence to the Select Committee on 13 May 2008. He said "Dr Byron put forward the view that PEGI is not as well known as it might be and that is something that is fully accepted by PEGI ... BBFC symbols are clearly much better known than the PEGI ones". He went on further to say "if the hybrid system is the one that is recommended PEGI will certainly work towards achieving that".**

**Although PEGI is planning to change its symbols and content advice (see**

Q31, below) this would only be useful if such changes added to consumer understanding (as well as avoiding copyright problems in relation to BBFC symbols). A change to PEGI's symbols would require agreement across the PEGI structure (ELSPA's say so is not enough) followed by a huge and sustained public education campaign. The chances of such a campaign being successful could only be improved under the adoption of the Byron package where it would receive the enthusiastic support of the BBFC's own public education efforts and would sit alongside the trusted BBFC brand, on the reverse of packaging.

To support its symbols, the BBFC offers bespoke content advice for video games in the form of a simple phrase such as "Contains strong bloody violence and strong language". Dr Byron's recommendation that the BBFC's content advice should provide the public face of the new classification system makes sense. British consumers understand the BBFC's content advice system ('Consumer Advice' or CA) which is tailor made for a UK audience. The terms and phrases that form the core of the BBFC Consumer Advice system have been developed and refined through qualitative research to ensure that they are fully understood by the target audience. Qualitative research carried out in 2008 compared BBFC CA with PEGI pictograms and concluded:

'...BBFC consumer advice was described as being 'spot on'. Respondents preferred the more detailed approach, using clear and accessible language. The familiar style, reminiscent of film consumer advice, also worked well and the benefits of this were two fold; it reinforced the content message and added credibility to the overall communication and branding.'

Research by both PEGI and the BBFC shows that PEGI's content advice on the other hand is simply not understood, either in the UK or in the rest of Europe.

As a result, PEGI's industry owners are planning to change PEGI content advice by adding a single word descriptor(eg "Fear" "Discrimination") in addition to the pictogram for certain markets including the UK. PEGI considered replacing the much criticised pictograms with fuller text, along the lines of the BBFC model but concluded that PEGI's "tick box" methodology made it too difficult for it to match the user friendliness and relevance of BBFC CA (though the idea has not been entirely dropped as an ideal aspiration for the future). As with PEGI's symbols, the chances of such a change being successful can only be improved under the adoption of the Byron package whereby PEGI advice would sit alongside already well-recognised BBFC content advice.

Public support is also encouraged by the BBFC's "Extended Consumer Advice" (ECA) service. Several paragraphs of content advice for each video game classified are published both on the BBFC's main website and

on its increasingly popular website for parents (Parents BBFC). Public feedback has been entirely positive for the service, which has been in place since the middle of 2007. Well-known film critic Mark Kermode is a particular fan of ECA. He frequently reads it out in full with relish and approval during his film podcast, which is one of i-Tunes' most popular podcasts.

The BBFC also provides ECA on its main website ([www.bbfc.co.uk](http://www.bbfc.co.uk)) and on its dedicated site for parents ([www.pbbfc.co.uk](http://www.pbbfc.co.uk)). The latter has been up and running since late 2007 and has received 6.23 million hits in its first year up to November 2008. ECA details, in a few short paragraphs, the particular nature of the video game and its content in terms of violence, sex, drugs, language etc. This initiative offers the sort of independent, comprehensive and detailed information for parents that the PEGI system, based on a 'tick box' self assessment questionnaire, can never deliver.

**(v) PEGI is strengthened**

The co-regulation classification system recommended by Dr Byron preserves a role for PEGI in the UK, particularly in relation to games aimed at the youngest children. For the first time, PEGI would be formally recognised as having a role in the classification of video games in the UK.

Co-regulation between an expert national body and PEGI is a satisfactory model across a number of European countries, including Ireland, Portugal and Finland (all small markets). Italy too is considering draft legislation involving co-regulation between PEGI and a national body which can override PEGI ratings. Recent French legislation which adopts national classification of video games appears to exclude PEGI, but some within PEGI argue that France (the third largest games market in Europe after the UK and Germany) could even now be persuaded to adopt a co-regulation model, with a "national layer" able to modify PEGI ratings to co-incide with French notions of harm and suitability. Germany of course rejects any role for PEGI.

**(vi) It works online**

The proposed partnership between the BBFC and PEGI in relation to online games (see Q8, below) would make a real contribution to online safety, while helping satisfy doubters in the Commission and elsewhere in Europe about the robustness of PEGI Online. In particular, it opens up the prospect of a genuinely pan-European solution by facilitating the possible involvement of Germany which will not co-operate with PEGI unless it is strengthened by BBFC involvement.

Research commissioned by the BBFC in October 2008 shows that 75% of the UK public believes online games should be regulated. 71% believe this

should be done by the BBFC, with only 22% favouring PEGI (see Annex E).

(vii) It is inexpensive

It would be considerably less expensive than Option 3 though more expensive than Option 2. See Q11 below.

(viii) It suits media convergence, including by retaining the one stop shop for Blu-ray/DVD/covermount classification

There is a powerful case for applying a single regulatory approach to films, DVDs and games, given: the presence of linear (ie non-interactive) material in most games; the existence of film and game versions of many works; the convergence of films and games, both through increased game photo-realism and the increased presence of game applications as part of linear film/DVD material; and the existence of common classification issues such as violence.

The existence of game and non-game video content side by side on the same retail product is becoming increasingly common thanks to the emergence of Blu-ray discs which allow sophisticated video game applications to run in conjunction with the main film feature offering, and for stand alone games to sit side by side on a disc with film features and other non-interactive video material (simple games have been a feature of many DVD releases for some time). For instance the Blu-ray disc of the teen oriented adventure film *The League of Extraordinary Gentlemen* allows the viewer to score points by shooting characters as they appear on screen during the film, with bloodspurts resulting from injuries as those characters are shot. Similarly, the Blu-ray disc of the family film *The Chronicles of Narnia* features a stand-alone role playing video game. A video game packaged with Disney's U-rated animated feature *Little Mermaid Ariel's Beginning* featured an offensive use of the word "spastic" which put the game to 12 (so Disney removed the offending dialogue to secure a U). Although most Blu-ray games applications have been relatively simple so far, they are increasing in complexity as technology develops and improves. The Blu-ray release of the 12-rated feature *What Happens in Vegas* includes an interactive drinking game in which the viewer is encouraged to drink alcohol in response to certain cues onscreen. The presence of this game raised the release's classification to 18 (so the distributor chose to remove the game from the disc to secure a 12).

At present, all elements of a Blu-ray disc or DVD, both linear and interactive are classified by the BBFC in a one stop shop for the DVD industry. This arrangement is convenient and inexpensive for the industry and it offers genuine brand protection because of the trust and confidence placed by the public in BBFC classifications. Under Option 2, this arrangement

would continue. There would be no additional cost implications.

The same issue is at play with the publishers of covermount discs. At present, they submit such discs which contain both linear and interactive material to the BBFC for classification. This would continue unchanged under Option 1, at no additional cost to the publisher.

Convergence is making it increasingly difficult to separate film, DVD and game content, as so many video games have a tie in to a big film release: during 2007 no less than 7 of the top 30 retail games were film related (The Simpsons, Spider-man 3, Transformers; Harry Potter and the Order of the Phoenix; Cars, Pirates of the Caribbean: At World's End; and Ratatouille). line between films and video games is becoming ever more blurred. A review in the film magazine Empire of the new best selling video game Star Wars: The Force Unleashed refers to "this blurring of the boundaries between gaming and movies ... the two industries are growing inexorably closer". In a converging world what is needed is a classification body that can read across from films to games and back again, while recognising the differences inherent in the different media.

The convergence argument is strongly supported by the Film Distributors Association which told the BBFC in September 2008 that a key reason for its support of an increased role for the BBFC in relation to video game classification was that "it makes full sense, in today's increasingly converged, digital media environment, to roll out a single, consistent, robust classification system across the board."

(ix) It enjoys the support of retailers and law enforcement agencies

Retailers like and understand BBFC classifications. Its sales staff understand BBFC symbols better than PEGI symbols.

Those responsible for enforcing statutory classifications favour the BBFC over PEGI. LACORS, who coordinate the work of local authority Trading Standards officers across the UK, favour having the same system for video games as for DVDs because the BBFC scheme is recognised by members of the public. In the view of LACORS, a different scheme for games causes confusion. Furthermore those responsible for law enforcement already enjoy an existing fruitful relationship with the BBFC in relation to for example the provision of evidence in criminal cases. Extending statutory BBFC classifications to all games would not be a problem for LACORS or Trading Standards Officers more generally.

**Q4: How do you think this system would work for the following key stakeholders:**

(i) the consumer?

Qualitative research commissioned by the BBFC and carried out in early 2008 indicates a very strong preference among consumers for BBFC classifications. For those games more likely to contain harmful or otherwise unsuitable material for children, the consumer would benefit from clear and trusted symbols, backed by well-understood content advice and bespoke extended content advice on the BBFC's educational websites aimed at children, adolescents and parents.

Parents in particular would benefit from:

- confidence in the meaning of the classification symbols. The BBFC symbols are a language which is common to both gamers and non-gamers. If all games carry BBFC symbols, parents will be more confident about exercising control over their children's playing, and less susceptible to arguments from their children that the (PEGI) rating is about ability, not suitability;

- confidence in the content advice offered. BBFC CA offers easily understood content advice which can explain the nature, extent and strength of an issue rather than just its presence. The advice "Contains frequent strong bloody violence" is more useful than a picture of a fist which is used by PEGI to warn of both infrequent, mild, fantasy violence and frequent, strong, bloody violence;

- confidence that age inappropriate games will not be sold to their children;

- confidence that games which pose a serious risk of harm to those likely to play them will not be available for sale in the UK;

- confidence that the ratings reflect UK standards and notions of harm and suitability;

- confidence in supervising their children's media use across the full entertainment spectrum, from film to DVD to games, using the same trusted symbols and content advice as a reliable and consistent guide.

(ii) the games industry?

It is important to recognise that "the games industry" as defined by membership of ELSPA or TIGA does not encompass all industry stakeholders who will be affected by changes to the classification of games. Many films released on Blu-ray discs (which play in Playstation 3 consoles) include among the "added value" bonus material game and other interactive, non-linear applications. Provided the VSC does not prove bloody-minded (eg by demanding that all games aimed at young children, including those on Blu-ray discs and DVDs be rated by PEGI) Option 1 works well for this part of the industry because it enables them to continue

to use the BBFC as a "one stop shop" for the classification of all the content on the disc. For retailers too, it means that all Blu-ray and DVD discs will carry a single, BBFC symbol.

Most in the games industry are already used to dealing with the BBFC. Games companies are already required to judge whether their games lose their VRA exemption and so require BBFC classification. From January 2007 to August 2008, 55 games companies submitted video games to the BBFC for classification. So under Option 1, game publishers and developers already familiar with BBFC classification processes will merely apply a slightly different exemption test in relation to revised legislation. See Q14 below for a suggested new test under a revised VRA.

Games would then be submitted to the BBFC in the same manner that they are now. Although some vocal videogame publishers have argued that BBFC classifications would be unduly costly and would lead to delays in the release to the UK market of titles, these fears are both founded on ignorance and strongly overstated. The BBFC's turnaround time of 8 calendar days already compares favourably to PEGI's longer standard turnaround times of 10 working days (which equate to 12-14 calendar days). Indeed some of the most vocal public critics of the BBFC post-Byron review privately praise the BBFC's customer focus. Even while arguing that BBFC classifications lead to delays, those same companies tell the BBFC privately that it is "super efficient". On 25 September 2008, the Film Developers Association echoed how the BBFC meets its customers' needs while remaining independent and robust, saying "the BBFC's ... classification system is clearly defined and communicated. Its services and procedures are attuned to the business needs of its trade clients, yet it remains an independent body."

We would also encourage game developers to continue to use the BBFC's advice system whereby developers may submit cutscenes and other sections of games before they are complete (often several months before a game is due to be completed) for advice on the likely rating of particularly problematic sequences. This service can save developers significant amounts of time and money.

For games released across several platforms, BBFC classifications would continue to be cheaper than PEGI classifications, as the Government's Impact Assessment makes clear. It is noticeable that video games classified by the BBFC are no more expensive at retail than those rated under PEGI. BBFC costs appear even more attractive following PEGI's decision to increase its charges by a substantial amount imminently. PEGI insiders have told the BBFC that the increase will be 100%. This will be the second doubling of PEGI charges in two years.

In any event, the time and cost of classification under either system is tiny

compared with the time and cost of developing new videogames. With new technology, video games are becoming ever more expensive to develop. For example, better graphic quality demands ever larger teams of artists. An average AAA video game for the PS3, Xbox 360 or PC costs around US\$10-20 million to develop over 2-3 years.

Under Option 1, the BBFC would experience a significant increase in games submissions. Economies of scale would flow from this. This would mean that the simplest, most straightforward games would see a significant percentage decrease in cost. This would advantageously effect significant numbers of submissions. Based on 2007 figures:

- 25% of games would see the fee reduced by over 15%
- 43% of games would see the fee reduced by almost 10%
- the average cost would fall by over 6%.

In addition to these savings, we would look to work with those companies producing simple games (including small developers producing low budget games and online aggregators) on an appropriate fee structure. In some cases, this would reflect a lower handling charge such as the one for simple Blu-ray games (see Q11(i)).

There remains the issue of online game elements (mods, new content) requiring classification. There could be a significant number of these. The BBFC would work with the industry to provide solutions to secure the cost effective and efficient classification of such elements as it already does with other content providers, see Q8 below and the attached document about how the BBFC would classify online games. Online content offers significant potential for savings in relation to the cost of classification. The BBFC would work with the industry to maximise these savings, including on self-assessment/compliance models for casual online games which would be significantly cheaper than PEGI's equivalent but inferior service. BBFC fees are agreed with DCMS and cost savings are inevitably reflected in lower fees, as happened on four occasions in the last 10 years.

(iii) the retail industry?

The retail industry would be happy with Option 1. It offers a clear classification system which retailers would be happy to promote in store. The education effort required for both retailers and consumers in store would be easy to meet. A single rating for all Blu-ray discs which contain both linear and interactive material would also be an advantage.

The only issue for retailers is marrying the BBFC 15 on the front of the packaging with the PEGI 16+ rating on the back. In this case, retailers hope that the PEGI rating would be changed to 15+, to match the 15+ PEGI rating used in a minority of PEGI countries, Portugal and Finland for example.

<b>PEGI has suggested informally that this would not be a problem.</b>
<b>Q5: What suggestions do you have to improve the system for any of the key stakeholders?</b>
<b>See Q5 above, the need to replace the PEGI 16+ with a 15+, or 15.</b>
<b>Q6: Do you think this system addresses the evidence on potential harms raised by the Byron review and if not why not?</b>
<p><b>Yes. Those games rated 12/12+ are those which contain the sort of material which could be harmful to young children and other vulnerable groups. So putting the classification of these games on a statutory basis and giving the responsibility for classifying them to an independent, professional, expert classification body and backing this up with an extensive education effort aimed at children, young people, parents and teachers is the right way to go.</b></p> <p><b>Giving parents symbols and content advice that they recognise, understand and trust helps them to play a crucial part in protecting their children. Dr Byron emphasised that protecting children requires effort from a variety of stakeholders (game developers, publishers, retailers, regulators, parents). Parents can only play their part if they understand what an individual game contains and who it is suitable for. Option 1 provides this information in a language that parents understand and are used to using effectively in relation to protecting their children from harmful DVD content.</b></p> <p><b>The BBFC makes full use of the Advisory Panel on Children's Viewing (APCV). The APCV consists of eminent experts in the field of children and child development. It provides the BBFC with a wide range of expertise and skills connected with children. As the bulk of the BBFC's general classification work involves classifying material for everyone under 18, this resource continues to be very valuable, including in relation to video game classification.</b></p> <p><b>However, there is a small risk of the more junior rated 3+ and 7+ games containing potentially harmful material. The problems innate to PEGI's methodology mean that issues such as imitable techniques (eg dangerous activities presented as safe) and anti-social behaviour are not routinely picked up. Because the BBFC would not classify such games, there is a risk that harmful material may slip through.</b></p> <p><b>There is also a risk in allowing game publishers to decide whether their game fulfils the criteria which would require statutory regulation. Although many publishers are responsible when it comes to classification, some have sought to avoid statutory regulation for reasons of convenience and</b></p>

commercial consideration (see Q31 (ii)).

**Q7: How do you think this system will last into the future?**

Because the BBFC, through its greater expertise and human and financial resources, would provide strong reinforcement to online classification, ideally working through the fledgling PEGI Online and in partnership with countries outside PEGI, the system would be future-proofed given the increasing move to online gaming over the next few years (see Q2 (iv) and Q 8).

If online games are excluded from this system - or any of the four system options proposed - then it will not last into the future. The Government would have to revisit the issue of online game classification before too long.

**Q8: Do you think this option would work in the online environment?**

**(i) If so, what would be the benefits?**

Yes.

As a preface to explaining why it would work, a short introduction is required. There is no clear distinction between offline and online games. Many games which are sold on a physical disc may be played offline or online. Some games are played online with other players. Some allow communication with other players (voice, text, video). Some are distributed online (eg through Marketplace, PSN, Wiiware). Some have content for the game available for download. Some allow content generated by users to be shared online. Some combine all the above attributes.

So to divide games into two neat categories is therefore not possible at the present time (though this may change as more games are supplied online without any physical product at all, for example through the Xbox Marketplace, and through the PS3 and Wii online stores). Experts predict a 120% increase in such product between 2007 and 2012. For this reason, and for reasons of future proofing, the classification system must deal with all video games, whether wholly offline, networked or wholly online, and whether or not there is any physical disc. Indeed, this is what Dr Byron recommended when she said that the BBFC should classify all games rated 12 and above, both online and offline. So did the Culture, Media and Sport Select Committee when it encouraged online distributors to use BBFC.online. Research carried out in October 2008 (Annex E) reinforces this message, with 75% of people saying that the regulation of online games is important and 71% saying that the BBFC should carry out this function.

Online games are becoming an increasingly important part of the market. Within a few years, online gaming is likely to be the dominant way to play a videogame. As Dr Byron points out, online gaming contains all the risks of offline gaming, with a whole lot more new problems thrown into the mix. These include cyber bullying; inappropriate conduct and contact; games constantly evolving through mods and patches, generated by both publishers and users; and excessive playing.

Protecting children in the online games space presents more challenges than in the offline world. The BBFC has carried out research into the real challenges of the classification of games online by tracking a number of online games and virtual worlds. The games and worlds range from MMORPGs aimed squarely at adults, through social networking sites aimed at young teenagers, to virtual worlds with minigames aimed at young children. They include Age of Conan, World of Warcraft, Runescape, Second Life, Club Penguin and Habbo Hotel. A copy of the results of this research is at Annex D.

The BBFC agrees that Dr Byron's Review highlighted the key issues in relation to protecting children from harmful material in online games, namely content, contact, conduct and excessive game play. However, the BBFC's own work in this area has highlighted additional issues which require attention. These include gatekeeping; advertising; links to other sites; privacy and data collection issues; the behaviour of games hosting websites generally. The BBFC is developing systems to deal with all these challenges. Some are already in place. For example, BBFC.online has accredited a number of age verification systems. Under Option 1, the BBFC would bring these systems into PEGI Online.

Under Option 1, the BBFC would work with PEGI to harmonise the requirements of the BBFC.online scheme for video games and the PEGI Online Safety Code (POSC). The two systems are already similar but the BBFC's requirements on its members are more stringent and crucially, the scheme includes regular compliance checks on BBFC.online members which the POSC lacks.

Indeed, the BBFC has been in discussions with a number of PEGI stakeholders in Europe about classifying online games by working through a significantly strengthened PEGI Online, with the aim of achieving a sound initial classification; rich information provision to consumers; independent monitoring to back up strong, standardised self regulation dealing with issues such as user generated content and cyber bullying; and an effective complaints mechanism. The response from those within the PEGI system in Europe has been positive, not least because such BBFC/PEGI cooperation would strengthen the robustness of PEGI Online, in particular when it comes to dealing with the evolution and moderation of individual games and making good the lack of resources from which PEGI Online

suffers. For example, PEGI Online has no resources to carry out the sort of independent monitoring of online games which is necessary to reassure parents whether or not particular online games remain suitable for their children. Such cooperation would fit the "compatible synergy" between the BBFC and PEGI which was highlighted by PAB Chairman Antonio Xavier in PEGI's 2007/8 Annual Report.

BBFC.online is proving popular with linear content providers and aggregators. Prominent members include Disney, Warner Bros, 20<sup>th</sup> Century Fox, 2 Entertain, Lovefilm, iloaded, and Tesco. (This membership compares very favourably with the undersubscribed PEGI Online, which has only 18 members.) With major multinational companies on board and others joining, there is every reason to believe that BBFC.online will become the default classification system in the UK for moving images online. All BBFC.online's strengths can be carried over to video game classifications.

We have discussed with the Commission how the BBFC might strengthen child protection by working through PEGI Online. The initial response of Commission officials has been encouraging.

The nature of online gaming means that online classification will present a significant new workload for the BBFC (though some of the more extreme claims from publishers about exactly how much extra work need to be taken with a pinch of salt). The BBFC's strong track record of coping with hugely increased workloads; responding to industry demands by working with them to provide the best possible service; and adapting to new technological developments while simultaneously bringing down turnaround times and fees suggests that the BBFC would have no significant problems in working through PEGI Online and in partnership with the video game industry to absorb the submission of more video games, particularly in the growing online market. Working through PEGI Online, the BBFC has the resources to be able to continue to provide a high quality and efficient service to the video game industry, and looks forward to working with the industry to ensure an effective classification of online material in a way which would not compromise release schedules while simultaneously providing a classification in which consumers can have confidence.

The BBFC would develop, in partnership with the online games industry, a self-assessment/compliance model for simple casual games. This would involve publishers and aggregators assessing whether their games contain any of the issues raised by Dr Byron and the BBFC as potentially harmful. Those games that contain no issues would be exempt from statutory classification. But the BBFC would systematically monitor compliance to ensure that the games really are issue-free. This would be a simple and effective solution for the suppliers of such games, which would not place

**an undue regulatory burden on them.**

**The BBFC has undertaken research into casual games online. It has studied several hundred casual games played through browsers across a range of websites and identified potentially harmful material in them. The vast majority - around 80% - are free of material which would require any rating other than a U or PG. For these games, a simple self-certification/compliance model would suffice. For the remaining 20% which would be rated 12 to R18, a simple, relatively inexpensive, pre-release classification model would be required.**

**In relation to online gaming, the BBFC and PEGI could also do useful work together on defining what is a game, building on the work done by others, including the Council of Europe. Based on its work on online games, the BBFC has come up with a working definition of the elements which make something a game and would therefore require classification. The BBFC would welcome PEGI input into this definition. Indeed, ISFE has told us that it would be happy to work with the BBFC in this area and has promised to submit a proposal. (The BBFC sees the key characteristics of an online game as being a custom designed structure based on progression through set missions and challenges under the control of a publisher. One US expert likened an online game to a theme park with specific rides and a virtual world to a local park.)**

**However, it is crucial to get the arrangement for rating online games in place now, to be implemented with immediate effect. The need to refine definitions should not delay this work.**

**Such cooperation in the online sphere would build on the cooperation enjoyed between PEGI and the BBFC since PEGI's appearance in 2003. In the current climate however, ELSPA and the VSC have successfully prevented PEGI structures from working with the BBFC on how this might work. However, assuming that ELSPA and the VSC accept an eventual Government decision in favour of Option 1, and end their opposition to any BBFC/PEGI cooperation, with goodwill on both sides, and building on each other's strengths, the BBFC and PEGI can together make significant strides towards making the discrete online gaming space a more readily understandable place for parents and children.**

**Legislation may well be required to support such a system and thereby ensure the effective classification of online games. Without legally enforceable incentives and without the de facto compulsion that exists in the offline world (by means of the requirement set by console manufacturers that all games must have either PEGI or BBFC or USK ratings in order to play on the machines) games publishers and aggregators have shown a marked reluctance to submit voluntarily to classification of online content. And PEGI Online's lack of teeth has meant that they can sign up to an**

online code of conduct and then proceed to ignore its rules. The reluctance of ELSPA and certain publishers to see a continued role for the BBFC in relation to games classification reinforces the perception that legislative force may be required.

(ii) If not, what would be the problems and do you have any solutions?

A number of videogame publishers have publicly expressed concern about whether the BBFC could cope with the increased volume of work arising from online games classification. These fears are unfounded and the BBFC expects that should Option 1 be chosen, these same publishers would very soon start using BBFC online classification services for classification of the initial game with ease (as most of them do already for offline games). As the BBFC has demonstrated many times, it would also provide whatever service the industry needs, consistent with the protection of children, for the rapid and efficient classification of very many online game elements such as new missions; new maps; new music and songs for games such as Rock Band; new clothes and furniture for games such as The Sims. The BBFC would look to work with the industry on a suitable business model for classifying such material.

In the online sphere, ELSPA has sought to argue in public that if the BBFC were to rate an online game differently from PEGI – in particular if the BBFC were to classify an online game 12 and if PEGI were to rate it 18+ - this would put British 12 year olds in harm's way because these 12 year olds would not be aware that they were playing against adults in other European countries. This bizarre argument is nonsense for several reasons. Even if it were to happen – and it has not happened yet – the BBFC is bound by its contract with the British public and expressed in its Guidelines to classify a game according to the public's expectations as to what is appropriate at a category. It should not award a classification simply to fall in line with the category awarded by another ratings body which uses less robust methodology and criteria which do not reflect UK sensibilities. Second, a classification category indicates only whether the game is suitable for a particular age group. It does not restrict the game to that age group and prevent older, even adult gamers, from playing them. Given that the average age of a gamer is 28, and increasing, but that the majority of games receive a PEGI 3+ or 7+ rating, it is reasonable to assume that many adults are playing games which are also suitable for children. The logic of ELSPA's argument is either that adults should not be allowed to play videogames such as chess or sudoku or that these games be awarded the adult rating.

Taking a couple of specific examples of online games, PEGI rated the very popular online games World of Warcraft 12+ and Star Wars: Galaxies 6+/7+. (For the purposes of comparison, the BBFC rated these games 12 and PG respectively.) Is ELSPA seriously suggesting that only children be allowed

to play these games online? As the BBFC sees it, protecting children playing online games is achieved by a robust initial classification in line with UK expectations, followed by proper self moderation of online play backed up by independent monitoring, and supported by educating children and adults about the risks of online play, rather than simply by a ridiculous initial rating which would damage public confidence in the classification system.

Ensuring that children are protected in online games from inappropriate contact or conduct requires effective monitoring of game behaviour and enforcement of sanctions (including blocking access to the game) if harmful interaction occurs. PEGI Online does not provide such monitoring and enforcement. Option 1 would see it provided by the BBFC in conjunction with PEGI Online, thus providing much greater protection for children in the online gaming world.

**Q9: Is there any other information that you think Government should take into account when considering the monetary costs of this option?**

The monetary costs of this and the other three options should be put into the context of the development and marketing costs of new videogames. The cost of BBFC classification of Halo 3 and Grand Theft Auto IV were respectively 0.012% and 0.0097% of those of the games' overall budgets.

For good reasons, the film and DVD industries have for many years been paying for the classification of their product across the world on a national basis. But their costs have not placed an undue burden on the film and DVD industries or rendered them economically unviable. Far from it. These directly comparable entertainment industries, whose content is regulated by the BBFC, have prospered. Furthermore, they welcome BBFC classification, not least because it protects their brand. The Film Distributors Association commented in September 2008 that "The BBFC's film classification system is clearly defined and communicated. Its services and procedures are attuned to the business needs of its trade clients (the film distributors), yet it remains an independent body. BBFC classifications are familiar to and trusted by UK consumers of filmed entertainment and – as we have indicated to the DCMS directly – it makes full sense, in today's increasingly converged, digital media environment, to roll out a single, consistent, robust classification system across the board."

These industries are facing the same issues as the video game industry in relation to online distribution mechanisms. Their faith in the BBFC is such that their first and only choice has been to come to the BBFC to develop jointly with the BBFC a system of voluntary online classification: BBFC.online. These companies have shown great responsibility in terms of child protection. Rather than distribute unrated material online and

thereby incur no classification costs (which the law permits them to do) they prefer to pay the BBFC to classify their material to ensure that inappropriate material does not fall into the hands of children, as well as to protect their brand. Over 1,700 works were classified for online distribution since the launch of the BBFC online scheme in May 2008.

Fledgling attempts to develop a pan-European ratings system for film and DVD classification have never got off the ground because of the different cultural sensitivities of the different populations. The same applies to video games.

The BBFC continues to work to bring down costs for the industry, while maintaining the integrity of its classification processes and decisions. Indeed, although Option 1 is identified in the Impact Assessment as generally the second cheapest option, it would be considerably cheaper than the figures in the Impact Assessment suggest.

**Q10: Do you think having different age classifications on the front and back of the box is a significant problem? If so, do you think the solution offered here is the right one or can you suggest an alternative?**

Different age classifications appearing on the same box could be a problem for consumers and retailers. However, the solution offered by the Government in section 2.5 (ie allowing PEGI content advice but no age rating on the reverse of packaging where the PEGI rating is out of alignment with the BBFC rating) is a sensible one which would remove any confusion. After all, it mirrors to a large extent the existing labelling of DVD packaging and discs, which is well understood. Indeed, in response to industry's concerns, the BBFC pioneered arrangements by which IFCO ratings appear alongside BBFC symbols on DVD packaging. This system works well.

A similar system works well in Germany where national USK symbols and PEGI symbols appear together on packaging, even though Germany is wholly outside the PEGI system (see Annex A).

**Q11: Do you think this option would be more or less costly to the games industry and if so what evidence do you have of this?**

Again, any answer to this question must be put into the context of the overall cost of developing and marketing a video game (see Q9, above). In this context, and under all four options, the cost to the games industry of classification is not significant. The minimal differences in cost of the four options identified in the Government's Impact Assessment cannot be allowed to override the very significant differences of the options in achieving the public policy goal of protecting children.

The answer to this question depends entirely on the attitude of both the industry and PEGI. Option 1 could be considerably cheaper than the present system. But ELSPA and certain publishers might attempt to present it as more costly in order to attack this option.

**(i) Economies of scale**

For online games and game elements, the BBFC would look to work with games publishers and developers on a business model for rapid and inexpensive classification and compliance which would satisfy the industry.

For casual online games, the BBFC would look to work with publishers and aggregators on a self-certification/compliance model for games which do not contain any of the sort of harmful material identified by Dr Byron and the BBFC.

**(ii) PEGI can use BBFC classifications**

Furthermore, Option 1 offers even greater savings.

First, with the BBFC classifying all games 12 and above for the UK, PEGI would be free, if it wished, to apply BBFC classifications for these games to the remaining PEGI countries. This could be done in a number of ways according to the wishes of the industry. PEGI could simply adopt the BBFC classification as it stood, so that for example a game given a 12 by the BBFC would automatically get a 12+ from PEGI. This would cost PEGI no more than a token amount. In any event, the BBFC will have done a great deal of work on each game it classifies. That work is available to PEGI/the industry. How they use it is up to them.

Of course, in order to attack Option 1, the games industry may refuse to consider using BBFC work at all in order to portray Option 1 as high cost. This should be treated with due scepticism. If the Byron package were adopted, we could expect the industry to change its tune rather quickly and look to save money as outlined above, if classification costs really were a significant drain on publishers' budgets. Indeed, key players currently backing the ELSPA line tell us privately that if Option 1 is adopted, they will be looking to press for maximum cooperation between PEGI and the BBFC in order to minimise costs. And PEGI has already stated that it is able to "morph into new combinations with national legislation, as exemplified in the UK", suggesting that PEGI would swiftly work with the BBFC to adapt to any new situation.

The truth is that (i) both PEGI and the BBFC offer good value for money to the industry and; (ii) classification costs represent a tiny part of a game's development cost - 0.02% on average.

<p><b>Q12: What are the likely implications (including costs) for games producers of having a classification system that does not automatically translate across to some other European countries?</b></p>
<p>See Q11 above. This system would allow classification decisions automatically to translate across to PEGI countries.</p>
<p><b>Q13: It would be helpful to have your views on whether this option would affect games developers based outside Europe, such as those in Japan or US; namely, how this option might affect them and the extent, if any, to which it may affect them.</b></p>
<p>This option would affect equally any games company selling into the UK, wherever that company is based. The same calculation applies to them as it does UK or other European companies. So no European developer would suffer any commercial disadvantage. The UK classification costs will be the same, wherever in the world a developer is based.</p>
<p><b>Q14: What do you think should be the determining factors or characteristics in deciding whether a game becomes subject to statutory classification at 12+? [see following section]</b></p>
<p>By drawing directly on the Byron Review's own language (7.33) and the relevant language in section 2 of the Video Recordings Act 1984 on exempted works, it would be relatively simple to add a new s2(4) to the VRA along the lines of the following:</p> <p>"(4) A video game is not an exempted work for these purposes if, to any significant extent, it depicts:</p> <ul style="list-style-type: none"> <li>(a) graphic violence;</li> <li>(b) nudity in a sexual context;</li> <li>(c) sexual activity;</li> <li>(d) strong or otherwise offensive language;</li> <li>(e) dangerous and easily imitable activities presented as safe;</li> <li>(f) drug and alcohol misuse;</li> <li>(g) criminal activity presented in a positive light;</li> </ul> <p>of a sort likely to require from the designated authority a rating restricting its availability to persons aged 12 or above."</p>

**The BBFC would be happy to work with the Government, and PEGI, to flesh out definitions of these terms. In particular, PEGI would need to consider amending its 12+ Guidelines which do not invariably fit the criteria above and may result in some games receiving a PEGI 12+ rating without meeting any of the points (a) to (f). For example, use of the words "God", "hell" and "damn" would automatically cause a game to receive a PEGI 12+ but would not on their own cause a game to be rated higher than U by the BBFC because the vast majority of the British public would not expect this language to receive anything more than a U. It is of course the case that these definitional issues (and the related one of the operation of the mechanisms for referring games to the BBFC) would not arise under Option 2.**

**ISFE has indicated a willingness to work with the BBFC in this area and has asked us to draw up a list of criteria we think should determine the cut off point between PG/7+ and 12/12+.**

### **What are the criteria for deciding on a 12+ game?**

Dr Byron recommends that statutory classification should be extended to include games rated 12+ and above. She arrived at this conclusion through her review of the research on child development, which shows that younger children have less ability to distinguish between fantasy and reality than more mature children. She also found both parents and children were worried and confused about gaming classification, and feels a system from 12+ backed by the law would give parents, children and retailers more confidence in the system, as well as protecting children from potentially harmful material. Children themselves gave evidence about trying to explain to their parents why younger siblings (particularly little brothers) should not play age-inappropriate games.

The review says the definition of what would constitute a 12+ game in law would have to be considered through public consultation but could broadly reflect the existing ratings. Dr Byron's example is that 12+ could incorporate games with more graphic violence, some nudity in a sexual context and some bad language.

The BBFC 12 classification for DVDs/videos says:

- Mature themes are acceptable but their treatment must be suitable for young teenagers.
- The use of strong language must be infrequent. Racist abuse is of particular concern.
- Nudity is allowed, but in a sexual context must be brief and discreet.

- Sexual activity may be implied. Sex references may reflect what is likely to be familiar to most adolescents but should not go beyond what is suitable for them.
- Violence must not dwell on detail. There should be no emphasis on injuries or blood. Sexual violence may only be implied or briefly and discreetly indicated.
- Dangerous techniques (e.g. combat, hanging, suicide and self-harming) should not dwell on imitable detail or appear pain or harm free. Easily accessible weapons should not be glamorised.
- Sustained moderate threat and menace are permitted. Occasional gory moments only.
- Any misuse of drugs must be infrequent and should not be glamorized or instructional.

*These are refined still further when the BBFC classifies video games because of the likelihood of greater offence emerging through interactivity, including the different ways gamers may play games.*

The PEGI 12+ classification can include:

- Violence of a slightly more graphic nature than 3+ and 7+, if it is towards fantasy characters (any violence towards human looking characters or recognizable animals should still be non-graphic).
- Nudity of a slightly more graphic nature than 3+ and 7+ (but still must not show genitalia).
- Some words amounting to sexual innuendo (but not in a form that is considered 'bad language').
- Mild bad language, which falls short of sexual expletives.
- Obvious innuendo of sexual activity even though the couple cannot be seen or clearly seen.

## **Option 2 – Enhanced BBFC system**

The BBFC would act as the statutory classifications body for all video games, applying its ratings from U to 18. It would retain its power to refuse to classify games it feels are potentially harmful based on its public consultations.

**Q15: What is your overall assessment of whether this option would work and why?**

**In her Review, Dr Byron states that to be effective, any classification system in the UK must at its most basic include the following elements:**

- clear age ratings;**
- clear accompanying descriptors which explain game content;**
- trustworthiness;**
- enforceability where there are risks of harm, including the ability to block the release of some games.**

**She goes on to state that to succeed, the system must rely on awareness amongst parents and carers. She also stresses that an effective rating system must work for the games industry; support retailers; be flexible and future proof; and reflect the evidence on potential harms.**

**Option 2 offers the simplest and most effective way of ensuring a safe and future proofed gaming environment for children, both online and offline. The BBFC can offer a rating system which meets all of Dr Byron's requirements. The BBFC can provide expert, independent video game classification that is understood and trusted by the British public and takes account of British sensibilities and attitudes. The BBFC has the resources to carry out all video game classification in the UK for both offline and online games. (And on top of this can offer PEGI the resources and expertise to beef up PEGI Online, even under Option 2.)**

**Such a system would be likely to receive strong political support given the stance of the all party Culture Media and Sport Select Committee report of 22 July 2008. While recommending a system similar to Dr Byron's, the report made clear that the Committee preferred the BBFC's system and believed that ideally there should be a single system.**

**Any assessment of Option 2 must take note of the following:**

- BBFC classifications are understood and trusted by the British public because they are independent; made after a proper contextual assessment of harm and suitability in an environment free of commercial pressure; and are based on extensive consultation with the public.**
- the BBFC offers unrivalled information to consumers through its symbols, clear Consumer Advice, and bespoke Extended Consumer Advice, as well as its media literacy work in schools.**

- the BBFC has demonstrated its willingness to intervene with the strongest games to seek guarantees that a game will not be marketed at children; remove harmful material; or in the most extreme cases reject a game altogether. This most severe sanction, reserved for only the most extreme games – is supported by 69% of the British public. This power helps ensure that the industry acts responsibly in relation to the strongest games aimed at adults.

- a classification system which takes account of UK considerations of suitability and harm is appropriate for the third largest gaming nation in the world. (The others in the top 4 – US, Japan and Germany - all have national classification systems.)

- the BBFC is well resourced in terms of both expertise and the ability to take on extra work. Crucially, the BBFC does not have to clear major resourcing issues with the games industry.

- the BBFC is future proofed in relation to online games because it offers a robust initial classification; properly resourced monitoring; full and independent information provision; and an effective complaints mechanism. These are the four crucial ingredients of effective online classification. BBFC.online could provide this service on its own. But we would prefer to work in partnership with others, including PEGI, even under this option, to support PEGI's efforts to strengthen the fledgling PEGI Online as demanded by the Commission. Longer term cooperation, with for example the US ESRB, is a further BBFC goal.

- the BBFC is best placed in relation to the convergence between film and video games given technology (eg, Blu-ray discs) which enables game and film material to appear on the same retail disc.

- the BBFC has a strong track record of working with industry to meet its changing requirements, including (i) in relation to classifying downloads; and (ii) absorbing huge increases in workload while simultaneously reducing turnaround time. This is particularly relevant as games move increasingly online. The BBFC has the resources to be able to cope with significantly increased numbers of online games and game elements, and casual games resulting from this shift. Working in partnership with the games industry, the BBFC would meet increased throughput with no delay in classification deadlines. Maintaining throughput would be more difficult for PEGI because all funding recommendations have to be cleared with PEGI's industry owners, and this can cause delays.

- it is by a large margin the least expensive option, especially given PEGI's imminent second significant fee increase in two years.

- BBFC classifications are backed by a significant education effort. Over 10

million people have visited our three educational websites. Our interactive DVD ROM educational resource is available to every school in the country (see Annex F). Under our outreach programme with schools and colleges we spoke to 15,000 students and teachers in 2007.

**Q16: What are the key flaws with this option and how could it be adapted to overcome them?**

**(i) It might put PEGI's future at risk**

Some games publishers have argued that an enhanced BBFC option would remove any role for PEGI in the UK and as a result, that this would undermine PEGI across Europe because it would mean that the two largest games markets in Europe would have rejected PEGI. (Between them, the UK and Germany account for over 50% of the European games market.) There is speculation that France (the third largest market) would follow suit as a result. Indeed a French Government decree of 24 June 2008 (based on Law no. 98-468 of 17 June 1998) sets up a National Commission tasked with examining harmful content across a range of media, including video games, and applying national symbols to them to protect minors from content featuring criminal activity, violence, drug or alcohol misuse and discrimination. The decree does not refer to a role for PEGI, opening up the very real possibility of PEGI not being present at all in the second and third largest games markets in Europe.

But predictions of PEGI's inevitable demise are highly implausible. A number of PEGI stakeholders in the smaller European markets have emphasised their commitment to PEGI. They have told the BBFC that they would continue to support PEGI notwithstanding any withdrawal of the larger European nations from the scheme. There is still a chance that France will adopt a co-regulation model, retaining a role for PEGI as an information service while superimposing a "national layer" ("couche nationale") of games classification. In any event, the BBFC does not see the adoption of Option 2 as removing PEGI from games classification in the UK. If PEGI was happy to cooperate with the BBFC in relation to online games under Option 2, PEGI Online would be significantly strengthened across Europe, including in the UK.

In any event, the fate of PEGI is a political, and secondary, consideration. It does not go to the heart of the debate over which classification system for the UK most effectively protects children from harmful or inappropriate material in video games. Protection of children was the reason for the Byron Review and this must remain the paramount consideration.

**(ii) Is the BBFC the right classification body for games?**

Some in the games industry have also argued that the BBFC is not the right

classification body for videogames in the future because it is costly; its classification lead to delays in release schedules; in the online world it cannot cover games websites across Europe; and it treats games like films.

All these arguments are false. BBFC charges form an insignificant part of a game's development budget and compare favourably with PEGI's charges; BBFC turnaround times are better than those of PEGI; territorial issues are common to all classification systems unless they are truly global; and the BBFC has a dedicated and expert games team who play each submitted game and take into account issues relating to interactivity in a gaming context. The influential book *Grand Theft Childhood* focuses on context. It's clear from research carried out for this book that parents want a contextual analysis of a video game. Using the helpful shorthand term "context trumps gore", the authors show how US parents are less concerned by the detail contained in a video game and more concerned about issues which PEGI simply cannot address (but the BBFC can, and does) such as rewarding bad behaviour. Because it is a tick box system, PEGI has to focus on detail and ignore context. The BBFC's methodology allows it to reflect parental concerns by taking context fully into account.

In relation to online games, ELSPA has sought to argue in public that if the BBFC were to rate an online game differently from PEGI – in particular if the BBFC were to classify an online game 12 and if PEGI were to rate it 18+ - this would put British 12 year olds in harm's way because these 12 year olds would not be aware that they were playing against adults in other European countries. This bizarre argument is nonsense for several reasons. Even if it were to happen – and it has not happened yet – the BBFC is bound by its contract with the British public and expressed in its Guidelines to classify a game according to the public's expectations as to what is appropriate at a category. It should not award a classification simply to fall in line with the category awarded by another ratings body which uses less robust methodology and criteria which do not reflect UK sensibilities. Second, a classification category indicates only whether the game is suitable for a particular age group. It does not restrict the game to that age group and prevent older, even adult gamers, from playing them. Given that the average age of a gamer is around 30, but that the majority of games receive a PEGI 3+ or 7+ rating, it is reasonable to assume that many adults are playing games which are also suitable for children. The logic of ELSPA's argument is either that adults should not be allowed to play videogames such as chess or sudoku or that these games be awarded the adult rating.

Taking a couple of specific examples of online games, PEGI rated the very popular online games *World of Warcraft* 12+ and *Star Wars: Galaxies* 6+/7+. (For the purposes of comparison, the BBFC rated these games 12 and PG respectively.) Is ELSPA seriously suggesting that only children be allowed to play these games online? As the BBFC sees it, protecting children

playing online games is achieved by a robust initial classification in line with UK expectations, followed by proper self moderation of online play backed up by independent monitoring, and supported by educating children and adults about the risks of online play, rather than simply by a ridiculous initial rating which would damage public confidence in the classification system. Indeed, Dr Byron found evidence that rating games unduly highly would damage confidence in the ratings system. A number of games publishers already believe that some PEGI ratings are unduly high. For example, in March 2007 Activision successfully appealed against a 12+ rating for Shrek 3, securing a 7+. In June 2007, Nintendo successfully challenged the 12+ rating for Scrabble Edition 2007, securing a 3+. In October 2007, Capcom successfully appealed the 12+ rating for Zack and Wiki: The Quest for Barbados Treasure from 12+ to 7+. Similar appeals in 2007 and 2008 resulted in other reduced ratings, including the lowering of the rating of Global Conflict Palestine from 16+ to 12+ and Lego Indiana Jones from 12+ to 7+. Companies which have formally appealed against what they perceived to be unduly high PEGI ratings include DTP Entertainment, Dreamcatcher, Emme, and Disney, as well as Activision, Nintendo and Capcom.

France too is concerned by PEGI ratings which do not match French notions of harm or offence. The Forum des Droits sur L'Internet cited the example of the game Kirikou which in its view received a PEGI rating which would have been regarded in France as unduly high. The future of PEGI in France is most uncertain following the decree of 24 June 2008 which appears to exclude PEGI from any role in classifying potentially harmful games. However, even if a role is found for PEGI in future, the generally pro-PEGI Forum believes that France should have a national body with the power to override inappropriate PEGI ratings, both online and offline.

ELSPA has also argued that the BBFC could not cope with the volume of work involved in classifying online games. It is true that the nature of online gaming means that online classification will present a significant new workload for the BBFC (though some of the more extreme claims from publishers about exactly how much extra work need to be taken with a pinch of salt). The BBFC's strong track record of coping with hugely increased workloads; responding to industry demands by working with them to provide the best possible service; and adapting to new technological developments while simultaneously bringing down turnaround times and fees suggests that the BBFC would have no significant problems in working in partnership with the video game industry to absorb the submission of more video games and game elements in the growing online market. The BBFC has the resources to be able to continue to provide a high quality and efficient service to the video game industry, and looks forward to working with the industry to ensure an effective classification of online material in a way which would not compromise release schedules while simultaneously providing a

classification in which consumers can have confidence.

Indeed, the BBFC can ramp up its resources far more effectively than PEGI. The BBFC increases resources to meet demand. PEGI cannot. NICAM has to clear all funding recommendations (including recruiting the extra testers who would be required for checking the questionnaire ratings for online games) with the industry for a decision. This can be a time consuming procedure. PEGI administrators may well find it difficult to keep up with demand. This has not been an issue until now because of the lack of popularity of PEGI Online.

**Q17: What are the key advantages with this option and why?**

The factors listed under Q15 are powerful advantages. Beyond those, the Government will wish to take into account the following.

(i) It provides the best fit as media converge (see also Q15)

There is a powerful case for applying a single regulatory approach to films, DVDs and games, given: the presence of linear (ie non-interactive) material in most games; the existence of film and game versions of many franchises; the convergence of films and games, both through increased game photo-realism and the increased presence of game applications as part of linear film/DVD material; and the existence of common classification issues such as violence.

The existence of game and non-game video content side by side on the same retail product is becoming increasingly common thanks to the emergence of Blu-ray discs which allow sophisticated video game applications to run in conjunction with the main film feature offering, and for stand alone games to sit side by side on a disc with film features and other non-interactive video material (simple games have been a feature of many DVD releases for some time). For instance the Blu-ray disc of the teen oriented adventure film *The League of Extraordinary Gentlemen* allows the viewer to score points by shooting characters as they appear on screen during the film, with bloodspurts resulting from injuries as those characters are shot. Similarly, the Blu-ray disc of the family film *The Chronicles of Narnia* features a stand-alone role playing video game. Such games can feature issues which are of great concern to parents. A video game packaged with Disney's U-rated animated feature *Little Mermaid Ariel's Beginning* featured an offensive use of the word "spastic" which put the game to 12 (so Disney removed the offending dialogue to secure a U). The Blu-ray release of the 12-rated feature *What Happens in Vegas* includes an interactive drinking game in which the viewer is encouraged to drink alcohol in response to certain cues onscreen. The presence of this game raised the release's classification to 18 (so the distributor chose to remove the game from the disc to secure a 12). Although most Blu-ray games

applications have been relatively simple so far, they are increasing in complexity and technology develops and improves.

At present, all elements of a Blu-ray disc or DVD, both linear and interactive are classified by the BBFC in a one stop shop for the DVD industry. This arrangement is convenient and inexpensive for the industry and it offers genuine brand protection because of the trust and confidence placed by the public in BBFC classifications. Under Option 2, this arrangement would continue. There would be no additional cost implications.

The same issue is at play with the publishers of covermount discs. At present, they submit such discs which contain both linear and interactive material to the BBFC for classification. This would continue unchanged under Option 2, at no additional cost to the publisher.

Convergence is making it increasingly difficult to separate film, DVD and game content, as so many video games have a tie in to a big film release: during 2007 no less than 7 of the top 30 retail games were film related (The Simpsons, Spider-man 3, Transformers; Harry Potter and the Order of the Phoenix; Cars, Pirates of the Caribbean: At World's End; and Ratatouille). The line between films and video games is becoming ever more blurred. A review in the film magazine Empire of the new best selling video game Star Wars: The Force Unleashed refers to "this blurring of the boundaries between gaming and movies ... the two industries are growing inexorably closer".

Similar arguments apply to the video game Heavy Rain which is heavily cinematic in its presentation. Some commentators have likened it more to an interactive film. It is clear that PEGI would have problems rating it because of the importance of context within the story. In a converging world what is needed is a classification body that can read across from films to games and back again, while recognising the differences inherent in the different media.

The convergence argument is strongly supported by the Film Distributors Association which told the BBFC in September 2008 that a key reason for its support of an increased role for the BBFC in relation to video game classification was that "it makes full sense, in today's increasingly converged, digital media environment, to roll out a single, consistent, robust classification system across the board."

(ii) It supports independent, expert classification for all games, free from commercial pressure

BBFC decisions are based on extensive gameplay by professional, independent BBFC examiners who are required to have an understanding of child development and media effects issues; who undergo a

comprehensive training programme lasting several months; and who take into account the context within which depictions of violence, sex, drugs, imitable techniques etc take place. Under the BBFC system, the potential for harm and the appropriateness of a game for a particular age group are therefore properly assessed in an environment free from commercial pressure.

The BBFC's methodology of examining a video game through playing it is widely regarded in the UK and abroad as the Gold Standard of video game classification. Germany's USK and France's CNC have expressed a desire to learn from BBFC systems, share best practice, and work more closely with us on video game classification. Even PEGI's administrators NICAM concede that the BBFC's methodology is better than theirs at producing the right classification result.

As *Manhunt 2*, *The Punisher* and other games have demonstrated, the industry is already producing games which feature violence which is graphic and sadistic in nature. Given the trend over the past few years, it is reasonable to speculate that even more violent and sadistic games will be produced in future. (Rape has been a feature of certain video games. The early 1980s game *Custer's Revenge* awarded the player points for raping a Native American woman. In the Japanese game *177*, the gamer plays the role of a rapist. Other Japanese games, such as *Saori: the Home of Beautiful Girls* and *Kokoro*, have featured abduction and incest.) It is certain that, as the technology advances, such violence will be rendered with ever greater photo-realism, thus increasing its impact. At such a moment, it makes sense to retain the independent, robust classifications of the BBFC, including its reject power, rather than give responsibility for the classification of all games to PEGI, an organisation which is (i) owned and controlled by a profit-driven games industry and (ii) incapable of exercising a reject power.

(iii) A properly exercised reject power has a wider beneficial effect on the most problematic games

The reject power vested in the BBFC is used very sparingly (only three games have ever been rejected). But it also gives the BBFC leverage to ensure that the industry acts in a responsible manner with regard to games at the 'top end' of '18'. For instance, the fear of possible rejection led the developers of *The Punisher* to work with the BBFC and tone down prior to submission the torture sequences that are a significant feature of the game. In relation to *50 Cent Bulletproof*, a very violent game suitable only for those over 18 but with an obvious appeal to adolescent fans of the US rapper on whose life it is based, the BBFC was able to insist on approving the key elements of the marketing strategy as a condition of classification. This ensured that the game was not actively marketed in a manner designed to increase or enhance its appeal to under 18s. More recently, in

September 2008, the BBFC insisted on assurances regarding the marketing campaign for the violent video game Fallout 3 before awarding it an 18 certificate. The BBFC was concerned that the game should not fall into the hands of young children and so agreed with the publisher that the game's marketing should be directed exclusively at adults. These considerations simply do not come into play in the PEGI system which awarded the same game 18+ without conditions.

**(iv) It provides trusted classification decisions**

BBFC classifications not only take full account of context, but are derived from the application of criteria which have been developed in consultation with the UK public over many years. In addition to a continuous programme of UK public opinion research projects, major consultation exercises on the development of new classification guidelines are conducted in the UK every 4 to 5 years. The last (in 2004) involved over 11,000 people and a further consultation of over 12,000 people is presently underway and will form the basis of new guidelines to issue in 2009. The BBFC has earned the trust that its classifications enjoy in the UK by ensuring that they are based on criteria which fit with UK notions of harm and appropriateness at different age groups (rather than with some lowest common denominator partial European aggregate).

**(v) It offers trusted classification symbols and content advice**

The BBFC's classification symbols enjoy huge and unrivalled public recognition and trust. This is borne out by both quantitative and qualitative research commissioned by the BBFC:

- a 2007 TNS poll over 4,000 adults showed that 89% understood BBFC ratings (rising to 97% for parents)

- according to research published in October 2008, 93% of 16-24 year olds' 92% of 25-44 year olds, and 79% of 45-64 year olds are familiar with BBFC symbols. Among gamers, the overall familiarity figure rises to 94%. 77% of people have never heard of PEGI (see Annex E).

- focus group work undertaken in 2008 reported that unlike PEGI "the BBFC classification system is unequivocally understood as referring to content. Respondents apply film classification 'rules' to computer games and immediately grasp that the [BBFC] classification is referring to key issues such as violence, sexual references and language"

The BBFC's content advice system ('Consumer Advice') is also popular and trusted. It is tailor made for a UK audience. The terms and phrases that form the core of the BBFC Consumer Advice system have been developed and refined through qualitative research to ensure that they are

fully understood by the target audience. Because BBFC Consumer Advice uses free text, it can contextualise, grade, and elaborate with all the flexibility that the English language allows. BBFC research confirms that the BBFC Consumer Advice format is highly effective in delivering to parents the information that they need, and much preferred to the PEGI pictogram system. The 2008 research concluded:

**‘BBFC consumer advice was described as being ‘spot on’. Respondents preferred the more detailed approach, using clear and accessible language. The familiar style, reminiscent of film consumer advice, also worked well and the benefits of this were two fold: it reinforced the content message and added credibility to the overall communication and branding.’**

**A comparison between the BBFC as a respected brand and PEGI as a second or third rate alternative was common among respondents (for example, Marks and Spencer vs Primark).**

**(vi) It offers education and further information for consumers**

**The BBFC also provides Extended Consumer Advice (ECA) on its main website ([www.bbfc.co.uk](http://www.bbfc.co.uk)) and on its dedicated site for parents ([www.pbbfc.co.uk](http://www.pbbfc.co.uk)). The latter has been up and running since late 2007 and has received 6.23 million hits up to November 2008. ECA details, in a few short paragraphs, the particular nature of the video game and its content in terms of violence, sex, drugs, language etc. This initiative offers the sort of independent, comprehensive and detailed information for parents that the PEGI system, based on a ‘tick box’ self assessment questionnaire, can never deliver.**

**Like all BBFC websites, Parents BBFC cover the classification of films, DVDs and video games but this in itself further reinforces the already established public understanding of BBFC classification symbols, criteria and decisions more broadly, which in turn offers parents, carers and gamers themselves (both child and adult) a detailed and familiar backdrop in which to understand and make informed choices about which video games they will chose to play.**

**Parents BBFC includes specific tailored resources on video games. On [www.pbbfc.co.uk](http://www.pbbfc.co.uk) there is extended consumer information about every game classified which offers detailed examples of what issues each game raises and parents can expect to find if they purchase and play it. The site also has a Parents Information Centre which has introductions to the categories, a guide to video games and glossaries of gaming terms and genres.**

**The site also offers parents the chance to browse and search for games and request detailed information on older titles. Making use of the BBFC’s**

**extensive archive and knowledge base, this allows parents to contextualise and understand their children's game play and make informed decisions about the suitability of material.**

**In addition to these websites, the BBFC offers two further educational websites. One ([www.cbbfc.co.uk](http://www.cbbfc.co.uk) - 1.1 million hits so far in 2008) is aimed at 5-11 year old children and the other ([www.sbbfc.co.uk](http://www.sbbfc.co.uk) - 2.63 million hits so far in 2008) is aimed at 12 year olds and above, but with a specific focus on 14-18, GCSE and AS/A2 and equivalent level. These sites offer children and young people information about video games (as well as films and DVDs) and aim to improve media literacy among the target age group, thereby enabling them to make informed choices and protect themselves from harmful or unsuitable content.**

**By allowing children and students to develop an autonomous, informed understanding of video game classification, the websites are paving the way for media literacy among the parents of tomorrow. The sites also offer a clear steer for teachers, tying in with Exam Board requirements and, along with the rest of the BBFC's education programme, inviting and responding to the changing needs of educators.**

**The BBFC, working with charity Film Education, has developed an interactive DVD ROM for use in the classroom. This resource offers teachers and pupils a hands-on introduction to how and why films, DVDs and video games are classified and empowers them as students and consumers. A copy of this DVD ROM is attached at Annex F.**

**The BBFC's Education Department also carries out media literacy work in schools, including talks specifically on video games as well as standard presentations which introduce classification and regulation more broadly and contextualise the classification of video games through discussion of games alongside films, DVDs, trailers and adverts.**

**(vii) It enjoys the support of retailers and law enforcement agencies**

**Retailers like and understand BBFC classifications. Its sales staff understand BBFC symbols better than PEGI symbols. Under Option 2, both staff training and customer communication would be simplified.**

**Those responsible for enforcing statutory classifications favour the BBFC over PEGI. LACORS, who coordinate the work of local authority Trading Standards officers across the UK, favour having the same system for video games as for DVDs because the BBFC scheme is recognised by members of the public. In the view of LACORS, a different scheme for games causes confusion. Furthermore those responsible for law enforcement already enjoy an existing fruitful relationship with the BBFC in relation to for example the provision of evidence in criminal cases. Extending**

statutory BBFC classifications to all games would not be a problem for LACORS or Trading Standards Officers more generally. Therefore LACORS responded to this consultation by strongly supporting Option 2.

(viii) It is the cheapest option

**Q18: How do you think this system would work for the following key stakeholders:**

**(i) the consumer?**

In many ways, this is the best option for the consumer. The British public is already hugely familiar with BBFC classifications for films, DVDs and games. And it is becoming increasingly familiar with BBFC symbols online. The British consumer trusts BBFC symbols and its content advice. Extending these to cover all videogames makes perfect sense for the consumer. No significant public education effort would be required under Option 2.

Games marketed at the UK would carry BBFC symbols. PEGI Online already recognises BBFC (and USK) symbols. The BBFC would be content to work either exclusively through BBFC.online or with other partners, including through PEGI Online, provided the previously good cooperation we enjoyed with PEGI can be restored. (This would require an end to ELSPA/VSC opposition to BBFC/PEGI cooperation, and in particular an end to the VSC's attempts to resile from PEGI Online's commitment to display BBFC symbols.) It is very easy (even trivial) for games distributors to display the appropriate symbols depending on where the customer is accessing the online store. Indeed, Xbox live already works in this way.

**(ii) the games industry?**

The system would be the simplest of all the four options for the industry to work with. It would simply submit all games to the BBFC. The BBFC would deal with all aspects of classification, including the reject option.

**(a) Online**

The BBFC could work exclusively through an expanded BBFC.online (see Q22, below) but would be happy to work through PEGI Online (see Q8). In either event, the BBFC would look to work with other partners (including video game regulators in the US and Germany) to drive up standards and thereby secure greater safety for children playing online games. And on either scenario, it would be necessary for the Government to make clear that non-compliance could result in legislation.

**(b) Cost and time**

**The BBFC is a not for profit organisation. The cost of its classifications is designed simply to cover its costs. This cost is an insignificant part of a game's overall development cost.**

**It is therefore simply not sustainable to argue that the huge and growing video game industry (software sales alone amounted to £1.72 billion in the UK in 2007) would suffer undue financial hardship if all video games were classified by the BBFC or that release schedules would be put back. Video games which are already classified by the BBFC do not cost more than those labelled by PEGI and their release dates are not routinely put back. Indeed, the BBFC classification process is faster than the standard PEGI process by between 4-6 calendar days.**

**Games currently classified by the BBFC are skewed towards the more difficult end of the spectrum but even given this distortion, the average turnaround time for a games submission (from payment to notification of classification and after factoring out delays caused by the games publishers themselves, for example submitting an incomplete or unstable game) is 8 calendar days. This compares favourably with PEGI's stated standard turnaround time of 12-14 calendar days (10 working days).**

**(c) Blu-ray**

**The Blu-ray industry prefers this option. The BVA - which represents the DVD and Blu-ray industries - has told the BBFC that for its members, it is imperative that they can get all Blu-ray content classified by a single regulatory body. For obvious reasons relating to professionalism, brand protection, customer focus and an existing positive relationship, the body they want to do this task is the BBFC. The Blu-ray and DVD industries therefore cannot support the enhanced role for PEGI and the de-designation of the BBFC envisaged under Option 3.**

**(iii) the retail industry?**

**The retail industry is in a similar position to that of the consumer. Its sales staff understand BBFC symbols better than PEGI symbols. It would be very easy for retailers to adapt quickly and without any disruption to the BBFC classifying all games.**

**Additionally, retailers' representatives have told the BBFC that they presently require till prompts for both PEGI and BBFC ratings. It would be simpler to have them only for BBFC ratings. Staff training would be simplified and consumer communication would be easier.**

**Trading Standards Officers, who work with retail outlets to ensure stocks are legal, are used to dealing with BBFC symbols and would have no**

problems with this option. Indeed, LACORS has told DCMS that they prefer Option 2.

A small number of consumers (almost invariably technologically sophisticated adults) bypass UK retailers and buy games from websites abroad, often in the US, which carry the American ESRB rather than BBFC or PEGI ratings. This also happens with DVD and has done for several years. But it has not undermined BBFC regulation of that media or public confidence in BBFC classifications. A few technologically sophisticated adults sourcing from abroad unusual Japanese games which are not sold in the UK would not undermine to any significant extent BBFC (or PEGI) classification of video games sold in the UK.

**Q19: What suggestions do you have to improve the system for any of the key stakeholders?**

This system is the most effective in terms of child protection for games bought in the UK by UK consumers.

However, for this option (and any option which doesn't give the industry control over regulating its own games) to work, ELSPA will need to accept that it cannot fight Dr Byron and the Government for ever.

**Q20: Do you think this system addresses the evidence on potential harms raised by the Byron review and if not why not?**

Emphatically yes. Under the VRA, the BBFC has been assessing the potential for harm in films and videogames for 24 years. No other media regulator in the UK has the BBFC's level of expertise - or anything close to it - in assessing harm and protecting children and other vulnerable individuals from it.

BBFC examiners, applying BBFC criteria and methodology, would ensure that no harmful material will appear in any game from U to R18. Risks that derive from PEGI's inferior methodology and less expert testers would disappear. The BBFC does not share PEGI's error rate of nearly 20%.

**Q21: How do you think this system will last into the future?**

Provided the system covers online games, the BBFC has the expertise, resources and flexibility to ensure robust, effective and trusted videogame classification for many years. Online classification could be achieved either through BBFC.online or working in partnership with PEGI Online. Either way, the BBFC would look to bring in regulatory partners from other major games markets, including France, Germany and the US.

But if the system only covered offline, boxed games, it would become

obsolete relatively quickly, as would all the other systems put forward in this consultation.

**Q22: Do you think this option would work in the online environment?**

**(i) If so, what would be the benefits?**

**Yes. The BBFC has demonstrated its ability to develop and deliver a high quality classification service to the VOD industry. Major content providers and aggregators which have signed up to BBFC.online include Disney, Warner Bros, 20<sup>th</sup> Century Fox, 2 Entertain, Lovefilm, Tesco and iloaded. There is no reason why BBFC.online cannot be expanded to classify video games.**

**The BBFC has classified online games. Its new voluntary co-regulation scheme - BBFC.online - provides effective regulation for a wide range of audio-visual material (including films, TV programmes and videogames). In deference to the spirit of the Byron Review and subsequent recommendations, BBFC.online currently limits its role in relation to video games to those which are supplied via the Internet and excludes those which are played online. This has been done as a demonstration of good faith to show that the BBFC is happy to work through PEGI Online rather than in competition with it. But BBFC.online could be extended to cover games played online and would achieve a sound initial classification; rich information provision to consumers; independent monitoring to back up strong, standardised self regulation dealing with issues such as user generated content and cyber bullying; and an effective complaints procedure, in a way that PEGI Online cannot.**

**The BBFC.online scheme is in part designed to provide a means of carrying over into the world of online gaming the benefits associated with the recognition, trust and understanding that have been built into the BBFC brand over many years in the UK. BBFC.online will enable the presentation of a single set of classification symbols across films, DVDs, VOD, video game discs and online games with obvious and significant benefits for parents and retailers.**

**If the BBFC.online scheme was extended to cover games played online, the main game (whether a network game, casual game or Massive Multiplayer Online Role Playing Game - MMORPG) would be classified through extensive gameplay by independent BBFC examiners and would carry the BBFC symbols and Consumer Advice which UK audiences find so useful (and so much more useful than PEGI symbols and pictograms) in the offline world. Extended Consumer Advice (ECA) for the game will also be available on the BBFC's well used websites. Other online elements, such as unwelcome or inappropriate interaction with other players, or 'mods' and 'patches' which alter the game, will be dealt with in the same manner as the current PEGI Online scheme, but with independent monitoring by**

the BBFC, until more robust solutions can be developed with the industry.

However, even under Option 2, the BBFC would be prepared for BBFC.online to work through PEGI for online games, provided ELSPA/VSC opposition to such cooperation is neutralised. PEGI online already recognises BBFC and (German) USK ratings (but not those of the US games regulator, ESRB) and it is worth noting that, at present, some online games marketed in the UK carry PEGI online ratings, some carry BBFC ratings, and most are unrated.

PEGI Online has a number of weaknesses (including for example no independent monitoring to back up self moderation by MMO hosts; no systematic checking that members are abiding by the POSC) which the BBFC could address and resolve. Reinforcing PEGI Online could be done at relatively little cost to both the BBFC and PEGI and would strengthen the effectiveness of the regulation of online games across Europe in a way which would satisfy the Commission (assuming ELSPA/VSC opposition to such cooperation is overcome).

If it was decided to remove confusion through the use of BBFC symbols only, the UK Government could, in the short term, make clear that it expects all online games sold in the UK to carry BBFC ratings. However, the experience of PEGI Online (in the absence of strong incentives, games publishers have not been keen for PEGI to rate their online games. Only 18 publishers and no independent aggregators have signed up to PEGI Online), suggests that a voluntary scheme would not produce a satisfactory result, particularly in terms of child protection. It would be preferable for the UK Government to legislate now to require all online games sold in the UK to carry BBFC ratings.

The games industry need not be worried by the increased workload to the BBFC resulting from classification of online game elements. The BBFC has established a strong track record of improving its service to customers while absorbing significantly increased volumes of work. For example, between 1997 and 2006 the number of works the BBFC classified rose from 3,279 to 15,122 per annum (an increase of 11,843 works or 461%). During roughly the same period, the BBFC reduced the turnaround time of DVD submissions from 25.5 days in 2000 to 12.5 days in 2008 (a saving to the industry of 13 days). Presently, turnaround time for DVDs is under 10 calendar days and for video games is 8 calendar days. And these times are improving.

More recently, the BBFC has demonstrated its willingness to work with customers to ensure that its services meet the evolving requirements of the industry. For example, BBFC.online was created jointly between the BBFC and the DVD industry to meet a demand for the classification of downloads, not least for the protection of vulnerable people, including

minors, from harmful or inappropriate contact. In response to industry demands, the BBFC is also working with content providers to set up a scheme for the very fast classification (in some cases same day) of films, TV programmes and other content, including recordings of live concerts for download and near simultaneous exhibition in cinemas. In 2009, and again in response to customer demand, all submissions to the BBFC will be made online. A review of BBFC processes in 2008 identified efficiency savings. As a result, we expect to reduce average turnaround time for all types of submissions by a further 11.5% by the end of 2009.

This track record of coping with hugely increased workloads; responding to industry demands by working with them to provide the best possible service; and adapting to new technological developments while simultaneously bringing down turnaround times, suggests that the BBFC would have no significant problems in working in partnership with the videogame industry to absorb the submission of more video games, particularly in the growing online market. The BBFC has the resources to be able to continue to provide a high quality and efficient service to the film, DVD and videogame industries.

(ii) If not, what would be the problems and do you have any solutions?

Supporters of PEGI Online argue that PEGI Online offers greater geographical coverage than a purely UK system. This is true. But even under Option 2, the BBFC would look to work through PEGI Online and with others (including France, Germany and the American ESRB) to ensure wider coverage of aggregators in particular. Unless the BBFC is involved, the chances of PEGI Online securing the cooperation of the Germans (the largest EU member state and the second largest games market in Europe) are nil. And any system which is not truly global will suffer from this problem in the absence of governmental solutions, such as requiring ISPs to block websites offering age inappropriate video games to children.

Such a system would not require members to apply common classification criteria. Each member (eg UK, Germany, France) would be free to apply their own criteria to reflect their cultural differences and individual notions of harm and offence.

**Q23: Is there any other information that you think Government should take into account when considering the monetary costs of this option?**

This need not be an expensive option. Indeed, although the Impact Assessment suggests that it is marginally the most expensive option, in reality it is likely to be the cheapest option, by some considerable way. So Option 2 could be achieved at very little, if any cost to the games industry. All the arguments discussed under Q9 and Q11 apply, but with the

additional benefit to the industry that all games would be classified by the BBFC rather than just those rated 12 and above. For these additional games, BBFC classification would be cheaper than PEGI classification for those simple (in classification terms) games released on multiple platforms, and with PEGI's imminent doubling of tariffs (the second time in two years) the cost arguments for this option become even more compelling.

As always, the monetary costs of this and the other three options should be put into the context of the development and marketing costs of new videogames. The costs of BBFC classification of Grand Theft Auto IV and Halo 3 were less than one hundredth of one percent of each game's overall development budget.

For good reasons, the film and DVD industries have for many years been paying for the classification of their product across the world on a national basis. But their costs have not placed an undue burden on the film and DVD industries or rendered them economically unviable. Far from it. These directly comparable entertainment industries whose content is regulated by the BBFC have prospered. They are also facing the same issues as the video game industry in relation to online distribution mechanisms. Their faith in the BBFC is such that their first and only choice has been to come to the BBFC to develop jointly with the BBFC a system of voluntary online classification: BBFC.online. These companies have shown great responsibility in terms of child protection. Rather than distribute unrated material online and thereby incur no classification costs (which the law permits them to do) they prefer to pay the BBFC to classify their material to ensure that inappropriate material does not fall into the hands of children.

Fledgling attempts to develop a pan-European ratings system for film and DVD classification have never got off the ground because of the different cultural sensitivities of the different populations. The same applies to video games, only more so, because they are currently far less well understood by parents.

It is worth noting that the BBFC reduced the costs of its classification in three successive years (2002, 2003, 2004), The BBFC continues to work to bring down costs for the industry, while maintaining the integrity of its classification processes and decisions. Meanwhile, PEGI doubled its fees in 2007 and is about to do so again in 2008.

**Q24: Do you think this option would be more or less costly to the games industry than both the current system and the hybrid system and if so what evidence do you have of this?**

**The Impact Assessment suggests that the differences in cost between all**

four options are limited. And in the context of a video game's overall development and marketing costs, classification costs represent a tiny amount.

The BBFC is a not for profit organisation. Its classification charges cover only the BBFC's costs.

Although the Impact Assessment suggests that costs under Option 2 are slightly higher than the other three options, the real cost is likely to be considerably lower than all the other options. The detailed analysis below sets out why.

Complex games at the higher classification levels with many hours of gameplay (e.g. Manhunt 2; 50 Cent Bulletproof) tend to require around 5 hours of chargeable examination time. At the other end of the scale, very repetitive games containing few classification issues (e.g. Play Wize Poker & Casino; Guitar Heroes 3 - Legends Of Rock) normally require around 1 hour of examination time. The table below shows the average time taken to examine interactive material in video games (by playing/sampling the game) at each category. It shows that the simpler the game, the less the examination time, and hence the lower the cost of classification. It also suggests that with current submissions to the BBFC biased towards the more complex adult games, the assumption must be that the average cost of a games submission would fall if all games were to be classified by the BBFC.

Category	Average sampling time, playing the game (minutes, 2007)
U	110
PG	150
12	165
15	230
18	250

In contrast to PEGI, BBFC classifications are not necessarily restricted to a single platform. Provided there are no significant changes to the game content, the same classification certificate is valid across all platforms . Even the most complex game can therefore cost significantly less to classify for all formats under the BBFC system than it does under PEGI if that game is released on multiple platforms.

Should a game undergo content changes from one platform to another, the fact that the underlying gameplay is the same is reflected in the examination time.

Ultimately, the answer to this question depends entirely on the attitude of both the industry and PEGI. Option 2 should be by some considerable way the cheapest of all the options. But ELSPA and certain publishers might

**attempt to present it as more costly in order to attack this option.**

**The actual cost of classification under this option would be just under. Here's why.**

**(i) Economies of scale**

**For online games and game elements, the BBFC would look to work with games publishers and developers on a business model for rapid and inexpensive classification and compliance which would satisfy the industry.**

**(ii) PEGI can use BBFC classifications**

**Furthermore, Option 2 offers even greater savings.**

**First, because the BBFC would classify all games for the UK, PEGI would be free, if it wished, to apply BBFC classifications for these games to the remaining PEGI countries. This could be done in a number of ways to suit the wishes of PEGI/the industry. PEGI could simply adopt the BBFC classification as it stood, automatically translating a BBFC U into a PEGI 3+; a BBFC PG into a PEGI 7+, a BBFC 12 into a PEGI 12+ and so on. This would cost PEGI no more than a token amount. In any event, the BBFC will have done a great deal of work on each game it classifies. That work will be available to PEGI/the industry. How they use it is up to them.**

**In order to attack Option 2, the games industry may refuse to consider such a possibility in order to portray Option 2 as high cost. Any attempts to do this should be treated by the Government with scepticism. If Option 2 were adopted, we could expect the industry to change its tune rather quickly and look to ways of saving money as outlined above, if classification costs really were a significant drain on publishers' budgets. Indeed, in private, leading lights in ELSPA's campaign have indicated that cooperation with the BBFC would be swift and total should this option be adopted. This would mirror the German experience where there is excellent cooperation between publishers and the USK, despite a campaign by publishers in favour of PEGI at a time when the German Government was considering the future of video game classification and had not yet decided against PEGI.**

**The truth is that (i) the BBFC offers excellent value for money to the industry; (ii) classification costs represent a tiny part of a game's development cost (0.02% on average) and; (iii) whatever figures are offered by various respondents to this consultation, minor differences in industry costs should not be allowed to trump very significant differences in child protection offered by the various options.**

**Q25: Which of the following options do you think would work best in the online environment and why?**

**(i) BBFC symbols recognised as part of PEGI Online; or**

Either (i) or (ii) would work. The BBFC is happy to work through PEGI Online provided ELSPA and VSC opposition to such cooperation is ended, including recent attempts by the VSC to resile from PEGI's commitment to display BBFC symbols for all online games classified by the BBFC. Alternatively, the BBFC could provide effective regulation without PEGI Online and in partnership with national regulators in other large games markets.

There may be a slight advantage to working through PEGI Online because the greater geographical scope of PEGI would allow more websites to be covered. But websites could easily move outside PEGI's scope too. And so far, no independent aggregator in a PEGI country has signed up to PEGI Online anyway. This compares unfavourably with BBFC.online. Among others, the largest UK retailer - Tesco - has signed up to BBFC.online, as have leading aggregators Lovefilm and i-loaded. Under either option (i) or (ii), the BBFC would seek to work with other classification bodies to ensure as wide a geographical coverage as possible.

The BBFC would also work with PEGI to encourage more publishers to sign up to a beefed up PEGI Online. Presently, only 18 publishers have joined PEGI Online. And two of these are the Council of Europe and UNHCR, which have each released a single game.

But in keeping with the spirit of the Byron recommendations, the BBFC would be happy to work through PEGI Online subject to the caveats above.

Enforcement would require action by Government (see Q27, below).

**(ii) BBFC.online (separate from the PEGI system)**

BBFC.online is already a recognised and trusted brand among the major film, DVD, and VOD distributors, both content providers and aggregators. It could easily adapt to take on games played online (see Annex E).

**Q26: What are the likely implications (including costs) for games producers of having a classification system that does not automatically translate across to some other European countries?**

Any answer to this question must reflect the reality that (i) both PEGI and the BBFC offer good value for money to the industry and; (ii) classification costs represent a tiny part of a game's development cost.

And it is worth noting that none of the 55 games publishers who used the BBFC in 2007 and 2008 have complained to the BBFC about either the cost or the time element of BBFC classification. This is not surprising given the BBFC's very competitive costs (recognised in the Government's Impact Assessment); the tiny (and shrinking) proportion of a game's development costs which are spent on classification; and the speed at which games are classified by the BBFC.

This question is based on a false assumption. The truth is that the system adopted under Option 2 could automatically translate to all PEGI countries. Whether it does or not is up to PEGI and most significantly, its industry owners. The BBFC will have done a great deal of classification work on each game. We would make this work available to PEGI. The owners of PEGI could decide that PEGI Classic and PEGI Online be administered by the BBFC. Alternatively, PEGI would be free, if it wished, to apply BBFC classifications for all video games to the remaining PEGI countries. This could be done in a number of ways to suit PEGI/the industry. PEGI could simply adopt the BBFC classification as it stood, automatically translating it to the equivalent PEGI rating. This would cost PEGI no more than a token amount.

If PEGI chose to go down this route, the cost of Option 2 would be significantly reduced from that offered in the Impact Assessment (see Q24).

This is a realistic and available option for PEGI/the industry. After all, PEGI/BBFC cooperation is nothing new, as PEGI's 2007/8 Annual Report makes clear when it refers to "compatible synergy" between PEGI and the BBFC.

On the other hand, those in the industry hostile to Option 2 could choose to dismiss all suggestions of such cooperation in order to attempt to show that BBFC classification places an undue burden on games publishers and thereby promote self-certification under PEGI. But such arguments do not hold water. The Government's Impact Assessment shows minor differences between Options 2 and 3 which would not justify rejecting a trusted and effective classification system in favour of a slightly cheaper (and this was already highly debatable, even more so after the imminent increase in PEGI's charges has come into effect) but ineffective one. In any event, as well as overestimating the cost of Options 1 and 2, the Impact Assessment under-estimates the cost of Option 3 because it omits (i) the cost to the Blu-ray and covermount industries of requiring two separate classifications and; (ii) the cost of classifying linear material not integral to a video game. Together, these costs are not insignificant.

**Q27: This option could be complicated by differences across Europe if games are purchased elsewhere. We are interested to know whether there**

is evidence that might support or disprove this. (Please refer to Paragraph 2.16)

UK consumers already buy DVDs from abroad (including, of course, from outside Europe). This has not undermined the UK's DVD classification system or damaged public confidence in BBFC classifications.

Although region coding for games still persists, it is becoming less of an issue. Consequently, a minority of technologically sophisticated adult consumers - generally those who know a great deal about games - buy games online, often from Japan (to acquire more esoteric games unavailable in the UK) or the US (to save money). Websites selling such games may well not offer BBFC or PEGI symbols and content advice. They are more likely to offer ESRB or CERO ratings. The consumers who use these sites are generally well informed about the content of the games they are buying (and about games in general). There is no evidence to suggest that such purchases have done or will do any damage to the integrity of BBFC (or PEGI) classification of games.

The BBFC would be content to work through BBFC.online or through PEGI Online (provided ELSPA/VSC opposition to such cooperation is ended) and in cooperation with others such as the USK, in relation to online games. The BBFC could classify all content on websites in the PEGI zone offering games for online play, as well as the content of the individual games.

As for enforcement, this would require Government action. If effective statutory sanctions are to apply, Government would have to require ISPs to block sites supplying age inappropriate video game material along the lines of the present system for blocking for example child abuse images. (See the attached paper on how the BBFC would classify online games.) This applies to whichever of the four options is selected.

**Q28: We would be interested in evidence to demonstrate whether this option creates additional burdens to online games developers and whether this could be confusing to parents. (Please refer to Paragraph 2.25)**

There would be no extra burden on them.

**Q29: It would be helpful to have your views on whether this option would affect games developers based outside Europe, such as those in Japan or US; namely, how this option might affect them and the extent, if any, to which it may affect them.**

Classification is dependent on a video game being sold and distributed in the UK. The location of the developer of the game is irrelevant. No European will suffer any sort of competitive disadvantage under this option (or any of the other options).

### **Option 3 – Enhanced PEGI system**

A UK-based organisation (possibly the Video Standards Council) would be the designated statutory classification body for video games, applying the PEGI ratings. The VSC (or other UK body chosen) would need to sign up to this new role and any legislative changes required. All video games would be rated using the PEGI system and there would be no role for the BBFC in classifying video games.

#### **Q30: What is your overall assessment of whether this option would work and why?**

**In her Review, Dr Byron states that to be effective, any classification system in the UK must at its most basic include the following elements:**

- clear age ratings;**
- clear accompanying descriptors which explain game content;**
- trustworthiness;**
- enforceability where there are risks of harm, including the ability to block the release of some games.**

**She goes on to state that to succeed, the system must rely on awareness amongst parents and carers. She also stresses that an effective rating system must work for the games industry; support retailers; be flexible and future proof; and reflect the evidence on potential harms.**

**Though it achieves the goal of working for parts of the games industry, in that it allows powerful multi-national publishers to take control of the statutory classification of video games in the UK, Option 3 fails to achieve virtually all of Dr Byron's more fundamental requirements. Indeed, it is noticeable that the Government's own Impact Assessment of this option highlights its key advantages as being (i) an industry-driven system which (ii) applies across a number of countries. Both of these are advantages to the industry, not to the public. This contrasts with the Government's own assessment of the advantages of Options 1 and 2 which relate to consumer confidence in, and familiarity with, BBFC classifications which take account of UK sensibilities.**

**The Byron Review was commissioned because of concern about video games posing a harm risk to children. Dr Byron examined all the evidence in a thorough and intellectually robust way and concluded that a PEGI**

dominated regulation system did not satisfy the key test of providing better protection for children. The Culture, Media and Sport Select Committee felt the same way.

A flawed, non-UK, lowest common denominator video game classification system for the UK would fail Dr Byron's test in almost every respect. PEGI would not provide soundly based classifications and clear content advice enabling parents to select appropriate and safe video games for their children.

PEGI has been adequate, though imperfect, while Parliament has been content for most video games sold in the UK not to be regulated. But on its own it does not provide a stable, sound or publicly acceptable basis for statutory regulation in the UK, whether offline or online.

Any assessment of Option 3 must take into account the following:

- PEGI ratings are misunderstood and mistrusted by the British public. Even once they are explained, they are regarded as inadequate, offering none of the detail or context required by parents. Research in the UK and across Europe suggests that many consumers misunderstand them as ability ratings. Changing them would require a huge and sustained public information campaign, with no guarantee of success.

- PEGI is owned by the games industry. The industry can unilaterally make any changes it wishes to the PEGI classification system. It is in no sense independent, which helps explain why it is not entirely trusted by the British public.

- designating PEGI as the body responsible for video game classification in the UK would make the classification system hostage to the interests of large, multinational video game companies whose bottom line is profit rather than protecting children or providing clear content advice to consumers, and who have until now shown little interest in educating consumers about PEGI game ratings. It is instructive to compare the large sums being spent on expensive lobbying by ELSPA to undermine Dr Byron's careful analysis, with the lack of spending on educating the UK public about PEGI and its symbols since its inception in 2003. In contrast, the BBFC does not employ lobbyists and devotes significant resources to media education work both online through dedicated websites and in direct contact with schools, colleges and universities.

- Option 3 runs contrary to the general European trend whereby PEGI is increasingly working in a co-regulation partnership with national classification bodies (as in for example Finland, Ireland, Portugal, and mooted in Italy) rather than largely on its own. France is the latest country to establish a national body for video game classification (see Q16) though

**new French legislation makes no mention of France's new national Commission working in partnership with PEGI, suggesting that PEGI may end up having no role at all in the second and third largest games markets in Europe (France and Germany).**

**- PEGI ratings are based on a flawed, tick box methodology largely carried out by several hundred coders, based all over the world, and who are untrained in media regulation. PEGI's crude methodology can lead to perverse classification decisions which are out of step with public expectations, not just in the UK but across Europe. It can also lead to mistakes. In 2007, 243 - or nearly 20% of - PEGI ratings had to be changed. To deal with PEGI's error-prone methodology, a number of countries which belong to PEGI retain national controls which override PEGI classifications where appropriate.**

**- PEGI pictograms are misunderstood by the British public. Nor, according to PEGI's own research, are they adequate for consumers in other European countries. Changing them would require a huge and sustained public information campaign, with no guarantee of success. Games publishers talk of funding a campaign but do not name a figure. The scale of an education effort in support of Option 3 would be immense and would take years to bring PEGI anywhere near BBFC levels of recognition. A temporary advertising blitz would be ineffective. The cost of such an education campaign must be added to the Impact Assessment of this option.**

**- PEGI classification does not – indeed cannot - take account of national, culturally specific notions of suitability and harm. PEGI's ratings are not – and cannot ever be – based on consultation with the British public.**

**- PEGI cannot intervene with the most harmful games to render them safe or to reject them. PEGI members are fundamentally divided on this issue and PEGI's owners show no sign of wanting the reject option. For the reject option to be maintained, a further, national structure would be needed, sitting above PEGI and replacing the trusted BBFC. The suggestion that the VSC could operate the rejection function and deal with the likely appeals and legal challenges is wholly unrealistic.**

**- there are substantial practical and political obstacles to giving PEGI ratings statutory force. The VSC lacks the resources and expertise to fulfil the range of statutory responsibilities presently carried out by the BBFC, including maintaining an archive of all classified games; assisting law enforcement authorities with prosecutions; and presenting an annual report to Parliament.**

**- although based in the UK, the VSC is in reality a sub-contractor of PEGI's Dutch Administrator, NICAM, and has no experience of consulting the**

**British public over issues of national sensibility.**

- a PEGI-only plus new national structure classification system would not be able to cope with convergence which increasingly means that game and film material appears together on the same retail disc, with increasing convergence between interactive video game content and linear film/DVD content. At best, Option 3 would have serious negative consequences for the Blu-ray and DVD industries. Indeed, the Blu-ray industry has declared its opposition to any system which would require two regulatory bodies to classify material on the same disc. The strong preference of Blu-ray and DVD distributors is for the BBFC to classify all material on their product. Similarly, publishers of covermount discs would be disadvantaged under Option 3.

- PEGI Online is rudimentary and has not yet faced a serious test. On its own, PEGI lacks the resources to ensure an effective initial classification; full information provision; independent monitoring of self moderation; and an effective complaints mechanism. PEGI admits that its Online Safety Code is weak.

- the PEGI system has been shown to be politically vulnerable across Europe, including over the games Rule of Rose and Manhunt 2.

- the PEGI complaints system has been shown to be flawed and ineffective.

- it would be pointless to construct a new and complex set of statutory arrangements when simpler options (1 and 2) exist. This smacks of reinventing the wheel to suit narrow industry interests at the expense of protecting children.

**Q31: What are the key flaws with this option and how could it be adapted to overcome them?**

A classification system operated outside the UK; run by a profit-driven games industry; whose classification criteria fail to take account of consumer views; based on flawed methodology; without sufficient educational resources to back it up; and whose symbols and content advice are widely misunderstood, will never gain the confidence of British consumers, particularly parents who are concerned by child safety. The system will be fatally flawed from the outset and will not last long.

It is difficult to see how the effective restrictions on supply to children offered by the BBFC system could be replicated under PEGI. It would be novel and politically very risky to give statutory force within the UK to a pan-European system owned by a curious and delicate tripartite alliance of organisations; lacking underlying credibility; depending on variable political support across a range of countries; using criteria which are not derived from the culturally specific concerns of the UK; and ultimately

dependent on a profit-driven industry.

Suggestions that the changes required in order to take on a statutory role under the VRA are simple and achievable should be treated with scepticism. Moving the (incomplete - of the 7,500 games rated under PEGI since 2003, only 6,000 have been archived) PEGI archive from Holland to the UK would require the consent of a range of stakeholders and is not in ELSPA or the VSC's gift.

**(i) A non-UK system**

Issues of harm and appropriateness in media content feature across a wide range of media, including: television, radio, press, cinema, DVD, and mobile phones. In all these areas, the regulation of content, whether statutory or non-statutory, takes into account the fact that notions of what is harmful or inappropriate (and the two are often difficult to disentangle given the lack of conclusive research evidence on harm) are culturally specific. This recognition results in all these media being regulated at the national level, not at an international level. To take a couple of simple illustrations: French notions of the effects on children of seeing graphic representations of sexual activity are simply not the same as UK notions; and UK concerns about knife crime are not replicated in Spain. A system which attempts to aggregate such concerns across a large number of culturally distinct nations, as PEGI does, is bound to reach assessments on harm and appropriateness which are out of line with UK assessments. As Patrice Chazerand of ISFE notes in a recent MCV article: 'PEGI is imperfect, that's for sure... we average out our ratings to very different cultures, so it's not easy.' Perhaps that is why PEGI regard racist terms such as 'nigger' and 'coon' as mild and treat them the same as words such as 'bloody', 'crap', 'arse' and 'hell'.

PEGI's lack of cultural sensitivity helps explain why Germany does not favour, and is unlikely ever to embrace, PEGI. Germany's 20th century history means that there are cultural and political issues specific to that country which cannot be taken account of by PEGI. For example, the German public is acutely aware of racism and other forms of discrimination and Germany's games rating body, the USK, believes that PEGI is unduly lenient towards discrimination in games. Banned symbols in Germany such as the swastika are removed by games companies for a game's release in Germany, at the insistence of the USK. PEGI cannot deal with this kind of culturally specific, but highly sensitive, issue.

France too is concerned by PEGI ratings which do not match French notions of harm or offence. The Forum des Droits sur L'Internet cited the example of the game Kirikou which in its view received a PEGI rating which would have been regarded in France as unduly high. The future of PEGI in France is most uncertain following the decree of 24 June 2008 which

appears to exclude PEGI from any role in classifying potentially harmful games. However, even if a role is found for PEGI in future, the generally pro-PEGI Forum believes that France should have a national body with the power to override inappropriate PEGI ratings, both online and offline.

Allowing UK notions of harm and appropriateness to be sacrificed to a pan-European lowest common denominator approach would be particularly strange given the dominance of the UK in the European games market. The UK is by far the biggest market in Europe - 30% in 2006 - and the projected market share for 2008 is even higher - 32%. According to the industry's own figures, the UK is home to the two single largest demographic groups of players in Europe. By some way, the biggest group of games players in Europe is UK males. The second largest demographic group of games players in Europe is UK females. The UK has more games players than the second two European markets (Germany and France) combined.

The UK is the third largest games market in the world behind the US and Japan, both of which have their own national classification bodies, the ESRB and CERO respectively. The fourth largest market, Germany, also has its own national classification body for games (USK, which is closely aligned to the film regulator). If the UK were to adopt a PEGI only solution, it would be the only one of the top four games markets in the world not to have its own national regulation of video games.

PEGI may be an appropriate classification for small markets, eg the four Nordic countries (6.5% of the European market combined) the three Benelux countries (5% combined) or Spain and Portugal (4.7% combined). But given the level of games playing in the UK, including by vulnerable groups such as children, and the level of societal concerns over games, it must be more appropriate for the UK to retain control over games classification, putting it in the hands of independent professionals rather than largely untrained games industry coders who are employees of a profit-driven industry. Even much smaller markets than the UK retain a degree of national control of games regulation, including Finland, Ireland and Portugal, where the film classification bodies can - and do - override PEGI ratings. There are reports that Holland and Poland are considering national controls. France too has passed legislation introducing greater national controls (see Q16 above). So is Italy which is considering draft legislation setting up a co-regulation system with PEGI similar to Dr Byron's proposed division of labour for the UK.

Given the cultural dimension to notions of harm and appropriateness, and the cultural differences between, for example, Romania, Sweden, France, Latvia, Greece and the UK, it is not clear why the public policy objectives that justify the regulation of video games are best served by regulation at the European rather than the national level. It is for good reason that all

other forms of mass media content, whether press, mobile phone, TV, radio, film or DVD, are regulated at the national level.

This problem cannot be addressed because of the very nature of PEGI, which covers a number of countries.

**(ii) Controlled by the games industry**

The games industry's key motivation is to ensure the widest possible distribution of its product in order to maximise profits. This is a reasonable goal. But it suggests that it would not be wise to entrust to the industry the judgment of whether its product is potentially harmful, and its distribution therefore restricted. For instance, during the summer of 2007, a great deal of work was done on the PEGI questionnaire in relation to the issue of protecting human dignity with a view to introducing a reject function. But this work was shelved, presumably at the request of the ISFE Board (which is made up of publisher representatives).

The classification methodology employed by PEGI does not allow for a proper or unbiased assessment of the harm risks posed by a game because it is based on a self-assessment questionnaire completed by the developer of the game itself. It is difficult to imagine the circumstances in which a developer, having spent tens of millions of pounds creating a game, would voluntarily identify it as harmful, still less that the risk of harm to children or to society is so great that distribution should be prevented. Indeed, PEGI's lack of independence from the games industry was a factor in Germany's decision to retain purely national control over the rating of videogames.

The industry's in house 'coders', based all over the globe, who carry out the PEGI self assessments receive minimal, if any, training; have no expertise in regulation; are not required to have an understanding of child development and media effects research; and do not invariably understand European sensibilities in even their broadest sense.

These coders tick boxes on a questionnaire. Given their lack of training and their geographical spread, PEGI accepts that there is a risk of lack of consistency in ratings standards. To reduce this risk, the questionnaire the coders complete gives (in theory at least) no leeway for interpretation or independent thought. Depending on the ticks in the boxes, the completed questionnaire will give an automatic rating. If the rating is 3+ or 7+ the game will go on sale with that rating and with no further checks (though a random sample of around 5% of 3+ and 7+ games will be checked by mainly part-time PEGI quality control testers - usually students or recent graduates with no media regulatory training - once the games have gone on sale).

However, it is clear that some checking is necessary. Based on information on PEGI's own database for 2007, 243 titles (or 19.7% of the games rated under PEGI) were re-rated that year. Re-ratings may be necessary for a variety of reasons, including complaints by the public; appeals by publishers; and mistakes made by PEGI coders. The number of re-ratings suggests that the PEGI system is far from error-free.

Since 2007, PEGI's testers at NICAM have checked all games rated 12+ before they go on sale. If the rating based on the questionnaire is 16+ or 18+ the game will be referred to the two man VSC in Borehamwood for checking before a game goes on sale.

PEGI's games testing both at NICAM and the VSC falls some way short of the thoroughness of BBFC examinations. This lack of rigour helps explain a number of ratings mistakes. For example, the VSC failed to pay sufficient attention to the mildly pornographic images in the video game BMX XXX. So instead of being referred to the BBFC (which would have awarded a legally enforceable 18 category), this game received a voluntary industry rating which allowed it to be bought by children across the UK. The game was subsequently seized by Trading Standards Officers who doubted whether it could legitimately claim exemption under the VRA. Similarly, the VSC's examination of Global Conflict Palestine resulted in an inappropriately high rating of 16+ which the publisher appealed down to a 12+ once PEGI's Complaints Committee agreed that the VSC had awarded an unduly high rating.

NICAM's checking in Hilversum can also be less than thorough. For example, PEGI testers did not ensure that the 12+ rated games Scrabble Edition 2007 (Nintendo's version, not Ubisoft's), Shrek 3, Zack and Wiki: the Quest for Barbados Treasure and Lego Indiana Jones were correctly rated. It wasn't until publishers appealed against the ratings did PEGI have to admit they got it wrong in each case.

PEGI's error-prone processes have seen some games which are unsuitable for young children being sold to them before PEGI realised that there was a problem. For example, in The Sims, the player is able to engage in detail-free sexual intercourse (called "making woohoo" in the game). But the game was released with only a 7+ category. After complaints about the rating, it was revised upwards to 12+, matching the BBFC classification certificate. Similarly, a cutscene in the game Need for Speed - Most Wanted featured a police officer striking the player character. This was given an unduly low rating which had to be revised upwards to a 12+ after a complaint. More notorious was Ubisoft's Scrabble. In 2008, many UK parents complained to the BBC's Watchdog programme at the 3+ rating when the game itself (not their children) started placing words such as "f\*\*\*\*" on the board. Ubisoft admitted that they should have given the game a 16+ rating. In September 2008 the game Tiger Woods PGA Tour 09 went

on sale with a 3+ rating despite a function in the game which allows the player to strike defenceless women and children in the face and groin with a golf ball at close range. In the case of these four games, PEGI testers did not even pick up that PEGI's coders had not correctly completed the questionnaire and that there was a consequent problem. It wasn't until members of the public complained that anything was done about the first three of these titles. Although all three were given higher ratings, at least one of them - Need for Speed - continued to be sold for at least two years at the original inappropriate rating. As for the Tiger Woods game, at the time of writing, the PEGI Administrator had not taken any action and the game remains on sale with a 3+ rating. Had the questionnaire been accurately completed, the rating would have been a minimum of 12+ or possibly even higher because the game "contains depictions of violence towards vulnerable or defenceless human-like characters" (PEGI questionnaire, Q18, which automatically assigns an 18 rating to such depictions of violence).

It is instructive to note that some games publishers have been less than enthusiastic in submitting their games to the BBFC for independent classification where those games have probably lost their exemption from statutory classification. Ubisoft submitted, then withdrew, the violent game Tom Clancy's Rainbow Six Vegas when BBFC assessors told the company that the game was incomplete and could not have a rating until Ubisoft had submitted the final version that would be on sale in the shops. Instead, Ubisoft simply went the PEGI route and secured a PEGI rating for the same incomplete game. A similar story took place with the violent game Call of Duty 4 Modern Warfare. Because the publisher submitted an incomplete game, the BBFC asked to see a complete version. But instead of submitting to the BBFC the version of the game that would go on sale, the publisher chose the route more susceptible to manipulation - PEGI. One of its coders simply filled in a PEGI questionnaire and secured the rating the company wanted. Another game - Prince of Persia - Warrior Within - arguably lost its VRA exemption as a result of strong, bloody violence, including decapitations, but Ubisoft again chose not to submit the game to the BBFC, preferring the voluntary PEGI rating. None of these games have been seized by TSOs as was BMX XXX but they are arguably being sold without a proper, legal classification.

Unlike the Finnish Board of Film Classification ( which can overrule inappropriate PEGI ratings) the BBFC has no enforcement role and so was unable to take any action to ensure the statutory classification of such games.

By behaving in this way, a minority of publishers appear to be flouting the law in their enthusiasm to secure the release onto the market of their games with the ratings they want by dint of a ratings system they control. Given this, it does not make sense in terms of protecting children, to give

more authority to a PEGI system which relies on publishers being absolutely scrupulous, when a number have shown that they cannot be entirely trusted.

Unless the industry is given strong, enforceable incentives to ensure that their games are robustly and properly rated, these problems will continue. It is difficult to envisage effective incentives under Option 3.

**(iii) Flawed classification criteria**

PEGI's other structural problems are compounded by the fact that the criteria used to determine PEGI ratings have never been subjected to consultation with the UK or any other European public. If UK parental experience of a game consistently fails to match the expectation established by the rating, parents are unlikely to take the ratings seriously. It is particularly serious if the highest rating is brought into disrepute through unnecessary overuse – especially if that category has no upper limit. Dr Byron found evidence of this problem in her research (Byron Review, paragraph 7.17).

Take the area of language for example. How the BBFC handles language in films and video games is based on extensive consultation with the British public, including research carried out by the BBFC, BBC and others. How PEGI handles language seems to be entirely arbitrary. So for example, the PEGI questionnaire requires that all "mild" language be rated 12+. PEGI defines mild language as including "God, Hell, damn, crap" as well as "nigger" and "coon". (So for example, PEGI rated the game Rock Band II 12+ for two uses of the word "hell". British consumers would not expect such a restrictive classification.) To British ears, a self-directed "damn" is a million miles away from an aggressive, racist use of the word "nigger". So rating all these words, without exception, at 12+, irrespective of context - which is precisely what would happen under Option 3 - would confound the expectations of the British public and bring the ratings system into disrepute.

PEGI rates all strong language 16+ without exception. PEGI defines strong as "f\*\*\*\*" and "c\*\*\*\*" (though it is noteworthy that Ubisoft's Scrabble game, which included these words, was rated 3+ under PEGI). BBFC and other research has repeatedly demonstrated that the "c\*\*\*\*" word is extremely offensive to many people in the UK. The degree of offence varies according to context. So for example, the BBFC classified the game Far Cry II 18 for seven aggressive, directed uses of "c\*\*\*\*". PEGI could not, and did not, reflect these UK sensitivities when awarding the game a 16+.

Germany shares British concerns about PEGI's flawed and sometimes arbitrary classification criteria and has opted out of the PEGI system. The German videogame classification body, the USK, reports that it is common

for games to have a PEGI rating which is quite out of step with the expectations of the German public and reflected in the USK rating. In the USK's view, Role Playing Games (RPGs) tend to receive an unnecessarily high PEGI rating because the PEGI questionnaire cannot take account of the fantasy context of most RPGs or the fact that violence is not a major part of the game. Some other games – including those which feature strong violence or elements of discrimination such as racism or homophobia – tend to receive what Germans perceive as an unduly lenient rating under PEGI.

France too has similar concerns. These lie behind the 24 June decree establishing a national commission to regulate potentially harmful media, including video games. The Forum des Droits sur L'Internet is urging the Government not to abandon PEGI altogether but to use the national commission as a "national layer" above a PEGI information system to modify PEGI ratings so that they reflect better French sensitivities. And although the French decree envisages national symbols, the Forum is asking the Government to consider using PEGI symbols, with the result, if adopted, that games would in several cases carry a quite different PEGI rating in France to that in other PEGI countries. PEGI's industry owners are unlikely to be happy with either French option as both are yet another challenge to the credibility of the PEGI system.

BBFC classification criteria are based on UK law; scientific research; expert advice and regular public consultations with thousands of individuals. The most recent BBFC guidelines resulted from a consultation involving over 11,000 people. The forthcoming 2009 Guidelines will be based on a consultation involving over 12,000 people. PEGI criteria are based on the Dutch self-regulatory Kijkwijzer criteria developed for film and TV in Holland. Contrary to ELSPA's claims, the PEGI criteria were not developed from scratch specifically for interactive games. Quite the contrary. They were developed from criteria designed for linear material, in one of the smaller European games markets. They do not take into account relevant laws in any country using PEGI. Nor are they based on any significant public consultation across Europe.

PEGI's classification criteria can throw up all sorts of internal contradictions within the PEGI questionnaire. For example, the notes in the PEGI handbook explaining what Q18 of the questionnaire means are thoroughly confusing and self contradictory. And they ask the coder to take account of context, which is something PEGI is supposed to eschew. (The context allowance was purportedly added when a game which involved a policewoman offering a single slap to a handcuffed criminal resulted in an automatic - and ridiculous - 18+ classification for this brief sequence.)

PEGI could attempt to alleviate this problem by consulting the publics in all

those countries which apply PEGI ratings. But this would most likely throw up contradictory criteria which would be impossible to reconcile.

**(iv) Flawed methodology**

By its very nature, PEGI's simplistic 'tick box' methodology cannot take into account context and therefore cannot take into account factors which have a direct and substantial bearing on the effect a game may have on those who play it, and on its appropriateness for a particular age group.

PEGI's methodology can therefore lead to perverse decisions. This is one of the key reasons why the largest EU country and second largest video game market in Europe, Germany, opted out of the PEGI system. Like the BBFC, Germany's USK believes that context is absolutely vital when classifying video games and any system which cannot take context into account cannot achieve the public policy objectives which justify regulation in the first place.

The risk of perverse decisions under PEGI is also why a number of countries which use the PEGI system retain national controls which can override PEGI ratings. For instance, Ireland's film censors (IFCO) overturned the 18+ PEGI rating for *Manhunt 2* and banned it. It has become virtually an annual ritual in Finland for the Finnish film and DVD classification body to overturn the PEGI 16+ rating for EA's NHL ice hockey game, replacing it with a more appropriate PG equivalent rating.

So PEGI's inability to take into account context and the pleasures on offer in a videogame is clearly an acknowledged weakness of the system. At a recent seminar for PEGI coders in the UK, the VSC provoked a strong negative reaction when using an illustrative clip to explain that a slow pan down the body of a naked woman would produce a '3+' rating under the PEGI system. A similar issue was at play with the games *Singles - Flirt Up Your Life* and *Singles 2 - Triple Trouble*. PEGI's inability to take into account context, and instead to focus purely on visual detail, resulted in 15+ and 16+ PEGI ratings for these games which feature strong sexual activity because the level of sexual detail did not include, for example, sight of actual penetration. The BBFC gave both games an 18 rating, not so much on grounds of detail, but because of the games' overall context. Their *raison d'être* was to offer the player the pleasure of engaging in interactive sex - including breast fondling, masturbation and full penetrative sex - with a potential to be used as a sexual stimulus. The BBFC's classification reflected this context in a way that PEGI simply cannot.

Because of the problems inherent in PEGI's methodology, classifications in many cases they are bound to be out of alignment with UK notions of harm and appropriateness. Slapstick, cartoon type action is particularly harshly

treated under PEGI and routinely results in a rating which is significantly higher than that expected by UK parents. For example, PEGI's initial classification (until it was appealed by the publisher) of the U-rated Lego: Indiana Jones was 12+ because of violence against Lego figures. If PEGI awards a 12+ to Sonic the Hedgehog for jumping on Dr Robotnik, why should parents trust it as a reliable guide to more worrying material? Parents who experience PEGI classifications as being out of line with their own notions of harm and appropriateness are unlikely to trust the classifications when considering future gaming choices for their children.

The same is true at the upper end of classification. PEGI's failure to take account of context means it cannot distinguish between games which are actually quite different in terms of the pleasures on offer, the likely impact of the content, and its appropriateness for different age groups. The PEGI system ticks a box and stops thinking.

The inevitable perverse results that would result from adopting this option will almost certainly have a negative effect on consumer confidence in the videogame classification system. When consumers are faced with ratings which do not match their expectations, their trust in the system would rapidly erode. This is why, as Dr Byron notes, parents give age-inappropriate video games to their children in a way which is not replicated with DVDs.

The very nature of the PEGI system - over 540 untrained coders spread all over the world leading to a risk of inconsistent ratings - means that only a questionnaire-based tick-box approach is possible. The questionnaire itself isn't bad. It's the tick box approach which is at fault, and this cannot be rectified.

#### **(v) The reject power**

The methodological drawbacks of the PEGI system are brought into sharp relief in the PEGI approach to the games which are of most concern. No matter what the content of the game, whether it is a game devoted to torture or rape, the self assessment questionnaire will never produce any outcome more restrictive than an '18+' classification. PEGI has no reject facility and is fundamentally incapable of introducing one. Games publishers have shown a marked reluctance to allow PEGI a reject power. Even if they were to accept a theoretical reject facility, it is reasonable to assume that none of their coders filling out the self assessment questionnaire would ever tick a box that is bound to result in the company that employs him losing the ability to distribute the game.

So, in order for a reject power to be maintained, as required by the terms of this consultation, the Government would have to de-designate the BBFC and create an entirely new national superstructure above PEGI to deal with

**the most extreme games, including considering the possibility of rejecting a game. This would create a messy hybrid system. And it would seem like reinventing the wheel. Why throw out the existing, credible system which is understood and trusted by the public, only to replace it with a new, untested system which would have to build up both expertise and public trust from scratch?**

**The two person VSC is the only organisation named in this consultation as a possible alternative to the BBFC. It should be remembered that the VSC is not primarily a classification organisation. Nor does its staff of two have any particular expertise in the field of videogames. Its role in PEGI is very much an add-on to the VSC's main work which is to promote high standards in the (linear) video industry. (This mostly involves distributing educational material on BBFC and PEGI symbols to DVD and video game retailers.) There is also the question of the independence of the VSC when it comes to deciding on potential rejects. Its PEGI role makes it part of the videogame industry and it also represents the video industry. Culturally and politically, the VSC has aligned itself completely with ELSPA, particularly following the publication of the Byron Review. It is therefore hard to imagine the VSC being able to decouple itself from the industry as would be required to exercise the reject function properly and in a way which would satisfy the public, or indeed proper legal scrutiny.**

**The VSC's ideas of creating commissions and panels of experts are merely untried and untested reproductions of bodies which already exist under the BBFC umbrella. Why reinvent the wheel, replacing a system which works very well with one that is wholly untested?**

**(vi) PEGI is not understood**

**PEGI also suffers from a lack of public awareness as an organisation, especially when compared with the BBFC. Qualitative 2008 research comparing the two systems concluded: 'there is no awareness of PEGI as an organisation..... respondents felt that the organisation lacked the heritage of the BBFC and was thought to be a 'newcomer'. More cynical respondents questioned its impartiality and wondered whether the organisation was being funded by the computer game industry. Again, this contrasted with the BBFC which was perceived to have almost a 'government body' status.'**

**A major marketing campaign combined with a track record of setting trustworthy ratings - which would take years to achieve - is the only way of addressing this flaw. Adopting Option 3 would therefore require Government to take a great deal on faith.**

**(vii) PEGI's symbols and content advice are misunderstood**

**Given widespread ignorance about what PEGI is, it is not surprising that PEGI's symbols and content advice are misunderstood. This means that even putting to one side for the moment PEGI's flawed methodology and the lack of statutory enforcement, PEGI's classification symbols and content advice fail to ensure that games containing unsuitable or otherwise harmful material are only sold to those who have attained the relevant age.**

**PEGI's classification symbols clearly do not enjoy the level and degree of understanding that is enjoyed by the BBFC symbols. This is borne out by research commissioned both by PEGI and by the BBFC. Many in the UK and elsewhere in Europe misunderstand PEGI ratings as 'ability' ratings. Even specialist retailers of video games in the UK do not always appear to understand that the PEGI rating is supposed to be an age bar. Indeed, until the BBFC drew attention to it in its formal submission to the Byron Review, the leading games retailer in the UK (GAME) offered the following advice on its website : "PEGI age ratings are a guide and simply indicate what age you're likely to have to be to understand how to play the game" .**

**Focus group work undertaken in the UK in 2008 reported that "the majority applied toys and clothing 'age rules' to the [PEGI] system and interpreted the age reference quite literally – 'a game that a child that age or above would be able to play'"**

**The industry's own research has produced similar evidence. For example a 2005 study showed that only 9% could name the 16+ rating and only 2% the 7+ rating and concluded that 'PEGI has not been established as a brand'. Three years later, an internal PEGI document of 5 July 2008 conceded that its latest Nielsen research "point to sub-optimal awareness of PEGI descriptors and their usefulness, as well as to a low understanding of how complaints can be lodged ... many European consumers keep taking the PEGI age logos as indicative of playability".**

**The present rethinking within PEGI over its symbols is an acknowledgement that the symbols have signally failed to provide the European public with useful information. A redesign, followed by a launch of new, more helpful symbols, may happen. In this case, PEGI will need to mount a huge and continuing education campaign to sell the new symbols to a sceptical public, and with no guarantee of success. The scale and duration of the campaign would have to be immense to have any hope of bringing recognition up to anywhere near BBFC levels. The industry has been shy about committing to numbers in this area. Unless Government is going to spend millions, much of the cost of the campaign would fall to the industry. This figure should therefore be included in the Impact Assessment of costs under Option 3. Assuming that Option 3 is chosen, what are the mechanisms to ensure that having banked the option, the industry delivers the scale of education required?**

**And PEGI should be careful not to cause confusion or legal problems in relation to the existing, copyright-protected BBFC symbols. The BBFC will protect these symbols with the full force of the law. In any event, why would Government buy a cheap knock-off of BBFC symbols when it can have the real thing?**

**Curiously, ELSPA has sought to argue publicly that the BBFC 15 rating for games is "out of step" and that it should realign itself with PEGI's 16+ rating. As well as being a bizarre argument, it ignores the fact that PEGI uses both a 15+ and a 16+ rating for video games, because not all countries which use PEGI prefer the 16+ rating. (At the same time, PEGI insiders have contradicted the ELSPA line, arguing that PEGI would easily be able to apply a 15+ rating in the UK as it does with other countries which use PEGI.)**

**It is common ground that while classification categories are an essential part of video game regulation, consumers (and parents in particular) are looking for more specific content advice. In short, they want to know why the video game has been awarded the particular category. However, in addition to confusion about PEGI's ratings, its content advice is also a problem. PEGI provides content advice through the use of pictograms despite the overwhelming evidence that the pictograms are not understood. On the basis of considerable research across Europe, PEGI concedes that its content advice is simply not understood, either in the UK or in the rest of Europe. According to ISFE's 2004 research :**

- o 56% felt that the meaning of the pictograms was not clear**
- o 52% felt that the pictograms were not useful**

**Three years later, the situation had not improved, as ISFE's 2007 research found:**

- o Only 20% find the meaning of the pictograms clear**
- o Only 30% find the pictograms a useful tool when buying a game for a child.**

**The BBFC's own 2008 qualitative research confirms this very low level of understanding of PEGI pictograms, concluding :**

**'PEGI pictograms were generally disliked. Firstly, the concept of pictograms was felt to be too simplistic and very much at odds with parents' need for more detailed information. The references, when understood, led to more questions than answers. Violence – what type of violence? Prolonged / sustained? Fantasy or gory? and so on'.**

**'The pictogram executions compounded this problem and were often ridiculed in the groups..... the visuals for horror, sex and racial**

discrimination were often misinterpreted with many being very wide of the mark; e.g. claustrophobia or multi - player (racial discrimination), contains spiders (for horror) and a game for boys and girls (for sex).'

The public's concerns over PEGI pictograms are shared elsewhere in Europe. Research carried out by the University of Amsterdam concluded that Dutch parents did not like the lack of more precise, contextualised descriptors for violence for example. In other research, German consumers mistook the "spider" pictogram (meaning fear/horror) as meaning a game featuring animals.

For five years, PEGI persisted with a content advice system which was not understood because it must use a system which is acceptable across a number of very different countries and because pictograms are cheap. The obvious alternative, words, has not so far been an option for PEGI because the system must work across territories with different languages. For the industry, a lowest common denominator - but cheap (no translation costs or additional packaging costs) - content advice system which works equally badly across all territories has been preferable to a content advice system that works brilliantly in the UK and which would work better across Europe.

However, there are signs of a shift in PEGI in response both to persistent public criticism of pictograms across Europe, and more significantly in response to the Byron Review recommendations. For example, in July 2008, the PAB Chairman appeared to suggest that PEGI might adopt "verbal descriptors" (words) "for each game in the local language to make it easier to understand ... addressing European consumers in their own language". The Managing Director of ELSPA commented in August 2008 on the need for change: "maybe to help we put a word in the pictogram, it says "Violence", "Sex", "Bad Language", and we can replicate that in different language and we're looking to introduce a panel below that puts in some words that says a bit more, "Graphical Violence", "Comical Violence", "Depicts Use of Drugs".

In the event, PEGI looks set to adopt one word descriptors (eg "Fear", "Discrimination") for certain markets, including the UK, because it proved too difficult to come up with the sort of user-friendly, bespoke content advice well-known to the British public from BBFC CA and ECA. So it's an improvement to be welcomed, but a minor one.

Until now, games publishers argued against text based content advice on the grounds that it would cause their packaging budgets to increase. However, their fear of losing a control over the videogame classification system appears to have trumped their concerns over packaging costs. These costs should be factored in to the Impact Assessment.

**Two further notes of caution. First, not all verbal descriptor systems are equally good. An effective system must be flexible and offer the consumer contextualisation, gradation, elaboration, and an indication of frequency. There must be doubts as to whether PEGI could achieve this. (The BBFC has proven over many years that it can.)**

**Second, although ELSPA, with its UK-centric approach, has pushed for changes to PEGI symbols and content advice, which will, it hopes, secure Option 3, it is far from clear whether the 28 countries in PEGI have agreed or will agree to these changes which appear to be being rushed through without any proper consultation or road testing.**

**In essence, in arguing for Option 3, ELSPA and others are asking Government to approve symbols and a content advice system which does not exist other than on paper; which has not been road tested on the public; and which rests on unproven levels of political support.**

#### **(viii) Convergence**

**Another key policy consideration is that giving PEGI responsibility for the classification of all video games would entail the very real risk of undermining the present system for DVD classification. If the VRA was amended so that PEGI rated all videogames, many retail discs containing games would still have to carry BBFC classification symbols. This is because many video game discs include video content which is not an integral part of the game. For example, the PS2 game Destroy All Humans! included alongside the game: film clips, a spoof documentary, featurettes and a full length feature film - Teenagers from Outer Space. The US Blu-ray release of John Woo's Stranglehold contains both the 18-rated video game and its "prequel", the feature film Hard Boiled. The linear content on these discs would require BBFC classification under the VRA. As long as a retail disc contains a single video work requiring BBFC classification, the VRA requires that the appropriate BBFC symbol is displayed on the packaging.**

**The existence of game and non-game video content side by side on the same retail product is becoming increasingly common thanks to the emergence of Blu-ray discs which allow sophisticated video game applications to run in conjunction with the main film feature offering, and for stand alone games to sit side by side on a disc with film features and other non-interactive video material (simple games have been a feature of many DVD releases for some time). For instance the Blu-ray disc of the teen oriented adventure film The League of Extraordinary Gentlemen allows the viewer to score points by shooting characters as they appear on screen during the film, with bloodspurts resulting from injuries as those characters are shot. Similarly, the Blu-ray disc of the family film The Chronicles of Narnia features a stand-alone role playing video game. A video game packaged with Disney's U-rated animated feature Little**

**Mermaid Ariel's Beginning** featured an offensive use of the word "spastic" which put the game to 12 (so Disney removed the offending dialogue to secure a U). Although most Blu-ray games applications have been relatively simple so far, they are increasing in complexity as technology develops and improves. The Blu-ray release of the 12-rated feature **What Happens in Vegas** includes an interactive drinking game in which the viewer is encouraged to drink alcohol in response to certain cues onscreen. The presence of this game raised the release's classification to 18 (so the distributor chose to remove the game from the disc to secure a 12).

Presently, none of these Blu-ray games goes anywhere near the PEGI system. The major film studios responsible for producing these games are strangers to PEGI but are well used to the BBFC classifying their material. If the BBFC were de-designated from classifying games under Option 3, it would not be allowed to classify this interactive material. Given that these games can contain material which is of concern to parents, some other body would have to classify them.

The only way around this problem under Option 3 would be for the Blu-ray and DVD industries to submit the linear and non-game interactive material to the BBFC and get the game material rated under the PEGI system. This would be both a costly and bureaucratic procedure for the Blu-ray and DVD industries. Instead of submitting all the material on one disc to one organisation, they would have to split the material in two with different bits of it going to different organisations. In some cases, it may be difficult to determine whether interactive material meets the criteria for a game or not. For example, would the ability to reshoot scenes from the film constitute a game? Interactive menus presumably would not. But for a range of material on Blu-ray, it is not so clear cut. Under Option 3, Blu-ray distributors are likely to have difficulty deciding to whom to send some of their interactive material - the BBFC or PEGI. What if the BBFC felt that an item was a game and was therefore unable by law to classify it, but PEGI disagreed and did not think it was a game and would therefore not classify it? At the very least, such inevitable confusion would cause delays to the classification of individual submissions while such issues are resolved. This in turn could lead to a delay in release schedules, compromising the profitability of individual products. This risk should be factored into the Impact Assessment.

Quite apart from these difficult questions, cost is a factor. The costs of Blu-ray and DVD classification to Home Entertainment Industry have not been taken account of in the Government's Impact Assessment for Option 3. They should be.

Furthermore, the DVD and Blu-ray industries would lose the certainty offered by a BBFC classification. Given that NICAM admits privately that

ratings mistakes are "not uncommon", and clear evidence that in up to 20% of cases PEGI has to change incorrect ratings, it is a real possibility that mistakes would be made in relation to these games, with consequent (i) damage to public confidence in the system for rating DVDs and (ii) costly withdrawal from sale of DVDs/Blu-ray discs and repackaging. After all, if PEGI failed to spot "fuck" and much other strong language besides in the 3+ rated Scrabble, what chance would it have picking up a single - but highly offensive and category-determining - use of "spastic" in Little Mermaid Ariel's Beginning?

Because of these problems, the Blu-ray industry opposes Option 3. It has told the BBFC that it is imperative that they can get all Blu-ray content classified by a single regulatory body.

The same issue is at play with the publishers of covermount discs. At present, they submit such discs which contain both linear and interactive game material to the BBFC for classification. Under Option 3, they would no longer be able to do this. The linear material would be classified by the BBFC but the interactive material would require a PEGI rating. Such a change would add to the industry's expense and could lead to delays.

If the classification of the linear content of the Blu-ray disc, DVD or covermount differed from that in the interactive material, it is unclear which category would prevail. Would it be the higher category? Which symbol - BBFC or PEGI - would prevail? Would it depend on whether the product was predominantly linear or interactive? If the BBFC classified a feature film as PG but PEGI rated a short game on the disc 18+, would the BBFC have to uprate its classification? The same question would apply in reverse to say a PEGI 3+ game and a BBFC 15 linear extra. Both organisations would have to have absolute confidence in the other's rating criteria and methodology to be able to adopt each other's ratings with confidence. This is presently not the case as far as PEGI ratings are concerned. What about the cases (such as covermounts) which vary? One covermount could be 60% linear and the next could be 60% interactive. All of these questions would need satisfactory answers before Option 3 could be considered viable.

Convergence is making it increasingly difficult to separate film, DVD and game content, as so many video games have a tie in to a big film release: during 2007 no less than 7 of the top 30 retail games were film related (The Simpsons, Spider-man 3, Transformers; Harry Potter and the Order of the Phoenix; Cars, Pirates of the Caribbean: At World's End; and Ratatouille). The line between films and video games is becoming ever more blurred. A review in the film magazine Empire of the new best selling video game Star Wars: The Force Unleashed refers to "this blurring of the boundaries between gaming and movies ... the two industries are growing inexorably closer". In a converging world what is needed is a classification body that

can read across from films to games and back again, while recognising the differences inherent in the different media.

This view is supported by the Film Distributors Association which said in September 2008 that "it makes full sense, in today's increasingly converged, digital media environment, to roll out a single, consistent, robust classification system across the board."

**(ix) Education**

Education is clearly acknowledged as a priority in the BBFC vision statement which states an aim to 'lead and innovate in media education and research'.

De-designating the BBFC as the statutory regulator of games would have a significant damaging effect on consumer - particularly parental - awareness of video game classification.

The BBFC's three educational websites would no longer carry information on video games. So for example, the 6.23 million parents who visited pbbfc during its first year to November 2008 would no longer have any access to information about video games, including Extended Consumer Advice (ECA) on individual titles. This would have a detrimental effect on parents' ability to make informed choices about which video games their children should play.

The BBFC's extensive programme of education for schools including tailored visits, in house events and seminars, online resources and events carried out in partnership with NST, the leading operator for schools and college trips in the UK, reached 15,000 students and teachers in 2007. If the BBFC were de-designated these presentations would no longer reference videogames, damaging media literacy work in British schools. A valuable resource such as the interactive DVD ROM for use in the classroom developed by the BBFC jointly with charity Film Education, would have to lose all its educational material on video games, damaging media literacy work in schools.

History has shown that the games industry in the UK has been very slow to invest in education about videogame classification.

An effective education campaign would be costly in terms of working hours and budget (the BBFC currently spends over 4,500 working hours per annum on Education) and it has simply not been a priority for the industry until now. An education campaign would be all the more costly for having to apply across all those countries which use PEGI symbols and content advice. It won't only be UK consumers who would be faced with new symbols and content advice. In the changed political climate, the industry

is making positive noises about educating parents and children about what PEGI ratings and symbols mean. But if Option 3 were to be adopted, it is likely that it would not be long before the industry scaled back whatever putative plans it may have for education and would look to the Government to take the brunt of this responsibility. This is not a sound basis on which to base the adoption of Option 3.

Retailers have told the BBFC that the amount of in store education required to enable the public to become familiar with a PEGI only system, with new and unproven symbols and content advice, would be many more times that required for BBFC symbols and content advice.

The BBFC has a large education team which crosses departments. Their role includes providing educational resources for children, students, teachers and parents as well as other members of the public and providing detailed additional information tailored specifically for parents on every game classified. In 2007 this took up over 4,500 working hours. This would disappear in relation to video games under Option 3.

It is involved with continuous awareness work including advertising in cinema listing magazines, developing long standing relationships with media educators, providing resources and advertising materials which enhance understanding of the category symbols including free resources such as wall charts, our dedicated education websites and a presence in diaries for primary and secondary school pupils. This too would disappear under Option 3 in relation to video games.

The BBFC's education programme has been established for several years and is bolstered by working in partnership with other organisations including the BFI, Film Education, The Media Teachers Association, annual initiatives such as National Schools Film Week, various exam Boards and NST , the leading operator for schools and college trips in the UK.

We are also a member of the Media Literacy Task Force and a signatory to the Charter for Media Literacy (see [www.medialiteracy.org.uk](http://www.medialiteracy.org.uk)).

**(x) A flawed complaints system**

The PEGI complaints system, under which consumers may complain about the ratings of games, is flawed. PEGI itself admits that there is "a low understanding of how complaints can be lodged". Furthermore, once a consumer has worked out that they can complain and how to complain, the complaints procedure does not always work. For example, a complaint made in February 2006 about the PEGI 3+ rating for EA's game Need for Speed – Most Wanted was theoretically resolved shortly thereafter when PEGI's Administrators conceded that the game had been wrongly classified and should have been awarded a 12+. But more than two years later, as

late as July 2008, the original complainant found that stock containing the 3+ rating was still being sold and EA's UK website and online UK retailers were still listing the game as a 3+. This suggests that a powerful publisher felt free to ignore an inconvenient PEGI rating which would have had cost implications (withdrawing a game from sale and repackaging it with a correct symbol). This does not happen with BBFC classifications.

An effective complaints system becomes particularly important in relation to online games where the content is constantly evolving - perhaps in a way which would render an existing classification and content advice at best misleading and at worst downright harmful. Doubts over the effectiveness of PEGI's complaints system suggest that PEGI would not be the appropriate body, on its own, to regulate online games. The two person VSC too, with its lack of resources, experience and basic credibility, would be a wholly inadequate and inappropriate statutory body to monitor the development of online games and deal with complaints.

**(xi) Statutory responsibilities**

Those proposing PEGI have not fully taken on board the resource costs consequent on a new UK body (for example the VSC) being awarded a statutory classification role. These include maintaining an archive, providing evidence to law enforcement authorities in criminal cases; submitting audited accounts and an annual report to Parliament. In 2007 the cost of these to the BBFC was £453,000.

For example, in 2007, the BBFC provided provision of evidence certificates in 486 cases relating to 8,673 titles. (Since 1989, the BBFC has provided evidence in 7,850 cases in relation to 167,144 titles.) This level of workload requires the BBFC to keep a full archive of a very high standard. If a trading standards test purchase establishes that a particular game has been sold to a particular child then the court requires evidence to establish (a) whether the game as sold has been classified, and (b) if so, which classification has been awarded. Even if the title of the game matches that of a classified work, the answer to (a) can only be established through direct comparison with the classified version because more than one game may have the same title, and because the copy sold may differ from that classified (eg through the addition of material). PEGI has not been able to explain how the VSC, with its present staff of two, would provide an equivalent service to the enforcement agencies.

The Dutch regulator NICAM maintains an archive of games rated under PEGI. ELSPA has suggested that this should be moved from the Netherlands to the VSC at Borehamwood to serve as the archive for the newly designated Option 3 statutory classification body. Putting aside for one moment the issue of whether ELSPA has any authority to make such a suggestion, there are issues with the Dutch archive. First, it is only around

80% complete. Of the 7,500 games rated by PEGI since 2003, only 6,000 have been archived according to PEGI's own figures. It is doubtful that in its present state it could meet the needs of a statutory archive. And ELSPA's suggestion presupposes that all the PEGI member states would be happy for the archive to move to the UK. It is not clear whether ELSPA has discussed such a move with NICAM.

In any event, the VSC has no experience of being a statutory regulator.

**(xii) Lack of support for PEGI from other professionals**

Beyond the confines of publishers, support for PEGI in other parts of the industry is less vociferous and more equivocal. Neither games developers or retailers have a preference for Option 3. They could live with it, but developers' representatives have told the BBFC that they would be equally happy with a greater, even exclusive role for the BBFC. Arguments put forward by ELSPA that developers cannot have a meaningful ongoing dialogue with the BBFC about the classification of individual games are wholly untrue. The BBFC will continue to offer the advice viewing option whereby developers and publishers can send games in progress to the BBFC at an early stage for advice on what classification a game is likely to get and what would need to be changes to secure a lower classification. (This kind of dialogue is not possible within the PEGI system.) And, although they do not wish to upset their suppliers and are consequently guarded in their attributable comments, if push came to shove and the Byron recommendations were not adopted, retailers would prefer BBFC over PEGI classification. Retailers have pointed out the flaws in the present PEGI system (most significantly that PEGI's symbols and content advice are not understood by consumers) and argue that PEGI must improve its performance significantly.

Those responsible for enforcing statutory classifications also favour the BBFC over PEGI. LACORS, who coordinate the work of local authority Trading Standards officers across the UK, favour having the same system for video games as for DVDs because the BBFC scheme is recognised by members of the public. In the view of LACORS, a different scheme for games causes confusion.

None of these flaws can be wholly overcome. Most of them are inherent to the very nature and structure of PEGI. Some could be alleviated if PEGI could be prevailed upon to cooperate closely with the BBFC in areas such as providing adequate symbols and content advice. But if Option 3 were to be adopted, the likely mood in the industry would not be conducive to it allowing the BBFC to have any role in supporting PEGI in future.

**Q32: What are the key advantages with this option and why?**

Some games publishers have been arguing that PEGI's online service, its pan (sic)-European dimension and its 'efficiency' and 'cost effectiveness' are significant advantages over the BBFC. While the attractions of these claims are clear, these much trumpeted features of the PEGI system do not compensate for its inability to deliver the key public policy objectives; are seriously overstated; and do not, on closer examination, stand up well to comparison with the BBFC.

**(i) Online games**

PEGI Online is in its infancy. PEGI insiders are disappointed by the low take up of PEGI Online. As recently as October 2008, an internal PEGI document admitted that "PEGI Online not as successful as hoped" and admitted that PEGI's Administrators were having to work very hard to try and encourage companies to join. The Commission too is disappointed in the low take up, see Q37 (ii), below. Only 18 publishers (including UNHCR and the Council of Europe - hardly classic games publishers!) have joined PEGI Online.

**(ii) Cost**

It has been argued that a pan-European system offers significant savings to the industry, not just in terms of saving the cost of classification in a number of different territories, but also because it enables a single retail product to be distributed across Europe. While there is clearly some force in this argument, it does not compensate for the inability of PEGI to meet the public policy objectives of regulation, and is, in any case, overstated.

**- Packaging**

First, despite what it may call itself, PEGI is not pan-European but part-European. It has no role in 20 European countries and territories (including Germany, Turkey and Russia) and even in those countries which are reliant on PEGI, packaging is very often changed to reflect the local language. Indeed, PEGI's own website states "the majority of games sold throughout Europe are identical, other than for the language and packaging". Games discs typically cannot support all required languages and so the standard 'EFIGS' version (containing English, French, Italian, German and Spanish language options) is often supplemented by alternative discs featuring, for example, Polish, Russian and Czech. BBFC classification comes with certain labelling and packaging requirements but does not require the creation of a new disc – the BBFC symbol and register number can appear alongside the PEGI (or other national classification) symbol on the disc itself. To take another example: Nintendo's packaging practices shows that arguments which attack Byron for raising packaging costs unduly are false. Nintendo uses different coloured triangles on its packaging. According to the Official Nintendo Magazine, there are 49 different

packaging versions using different triangles. No-one is forcing Nintendo to come up with so many variants.

**- Classification charges**

These are about to double.

In an event, in the context of a videogame's overall development budget, the cost of classification by either PEGI or the BBFC is insignificant - on average around 0.02%.

PEGI's charges are about to increase significantly to provide the money to enable PEGI testers to review all games prior to release. (They currently review fewer than half and often post-release.) Privately, PEGI admits that the charges will double, for the second time in two years. (By means of comparison, BBFC examination charges have come down four times since 2002.) This reduces still further PEGI's alleged price advantage. This fee increase must be factored into the Impact Assessment.

**(iii) Speed**

Some have sought to argue that PEGI provides a speedier classification service than the BBFC. Data shows that this is not the case. PEGI's standard turnaround time of 10 working (12-14 calendar) days is longer than the BBFC's turnaround time of 8 calendar days. PEGI's fast service of 5 working days (around 7 calendar days) is comparable to BBFC timings.

**Q33: How do you think this system would work for the following key stakeholders:**

**(i) the consumer?**

It won't. All sides accept that the British public (alongside many consumers in Europe) do not recognise, understand or like PEGI symbols or content advice. Nor does the British public trust the PEGI system because it is under the control of a profit-driven games industry and because it doesn't reflect UK notions of harm and suitability.

Since the PEGI system fails this most important test, the other tests are irrelevant. Child protection is the heart of the matter. How PEGI might work for publishers and how much it costs should not even enter the equation if PEGI fails this most basic test.

**(ii) the games industry?**

The games industry is not monolithic and HMG should not fall into the trap of equating the games industry with ELSPA and its members. The broader home entertainment and internet industries have their own interests at

stake, as do games developers. In particular, Option 3 would be a disaster for the large and growing Blu-ray industry.

Although this option is preferred by ELSPA and a number of vocal games publishers, it is worth remembering that the games publishing industry is not monolithic. A number of publishers have told the BBFC that they are satisfied with Dr Byron's recommendations. One major UK games publisher said privately of the recommendations "we've got something good here. Let's not wreck it".

**(iii) the retail industry?**

If both systems remain as they are, with the same level of consumer understanding and confidence, the retail industry would prefer BBFC classification over the PEGI system, because BBFC symbols and content advice are much better understood by the consumer and retail staff.

**Q34: What suggestions do you have to improve the system for any of the key stakeholders?**

The flaws within the PEGI system are structural and arise from the very nature of a self-regulatory system in which untrained non-experts, with a vested interest in the rating a game gets, complete a questionnaire which cannot take account of context or national sensitivities.

A closer relationship between PEGI and the BBFC would help address some of the flaws inherent in the PEGI system, but it is doubtful, given the hostility of certain influential multi-national games publishers to losing control of games classification, that they would allow PEGI to cooperate with the BBFC if Option 3 were chosen. Rather, the industry would simply bank the adoption of Option 3. The evidence to date suggests that in the absence of strong pressure, the industry would merely pay lip service addressing PEGI's weaknesses; improving education; and providing a real focus on child protection.

**Q35: Do you think this system addresses the evidence on potential harms raised by the Byron review and if not why not?**

No. The system is driven by, and subject to, commercial interests. PEGI coders, employed by commercial interests, do not have a regulatory background. Considerations of harm; the protection of children; and providing adequate information to parents come way down their list of priorities.

NICAM and the VSC are supposed to provide a check on these interests. But PEGI testers and the VSC do not have a strong regulatory background. They lack training. Nor are their examinations of videogames particularly

thorough. Issues such as imitable techniques do not enter the PEGI equation. For example, at the top end of classification, PEGI did not consider at any stage of the process a sequence in GTA IV in which the gamer is apparently given detailed instructions on how to manufacture crystal meth at home. Only the BBFC sought advice from independent experts, including the Metropolitan Police, on this sequence before classifying the game 18.

Similarly, the PEGI Advisory Board (PAB, consisting of national experts in video classification who consider issues of harm and suitability) is also supposed to provide a balance to commercial interests. But if publishers do not like a PAB proposal (for example if it would impact on their profits) they have simply ignored the PAB. For example, a great deal of work was done on the questionnaire to take account of human dignity following concern in a number of European countries about the extreme content of games such as Manhunt 2. But this work has been shelved, presumably at the insistence of the ISFE Board - made up of publishers - which did not wish to see games on which publishers had lavished millions of pounds - prevented from reaching the market.

**Q36: How do you think this system will last into the future?**

Provided it covered online games it could in theory last. But it would still not be effective in protecting children and providing parents with the information they need to make informed choices. Most significantly therefore it would fail Dr Byron's key child protection tests.

Even if Government was content with a flawed system, at best there would be a strong risk that it would quickly lose public confidence. At worst, it would be stillborn. The likelihood is that Government would have to revisit the issue of videogame classification very soon.

**Q37: Do you think this option would work in the online environment?**

**(i) If so, what would be the benefits?**

No, see Q37(ii) below.

**(ii) If not, what would be the problems and do you have any solutions?**

It would not work effectively because PEGI Online (i) lacks the support of a critical mass of content providers and aggregators and (ii) has neither the tools nor resources, nor expertise to provide the key requirements of online videogame classification.

PEGI Online is a voluntary scheme dealing with online games. It remains a fledgling enterprise which is yet to prove its worth.

At present, PEGI Online lacks support. In 2003, pressure from the three main console manufacturers in favour of PEGI Classic forced the industry to adopt the then new PEGI system (because unclassified games would not be allowed on those consoles and so the route to the consumer would be blocked if a console game did not have a PEGI rating). This pressure is simply not present in the online world and ISFE has publicly acknowledged that this lack of pressure has resulted in strongly disappointing sign up rates for PEGI Online. Only 18 publishers, including the Council of Europe and UNHCR have signed up to PEGI Online, compared with around 300 members of PEGI Classic. The Commission too has expressed disappointment in so few companies signing up to PEGI Online.

PEGI Online does not have the resources to do anything other than offer an initial classification. In particular, it does not monitor the development of online games. It does nothing to ensure that moderation is effective or that a game is not evolving in a way inappropriate to its initial classification. Nor is it at all clear how PEGI could cope with such a role. Nor does it check compliance by PEGI Online members with the POSC except on an annual basis. One PEGI insider confessed to the BBFC that "we just pull down the shutters for a year" and admitted that a number of members were not abiding by the POSC. None have been sanctioned as a result.

Given the power of online games; the relatively low levels of parental understanding; the heightened possibility of unduly lengthy playing sessions; and the risks posed by upgrades, user-generated content and, above all, inter-gamer bullying or other abuse, it is not sufficient just to leave them to be supervised by technological tools, notification procedures and pure self regulation by games publishers. And it is not safe simply to rely on PEGI Online in the UK, given: its currently limited coverage; its novelty and fragility; the increased risks to gamers and parents posed by online play; and the current uncertainties about how PEGI online is dealing with a whole raft of issues, including upgrades and inter-player abuse.

Although the Commission continues to be a supporter of PEGI, it argues that there is room for improvement and that PEGI Online in particular should be more robust. On 22 April 2008, Commissioner Reding said : "[PEGI] is a very good first step. However, it can be greatly improved ... I also call on Member States and the industry to govern the sale of video games ... to protect minors. All consumers need clear, accurate information to make informed choices". Recognising that PEGI Online does not have sufficient signatories to render it effective, the Commission called on the video games industry to "improve the PEGI and PEGI Online systems and in particular regularly to update the criteria for age rating and labelling, to advertise PEGI more actively and increase the list of signatories". The Commission acknowledged in a written answer to a PQ in June 2008 that "only a few Member States apply PEGI online". Dr Byron

herself commented that the "low level of awareness [of PEGI Online] needs to be addressed as a priority". The Culture, Media and Sport Select Committee also considered the effectiveness of PEGI Online and concluded that games distributors should sign up to BBFC.online instead.

PEGI Online could improve. Many within PEGI would like to see it become more effective. The key areas which would make a huge difference to the effectiveness of PEGI Online are:

- statutory backing. But enforcement is an issue for any system. Government could address this.

- increased cooperation with the BBFC, see Q34, above. But under Option 3 and based on the evidence so far, it is difficult to see powerful games publishers agreeing that PEGI should work with the BBFC in this (or any other) area.

**Q38: Is there any other information that you think Government should take into account when considering the monetary costs of this option?**

As with all the options in this consultation document, the costs of classification are minimal in comparison with overall development costs of games.

The Impact Assessment predates the planned substantial increase (we understand a doubling) of PEGI's fees. The Impact Assessment must be amended to take account of this major change. The existing PEGI charges can no longer be considered valid.

Another figure which should be included in the Impact Assessment for Option 3 is the cost of classification of games elements on Blu-ray and DVD discs. A minority of Blu-ray discs now contain some sort of game. Most contain interactive material which arguably falls short of a game, such as the ability to shoot or view a scene from different camera angles. Following de-designation, the BBFC would have no authority to classify material which is clearly a game. It would not be clear who would classify all other interactive material on a Blu-ray disc. To avoid catching interactive material which falls short of being a game, legislation would need a very tight definition of what constitutes a game. Would for example re-shooting or re-watching a sequence from a different angle constitute a game?

Added to this would be the cost to distributors of training staff to fill in the PEGI questionnaire and the cost of those staff being taken off other duties. Ultimately, the issue of brand protection and cumbersome bureaucracy are likely to have constituted greater downsides for the DVD and Blu-ray industries though the cost element was, we understand, not an

insignificant factor in the Blu-ray and DVD industries' opposition to Option 3.

A more significant figure which is surprisingly not reflected in the Impact Assessment under Option 3 is the cost of education. Given the lack of public awareness of PEGI symbols and pictograms - compounded by their almost certain imminent disappearance and replacement by new symbols and content advice - a massive and sustained education campaign would be required. This is likely to run into millions of pounds over several years.

Less important in monetary terms but still significant is that those supporting Option 3 may have not factored in the costs accruing to the VSC resulting from statutory designation (though helpfully, a figure is included in the Government's Impact Assessment). These duties are currently required of the BBFC.

Taking into account all these sums, some of which are very significant, Option 3 is by some way the most expensive. It is also the only option which would increase the classification costs of the DVD, Blu-ray and covermount industries.

**Q39: Who do you think would be the right body to take on the role of statutory classifier of video games and why?**

The BBFC is the only body in the UK with the expertise, experience and level of public trust required to fulfil this function. However, under Option 3, the BBFC would be de-designated as the statutory classifier of video games.

The VSC is named in the consultation as a possible alternative. But the VSC is not primarily a classification body. Its primary role is to promote high standards in the video industry. In effect, this means distributing posters, stickers and other educational material on BBFC and PEGI classifications to UK retailers. Its staff of two in Borehamwood have neither the expertise, experience, resources, independence or public trust to be a credible statutory classifier. As for being able to exercise anything like a proper reject function, this is wholly beyond the capability of the VSC.

The VSC's undertakings to massively increase its workload and staff, and bolt on new structures in an attempt to recreate what the BBFC already does lack any credibility.

No other possible alternative is named in the consultation document. This is not surprising given that no body in the UK other than the BBFC has the relevant attributes to fulfil this function.

**The BBFC believes that a significant duty of a statutory video game classifier is educating the public, particularly given the extent of ignorance about video game classification and the recommendations of the Byron Review. The BBFC carries out an extensive video game education programme, targeting in particular schools and parents. The BBFC's website for parents (pbbfc - launched in October 2007) has so far received 6.23 million hits from parents concerned about the content of films and video games. As far as video games are concerned, this valuable and well-used educational resource would be lost if the BBFC were to be dedesignated. And there is nothing planned by any other body to replace it. There must be a question mark over whether the VSC or the industry generally has any serious education effort planned. Even if it had, the VSC lacks the resources and basic competence to mount anything remotely comparable to the BBFC's education effort.**

**All BBFC websites cover the classification of films, DVD and video games but this in itself further reinforces the already established public understanding of BBFC classification symbols, criteria and decisions more broadly, which in turn offers parents, carers and gamers themselves (both child and adult) a detailed and familiar backdrop in which to understand and make informed choices about their experience of video games.**

**The BBFC's education websites consist of Parents BBFC, (www.pbbfc.co.uk, 6.23 million hits in the year to November 2008, including 800,000 hits in October alone), providing detailed information about film, video and video game classification decisions for parents and carers; Students BBFC, (www.sbbfc.co.uk, 2.63 million hits so far in 2008), a website dedicated to students ages 12+ but with most focus on students on GCSE and AS/A2 and equivalent level courses, and Children's BBFC, (www.cbbfc.co.uk, 1.1 million hits so far in 2008), our website for under 12s, but more specifically, those aged 5 -11 years.**

**All the BBFC sites contain specific tailored resources on video games. On www.pbbfc.co.uk there is Extended Consumer Advice (ECA) about every video game classified. ECA offers detailed examples of what issues each game raises and what parents can expect to find if they purchase or play it. The site also has a Parents Information Centre which has introductions to the categories, a guide to video games and glossaries of gaming terms and genres. On www.sbbfc.co.uk there is a dedicated Games Portal which collates case studies, timelines, news articles (on subjects such as children's games, violent games, the Byron Review), research materials and other educational resources for teachers and students. On www.cbbfc.co.uk there is information for parents and teachers alongside a dedicated Games Room which offers young site users the chance to play games, improve their gaming vocabulary, place the games they play in context and explore the issues raised by games, either alone or with parents and carers.**

The BBFC, working with charity Film Education, has developed an interactive DVD ROM for use in the classroom. This resource offers teachers and pupils a hands-on introduction to how and why films, DVDs and video games are classified and empowers them as students and consumers. A copy of this DVD ROM is attached at Annex F.

Other education initiatives involving video games include: in house seminars available to individuals and school groups; collaboration with other media education specialists including the Media Teachers Association, Film Education and the BFI; ad hoc talks and training with adult groups including professional groups (Local Authorities, INSET days for media teachers) and community groups (such as the Round Table); working with school tour providers such as NST to provide tailored sessions in house.

The BBFC is a member of the Media Literacy Task Force and a signatory to the Charter for Media Literacy (see [www.medialiteracy.org.uk](http://www.medialiteracy.org.uk)).

Outside specific Education initiatives the BBFC has an established commitment to wider media literacy, offering increasingly detailed information about decisions, category symbols, specific works and the BBFC guidelines.

The BBFC's Consumer Advice is now so much a part of the cinema going landscape that it turns up in film reviews, podcasts (including Mark Kermode's very popular podcast), and political cartoons. Consumers expect and well understand the format. This is clear as the forms themselves, and the BBFC symbols, have been appropriated, discussed, adapted and utilised across a wide variety of fields outside film such as The Stereophonics 2005 album Language. Sex. Violence. Other? It has even become an intrinsic part of the marketing and promotion of certain films! Such familiarity further underpins the understanding of the BBFC's games classification.

**Q40: Do you think the body given in answer to Q39 would be able to set up the systems required to carry out this statutory function and why? But if not, why not?**

For the reasons given in Q39 above, only the BBFC could be a credible statutory regulator of video games.

**Q41: Do you think this option would be more or less costly to the games industry than both the current system and the hybrid system and if so what evidence do you have of this?**

Several games publishers and ELSPA believe that this option will be less

costly. However, their calculations may not factor in a realistic figure for the costs of the statutory obligations that would fall to the industry under Option 3. The 2007 cost of BBFC's service to Parliament and TSOs arising from its statutory designation was £453,000.

The maintenance of an archive by the VSC may lead to other complications within PEGI. NICAM already maintains an archive in Holland under the voluntary PEGI system. ELSPA has apparently commented that this should move to the UK once the VSC is designated as the statutory regulator. But other countries which use the PEGI system might conceivably object to this. And the archive is presently inadequate to serve as a statutory archive. For a start, according to PEGI's own figures contained in its 2007/8 Annual Report, it is only 80% complete. It may therefore be necessary to maintain more than one archive. ELSPA and the VSC massively underestimate the level of work required to maintain an archive to an adequate standard.

It is likely that the VSC has not factored into its equation the cost of the extensive education effort that should result from its designation as the statutory UK regulator of videogames. Such an effort would need to be immense and last several years for PEGI to get anywhere near BBFC recognition levels.

Besides the above cost, at the time of writing the costs arising from classification under Option 3 were not dissimilar to those under Options 1 or 2, because there was not much to choose between BBFC and PEGI classification costs. But this analysis does not take into account the imminent substantial increase in PEGI's fees. These were originally due to have come into force in October 2008, but Byron considerations (mainly a desire not to portray PEGI as expensive) have meant that they may be delayed until after Government has taken a decision on the future of video game classification. Generally, the BBFC is the cheaper option for games released on multiple platforms and PEGI has until now been cheaper for the more complex, top end games released on single platforms. Whether PEGI continues to be cheaper for such games remains to be seen.

The evidence suggests that the likely cost of packaging under this option would be very similar to that under Options 1 or 2.

**Q42: Do you think the BBFC should continue to rate all content (games and video) of discs which contain film or video content not integral to the game and why? [please refer to footnote 5 in answering this question]**

**Yes. This is more sensible than the alternatives which are: (i) to give responsibility for classifying this linear material - which may include entire feature films, making of... featurettes, short films and the like - to another body; (ii) to split the responsibility for classifying a single product to two**

separate organisations operating different systems and standards; or (iii) not to classify it at all.

(i) If Government agrees that such material should be classified, there is no body besides the BBFC competent to carry out this role. PEGI coders employed by games publishers could not rate entire feature films or any other sort of purely linear material. So the question arises of who should classify such linear material. If Government selected any body other than the BBFC, it would effectively drive a coach and horses through the film and DVD classification system, destroying film and DVD classification in the UK. Distributors of linear material who currently submit to BBFC classification might argue, with some justification, that this new body should classify its feature films, featurettes, short films and trailers too. And where is this new body that could take on over 15,000 such works per annum with immediate effect?

(ii) Two distinct bodies carrying out two separate classifications for different elements within the same product is cumbersome, overly bureaucratic, and potentially confusing. Questions would arise over which classification would take precedence. The higher one? The one which covers the majority of the product? In which case is the product essentially a game which has linear add-ons or a linear work which contains game elements? How would the system deal with for example the release of the double disc package of John Woo material with one disc containing a John Woo feature film (Hard Boiled) and the other containing a videogame (Stranglehold) inspired by John Woo? Would the product then carry both BBFC and PEGI symbols? Would this in turn create consumer confusion? What if the ratings are different? These are all complicated and difficult questions to which there are no easy answers.

(iii) If nobody were to classify linear material not integral to the game, unscrupulous distributors could release all sorts of problematic and harmful material by packaging it as a game. A pornographer could for example release a minigame; get it rated 3+ by PEGI; then add two hours of hard core pornography as video content not integral to the game; release the pornography with a legitimate 3+ game rating. This is not a far fetched possibility. Certain pornographers have shown themselves most adept at latching onto new possibilities of releasing their material to avoid regulation.

**Q43: Do you think PEGI should rate the game content, while the BBFC rates the film/video content and why?**

**(i) If so, should both symbols be on the box?**

**No. The BBFC believes that such a system, with two bodies rating different parts of a single product is far from ideal and even possibly unworkable (see Q42(ii) above), not least because it is confusing for consumers. No**

side disputes this. Hence the voluntary agreement between PEGI and the BBFC that where non-integral linear material is packaged with a game, the whole game comes to the BBFC for classification regardless of whether the game itself falls under the statutory remit.

Take the case of an 18+ rated game aimed solely at adults but which comes with an innocuous U rated featurette. Given the much higher consumer recognition levels of BBFC symbols, there must be a risk that the average consumer would base a purchasing decision on the recognised BBFC symbol and ignore the unknown PEGI symbol. The problem is compounded given that often it is parents or grandparents buying games for their children.

**(ii) In the event of different age ratings, should only the higher symbol prevail?**

**Yes, though this could potentially be confusing for customers.**

**Q44: It would be helpful to have your views on whether this option would affect games developers based outside Europe, such as those in Japan or US; namely, how this option might affect them and the extent, if any, to which it may affect them. (Please refer to Paragraph 2.36)**

**Because the system would apply to any games sold in the UK, all developers, wherever in the world they are based, would pay the same amount. No European developer would be at a competitive disadvantage.**

#### **Option 4 – Voluntary Code of Practice**

There would be no changes made to the legislation so the BBFC and PEGI would continue to classify games as they currently do. The Government would ask retailers and suppliers to sign up to a voluntary Code of Practice to secure adherence to the classification system when selling or supplying video games to children aged 12 or above, even though a statutory offence would not be committed if they broke the code. This Code of Practice would focus on classification and consumer protection and would follow the guidelines outlined in the review. If tougher measures were called for, this could be backed up with statutory legislation calling on the industry to consult and agree on a Code of Practice, breach of which could then be taken into consideration during a prosecution.

**Q45: What is your overall assessment of whether this option would work and why?**

**In her Review, Dr Byron states that to be effective, any classification system in the UK must at its most basic include the following elements:**

- clear age ratings;
- clear accompanying descriptors which explain game content;
- trustworthiness;
- enforcibility where there are risks of harm, including the ability to block the release of some games.

She goes on to state that to succeed, the system must rely on awareness amongst parents and carers. She also stresses that an effective rating system must work for the games industry; support retailers; be flexible and future proof; and reflect the evidence on potential harms.

The present system fails several of these key tests. A voluntary code of practice will not help to meet them.

The present system has worked to an extent while public and governmental concerns about the content of video games was less significant. But this has been at the cost of confusion among consumers, particularly parents, and even retailers. Clear and increasing societal concerns about the potential harmful effect of videogames, coupled with the rendering of violent and sexual content of video games in an increasingly photo-realistic fashion, the likelihood of this option securing any degree of public confidence is minimal. Indeed, the Byron Review was commissioned because of concerns about children playing unsuitable games, partly as a result of an inadequate, largely misunderstood voluntary classification system.

**Q46: What are the key flaws with this option and how could it be adapted to overcome them?**

The existing dual classification system - two bodies; two sets of criteria; two methodologies; two sets of symbols; statutory vs voluntary ratings - is confusing by its very nature. Nor does this option take account of the likelihood that within a few years, the vast majority of games will be played online.

With the cooperation of the games publishing industry some - but not all - of these problems could be addressed. But the hostile response of ELSPA and a number of publishers to the Byron Review (and consequently to the BBFC) suggests that whatever they promise now, they would not cooperate under Option 4 in the absence of legislation.

There must be doubts as to whether essentially doing nothing would satisfy the public given significant societal concern over the potential

<b>harmful effects of video games.</b>
<b>Q47: What are the key advantages with this option and why?</b>
<b>It would be cost neutral. It's the cheapest of the four options.</b>
<b>Q48: How do you think this system would work for the following key stakeholders:</b>
<b>(i) the consumer?</b>
<b>Without a massive public education effort and significant cooperation by the games industry, all the existing problems would remain. In any event, even pouring money into an education campaign is unlikely to succeed under Option 4. The structural problems inherent with the option cannot be solved by throwing money at it.</b>
<b>(ii) the games industry?</b>
<b>Other than signing up to a voluntary code of practice there would be no change for them. There would be no increase in costs. Nor would there be much incentive for them to cooperate with the BBFC, or to support an effective public information campaign.</b>
<b>(iii) the retail industry?</b>
<b>The existing confusion would remain.</b>
<b>Q49: What suggestions do you have to improve the system for any of the key stakeholders?</b>
<b>Evidence suggests that the industry requires powerful incentives if it is to take a responsible approach to the supply of video games. A voluntary code of practice is likely to adopt a lowest common denominator approach. Statutory backing would be required to secure a code of practice which would meet genuine concerns about the classification of video games, both on and offline.</b>
<b>Q50: Do you think this system is sufficient to reflect the evidence on potential harms raised by the Byron review and if not why not?</b>
<b>No. This option ignores the evidence on harm discussed by Dr Byron because many 12+ and 16+ games which contain potentially harmful material would continue to be rated by a voluntary system owned and run by an industry whose bottom line is not child safety but profit.</b>
<b>Q51: How do you think this system will last into the future?</b>

<p>It won't. As games increasingly move online, this system would rapidly become obsolete. At the very least, statutory backing of a code of practice for online games would be required.</p>
<p><b>Q52: Do you think this option would work in the online environment?</b></p>
<p><b>(i) If so, what would be the benefits?</b></p> <p>No, it wouldn't work, see Q51 above.</p>
<p><b>(ii) If not, what would be the problems and do you have any solutions?</b></p> <p>Without strong and enforceable incentives for publishers to sign up to BBFC.online and/or PEGI Online, the effective classification of online games would be severely hampered. The BBFC classifies only a small number of online games (though it classifies large amounts of linear material distributed online). And PEGI Online has few members. This is because both systems are voluntary and so far, games publishers have felt free to ignore these classification mechanisms. In particular, in the online world there are not the console manufacturers such as Microsoft, Nintendo and Sony who essentially forced games publishers to adopt PEGI Classic in 2003 by blocking access to the consumer unless a game carried a PEGI rating.</p> <p>The industry would be free to self-regulate all online games. There would be no independent UK voice able to challenge whatever online system was developed by the industry, the same industry which has shown a marked reluctance to sign up to, or abide by, PEGI's Online Safety Code.</p>
<p><b>Q53: Is there any other information that you think Government should take into account when considering the monetary costs of this option?</b></p>
<p>No.</p>
<p><b>Q54: Do you think industry would sign up to such a code?</b></p>
<p>Without a strong lead from Government, industry would have few incentives to sign up to a code. Even if they did sign up, the industry's track record so far suggests that without strong - and enforceable - incentives, the code is likely to be ineffective.</p>
<p><b>Q55: Would this incur any additional costs to industry (games or retail) and can you provide evidence of this?</b></p>
<p>No.</p>
<p><b>Q56: Do you think that this would work in practice on the ground?</b></p>

**Until it became obsolete in a few years, it would work, but unsatisfactorily. Public dissatisfaction with the system could cause it to fail much earlier however, given the expectation raised by the Review and Dr Byron's recommendations, and Ministerial comments supporting "cinema style" ratings being applied to video game content.**

**Q57: It would be helpful to have your views on whether this option would affect games developers based outside Europe, such as those in Japan or US; namely, how this option might affect them and the extent, if any, to which it may affect them.**

**No distributor will be put at a competitive disadvantage because the system would apply to all games released in the UK irrespective of the location of the developer.**