

Dr Bryon's review had 3 main recommendations relating to video games. Firstly, that the statutory basis of classification should include video games which would otherwise receive a 12+ PEGI rating. Secondly, those games at the lower end, namely, 3+, 7+ should continue to be free from statutory classification. And thirdly there should be a partnership approach to classification, with a hybrid system of classification, with BBFC logos on the front of all games, with PEGI continuing to rate 3+ and 7+ games and their equivalent logos across all age ranges on the back of all boxes.¹⁰

The response to this consultation proposes a fifth option called an enhanced hybrid statutory system. This includes the labelling of the front and the back of boxes as already outlined. In this option, video games/DVDs and films both off and on line are rated initially by PEGI and then by the BBFC for all games rated 12+ and offline the games rated under 3+ and 7+ are to be rated by PEGI with enforcement at the point of sale but only with minimal penalties for the lower age groups. This would help to ensure a simpler system at the retail and hire outlets to say that all ages are sold on a statutory basis. All video games rated by just PEGI on a self assessed industry basis for 3+ and 7+ would be subject to enforcement and random checks by a new Review Board both off and on line.

A comprehensive overhaul of the legislation is recommended. The Video Recordings Act 1984 could be repealed and certain elements incorporated into a new Act comprehensively dealing with video games on and off line as well as films and DVDs. In view of the concerns over the violent and antisocial nature of the content of video games and films, it is important that classification guidelines are both raised and the guidelines scrutinised and monitored. Adequate statutory mechanisms to allow for more robust decision making to both refuse and allow for reconsideration of classification decisions, even when the games are on the shop shelves are clearly needed. Stringent standards also need to be applied within the games industry appeal system itself.

Parental self regulation, as recommended by Dr Bryon's review, can only go so far in protecting our children from the potential harmful content of videos. The Government, those responsible for setting the film classification standards, the games producers and the game industry itself need to take a responsible role and a lead. The public or parents have no say over what is on our shop shelves. There is no public or 'people' element in the appeal process and only the industry itself can ask for reconsideration of classification or appeal to the Video Appeals Committee. The BBFC has only refused classification 3 times since 1984.¹¹ Even toned down versions of some games should not have lead to such a low refusal figure. This compares to Australia where since 2000, the Review Board has refused to classify 22 times.¹²

5. Parents or those who wish to act in the public interest also have no control over what is on sale on the shop shelves and only the industry itself can appeal against classifications. Whilst both PEGI (the Pan European Game Information age rating system¹⁹) and the BBFC systems have a complaints process for members of the public²⁰the BBFC appeals processes are for publishers who are not happy with a particular rating. There is generally no public or people element for the appeal process even if there is considerable disquiet over a particular classification.

6. Earlier this year Julian Brazier MP sought to address these accountability issues in a private members Bill called the British Board of Film Classification (Accountability to Parliament and Appeals) Bill 2007-2008 (please see the link to this Bill).²¹ This Bill would have allowed Parliamentary scrutiny of the top posts in the BBFC, the establishment of an independent appeals body to look at a classification of video works at any stage of the process; and the ability to review a classification of an existing video triggered by an Early Day Motion (which would need to be signed by not less than 50 MPs).

7. The Brazier Bill also envisaged Parliamentary Scrutiny and approval by the Home Affairs Committee of the BBFC guidelines on Classification once in the lifetime of every Parliament and before revision. This way the classification would be monitored. The Bill also proposed an increase in the various penalties under the Video Recordings Act 1984.

8. At the end of February, the Minister for the Department for Culture, Media and Sport, Margaret Hodge's in her concluding remarks on Julian Brazier's Bill referred to Dr Bryon's Review that was due in March 2008. She said; *During our consideration of that review, there will be plenty of time to engage with the question of how best to respond, and whether action needs to be taken to change the way that we establish the BBFC or to change its accountabilities.*²²

9. The question that needs to be asked is what are the issues that need to be addressed when looking at the accountability structure of the BBFC?

9.1. The two main issues are:-

- Raising the Classification guidelines standards;
- Various legislative measures to improve the accountability of the BBFC including statutory principles to raise classification standards together with the formation of a Review Board to review current and existing classifications.

10. Firstly, the raising of the classification guideline standards:

10.5. As films are becoming increasingly violent the difference between the morality of the hero in the plot and the villain is becoming increasingly blurred. For example, Batman is now the Dark Knight with a classification 12A. Again this was given a 12A certificate when many other countries gave it a 15 or 16 classification.²⁸ On the parent information site²⁹ it says that Dark Knight was passed as 12A for moderate violence and sustained threat but then goes on to say that the film does contain a good deal of violence but not detail. It is described as a superhero movie and this subtly masks the violence within that context as Batman and the Joker are apparently indestructible no matter what is thrown at them. This may simply serve to be potentially harmful to younger children who may not distinguish between fantasy and reality and start to believe that violence has no painful consequences. There is a very threatening and realistic scene in the film where the Joker threatens to create a larger smile on woman's face with a knife. This is described on the parental site as having a significant degree of menace but there is no actual violence shown. Any new legislation should consider the need for both content and context to be monitored in classifications but not use context as an excuse to allow more violence particularly as the context of such superhero films is increasingly realistic and not based upon cartoon characterisation but on real figures interacting in real environments.

11. Secondly, in terms of the need for increased accountability, as well as raising the standards of classifications, we can learn from how other legislative models tackle the need for improving and changing accountabilities. In Australia, the Classification (Films, Publications and Computer Games) Act 1995³⁰ provides a good model of a system which allows for a more accountable people input into the classification system. It has both a Classification Board and a Review Board for reviewing classification decisions. Under the Australian legislation, the Minister, the applicant for classification, the publisher and a person aggrieved can all apply for a review.³¹ Since 2000, the Australian Review Board publicly lists many decisions on classification.³²

11.1. What are the Legislative measures to be considered that would improve classification accountability?

- Setting up a Classification Review Board, referred to as a Review Board.
- Appointments to the Review Board ensuring independence and avoiding conflicts of interest so that no-one associated with the industry are appointed.
- Time limited appointments to the Review Board to avoid case hardening.
- The Review Board reviewing current classification decisions as well as existing ones already on the shop shelves.³³
- Improved Public accountability by allowing a public or people element to apply to the Review Board for reconsideration of classifications including initial film classifications.

H) The system must reflect the evidence on potential harm.

J) Government and industry must take into account how the system will translate into online gaming.³⁸

A) There must be a trustworthy, uniform and clear set of symbols or labels to categorise the age ratings with accompanying descriptors which explain game content.

13. In the fifth option of the enhanced hybrid classification the BBFC labels would be on the front and the PEGI on the reverse of video games but the legislative system would be varied as described above. The advantage of such a system is that it would provide parents with more information on content. Dr Bryon argued that the pictograms could be misinterpreted.³⁹ However, the Pictograms with more content information could be easily improved with explanatory text which apparently is already underway.⁴⁰ The preference would be for the higher age classification to be provided if there was a disagreement, this could be either the BBFC or PEGI. This would help drive up standards. On the whole there should be a preference for the PEGI classification due to their higher standards. The Director General of European Leisure Software Publishers Association (ELSPA), Paul Jackson has said that *"The film ratings board continually downgrades games classified 18 by PEGI. They go to BBFC 15 or even BBFC 12,"* He alleged that the UK would be left *"out of step"* with classifications in the rest of Europe.⁴¹ A more integrated approach with a preference for PEGI classifications due to their higher standards should be put in place.

14. Dr Bryon found that parents feel they need more and better information about what is in a game to help them decide what is appropriate for their individual child.⁴² Even at the lower end of the market it is helpful not only to have a U certificate but an indication if the film/game is suitable on the back of the box for 7+. This is on the basis that the more information a parent can have the better.

15. The BBFC state that the classification guidelines are the product also of public consultation, research and the accumulated experience of the BBFC over many years.⁴³

However, it is highly questionable whether public consultation is the appropriate way to maintain high standards for classification guidelines. To draw an analogy, in charity case law trying to define charity through public consensus is seen as a most imprudent thing to do and such things should not be dealt with by a battle between pollsters.⁴⁴ It is submitted that the correct way to deal with guidelines is by statutory provisions which provide clear cut principles and standards. For example, in Australia there are guidelines and a code with general principles which is on a defined, clear cut statutory basis, Section 11 of the Australian Classification (Films, Publications and Computer Games) Act 1995 refers to the matters to be taken into account for a classification publication decision including: *the standards of*

C) There must be a statutory basis to the video game classification system from the age of 12 onwards.

D) There should continue to be a non-statutory system up to the age of 12.

20. The statutory legislative measures need to consider the appropriate legislative model. An enhanced hybrid classification system is preferable with proper accountability. In order for there to be statutory consistency, it would be preferable to make both the PEGI and the BBFC statutory for all ages. The statutory system could have all initial video games under the current PEGI system by the games applicants to cover all age ranges. This could still include a check on the games rated as 16+ and 18+ by the Video Standards Council (VSC) as this is already required for a game to be on the on line registration site.⁵¹ The majority of games are already rated by PEGI and it is important that the VSC retains in legislation its stated aim to promote high standards within the video and video games industry.

21. The Netherlands Institute of Audiovisual Media (NICAM) already carries out random tests on self assessment rated games for the 3+ and 7+ age range. Games rated 18+ are already referred to the BBFC. Dr Byron recommended that the 12+ games could be rated by the BBFC on a statutory basis. We agree that would be a sensible option. However, it was recommended that PEGI would continue to rate 3+ and 7+ exempted from statutory classification. We agree with PEGI rating but believe that all ages should come under legislation so that with the 3+ and 7+ ages there is enforcement at the point of sale. The penalty for lower age groups could be much less but it would have the distinct advantage and simplicity in retail outlets for training purposes and codes of practice to say that the whole age range of classification was subject to these statutory rules.

22. The fifth option proposed would mean an extra emphasis upon the video games above 12+ as these would be rated both under PEGI and BBFC as this is where the greatest risks of potential harm for children and young people are considered greatest. However this would not ignore the 3+ and 7+ ranges.

E) Any system must be flexible and future proof.

23. This is necessary because games are changing fast and the rating system must be able to adjust quickly to reflect any new risks these changes bring.⁵² In view of the nature of the changes since the Video Recordings Act 1984 came into force, there needs to be a comprehensive and radical overhaul of the legislation in this area. It would be best to repeal the VR Act 1984 and incorporate appropriate parts within a completely new and comprehensive Act. It is advisable not to deal with this in a piecemeal fashion but to have a fully comprehensive well thought through new Act. This Act could also cover games both on and off line and the need to classify and control both content and context there. Any legislation should

27. The enhanced hybrid system would support retailers so that they can sell age appropriate games. It would make staff training much simpler for this to be statutory for all ages not only to deny sales but also to simply state that all video works must be sold or rented at the appropriate age. This would save having to make a distinction with the 12+ video games even if the penalties for 3+ and 7+ were much lower.⁵⁶

H) The system must reflect the evidence on potential harm.

28. Any new system needs to be robust enough to protect young people from potential harm.⁵⁷ The strengthening of the legislation with a Review Board to review classification decisions as well as extra measures to ensure that the regulators are not afraid to refuse classifications should help to protect children and young people from harm.

29. The legislation should aim for classification to look at both content and context to protect against potential harm. But context should not be used as an excuse for allowing ever increasing levels of violence particularly as the superheroes are not just comic or cartoon characters and are more realistic. In fact the context should be used to assess the morality of the storyline, Grand Theft Auto is morally destructive not only because of the high level of violence but also because the player takes on the role of the villain who kills or attacks innocent victims and the gamer plays the role of the villain and has that perspective through repetitive play. The good guy bad guy morality is lost in such games and needs to be restored and games and film producers need to play a more positive role. Sadly, the message from video games and films is often that violence is acceptable.

J) Government and industry must take into account how the system will translate into online gaming.

30. Consideration needs to be given to the online increase in video games and the harmful psychological effect of game addiction. The World of Warcraft is played by 11 million world wide. The Chinese Government restricts under18s to three hours playing time, after which the player is expelled from the game. American psychologists have estimated that up to 40 per cent of *World of Warcraft* players are addicted to it⁵⁸ The average player plays up to 25 hours a week⁵⁹

31. For those players of the World of Warcraft who are obsessed with the game spending long hours playing per day may lead to a point where more of a person's free time is spent in a game world than a real world. The bizarre effect of the Avatar games when a person develops an alter ego role and a second life, the dangers of which are that the distinction between reality and fantasy even for adults can become blurred. Recently a newspaper has reported a story of a couple who got married and divorced both off and online with their Avatar characters. The divorce was alleged to be as a result of online adultery by the male partner. The fantasy online world where the couple forged a relationship was seen as

This could also apply to the higher age categories as well as the younger age groups. The same powers would apply off line with the power to order no reprints of video games or films undergoing review and to ensure current copies are kept off the hire or retail shelves.

36. There needs to be a system of enforcement legislation to ensure that game producers act responsibly and adopt the Video Standards Council (VSC) stated aim of higher standards in video games both off and on line. It is of interest to note that both *Manhunt 2* and *Grand Theft Auto* are both produced by Rockstar North⁶⁷. Legislation which refers to statutory codes of practice could allow for much more stringent methods of ensuring game and film applicants and producers produce more socially responsible video games and films, so that the message that violence is unacceptable comes across in the content, context and script.

37. Currently, most games do not require a statutory classification. The VRA 1984 says that a video work is not exempt from classification if it covers matters such as human sexual activity or acts of force or restraint associated with such activity; mutilation or torture of, or other acts of gross violence, towards humans or animals or human genitals or human urinary or excretory functions. In 2007, 101 out of 1231 video games were classified by the BBFC of the 101, 29 received an 18+, 19 received a 15+ and 2 received a 12+. This means that only 2.4% of the 1231 games released had an 18 certificate. The BBFC currently classifies around 250 video games and envisages an increase of 300-500 per year initially⁶⁸, presumably on the proposal that their work is expanded to cover the 12+ age ratings side.

38. However, these figures mask and under estimate the harmful impact of such games on children and young people as children under 18 do play these games even if they are rated 18+. This is because although there are few games rated 18+ but millions are sold of just one game. The *Grand Theft Auto* game has been reported as having global sale figures of 70 million⁶⁹ and it is assumed that numerous copies have been sold in the UK.

39. In summary the proposed fifth enhanced hybrid classification option suggests legislative methods which would help to ensure that our children and young people are protected from the harmful content of video games/DVDs and films.

40. However, if an enhanced BBFC option is chosen instead then many of the same legislative principles and ideas in this submission can be used to improve and increase the accountability of the BBFC including the Review Board to review current and existing classifications.

- 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. "

²⁵The only reference traceable for the guidelines is one A4 sheet on the BBFC website which confusingly links through icons to age classification guidelines

<http://www.bbfc.co.uk/policy/index.php>

More details can be much more easily found on a campaigning anti censorship site

<http://www.melonfarmers.co.uk/guide05.htm>

No references to the guidelines are provided in the Video Games Consultation for PEGI and BBFC classification apart from the comparison for 12

See http://www.culture.gov.uk/reference_library/consultations/5345.aspx

See column 1409 –states that The BBFC is already planning and undertaking the consultation that will inform the 2009 guidelines

<http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080229/debtext/80229-0010.htm>

But no trace of this appears to be publicly available

²⁶ See section 3 <http://www.publications.parliament.uk/pa/cm200708/cmbills/016/08016.1-4.html#j01>

²⁷ See <http://www.pbbfc.co.uk/filmDetail.asp?filmID=1102>

²⁸ See <http://www.dailymail.co.uk/news/article-1041817/British-film-censors-pressure-countries-violent-Batman-15-certificate.html>

²⁹ See <http://www.pbbfc.co.uk/filmDetail.asp?filmID=1015>

³⁰ See section 42 and Part 5 –Review of Decisions

<http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/frameLodgmentAttachments/EF93D56992787E3ECA25736F001AAAF4E>

³¹ The legislation is drafted so that the person aggrieved is likely to be a person highly engaged in activities relating to such matters or an organisation whose activities relate to the contentious aspects of the theme or subject matter.(see section 42 (3).

<http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/frameLodgmentAttachments/EF93D56992787E3ECA25736F001AAAF4E>

<http://www.culture.gov.uk/images/consultations/VideoGames2008.pdf>

⁴⁸See VAC this just gives the Procedure and repeats the VRA 1984 on appeals

http://www.bbfc.co.uk/downloads/pub/Submitting%20Companies/Video_Appeals_Committee_Terms.pdf .

⁴⁹ See <http://www.videostandards.org.uk/>

⁵⁰ See point 1.15 <http://www.culture.gov.uk/images/consultations/VideoGames2008.pdf>

⁵¹ See 4.1. <http://www.culture.gov.uk/images/publications/PEGIHandbook2007.pdf>

⁵² See 1.27 <http://www.culture.gov.uk/images/consultations/VideoGames2008.pdf>

⁵³ See <http://www.independent.co.uk/news/world/europe/dutch-open-detox-clinic-for-videogame-addicts-481743.html>

⁵⁴ See point 7.46 <http://www.dcsf.gov.uk/byronreview/pdfs/Final%20Report%20Bookmarked.pdf>

⁵⁵ See 7.8. <http://www.dcsf.gov.uk/byronreview/pdfs/Final%20Report%20Bookmarked.pdf>

⁵⁶ See 7.20 <http://www.dcsf.gov.uk/byronreview/pdfs/Final%20Report%20Bookmarked.pdf>

⁵⁷ See point 1.30 <http://www.culture.gov.uk/images/consultations/VideoGames2008.pdf>

⁵⁸See

http://technology.timesonline.co.uk/tol/news/tech_and_web/gadgets_and_gaming/article4931876.ece

⁵⁹ See http://news.bbc.co.uk/news/beat/hi/technology/newsid_7726000/7726168.stm

⁶⁰ See <http://www.dailymail.co.uk/sciencetech/article-1087304/Microsoft-joins-war-virtual-worlds-Xbox-update.html>

Various references on Avatars

<http://www.dailymail.co.uk/home/search.html?searchphrase=avatar>

⁶¹ See point 6.68 <http://www.dcsf.gov.uk/byronreview/pdfs/Final%20Report%20Bookmarked.pdf> .

⁶² See point 6.44 <http://www.dcsf.gov.uk/byronreview/pdfs/Final%20Report%20Bookmarked.pdf>

⁶³ See page 4

<http://www.gamblingcommission.gov.uk/UploadDocs/publications/Document/British%20Gambling%20Prevalence%20Survey%202007%20summary.pdf>

⁶⁴ See the descriptions in points 8.15 to 8.17

<http://www.dcsf.gov.uk/byronreview/pdfs/Final%20Report%20Bookmarked.pdf>

⁶⁵ See 199.

<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmcomeds/353/353.pdf>

⁶⁶ See 198

<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmcomeds/353/353.pdf>

⁶⁷ See <http://www.timesonline.co.uk/tol/news/uk/scotland/article3821838.ece>

⁶⁸ See 187 to 190

<http://www.publications.parliament.uk/pa/cm200708/cmselect/cmcomeds/353/353.pdf>

⁶⁹ See <http://www.timesonline.co.uk/tol/news/uk/scotland/article3821838.ece>