

Firstly I would like to note an important point: Your consultation addresses commercial proprietary game manufacture and resellers. There are many other interested parties and increasingly game writing and design is being done by open source groups. They were not consulted, they should have been, and this short response made when I found out about it should not be considered prejudicial to any other actions in future.

#### Non-Commercial, Open Source and Educational Games

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Each of the classification systems faces a similar set of problems and it is important to address those directly.

Firstly a large number of games are provided freely or with other products. Secondly the definition of a "game" is surprisingly unclear. Many educational tools are built to operate as games because this motivates children to learn. Equally flight simulators for the PC are games, yet one assumes flight simulators for training pilots are not. When you consider quizzes (clearly games) the category that becomes a "game" is suddenly very broad and starts to include millions of web sites. Thus a game is not defined by what is in the code, but by who uses it. An even clearer example of that ambiguity is America's Army which is either a game, a military recruiting advert or a training tool depending upon the user.

A second problem is that games are produced by many groups, including those you failed to consult. A brief scan of [www.happypenguin.org](http://www.happypenguin.org) will show you the tip of the iceberg - it lists hundreds of free games written for fun by the free software community, or donated by educators and volunteers to help teach subjects from typing to painting. That large list includes only games for Linux not Macintosh or Windows games. A system which inadvertently criminalises open source developers and up and coming young programmers is likely to be detrimental to government commitments to education and learning in IT as well as discrediting the aims of any legal change and setting up a dispute between groups of people who differ on the detail not the fundamental goals of protection.

A third area of concern is archives and caches. Many internet providers and other sites archive games of historic interest and often mirror entire sites which are full of games, almost entirely harmless but which have not been rated and never will be. There are terabytes of material and the owners and keepers of these archives could no more rate them all than the British Library could retro-actively age classify its book collection and glue stickers onto them. Historically even arcade game machines have depicted acts that would meet BBFC regulation.

Against this it is recognized that some freely available and open source games are not child appropriate. Games such as Quake depict fairly graphically acts of violence which in multiplayer mode include acts of graphic violence against other players using simulated firearms.

Therefore we believe that non-voluntary approaches must continue to exempt historic material produced before the date of law change. For sold product that could be a sunrise period (say five years), for free access to historical material from before any regulation it should continue indefinitely because of

the problem with archives and historical collections. This should not be a big problem. Most games sell within five years and are gone, while almost all historical material is not remotely photo-realistic.

For new games a non-voluntary approach must not prevent the free, unrated distribution of games software. This is vital to protect the many non-commercial projects and to protect those in education learning and distributing games of their own. Neither PEGI or BBFC are financially viable paths for non-profits to distribute games and this threatens freedom of expression and protest. Games are written for free to make political points and should continue to be so. It is viable to rate films because their high setup and production cost means the cost of rating is minor.

A clear analogy is paintings and photographs. Like computer games anyone can produce them and the cost of production can be minimal. As a result there is no BBFC classification of paintings or photographs. Instead voluntary guidelines are used and these are re-enforced by obscenity laws, social acceptability and specialist law dealing in areas such as child pornography.

The hybrid approach where games are required to be rated for higher age groups could be made to work here. There is a balance to be struck between free expression and art (as games are), and regulation.

Given that the voluntary system does not seem to be broken (beyond the fact parents actively choose to ignore it) there seems to be no point moving beyond a voluntary system which already works. Any kind of regulation would have to include criminal action against parents for permitting their children access to such games to have material effect.

#### Dynamic Games =====

Increasingly gaming is more dynamic while the current regulatory models for DVD are static. A WII user for example get different in game characters shared over the internet from other WII users. Increasingly games download updates and support sharing of user customisations and redesign. This raises special problems for the crude static classification schemes of the BBFC (and also PEGI) as they cannot cope with continuous re-evaluation of the game on a daily basis and games continue to become more like an improvised group play and less like a film.

#### Community Gaming =====

A second area that the consultation sidesteps is the growing world of what might be called community gaming or shared environments/shared worlds. Although this goes back to the 1970s it is only in the past few years such games have really become mainstream with projects such as second life, and educational systems such as Croquet.

In such games the game world itself is built and created by the users. The crude supplier/consumer model of the world is gone, and regulation must reflect this. What defines the age range for such an environment is the action of other users. Thus while the operators may have influence over the game environment they do not control it beyond defining and enforcing terms and conditions. It is, to put it simply, not a closed box you can evaluate.

These games are big business and it is vital that enough legal certainty exists not to drive them all overseas where they are just as accessible but completely unregulatable.

### The End Of The Physical

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The worlds largest music seller today is itunes. Many large music organisations are moving to subscription models. Gaming is following the same paths. Any set of policies which are built around consulting on a simple model where a supplier provides a fixed, bounded and non user controlled environment to a user in a box for a fee is living in the past. Whatever route is chosen there is an absolute need to address clear voluntary labelling of online and downloadable games.

### Making The Voluntary Easy

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The open source community would like to be able to provide clear consistent guidelines on game suitability. There are however no public domain, licence fee free sets of age rating rules and symbols provided by a respectable body. There should be, and they should be ones that both indicate suitability and also make it clear any rating was done informally. We could simply go and create another rating scheme to confuse with PEGI and BBFC but that has never appeared to be a helpful move.

The consultation needs to address the following very simple problem. Free software game developers producing games for free would like to help them be played by the right people. They would like to be able to indicate that clearly and concisely and in a manner consistent with general views on age suitability worldwide. Many of them don't have money to spend on it.

Neither the BBFC or PEGI addresses their needs and this actually hinders them doing the right things when they want to.

### Conclusion

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The consultation is rather flawed both in the interested parties it addresses and in the assumptions it makes about games and game technology. Many large game companies would like expensive schemes to shut out free and open source game developers and to build defacto regulatory barriers to competition. Both the BBFC and PEGI operators have enormous financial incentives to grow their empires at the expense of the public and private purse - as well as competition and society.

In a fast changing environment history says very clearly that government intervention always produces disasters. Therefore the voluntary approach should be continued and parents should be educated further.

There are actions that could be taken to increase the protection of children.

- A standardised recommended conversion between RSACI ratings (for web content such as online game pages) and BBFC/PEGI ratings

- A standardised \*no fee\* set of logos and rules for self/community rated material such as freeware and open source, at least for ages up to 12 or 15.
- Education of parents that the BBFC and PEGI codes exist for a reason

Parents are ignoring game ratings that suppliers choose to include. Making the rating mandatory doesn't address the real problem. It isn't the game authors who need regulating as they are all keen to do the right thing.

It is the parents who need educating because they either don't understand the reason for, or more often make an active decision to ignore game ratings. This often happens even when it is pointed out to them directly, in person, by the retailer.

If you want a new offence, it should be "knowingly permitting a minor under your supervision to play or watch content rated for a higher age group"

That would address the real problem, and avoid all the problems with internet content, free software, games hosted abroad and digital downloads.