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Rt Hon Andy Burnham MP  
Secretary of State for Culture, Media &  
Sport  
Video games classification  
Department for Culture, Media and Sport



20<sup>th</sup> November 2008

Dear Secretary of State

## Video Games Classification

I set out below my response to the Video Games Classification consultation document.

However, in order to put my response into context, I would like to begin with a short summary of my involvement in the video games industry, and why I am interested in this issue.

### *Who I am*

I am a lawyer specialising in video games contracts. I have worked in the UK games industry since 1997. Although I started out as an in-house lawyer with a video games publisher, most of my practice consists of representing British independent video games developers in their contractual negotiations with (usually US based) video games publishers. Since 2004 I have run a small legal and business affairs consultancy called Sarassin LLP in London.

### *Why I am interested in video games classification*

I am interested in video games classification for the following reason. My clients, independent video game developers, generally create video games "on order" for large international video game publishers. These publishers generally require that my clients make a number of contractual warranties about the games they are developing. These warranties often include binding promises that the games they create achieve a particular

age rating, and are not banned in the UK. If a game subject to such a warranty were banned in the UK, then the costs of a warranty claim against the game developer would put that developer out of business, with the loss of perhaps hundreds of jobs. Indeed, most of my work involves protecting my clients from this kind of contractual liability.

I believe that it is therefore essential that the game classification process, and in particular the process by which games can be banned, should be: (a) transparent; and (b) operated by individuals who understand the video games business. Any alternative system would impose an intolerable burden of uncertainty and risk on video game developers.

However, the BBFC fails to recognise or to adopt either of these requirements. The purpose of this response is therefore to set out my observations about the practices of the BBFC, and to explain why the BBFC should not continue its role in video games classification, and in particular why it should not be granted an enhanced role in this field. I shall conclude with my thoughts as to the four options for the future which are presently under consideration.

#### *Lack of transparency*

As the consultation document notes, the BBFC banned a video game, *Manhunt 2*, during 2007. In order to try to understand the reasons for this ban, which would in turn help me to advise my game developer clients, I asked the BBFC for a full list of their reasons for the ban, together with any other relevant information (such as the kinds of changes that the BBFC had recommended should be made to *Manhunt 2*). This request, made by telephone, was rejected, although I was told that all of the information I had requested would be available at the Video Appeals Committee hearing later that year.

I attended the Video Appeals Committee hearing and requested sight of the copies of the documents cited at that hearing. These documents included: (1) all of the evidence in chief of the witnesses; (2) the correspondence between the BBFC and the publishers of *Manhunt 2*, including correspondence setting out changes which the BBFC demanded be made to the game; (3) the formal appeal and reply notices issued by the BBFC and the game publishers; (4) the formal arguments of the parties, including the list of specific objections raised by the BBFC to the game.

Any public judicial hearing in England and Wales would be required to provide this information. Indeed, no hearing can properly be described as being held in public if key elements, such as the evidence in chief of witnesses, or the parties' written arguments, are withheld from the public. However, when I requested sight of these documents, the Video Appeals Committee secretary (who I understand is employed by the BBFC) refused. I wrote to him – twice – to ask for access to these documents and both times my request was rejected.

I also wrote twice to the BBFC asking for these documents, or at least access to them so that I could consult them. The first letter simply postponed a substantive reply on the

basis that the High Court proceedings were pending (although this cannot possibly have been relevant to my request). I have not received any formal reply to my second letter, although I did receive an email from the BBFC shortly after I sent it, which was accompanied by one of the witness statements of the BBFC's director (but without any of the extensive exhibits to that statement).

Copies of these letters are attached at Appendix 1.

I have to say that I found this absolutely astonishing. It is simply unacceptable that any body which has the power to ban a lawful creative work in the UK can proceed in this manner, without explaining itself to the public or to the industry which it regulates. The video games industry can not have any clear understanding of the BBFC's approach to violent video games without the information that I requested. This imposes an additional burden of uncertainty on the industry which is completely unnecessary and potentially highly damaging to its stakeholders, particularly the UK's internationally renowned independent game developer community.

I would add that no question of company confidentiality applies to these documents. As *Manhunt 2* was at all material times already on sale in other countries, the BBFC cannot claim that any of these documents contains information which is confidential to the publishers of the game.

#### *Lack of understanding of the video games industry*

Although I have not yet had access to all of the documents cited by the BBFC in support of its ban of *Manhunt 2*, I was present at the appeal hearing and have obtained many of the arguments made to support the ban. I attach at Appendix 2 an extract from a lecture I gave at a video game development conference earlier this year. This extract considers at length the principal arguments advanced by the BBFC at the Video Appeals Committee hearing in order to justify banning *Manhunt 2*.

These reasons are quite extraordinary. In particular, they reveal a level of ignorance about video games which is simply breathtaking. For the sake of brevity I shall mention here only three of the most absurd points made:

1. The BBFC appears to be completely ignorant of the very popular "stealth mechanic" used in video games for all ages for many years (paragraph 13). Instead, the BBFC appears to consider that encouraging gamers to use stealth amounts instead to encouraging an underhand and dishonest activity, and that this should be taken into account in deciding to ban a game.
2. The BBFC considers that bleak video games (even if made for adults only) are unacceptable, and that video games should include humour in order to alleviate bleakness (paragraph 24). Bleak books and films are accepted, and even highly

regarded, in our culture. There is no reason why bleak video games should not be treated equally.

3. The BBFC cites the absence of “moral dilemma” and “puzzle elements” as reasons to ban a game (paragraphs 23 and 26 respectively). Again, no such requirement is imposed on any other creative medium.

Having played *Manhunt 2*, I can also confirm that it is not remotely realistic, contrary to the assertions made by the BBFC (as another reason to ban the game – see paragraph 16). Indeed, the Video Appeals Committee also found that the game lacks realism. My concern is that the video games currently in development, including the bleak and violent ones, are much more realistic than *Manhunt 2*. If the BBFC requires that violent and bleak games be prevented from becoming more realistic than *Manhunt 2* then this is surely an issue which should be addressed by Parliament, rather than taken by a group of individuals in secret.

I would add that the individuals who actually decided to ban *Manhunt 2* – David Cooke, Sir Quentin Thomas, Lord Taylor of Warwick and Janet Lewis-Jones – are not video game players and to my knowledge have no experience of the video games industry. We do not even know whether any of these people even *played* the game, or if so for how long. We do not have access to any minutes of their meeting, if indeed any minutes were taken. The Video Appeals Committee was also made up of people who did not play video games and had no experience of the games industry. The fact that the games industry should be regulated by an institution whose decision-makers have no experience of video games playing or production is, again, simply astonishing. I fully accept that the BBFC employs people who do understand games. However, these are not the people who make the important decisions, such as whether to ban a game.

### *Options*


Turning to the four options proposed by Dr Byron, I clearly reject options 1 and 2 for the reasons set out above. As I mentioned in the introductory section of this letter, I work for British game developers and therefore spend much of my professional time confronting the video game publishers who control the PEGI classification system. Accordingly, I have no natural inclination towards these publishers or towards the PEGI classification system. Options 3 and 4 are I think equally valid, although it seems strange to set up a new system when the PEGI system already exists. The video games industry has shown that it is quite capable of self regulation and there is simply no historical case when a rating has been given by a games industry body which the public has considered to be inappropriate.

*Conclusion*

I know of no individual or institution within the games industry who, in the light of what I have said above, would consider that the current state of affairs is acceptable, still less that it is sensible to extend the remit of the BBFC further. In these circumstances, it simply cannot be right to enhance the role of the BBFC in the games industry. I know of no other example in which an institution with so little understanding of a particular industry has been granted the power to classify, or ban, the lawful creative output of that industry. The BBFC is a film body, its directors are film experts, and it clearly has no place in the video games industry. Its continuing involvement in classifying and banning games simply sends out the message that the video games industry is not mature enough, or professional enough, to do the job itself. I do not think that this message is justified.

I remain at your disposal should you require any further information.

Yours sincerely

A handwritten signature in cursive script, reading "Vincent Scheurer".

**Vincent Scheurer**  
Sarassin LLP