

Trading Standards

South East Ltd

TSSE is a partnership of 19 local authority Trading Standards services in the South East of England operated by TSSE Ltd, a limited liability company.

DCMS Video Games consultation 2008 – 13th November 2008

Thank you for the opportunity to contribute to the video game consultation. This response is on behalf of TSSE, a partnership between 19 Local Authority Trading Standards Services from the following councils: Bracknell Forest, Brighton & Hove, Buckinghamshire, East Sussex, Hampshire, Isle of Wight, Kent, Medway, Milton Keynes, Oxfordshire, Portsmouth, Reading, Slough, Southampton, Surrey, West Berkshire, West Sussex, Royal Borough of Windsor & Maidenhead, and Wokingham.

With an existing role in the sale of age restricted video games, the focus of the response is on the part of the consultation most relevant to Trading Standards work and experience.

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?

Lack of:

- clarity re age restriction
- consistency across Europe

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

It would over complicate the situation, with both consumers and retailers possibly suffering. It relies upon the BBFC and PEGI coordinating to a greater extent. Overcoming these issues would require adopting one of the other proposals.

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

Use of the BBFC ratings would, to some extent, bring it more into line with DVD ratings, a system with which consumers and retailers are familiar.

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

(i) the consumer?

-Too confusing as both systems (BBFC and PEGI) would need, to an extent, to be run in unison.

-However, an increase in 'front of box' BBFC logos would still be a welcome aid to the consumer.

(ii) the games industry?

Probably not a great difference to the situation now, so little impact

(iii) the retail industry?

More BBFC ratings would help retailers in preventing age restricted sales occurring. However, proof of age at 12 or 15 is (for all proposals) an issue in the UK where id at such ages is likely to be less available than, say 16 (which is a PEGI rating)

Q5: What suggestions do you have to improve the system for any of the key stakeholders?

Adopt the PEGI age ratings

Q6: Do you think this system addresses the evidence on potential harms raised by the Byron review and if not why not?

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

It will find itself being replaced with a pan-European system

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

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

(left blank)

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

The PEGI online system is already further developed than the BBFC offering. Developing a hybrid online system would appear to be inefficient

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

Developer costs would likely increase, which could have a negative effect on smaller software houses, and/or increase costs to consumers.

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?

Use a hybrid PEGI system.

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?

More, but no evidence to support this (see answer to Q9).

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?

I would suspect it would increase (or at the very least not decrease) costs.

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.

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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]

Agree with the criteria currently used by PEGI in their 'Handbook for coders and contacts'

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.

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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?

While adopting one system is, I feel, the way forward, and using the BBFC would mean the extension of an already recognised system of marking, it (possibly) restricts trade in Europe.

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

Not European wide. This fault cannot be adapted, it needs to be avoided i.e. by using the PEGI system.

**Q17: What are the key advantages with this option and why?
A well known system of marking.**

Consumers and retailers know the symbols already.

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

(i) the consumer?

Well, with only a little extra publicity to make them aware

(ii) the games industry?

From the review documents read, they appear to be happy with any system that works and does not cost them more money.

(iii) the retail industry?

If it sees and increase in the number of age restricted (by law rather than on a voluntary basis) titles it will not be popular as it will require more diligence on their part with regard to checking ages/ids etc. of customers. More burden on business.

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

Adopt a pan-European system.

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

Yes

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

It will be replaced by a European wide system.

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

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

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

The online environment is 'world wide'. While a European system would address many users, a UK based one reduces this to a small fraction.

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

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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?

Probably more expensive. Again, no evidence other than the increase in the number of restricted titles would appear to increase costs from developer, retailer and consumer. (This would include an increase in penalties paid by retailers when found to be selling age restricted titles to underage customers)

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 PEGI symbols alone

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

No.

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?

I would suspect it can only add to costs, with the UK consumer perhaps paying for the increase.

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)

No evidence. However, again, the market place is larger than the UK now, and trying to be UK restrictive can only make the task more complicated and therefore more open to failure.

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)

No evidence. However, one European system (subject to it being publicised to UK users) appears to be one way of reducing or, at least, not increasing such burdens or confusion.

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.

I do not believe it would be of benefit.

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?

Of the 4 proposals, this is the most forward looking.

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

Consumers are not as familiar with the PEGI system as they are the BBFC. Although it is not 'new'.

While PEGI based the reliance on a UK based organisation would mean the adoption of the Irish system i.e. if an 18+ PEGI title is then considered unsuitable by the VSC it would effectively be banned. This still leads to the problem of a non-true pan-European system.

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

One pan-European system...in the most part (see answer to Q31).

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

(i) the consumer?

Easier due to just one marking re age (plus content indicators).

(ii) the games industry?

Easier as reduced packaging costs.

(iii) the retail industry?

Again, easier due control age restricted sales when it's clear which age marking (in this case just the one PEGI marking) is relevant.

But more of burden if 12+ and 16+ become more widespread.

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

One European based body to control age ratings, with all European governments adopting those ratings.

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

Yes

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

Again, it will be replaced by a European wide system. Possibly, in time (and this may be far off) a worldwide system may be required/introduced. Who would administer this? The UN?

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

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

Possibly within Europe and co-operating non-European based providers. The benefit would be a much larger user base as they would not be restricted by UK boundaries.

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

Continuing from Q37, any such online system would probably require the co-operation of ISP's to block non-complying sites.

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

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

Probably the VSC as it would be an extension of their current role. Obviously an increase in resources would be required.

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?

Yes, as they do it already. It would just require additional resources.

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?

Probably less or no more than. No evidence. However, a reduction in packaging design/printing costs seems likely, as one example.

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]

Only in accordance with PEGI guidance found in their 'Handbook...' i.e. the BBFC should not rate games just because there are 'cut scenes' that introduce, enhance or link the game. Extra film or video content (e.g. a 'making of' documentary) would still need to be rated by the BBFC.

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

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

Yes, subject to answer to Q42.

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

In this situation a PEGI symbol should be used that relates to the higher rating. A BBFC symbol should never be used, as it defeats the object of adopting a PEGI system alone. The BBFC would return their rating to PEGI (or the VSC) who would then rate the item using the equivalent PEGI rating.

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)

Of the 4 proposals this would be the most 'open market' approach.

However, a central European body (i.e. not the BBFC or VSC) would surely make such a system even more attractive.

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?

Voluntary codes of practice (VCOP) are insufficient in this area i.e. protecting children

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

As a VCOP it lacks the legislative weight to be effective. I do not think a VCOP could be adapted as its flaws are inherent.

Q47: What are the key advantages with this option and why?

None.

Q48: How do you think this system would work for the following key stakeholders:

(i) the consumer?

No

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(ii) the games industry?

Possibly, in that it could be the cheapest and easiest of the proposals for them to adopt.

(iii) the retail industry?

Would assist irresponsible retailers and possibly be unfair on responsible ones i.e. it could remove the level playing field of statutory measures.

Q49: What suggestions do you have to improve the system for any of the key stakeholders?

To not adopt a VCOP.

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?

Possibly not. Infringements, from the design of games that do not comply to the supply of restricted games to the wrong ages need to be tackled as prevention not cure. A VCOP leaves it too late and could see more problems in this area that have to be tackled post non-compliance.

Q51: How do you think this system will last into the future?

It would be replaced with a statutory one.

Q52: Do you think this option would work in the online environment?

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

(left blank)

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

Even legislation is difficult to enforce in the online environment; a VCOP would be open to exploitation and excuses of providers alleging to not understanding what was required of them.

Q53: Is there any other information that you think Government should take into account when considering the monetary costs of this option?

(left blank)

Q54: Do you think industry would sign up to such a code?

Quite possibly. It would be seen as a reduction of the burden on business by them I suspect, and allow them to possibly push the limits of the VCOP to see how much they could get away with (and I only refer to a small number of less responsible industry members (I hope) here) within the 'soft' boundaries of such a scheme.

Q55: Would this incur any additional costs to industry (games or retail) and can you provide evidence of this?

No evidence. However, I would suspect it would reduce costs to everybody but the consumer. Any savings made would no doubt be retained by some party in the supply chain.

Q56: Do you think that this would work in practice on the ground?

No, as per previous answers.

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.

It would be more flexible, certainly, but as with any provider outside of the UK or Europe, telling them what they can and can't do is one thing. Enforcing it another.

BACKGROUND INFORMATION ON UNDER AGE SALES
BY TRADING STANDARDS SOUTH EAST REGION

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In **2007/08** TSSE Authorities carried out 2034 tests for sales of age restricted goods, with 358 sales (18%).

	Number of tests	Number of Sales	of sales
Alcohol	1495	242	16
Tobacco	293	69	23
Fireworks	108	8	7
Spray paints	41	14	34
Knives	50	13	26
Videos/DVDs	14	4	29
Solvents/Butanes	33	8	24

Alcohol has been the main focus and this year's results are a very encouraging improvement over previous years.

Tobacco has seen its worst recorded tobacco test purchase figures across the region this last year, with one in four shops selling tobacco to our volunteers (at least 18 months below the legal age) after the age rise to 18 in October 2007.

05/06 20 sales from 173 (12%) 06/07 19 sales from 109 (17%)

Response collated and compiled by Kevan Morley (Chair of TSSEL Age Restricted Sales Focus Group) Hampshire County Council

Particular thanks to Troy Doyle of Hampshire County Council for thorough reading and draft response circulated around TSSEL
20th October 2008

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