

**CHRISTIAN CONCERN FOR OUR NATION
RESPONSE TO THE DEPARTMENT FOR CULTURE, MEDIA
AND SPORT CONSULTATION ON VIDEO GAMES
NOVEMBER 2008**



*Changing Society to put the
Hope of Christ at its Centre*

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About Christian Concern for our Nation (CCFON), CCFON is a policy and legal resource centre which identifies changes in policy and law that will affect Christians. The team of lawyers at CCFON research and prepare for legislation affecting Christian Freedoms. CCFON serves a mailing list of 30,000 supporters.

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

CONSULTATION RESPONSE

EXECUTIVE SUMMARY

BACKGROUND TO RESPONSE

The Video Games consultation¹ follows on as a result of Dr Byron's Review "Safer Children in a Digital World"² recommendations and presents 4 proposals to reform the current video game classification system. Namely, a Hybrid Classification System, Enhanced British Board Film Classification (BBFC)³, Enhanced PEGI (Pan European Pan European Game Information age rating system⁴) and a Voluntary Code of Practice. The consultation also indicates an interest in hearing of other approaches and a fifth option. This response is based on proposing a fifth option.

Currently there are both statutory and voluntary classification systems. The statutory system based on the Video Recordings Act (VRA) 1984⁵ is used for the BBFC and based upon age related ratings. It is enforced at the point of sale and gives content advice in the form of a short sentence. The BBFC also rates all films; local authorities can vary this classification for local cinemas under the Licensing Act 2003⁶. The non-statutory PEGI European system is self regulatory by completing a detailed questionnaire and run voluntarily by the video games industry. It is also based on age ratings but gives parents more information about the games in the form of pictograms covering violence, bad language, fear, drugs /alcohol, discrimination, gambling and sex.⁷

The BBFC has classification categories for video games which are the same as those for DVDs/videos/films of 18, 15, 12, PG, U.⁸ The PEGI system has age ratings of 3+, 7+, 12+, 16+and 18+.⁹

Dr Byron'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 Byron'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

It is submitted that other legislative models could be used such as the Australian model to improve classification accountability as outlined further in point 11 of this submission. In Australia there is a Classification Board as well as a Review Board who review classifications. A public/people element is allowed to apply for a review of classification decisions. The Minister, the applicant for classification, the publisher and a person aggrieved can all apply. If such a legislative change was made in the UK there would be improved accountability of classification decisions. Currently the weakness of the BBFC

system is that the only industry itself can appeal if dissatisfied with a classification decision.

This submission is based on the preference for a fifth option of an enhanced hybrid system although the Review Board proposals could also be applied and other legislative ideas if the enhanced BBFC option is used instead.

FIFTH OPTION PROPOSAL-ENHANCED HYBRID CLASSIFICATION

1. There is real concern that the BBFC role may expand further if the recommendations of Dr Byron's report are taken up either for a hybrid system as she recommends with a greater role for the BBFC in 12+ classifications¹³ or alternatively a single system for the BBFC as recommended by the House of Commons Culture Media and Sport Committee on the Harmful Content on the Internet and Video Games 10th report published in July 2008.¹⁴ An expanded role option for the BBFC is of concern because of the lack of public accountability for the BBFC Classification decisions.

2. It is vital that classification accountability focuses on the serious need for improved public accountability and better regulation of the violent and antisocial content of video games and films.

3. In a recent survey¹⁵ by (ELSPA/YouGov 2007) 69% of respondents were in favour of banning some violent video games, compared with 23% who disagreed with it. However, in practice, the BBFC has only refused to classify three games since 1984.¹⁶

4. It would appear that neither the Byron review, the current structure of the BBFC, its appeal system nor this Video Games consultation (which follows on from the Byron review)¹⁷ properly address or ask questions on this very important issue. The review by Dr Byron concentrated on the need for better information for parents and upon self-regulation. Parental self regulation is important but may be difficult not only due to the generational digital divide, but also because the review acknowledged that "...many Parents who felt under pressure to buy unsuitable products often said that peer pressure to get their child particular games was fierce" and children under 18 do play 18+ games such as Grand Theft Auto.¹⁸

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 public²⁰ the 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:

10.1. It is submitted that the standards of BBFC classification guidelines need to be raised. A simple illustration of how standards have lowered can be seen by looking at the emboldened descriptions of the game Grand Theft Auto on the Parent information BBFC website. Grand Theft Auto I-III series released in 1997 refers to (**strong bloody violence, strong language, sex references and drug references**) and Grand Theft Auto IV in 2008 now has many more references to (**strong violence, very strong language, very strong sex references and drug use, violence is a central theme, very strong language, strong language, sex references, strong references to sexual behaviour, drugs**)²³ yet all games are still rated 18. In addition a comparison of the verbal descriptions of PEGI 12 + and the 12 BBFC Classification descriptions may lead to the conclusion that PEGI has higher classification standards.²⁴

10.2. It is submitted that there needs to be proper scrutiny and review of the BBFC guidelines²⁵. The Brazier Bill²⁶ suggests this is done by Parliamentary scrutiny and approval of the guidelines. On classification, the current guidelines pose the question, *is the material for the age group concerned, clearly unacceptable to broad public opinion*. We submit that this is asking the question the wrong way round. In order to protect children and vulnerable groups we need to be asking whether the material is **acceptable** to broad public opinion not **unacceptable**. The balance here may be incorrectly tilted towards non-censorship as opposed to the greater need to protect our children from potential harm.

10.3. Further examples can be provided of how standards need to be raised by looking at recent film classifications by the BBFC. It is noted that the latest James Bond film - Quantum of Solace is rated as a 12A and is described on the BBFC Parental Information site as *frequent moderate action violence*.²⁷ **This rating says that Violence must not dwell on detail. There should be no emphasis on injuries or blood.** Yet as a result of James Bond's (Daniel Craig's) continual violent killing (which does provide detail of single victim killing), M (Judi Dench) remarks that this is preventing the following of leads. The high number of corpses produced during the film makes one question the classification

10.4. The legislation should consider the need to link up the marketing of products with high demand to age appropriate film making and the refusal of classification, if linked to high street shop products which may or are likely to be suitable for younger age groups. This would be to avoid inappropriate age classifications and demands for lower age classifications for such films, particularly for new or traditional super heroes' characters. For example in relation to the younger hero child age market for Spiderman, Superman, James Bond, and Batman so that there would be age appropriate film content. The call for a lowering of classifications may be simply due to the products marketed in connection with such heroes.

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.
- The Review Board should act as a watchdog to monitor existing and current classifications of Videos/DVDs /games as well as the initial classification of films.
- The Review Board should initiate its own classification review and investigation at its own discretion.³⁴
- Advertising Videos/DVDs/games/films should come under statutory classification control, as in the Australian system³⁵, to ensure age appropriate advertising.
- The matters to be taken into consideration for classification could be on a statutory basis to reflect higher standards, but with the guidelines themselves monitored by the Review Board.³⁶
- Appointments to the top posts of the BBFC could be scrutinised by the Home Affairs Parliamentary Committee of the House of Commons and be of limited duration.
- Any Dual classification system for the BBFC and PEGI could legislate to show a preference for the higher age classification for Videos/DVDs/Games or Films, if not agreed. This would be in order to improve standards, safety and child protection, particularly as children are currently accessing games above appropriate age classification.

11.2. In order to ensure proper public accountability in classification decision making, application fees for non-profit making organisations wishing to ask the Review Board for a review and reconsideration of a classification decision should be kept at a minimum or

waived and consideration should be given to a right of appeal to the High Court. Measures should be put in place so that legal costs are not prohibitive otherwise public minded citizens and groups will be unable to challenge any decision.³⁷

Astute, well thought through legislation needs to be put in place.

12. How would this proposed fifth option meet Dr Bryon's nine essential elements of a new classification system, listed from A) to J) below?

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.

B) There must be the power to refuse to certify certain titles so they cannot be sold (or supplied⁸) in the UK.

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.

E) Any system must be flexible and future proof.

F) The system must work for the games industry.

G) The system must support retailers.

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 Byron 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 Byron 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 morality, decency and propriety generally accepted by reasonable adults and the persons or class of persons to or amongst whom it is published or is intended or likely to be published.* ¹ Julian Brazier's Bill referred to the need to have *special regard to public concerns about violence and the sexualisation of children.*

B) There must be the power to refuse to certify certain titles so they cannot be sold (or supplied⁸) in the UK.

16. The refusal of classification of video works is simply not operating properly in practice. As we have already said the British Board of Film Classification (BBFC) refusal to classify a game has only happened three times since 1984⁴⁵, compared to the Australian model where since 2000 the Review Board has refused classification 22 times.⁴⁶

17. Even in the case of Manhunt 2 where the BBFC tried to take a more vigilant approach challenging in the High Court the Video Appeals Committee (VAC) decision, a further similar decision by the VAC may still see a toned down version of Man Hunt 2 being released in the UK with an 18 certificate.⁴⁷ Adequate statutory mechanisms to allow for more robust decision making to both refuse and allow for reconsideration of classification decisions, once on the shop shelf are clearly needed.

18. It is of great concern that the Video Appeals Committee (VAC) is making such decisions which shows the weakness of an industry only appeal system. The VAC gives details of how the procedure operates within the games industry to appeal. However, there are no stated aims given for the VAC just a repetition of what the VRA 1984 says about appeals.⁴⁸ This contrasts with the UK based Video Standards Council (VSC)⁴⁹ who examine the higher age end of the PEGI classifications and whose stated aim is to promote higher standards within the video and video games industry.⁵⁰ The focus of any

legislation should be to maintain high standards. The weakness of the VRA 1984 is that it has a strong industry bias.

In our submission the Review Board should entirely replace the VAC

19. A robust refusal of classifications could be strengthened by statutory measures and principles to adhere to, so as to ensure that classifiers are not intimidated in their classification refusal decisions or higher age classifications by facing potential legal costs from the games or film industry. To discourage the industry challenging higher age or refused classification decisions a weighted legal premium could be charged to the industry within the application fee which alters according to the legal costs or anticipated legal costs incurred by the BBFC, PEGI or the Review Board in defending higher age or refused classification decisions.

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.⁵²In 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 have flexible legislative regulative tools within it to allow for further future developments which could or may need improved regulation. But all regulations should be worded and framed to have the main stated purpose of aiming to achieve higher standards and to protect children and young persons from the risk of potential harm.

24. There is also a need to consider taxing the industry to help combat gaming addiction. This may end up being recognised as much as a problem as gambling, alcohol or drug addiction. Gaming addiction clinics were opened 2 years ago in Amsterdam to help addicts.⁵³ Measures should be considered to try to prevent gaming addiction by internet site providers considering the possibility of only allowing access to games for a total time period of 2 hours per day.

F) The system must work for the games industry.

25. The advantage of the proposed fifth option is that it builds on what already happens in practice as there is already a dual classification system, particularly in relation to the higher age classifications which may need dual classification for both a UK and European market. It has been argued that a BBFC system may risk undermining the PEGI system to such an extent it may collapse.⁵⁴ Rating video games initially by PEGI and then by the BBFC would have the advantage of each game being more carefully checked. The Review Board would add a formal legislative body to allow for greater public accountability on classification and presumably may undertake other functions such as if there is a disagreement on classification but the legislation will mean that if there is any doubt a higher age classification is accepted.

26. Dr Byron appeared to argue against the PEGI system on the basis of the UK sensitivities being different and stated that the “...UK may feel less worried about e.g. certain religious profanities”.⁵⁵ Whilst it may be argued that some European countries are more religious, others may also have a more secular bias. We are very concerned that Dr Byron appears to be giving an opinion which lacks an evidence basis and which on the face of it may discriminate against those in the UK with religious beliefs who are sensitive to religious profanities and find it offensive for these to be in video games or films. Bad language is offensive and measures should be taken to curtail its use in video games or films. But it is doubly offensive for such bad language to be combined with

religious profanities. It is suggested that the initial PEGI pictogram system could be expanded in the UK to include a picture of a church to show the absence of religious profanities in video games and DVD films with an explanatory note to say that it contains no religious profanities, so that religious parents could choose appropriate videos and DVD films to reflect their religious beliefs.

G) The system must support retailers.

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 under 18s 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 emotionally real as the off line world. Of even more concern is that there can be second lives for teens and Microsoft has recently announced changes for children whereby *“The system allows people to create electronic versions of themselves, known as avatars, to play games, and chat with other users online in a ‘party room’.”*⁶⁰ Dr Byron has argued that it is unknown *“the degree to which attributes of the avatar might be incorporated into the autobiographical self”*.⁶¹

32. The Byron report appears to down play the problem of game addiction referring to research of only 7% of teens in the UK found to play more than 30 hours of computer games per week.⁶² Compared with other addictions, this is in fact a high percentage of problem gamers and should be a real cause for concern. For example, on a comparative basis, only about 0.5% of the adult population is considered to be problem gamblers with about with 1.4% moderate risk gamblers and 5.1% low risk gamblers.⁶³

33. A flexible and future proof system as well as one which translates onto online gaming should consider what legislative and other measures are needed to combat the potentially harmful psychological effects. These effects may arise from online gaming in view of more realistic alter egos and the ability to actually put oneself in the gaming scene due to virtual software.

34. The PEGI system appears to have made more progress on the online gaming side as far as classification is concerned. The BBFC are only described as being at the pilot stage.⁶⁴ Microsoft has pointed to the advantage of the PEGI system as being more informative than the BBFC due to giving parents both an age rating and a content rating for a game. PEGI is a self-regulatory system applied consistently across Europe.⁶⁵ Comments have been made over whether or not the BBFC would have the necessary resources to keep up with the increase in the number of games and game components reaching possibly 100,000 game elements in five years time and that only a self-regulatory system would be able to keep up.⁶⁶

35. In our opinion, it would be advantageous to have a dual hybrid statutory system on line to cover both the PEGI European classifications and the BBFC so that each game would be statutorily rated by both self assessment and BBFC assessment for games of 12 and above. Games of 3+ and 7+ could be covered by PEGI ratings in case of games assessment overload. However the legislation could look at systems of statutory controls over the 3+ and 7+ ranges. This would be so that games applicants who self regulate and assess and internet sites could be called to account for inappropriate age ratings. This could be by a system of enforcement measures such as fines, banning from age ratings and internet providers not being able to list those games producers /self assessed games applicants who are banned. The Review Board could carry out random checks on all such games on line with power to have them immediately taken off line so that internet providers and sites would have to respond or risk fines or imprisonment. 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.

- ¹ See http://www.culture.gov.uk/reference_library/consultations/5345.aspx
- ² See <http://www.dcsf.gov.uk/byronreview/>
- ³ See <http://www.bbfc.co.uk/>
- ⁴ See <http://www.pegi.info/en/index/>
- ⁵ See Video Recordings Act 1984
http://www.opsi.gov.uk/RevisedStatutes/Acts/ukpga/1984/cukpga_19840039_en_1
 Video Recordings Act 1993-amends VRA 1984
http://www.opsi.gov.uk/Acts/acts1993/ukpga_19930024_en_1
- ⁶ See section 20 of the Licensing Act 2003
http://www.opsi.gov.uk/acts/acts2003/ukpga_20030017_en_3#pt3-pb2-11g20
- ⁷ See 3.2. <http://www.culture.gov.uk/images/publications/PEGIHandbook2007.pdf>
- ⁸ See 1.13 <http://www.culture.gov.uk/images/consultations/VideoGames2008.pdf>
- ⁹ See point 3. <http://www.culture.gov.uk/images/publications/PEGIHandbook2007.pdf>
- ¹⁰ See points 7.34,7.35 and 7.47
<http://www.dcsf.gov.uk/byronreview/pdfs/Final%20Report%20Bookmarked.pdf>
- ¹¹ See 1.12 Video games consultation by the Dept for culture, media and sport.
<http://www.culture.gov.uk/images/consultations/VideoGames2008.pdf>
- ¹² See <http://www.classification.gov.au/special.html?n=262&p=66>
- ¹³ See point 7.41 of the Byron Review
<http://www.dcsf.gov.uk/byronreview/pdfs/Final%20Report%20Bookmarked.pdf>
- ¹⁴ See point 200 <http://www.publications.parliament.uk/pa/cm200708/cmselect/cmcomeds/353/353.pdf>
- ¹⁵ See 7.21 of Byron Review
<http://www.dcsf.gov.uk/byronreview/pdfs/Final%20Report%20Bookmarked.pdf>
- ¹⁶ See 1.12 Video games consultation by the Dept for culture, media and sport.
<http://www.culture.gov.uk/images/consultations/VideoGames2008.pdf>
- ¹⁷ See <http://www.culture.gov.uk/images/consultations/VideoGames2008.pdf>
- ¹⁸ See points 7.74 and 7.75 of the Byron Review
<http://www.dcsf.gov.uk/byronreview/pdfs/Final%20Report%20Bookmarked.pdf>
- ¹⁹ See <http://www.pegi.info/en/index/>
- ²⁰ See 7.15 of Byron Review
- ²¹ See <http://services.parliament.uk/bills/2007-08/britishboardoffilmclassificationaccountabilitytoparliamentandappeals.html>
- ²² See column 1423
<http://www.publications.parliament.uk/pa/cm200708/cmhansrd/cm080229/debtext/80229-0012.htm> .
- ²³ See <http://www.pbbfc.co.uk/gameDetail.asp?filmID=40> 1997
<http://www.pbbfc.co.uk/gameDetail.asp?filmID=68> 2008
- ²⁴ See page 21 <http://www.culture.gov.uk/images/consultations/VideoGames2008.pdf>
- “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. “

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.htm#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/EF93D56992787E3ECA25736F001AAF4E>

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/EF93D56992787E3ECA25736F001AAF4E>

³² See <http://www.classification.gov.au/special.html?n=262&p=66>

³³ Whilst it may be argued that reviewing existing Videos/DVDs /games is a new idea. This simply is not the case. Regulations from the Video Recording Act 1984 [Video Recordings (Review of Determinations) Order 1995, SI 1995/2551] already allow for reviews of existing old classifications made before the 3rd of November 1994 if the BBFC think fit.

³⁴ For example, if the classification decision which has been made is of particular public concern or a large number of complaints have been received and the Board considers it is in public interest to do so.

³⁵ See for example sections 22,29 and 30

<http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/framelodgmentattachments/EF93D56992787E3ECA25736F001AAF4E>

³⁶ For example, in Australia there are guidelines and a code with general principles but on a statutory basis section 11 of the 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 morality, decency and propriety generally accepted by reasonable adults and the persons or class of persons to or amongst whom it is published or is intended or likely to be published.* ³⁶ Julian Brazier's Bill referred to the need to have special regard to public concerns about violence and the sexualisation of children

³⁷ See section 91 where the Waiver of fees may be allowed by the Director of the Classification Board or the Convenor of the Review Board in Australia under section 91 for non-profit making organisations/ for public health or educational reasons etc.

<http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/frameLodgmentAttachments/EF93D56992787E3ECA25736F001AAF4E>

³⁸ See I.22 video games consultation

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

³⁹ See point 7.26 <http://www.dcsf.gov.uk/byronreview/pdfs/Final%20Report%20Bookmarked.pdf>

⁴⁰ See I.16 <http://www.culture.gov.uk/images/consultations/VideoGames2008.pdf>

⁴¹ See http://www.reghardware.co.uk/2008/09/23/paul_jackson_labour_conf/

⁴² See 7.29 <http://www.dcsf.gov.uk/byronreview/pdfs/Final%20Report%20Bookmarked.pdf>

⁴³ See <http://www.bbbc.co.uk/policy/index.php>

⁴⁴ See I.7. <http://www.charity-commission.gov.uk/Library/publicbenefit/pdfs/pblawtext.pdf>

⁴⁵ See I.12 Video games consultation by the Dept for culture, media and sport.

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

⁴⁶ See <http://www.classification.gov.au/special.html?n=262&p=66>

⁴⁷ “I.12. The BBFC classification system has a complaints procedure for members of the public and an appeals system for game publishers and developers. In practice, BBFC refusal to classify a game has only happened three times since 1984. In the case of a potential reject, the BBFC and games developer or publisher will start a dialogue about the game so, for example, changes can be made to the game and complete rejection avoided. However, if the BBFC refuse to classify a game legal proceedings with their associated costs can ensue. This occurred in the case of a toned-down version of *Manhunt 2* where developers won an appeal to the Videos Appeal Committee (VAC). The VAC consists of a panel of seven independent members appointed by the BBFC to review their decisions. The BBFC successfully contested the VAC decision in the High Court through judicial review proceedings which sent the game back to the VAC with instructions to re-take their appeal decision but applying the proper legal test. The final outcome was that the VAC upheld its original decision by a majority of 4 to 3. The toned-down game may be released in the UK with an 18 certificate.”

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

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

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

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

⁵⁰ See point I.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 I.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 I.30 <http://www.culture.gov.uk/images/consultations/VideoGames2008.pdf>

⁵⁸ See

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

⁵⁹ See http://news.bbc.co.uk/newsbeat/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>

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- 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>