



department for
**culture, media
and sport**

Consultation on Exemptions to the Video Recordings Act and on Advertising in Cinemas

9th May 2012

Our aim is to improve the quality of life for all through cultural and sporting activities, support the pursuit of excellence, and champion the tourism, creative and leisure industries.

Contents

	Paragraphs
Introduction	1.1-1.5
Executive Summary	2.1- 2.20
How to respond	3.1- 3.7
Part A: Regulation of Advertising in Cinemas	
Overview of the current regulatory situation	4.1–4.2
BBFC’s role in relation to film and cinema advertising classification	4.3-4.5
Cap Code and CAA’s role	4.6-4.10
The policy issue	4.11-4.13
Appropriate levels of consumer protection	4.14-4.19
Additional controls – restricting the screening of cinema commercials	4.20-4.23
Potential change in regulation – costs and impact	4.24-4.29
Industry/BBFC views	4.30-4.38
The options – a summary	4.39-4.41
The options – in more detail	4.42-4.50
Consultation questions for Part A	P18-19
Useful websites	P 20
Part B: Exemptions to classification in the Video Recordings Act 1984	
Overview of the current regulatory situation	5.1-5.5
Concerns raised about the exempt categories	5.6-5.12
Classifications for broadcast and or online content	5.13-5.22
The policy issue	5.23-5.28
The options – a summary	5.29-5.31
The options – in more detail	5.32-5.53
Conclusion	5.54-5.55
Consultation questions for Part B	P34-37
Annex A: Extract from section 2 of the Video Recordings Act	P38
Annex B: List of organisations consulted	P39
Annex C: Seven Consultation Criteria	P40

Introduction

1.1 This consultation seeks views on two matters: whether to make changes to the exemptions from classification set out in section 2 of the Video Recordings Act 1984 (“the VRA”) and whether to amend the Licensing Act 2003 to remove any requirement for the British Board of Film Classification (BBFC) to have a role in age rating advertisements shown in cinemas.

1.2 This consultation will be of interest to a wide range of stakeholders including producers, publishers and distributors of content released as hard copy video recordings (DVDs, Blu-ray, VHS etc), advertising agencies, trade associations, cinema operators, retailers, classification bodies, enforcement agencies, consumer groups, children’s groups, parents and teachers.

1.3 Impact assessments for the policy options discussed in this consultation are available on the DCMS website here:

<http://www.culture.gov.uk/consultations/default.aspx>

Issued: 9 May 2012

Respond by: 1 August 2012

EXECUTIVE SUMMARY

2.1 The purpose of this consultation is to seek views and evidence on :

- whether to make changes to the current exemptions from statutory classification set out in section 2 of the Video Recordings Act 1984 and
- whether to amend the Licensing Act 2003 to remove any requirement for the British Board of Film Classification (BBFC) to have a role in age rating advertisements shown in cinemas

2.2 These are separate issues but have a number of stakeholders in common and are linked also through the themes of child and consumer protection. Respondents are welcome to offer views and evidence on one of these issues – rather than both - if they prefer.

2.3 UK audiences have a great appetite for video content, both screened in the cinema and enjoyed at home on DVD or other formats. Over 169 million cinema tickets were sold in the UK in 2010¹ and total advertising spend on cinema reached £184m. In the home entertainment space, 7999 DVD and Blu-ray disc titles were released for mainstream retail in 2011 in the UK and the value of sales exceeded £2 billion².

2.4 The Government is committed to taking forward the recommendations of the independent report by Reg Bailey, “Letting Children be Children”, published last year. We want to support parents, and consumers generally, by ensuring they have clear information about content they are viewing. We also want to remove red tape and ensure we have in place a regulatory environment that supports our entertainment industries - giving content producers the space to innovate, create great audience experiences and maximise the sector’s contribution to the UK economy. This consultation considers how best to achieve this balance.

Part A: Cinema Advertising

2.5 Under the Licensing Act 2003, cinemas are authorised to show feature films under the terms of licences issued by their local authority. These licences must include conditions restricting the admission of children³ to films in accordance with any recommendations made by the British Board of Film Classification (BBFC), unless licensing authorities themselves make recommendations regarding the admission of children. This requirement to “age rate” feature films for cinema exhibition is not set to change.

2.6 However, under the Licensing Act cinema advertisements are also required to be age rated in this way if they are shown together with a main feature film. In

¹ BFI Statistical Yearbook

² British Video Association/The Official Charts Company/West 10

³ For the purposes of this consultation, references to “children” generally mean persons under the age of 18. By “younger children” we generally mean children age 12 or younger

addition to this statutory process, all cinema advertisements also remain fully subject to the Advertising Standard Authority's non-broadcast Committee of Advertising Practice (CAP) Code and the pre-clearance procedures required under industry self-regulation to ensure compliance with the CAP Code.

2.7 The rationale for the existing legislation is to ensure that consumers, in particular children, do not see advertisements containing content that would be inappropriate to the age rating for the film being screened. The BBFC restricts its classification considerations to issues of harm, offence and legality outside advertising rules. The CAP Code requires advertisers to adhere to rules on consumer protection and social responsibility ensuring ads, amongst other things, are not misleading, harmful or offensive and - as with the BBFC's role - ensuring that children are suitably protected. Advertisements must also be socially responsible. These broad principles apply regardless of the particular product being advertised.

2.8 Industry believes this amounts to a 'dual system of clearance' for cinema advertisements which can cause confusion, in many cases create duplication of effort, and result in additional expense whilst not enhancing consumer or child protection.

2.9 This consultation seeks views and evidence on the regulation of cinema advertising and the case for removing the current requirement for the BBFC to age rate cinema advertisements when they are shown together with a main feature film. Two main options are offered for consideration:

- Leave the current system unchanged
- Remove the requirement for cinema advertisements to be age rated by the BBFC when they are shown with a feature film at the cinema; and rely in future on the self-regulatory regime of the CAP Code, enforced by the Advertising Standards Authority

2.10 At this point our view is that there is a strong case for simplifying the regulation of cinema adverts. Given the similarities between the CAP Code and the BBFC's pre-release scrutiny of commercials, the public should not face any change in their cinema experience if the BBFC withdrew from cinema advertising clearance. However, we have an open mind and want to hear the full range of views on both options and indeed on any other options that respondents might consider appropriate.

Part B - Video Recordings Act exemptions

2.11 The Video Recordings Act 1984 ("the VRA") governs the supply of DVDs, Blu-ray discs and other hard copy video works in the UK. It requires that certain filmed content and video games must be submitted to the BBFC for a statutory age rating before they can be supplied as the physical product to the public. Under the Act certain kinds of videos - for example videos primarily concerned with music, sports, religion or education - are exempted from this statutory requirement and do not have to be submitted to the BBFC for age rating unless they contain adult-type content which includes matters like sex, violence or criminal behaviour. Such content would generally attract a BBFC "15" or "18" rating although, having

considered it against their guidelines which also take context into account, the BBFC could decide the product merits a lower rating.

2.12 Exempt video products therefore do not have to carry BBFC age ratings and can be sold to consumers of any age. In response to concerns raised about the content of some of these currently exempt video works – particularly those in the music and sports genres - Government committed to carrying out a public consultation on the appropriateness of the exemptions in today’s environment. A review of the exemption for music videos was also a specific recommendation of Reg Bailey’s review which reported, for example, that some parents had concerns about sexual and violent references in some song lyrics and what they regarded as highly sexualised dance routines and the portrayal of stereotyped gender roles.

2.13 This consultation seeks views on whether the current exemptions for music, sports, religious and educational video works represent a sensible, proportionate response or whether we should now take a different approach to reflect content industry, market and cultural changes that have happened since the exemptions were put in place when the VRA was passed some 28 years ago.

2.14 Part 2 of this consultation offers four possible policy options for consideration :

- Leave the existing exemptions in place and untouched
- Remove the existing exemptions – making music, sport, religious and educational videos subject to statutory film age rating by the BBFC. This will require primary legislation
- Lower the existing statutory thresholds for exemption of music, sport, religious and educational videos so that products likely to be unsuitable for younger children are age rated (effectively anything that would be rated 12 or above); but those likely to be suitable for viewing by wider audiences remain exempt. This will require secondary legislation
- Ask other parts of the video industry to introduce a self-regulatory ‘parental advisory’ labelling scheme similar to the Parental Advisory Service developed by the music industry and allow the industry to self-regulate the currently exempt products without the need for any legislative changes

2.15 Our preference at this stage is to lower the threshold for exemption by amending the VRA via secondary legislation. This would effectively mean introducing statutory age rating for all products likely to cause concern whilst avoiding new regulatory burdens for a large proportion of the market. Evidence to date suggests that most currently exempt products are suitable for wide distribution and would be classified as such by the BBFC anyway. However, we have an open mind on this matter and want to hear the full range of opinions and views to assist with arriving at the best possible solution.

2.16 It should also be noted that Government is already in the process of bringing into force changes to the VRA which implement a new regulatory regime

for video games. Under the new system, games for younger children are exempt but the threshold for classification has been lowered so that video games suitable only for viewing by persons aged 12 years and above will have to be age rated by the Pan European Game Information (PEGI) system, administered by the Video Standards Council. Potentially, producers of games that are suitable only for 12 years and above could still claim exemption from age rating where their products are primarily concerned with music, sports, religion or education provided these games do not contain material specified in section (2) 2 of the VRA – namely sex, violence, criminal behaviour. Such products could be affected by a decision to remove the current exemptions for these genres. It is unclear how many video games products could possibly be relevant here, if any. It is thought to be relatively few but we hope this will be clarified via the consultation.

2.17 The VRA only covers physical copies of video content. However, increasingly consumers – and perhaps young people especially – are accessing their content online via a variety of digital platforms and devices. The concerns from parents described in the Bailey Review were particularly about promotional music videos which it may be reasonable to assume many young people are as likely to encounter in the online as in the offline world. We would like to see the same information and labelling available online as in the offline world and this consultation describes some of the voluntary classification and labelling schemes available for online content. We invite views on such schemes.

2.18 We would be grateful for comments and views on all of the proposals presented in this consultation together with any supporting evidence you might have. We would also welcome any other ideas or recommendations for change that would assist Government in addressing the policy issues we have discussed.

2.19 Additional industry and market data would be especially helpful in relation to the application of the exemptions under the VRA. We would also like to hear about any unintended consequences or other implications that you believe could arise as a result of the adoption of any of the preferred options presented.

2.20 A series of questions to help inform this consultation are set out at the end of each section. Respondents need reply only to those questions they feel able to meaningfully answer. We ask for full and detailed responses wherever possible.

List of Annexes

Annex A: Extract from Video Recordings Act

Annex B: List of organisations consulted

Annex C: Seven Consultation Criteria

HOW TO RESPOND

3.1 When responding please state whether you are doing so as an individual or whether you are representing the views of an organisation. If responding on behalf of an organisation please make it clear who your organisation represents and how the views of its members were evaluated.

3.2 The consultation was published on 9th May 2012. The consultation period will run for 12 weeks and the closing date for responses is 1st August 2012. However, we would welcome responses as early as possibly to help us to accelerate the process of fully considering replies.

3.3 Responses to, and enquiries about, this consultation should be sent to :

AdsExempt@culture.gsi.gov.uk

Or by post to:

Advertising and Exemption Consultation
Department for Culture, Media and Sport
2-4 Cockspur Street
London SW1Y 5DH

3.4 A list of those organisations directly consulted is at Annex B but we would welcome suggestions of others who may wish to be involved in the consultation process.

3.5 This consultation can be found at:

<http://www.culture.gov.uk/consultations/default.aspx>

3.6 This consultation will be carried out in accordance with the Code of Practice on Consultation and the seven consultation criteria listed at Annex C.

3.7 For enquires about the consultation (handling) process only please contact :

Enquiries@culture.gsi.gov.uk, heading your communication "Consultation on Exemptions to the Video Recordings Act and on Cinema Advertising".

PART A : REGULATION OF ADVERTISING IN CINEMAS

Overview of the current regulatory situation

4.1 The British Board of Film Classification (BBFC) age rates cinema films, trailers and also adverts submitted for theatrical release (cinema exhibition) on the initiation of the local authorities who license cinemas under the Licensing Act 2003. The BBFC determines the appropriate age rating for the film, trailer, advert – and this in turn determines how the screening is controlled in cinemas to restrict the audience viewing that material according to the BBFC age rating. Under this system cinema advertisements are currently submitted to the BBFC for an age rating before they can be shown at the cinema together with a feature film.

4.2 In addition to this statutory classification process, cinema advertising in the UK is strictly controlled through a system of mandatory self-regulation which is administered by the Advertising Standards Authority (ASA).

BBFC's role in relation to film and cinema advertisement classification

4.3 The BBFC is an independent, not for profit company which classifies films and video works based on published Classification Guidelines. This is primarily to fulfil its role as designated classifications body under the Video Recordings Act 1984 ("the VRA"). The BBFC Guidelines are the result of extensive public consultation (the BBFC sought the views of 20,000 people during each of its two most recent Guidelines consultations in 2005 and 2009.)

4.4 The BBFC age rates cinema adverts according to these guidelines which reflect public opinion and the risk of potential harm to the viewer. The protection of children is central to the BBFC Guidelines and its 'U', 'PG', '12A', '15' and '18' age ratings. In its classification decisions, the BBFC considers whether the material, either on its own, or in combination with other content of a similar nature, may cause any potential harm at the category concerned.

4.5 This includes not just any harm that may result from the behaviour of potential viewers, but also any 'moral harm' that may be caused by, for example, desensitising a potential viewer to the effects of violence, degrading a potential viewer's sense of empathy, encouraging a dehumanised view of others, suppressing pro-social attitudes, encouraging anti-social attitudes, reinforcing unhealthy fantasies, or eroding a sense of moral responsibility. Especially with regard to children, harm may also include retarding social and moral development, distorting a viewer's sense of right and wrong, and limiting their capacity for compassion.

CAP Code and CAA's role

4.6 In addition to the system described above for their BBFC age rating, all cinema advertisements have to comply with the non-broadcast Committee of Advertising Practice (CAP) Code, enforced by the ASA, which ensures that advertising is legal, decent, honest and truthful while also considering the environment in which the commercials will be shown.

4.7 The CAP Code requires advertisers to adhere to rules on consumer protection and social responsibility (ensuring ads, amongst other things, are not misleading, harmful or offensive and that children are suitably protected). This is set out in greater detail below.

4.8 In terms of enforcing these controls, the ASA has a range of sanctions available for non-broadcast advertising to ensure advertisers comply with the CAP Code, including:- adverse publicity; advising members to withhold services from non-compliant advertisers or denying access to advertising space; CAP trade associations and professional bodies withdrawing members trading privileges offered to their members and, in exceptional cases, expelling advertisers from membership.

4.9 To ensure cinema adverts are compliant with the CAP Code, the cinema advertising industry funds a self-regulating body, the Cinema Advertising Association (CAA) to pre-clear all cinema commercials. The CAA uses a Copy Panel to undertake this pre-clearance, which includes ensuring that advertisements are shown only with films that are considered age-appropriate. The CAA's Copy Panel can ask for changes to be made to advertisements, restricted screening to feature films carrying specific BBFC age ratings, or they can refuse clearance.

4.10 Whilst a BBFC age rating for cinema adverts ensures consumers, in particular children, do not see advertisements containing content that would be inappropriate to the BBFC classified film being screened, it restricts its classification considerations to issue of harm, offence and legality outside advertising rules. It does not consider the wider advertising controls which require ads to be legal, decent, honest and truthful, as well as specific rules that cover areas such as advertising to children, alcohol and gambling, the environment and financial products - as set out in the CAP Code.

The policy issue

4.11 The current system of cinema advertising regulation requires the age rating of adverts by the BBFC whilst cinema adverts also remain fully subject to the Advertising Standard Authority's non-broadcast advertising code (CAP Code) and the pre-clearance procedures required under industry self-regulation to ensure compliance with the CAP Code.

4.12 The cinema industry takes the view that BBFC age rating of advertisements, currently required by system in place in the Licensing Act 2003, has created a system of double regulation which has resulted in cinema advertising being the only medium that has two different bodies - the BBFC and the CAA - involved in scrutinising commercials before they are shown to the public.

4.13 Industry has indicated that it believes this 'dual system of clearance' can cause confusion, in many cases creates duplication of effort, and results in additional expense whilst not enhancing consumer protection.

Appropriate levels of consumer protection

4.14 At present the CAA pre-clears all cinema commercials to ensure they are compliant with the CAP Code. The CAP Code contains wide-ranging rules designed to ensure that advertising does not mislead, harm or offend. Advertisements must also be socially responsible. These broad principles apply regardless of the product being advertised.

4.15 In addition, the CAP Code contains specific rules for certain products and marketing techniques. These include rules for alcoholic drinks, health and beauty claims, children, medicines, financial products, environmental claims, gambling, direct marketing and prize promotions. These rules add an extra layer of consumer protection on top of consumer protection law and aim to ensure that UK advertising is responsible.

4.16 The CAP Code therefore contains strict rules to ensure children and young people, in particular, are suitably protected. They are designed to prevent children from being enticed into moral, physical or psychological harm, and reflect the norms of society with regard to what is appropriate for children to see and hear.

4.17 The rules prevent advertisements from undermining parental authority or placing unfair pressure on children to buy products. Advertisements addressed to children must not actively encourage them to pester their parents and must make clear that adult permission is required if a prize or incentive might cause conflict between a child's desire and a parent's authority. Equally, such ads must not tend to make children feel inferior or lacking in duty or loyalty if they do not buy a product. The rules also mean that ads cannot depict or encourage children to engage in dangerous behaviour or talk to strangers.

4.18 Furthermore, in recent years, the advertising rules surrounding specific products such as food and alcohol have been significantly tightened in response to public concerns about childhood obesity and underage drinking. As an example, the CAP Code includes specific rules that alcohol adverts may only be screened with films where 75% of the average audience is likely to be 18 years-of-age or older.

4.19 Compliance with CAP Code rules on alcohol is overseen by the CAA's Alcohol Film Panel. The CAA also supervises the self-imposed rule that no cinema advertising reel should carry more than 40% of alcohol commercials in terms of the duration of that entire advertising reel. In addition, members endeavour to assemble the advertising reels in such a way that alcohol commercials do not run sequentially. Those two 'rules' do not feature in the CAP Code; the CAA believe they constitute examples of the cinema business going further than is mandatorily required by the CAP Code.

Additional controls - restricting the screening of cinema commercials

4.20 The CAA Copy Panel approves commercials under the CAP Code in light of the likely audience. Adverts acceptable for older children might not be

acceptable for younger ones, similarly some ads may be appropriate only for teenagers and adults, whilst others may only be suitable for adults alone.

4.21 In addition, cinema advertising is sold on the basis of the films it is booked to accompany. As a result, the CAA has two pre-clearance systems in place to enable it to restrict the screening of an advert to ensure this plays before an age-appropriate audience. The CAA Copy panel:-

- can restrict a commercial to screening with films of a certain BBFC category and above. This may be for the protection of children, or on the grounds of public expectations as to the content of the advertising in general
- take into account the genre of the film the advertisement is to accompany and the audience it is likely to attract: for example, a 'U' certificate documentary on global warming will be seen by a very different audience to the 'U' certificate *Arthur Christmas*

4.22 Whilst a BBFC age rating category covers a broad band of material, the CAA Copy Panel has said that it adopts a cautious approach to all commercials in relation to the certificates of films they are allowed to accompany. This is particularly the case as audiences will have actively chosen to see a specific film however extreme it may be (based on expectations of the particular genre at the given classification and on the Consumer Advice and Extended Classification information provided by the BBFC). However, in contrast, the audience will not have chosen to see the accompanying commercials.

4.23 The CAA will only give final approval when the Copy Panel considers that a completed advertisement complies with all aspects of the CAP Code. As a final check, all advertisements are screened for CAA Copy Panel approval in their final theatrical form, prior to their exhibition. This ensures that only the approved version of the commercials are shown on cinema screens.

Potential change in regulation – costs and impact

4.24 To age rate each cinema commercial the BBFC charges a handling fee of £100 per submission plus £7.00 per minute of content. In addition, the BBFC charges 75% of the standard fee for advice viewings and a set fee of £100 for script consideration.

4.25 The BBFC has indicated that cinema advertisers have collectively been charged the following fees in recent years:-

2008	£71,000
2009	£67,000
2010	£71,000
2011	£72,000 (BBFC estimate for the year)

4.26 There is no direct fee charged by the CAA for its pre-clearance services. The CAA is funded by its members, which in the UK consist of Digital Cinema Media and Pearl & Dean.

4.27 Digital Cinema Media (DCM) is the market leader in UK cinema advertising, providing 2,799 screens at 477 sites for advertisers. DCM owns an 80.5% share of the cinema advertising market through exhibitors including ODEON, Cineworld, Vue, Picturehouse, IMAX, and many independent cinemas. Pearl & Dean controls numerous UK cinema sites including leading multiplex operators such as Empire, Showcase, Apollo and AMC and is the leading sales house for Independent Cinemas in the UK. The CAA provides pre-clearance advice and script guidance as part of this service.

4.28 Advertising regulation, as administered by the ASA, is funded by advertisers through a levy on advertising spend. Under this system, advertisers pay a levy of £1 per £1,000 spent on advertising in cinema (as well as press, magazines, outdoor, and the internet). This is included by advertising agencies in their media invoices to their clients, collected by the agencies, and passed over to the Advertising Standards Board of Finance (asbof).

4.29 Cinema advertising is a relatively small sector (around 1.5% of total advertising spend) compared with other media (TV, press, on-line) however, it remains a significant revenue source with total advertising spend on cinema reaching £184m in 2010.

Industry/BBFC views

4.30 The industry view is that the CAP Code and the additional regulatory functions of the CAA fulfill the practical function of a BBFC age rating and go well beyond it.

4.31 In addition, concerns have been raised about the speed with which cinema ads can be cleared under the current system, which industry believes to be a major disincentive for advertisers and agencies who might want to use the medium of cinema for their campaigns, in particular that smaller brands and agencies may not have the revenue or resources to undertake this 'dual clearance' process, resulting in a less plural market in cinema advertising.

4.32 The industry argues this continues to reduce the advertising revenues flowing into the cinema industry and has estimated (at the top end) a difference between actual and potential revenue from cinema advertising of £31.5m based on 2010 Nielsen figures resulting from the lead times needed for clearance.

4.33 The BBFC has advised that it agrees there is a significant element of double regulation in this area but it is currently required to undertake this regulatory function based on statutory requirements in the Licensing Act 2003.

4.34 Furthermore, given the similarities between the CAA and BBFC's pre-release scrutiny of commercials and how the two systems overlap, both the industry and the BBFC has indicated that it believes the public would not face any

change in their cinema experience if the BBFC withdrew from cinema advertising clearance.

4.35 In addition, the ASA would continue, as now, to respond to public complaints, to monitor the proper application of the CAP Code, and in the event of investigation, to issue ASA Council decisions to the advertiser and the CAA Copy Panel.

4.36 We recognise that this form of 'double clearance' for cinema advertising is an issue that is of concern not just to the cinema industry but also to advertisers and agencies because of additional administration and costs involved in getting cinema ads to the screen – something that does not exist for other media. We also note that the cinema advertising industry and the BBFC together believe that there is a strong case to simplify regulation in this area.

4.37 In response to the Better Regulation Executive's (BRE) initiative to enable businesses to influence how regulations that affect them are devised and delivered, a range of cinema industry bodies submitted proposals to the BRE outlining views on how this area of regulation could be improved.

4.38 Consequently this consultation is seeking views on the potential to streamline and simplify regulation of cinema advertising, whilst ensuring that consumer protection remains high.

Part A - The Options – a summary

4.39 We set out here the two main options that present themselves :

- **Part A option 0 - Leave things as they are**, on the basis that the present arrangements do not place unnecessary or disproportionate burdens on industry to the extent that would justify a legislative change and offer appropriate levels of child and consumer protection
- **Part A option 1 – amend the Licensing Act 2003 to remove any requirement for BBFC to have a role in age rating cinema adverts** and focus on the self-regulatory regime of the CAP Code on the basis that this would not result in any gaps in relation to consumer and child protection and that suitable safeguards would be maintained for a proportionate system of regulation

4.40 There may be other options and we welcome evidence and views on any other workable solutions respondents may wish to put forward.

4.41 From evidence presented to date our preferred option is to remove the BBFC age rating requirement in the Licensing Act but we have an open mind and want to consider the full range of views on this issue.

Part A The Options – in more detail

Part A, Option 0 : No change

4.42 Under this option cinema advertisements would continue to be referred to the BBFC for age rating whilst also being subject to mandatory self-regulation overseen by the ASA.

4.43 This regime has been in place for a number of years and it could be considered that it should remain on the grounds that it appears to work effectively to ensure that children are not exposed to inappropriate content via cinema advertisements and consumers' rights are properly observed. Some may feel also that the statutory backing is an essential element of the regime.

4.44 However, as set out earlier in the preceding paragraphs, others may consider that the age rating role provided by the BBFC in relation to cinema advertisements is already adequately covered by the self-regulatory approach of the industry and that it therefore represents an unnecessary burden on business.

Part A, Option 1: Remove the requirement for BBFC classification of cinema advertisements

4.45 This option would potentially remove the financial and administrative burdens on the cinema advertising industry of having to submit each advert to the BBFC for an age rating. Arguably, this would also make matters simpler for industry, reducing the additional time constraints resulting from both BBFC and CAA clearance.

4.46 The BBFC has indicated that the current average classification cost is around £111 per ad classified. There is an additional administrative burden for industry attached to this process in supplying the BBFC with hard copies of the adverts requiring classification. The impact on the BBFC of removing the classification requirement would simply relate to their resourcing of this function.

4.47 However, could removing the requirement to age rate adverts shown in cinemas by the BBFC result in a reduction in consumer and child protection? The industry bodies and the CAA believe the existing advertising clearance system as set out in paragraphs 4.6 to 4.23, underpinned by the ASA's non-broadcast advertising code (CAP Code), is robust enough to ensure there are no regulatory gaps, particularly in relation to child protection, and that suitable consumer safeguards will be maintained.

4.48 This option would also not place additional enforcement burdens on local authorities.

Legislative options

4.49 At present the Government is consulting separately on proposals to examine the deregulation of Schedule 1 of the Licensing Act 2003. If it is decided that legislative changes will be made to the Licensing Act as a result of this consultation about cinema advertising, we may either i) make those changes as

part of the wider changes proposed in Schedule 1 to the 2003 Act or ii) make those changes to primary legislation separately from the wider Schedule 1 changes.

4.50 Whatever the outcome of the Government's consultation on the Licensing Act 2003, this Part A Option 1 proposal to remove the requirements for BBFC age rating of cinema advertisements will not require any changes to the Video Recordings Act 1984.

CONSULTATION QUESTIONS FOR PART A

When answering any questions please provide your reasons and any relevant evidence to substantiate your views, wherever possible.

General Questions

- Q A.1 What is your view on the current system of regulating cinema advertising?
- Q A.2 Do you consider that the current system which involves both the BBFC and CAA is placing an unnecessary dual burden on industry?
- Q A.3 What is your assessment of any extra costs involved from this dual system?
- Q A.4 Do you consider that the current system which involves both the BBFC and CAA is beneficial? Please provide your reasons?
- Q A.5 Is there any evidence to suggest that removing the BBFC requirement to age rate adverts shown in cinemas will result in a reduction in consumer and child protection? Please provide details.

For Part A Option 0 (No change) :

- Q A .6 What is your overall assessment of whether this option would :
- achieve the objectives of ensuring consumer and children protection
 - work in practical terms
- Q A.7 What are the key disadvantages of this option in your view? Could this option be adapted to overcome any problems?
- Q A.8 What are the key advantages to this option in your view?
- Q A.9 How do you think this option would work for the following key stakeholders:
- consumers
 - industry
 - enforcement agencies
- Q A.10 Is there anything that would improve this option for any of the stakeholders?
- Q A.11 Is this option a proportionate way of regulating cinema adverts?

- Q A.12 Is there any other information you think that Government should take into account when considering this option?
- Q.A.13 Are there any other observations or representations you wish to make? Please provide details here

For Part A Option 1 (remove the requirement for the BBFC to have a role in age rating cinema adverts) :

- Q A.14 What is your overall assessment of whether this option would :
- achieve the objectives of ensuring consumer and children protection work in practical terms?
- Q A.15 What are the key disadvantages of this option in your view? Could this option be adapted to overcome any problems?
- Q A.16 What are the key advantages to this option in your view?
- Q A.17 How do you think this option would work for the following key stakeholders:
- consumers
 - industry
 - enforcement agencies
- Q A.18 Is there anything that would improve this option for any of the stakeholders?
- Q A.19 Is this option a proportionate way of regulating cinema adverts?
- Q A.20 Is there any other information you think that Government should take into account when considering this option?
- Q.A.21 Are there any other observations or representations you wish to make? Please provide details here

USEFUL WEBSITES

The Advertising Standards Authority website sets out its role overseeing advertising regulation:-

<http://www.asa.org.uk/>

The UK Code of Non-broadcast Advertising, Sales Promotion and Direct Marketing (CAP Code) can be found at:-

<http://www.cap.org.uk/The-Codes/CAP-Code.aspx>

The British Board of Film Classification (BBFC) website sets out its current role, including the classification of cinema ads:-

<http://www.bbfc.co.uk/>

Details of the Cinema Advertising Association's primary functions can be found at:-

<http://www.dcm.co.uk/about/cinema-advertising-association>

EXEMPTIONS TO CLASSIFICATION IN THE VIDEO RECORDINGS ACT 1984

Overview of current regulatory situation

5.1 The Video Recordings Act 1984 (VRA) governs the supply of hard copy video works in the UK. Certain video work material intended for supply to the public as physical product must be submitted to the designated authority to receive an age-related classification certificate. These days a “video work” is normally a DVD or Blu-ray product, but it covers any disc, or other storage device capable of storing a video recording. The BBFC has been designated by the Secretary of State for Culture, Media and Sport to carry out the work of classifying these products (the BBFC is described in more detail in paragraphs 4.3 to 4.5 of this document). The BBFC considers a work against the VRA and other law and its own guidelines and awards a ‘U’, ‘PG’, ‘12’, ‘15’, ‘18’ or ‘R18’ age rating⁴.

5.2 Product packaging and discs (storage media) must be labelled with the appropriate age rating. It is then an offence to sell or rent a classified work in breach of the age rating on its classification certificate. Supplying an unclassified video work is also an offence unless the work in question is exempt from classification. Equally importantly, the age rating provides vital information to parents and others who are buying products for children or young adults and alerts them to the nature of the product’s content. Enforcement of the system is by Trading Standards Officers who carry out checks on retailers to ensure products are labelled and sold in accordance with the law.

5.3 Provided they do not contain certain types of content set out in section 2(2) of the VRA (for example, scenes depicting gross violence or human sexual activity) some video material is currently exempt from the statutory age rating requirement. These are video works that are primarily about music, sport, religion or education. Section 2 of the VRA dealing with these exemptions is reproduced at Annex 1. These exemptions from classification have been in place since the VRA first passed into law back in 1984. Exempt products are not required to carry any kind of age rating symbol although some producers apply an “E” symbol to packaging for exempt works. The “E” symbol is not an official symbol of the BBFC or any other designated ratings body in the UK and has no legal standing.

5.4 Figures supplied by the British Video Association (BVA)⁵ indicate that 7,999 different DVD and Blu-ray products were released for distribution through mainstream retail in 2011. They believe that 2,920 of these products claimed exemption from age rating as follows:

⁴ U’ is Universal – suitable for all, ‘PG’ recommends Parental Guidance. ‘R18’ works can be supplied only in licensed sex shops to adults of not less than 18 years

⁵ Data source is BVA/Official Charts Company/West 10. Information on the BVA can be found at their website: <http://www.bva.org.uk/>

- **Music:** total number of releases was 1,300 of which 1,269 did not carry age ratings
- **Sports:** total number of releases was 571, of which 483 did not carry age ratings
- **Educational and religious (including documentary):** total number of releases was 1,293, of which 1,112 did not carry age ratings

5.5 However, we are aware that the BVA figures are not likely to represent 100% of the DVD and Blu-ray disc products made available on the UK market. For example, we believe there may be a number of products for niche or culturally-specific consumer demand offered outside mainstream retail and not necessarily identified in published market data.

Concerns raised about the exempt categories

5.6 Most video games have also been exempt from statutory classification but this exemption is being changed so that all games suitable for persons aged 12 years and over will be required to be age-rated before they can be supplied in the UK. This change was in response to recommendations made by Professor Tanya Byron in her review *Safer Children in a Digital World*, published in March 2008 which looked at the way children were using the internet and playing video games and considered how best to protect them from inappropriate or potentially harmful content. <http://www.education.gov.uk/ukccis/about/a0076277/the-byron-reviews>

5.7 The VRA was subsequently amended by means of the Digital Economy Act 2010 (DEA) and the new arrangements for video games will be fully implemented when i) those elements of the 2010 Act are brought into force, ii) the Video Standards Council is designated as the video games classifying body under the VRA and iii) the new Video Recordings (Labelling) Regulations 2012 come into effect, anticipated this summer.

5.8 During the passage of the DEA several Members of Parliament suggested that the exemptions for music and sport videos should also be removed. Concerns have also subsequently been raised about the content of some documentary video works which are considered to fit under the education exemption from classification in the VRA.

5.9 The issue was further considered in Reg Bailey's independent review of the Commercialisation and Sexualisation of Childhood published in June 2011 (<http://www.education.gov.uk/childrenandyoungpeople/healthandwellbeing/b0074315/bailey-review>). Mr Bailey recommended that the Government should consult on whether music videos should continue to be treated differently from other genres of video work, and whether the exemption from the VRA, which allows many of them to be sold without an age rating, should be removed.

5.10 The VRA applies only to hard copy video recordings (the physical product) and not the content screened on television which is regulated under the Communications Act (implementing the Audio Visual Media Services Directive) or

content made available via the internet. Nonetheless, in his recommendations to Government Reg Bailey suggested that age ratings on DVDs and other storage media would assist broadcasters and internet companies in ensuring that the content they offer via these methods is made available responsibly. The Bailey Review recommendation reflected the fact that contributors to the review had expressed concern about music videos, regardless of the medium in which they appear. Concerns focused on the sexual and violent nature of some song lyrics, and what respondents saw as highly sexualised dance routines and the portrayal of stereotyped gender roles in some videos.

5.11 A subsequent survey carried out by the BBFC via the Mumsnet forum suggests that there is little understanding that some video works are exempt from age rating. The results of the survey can be seen on the BBFC's website at <http://www.bbfc.co.uk/download/policy-and-research/Mumsnet%202011.pdf>.

5.12 The key findings of the survey are that:

- 8 out of 10 of those who replied believe that presently exempt video works which contain unsuitable content should be subject to statutory age rating
- the concern is greatest in relation to works featuring violence against humans and sexual content falling short of actual sex, with 86% and 87% respectively supporting a requirement for statutory age rating

Classifications for broadcast or online content

5.13 The statutory Ofcom Broadcasting Code sets out rules that broadcasters must follow in relation to how and when different types of material may be broadcast. A number of restrictions set out in the Code – both on broadcasting of sexual material and on films, premium subscription film services and pay per view services - are based on the relevant BBFC (or equivalent age rating). This generally will not be directly relevant to most of the physical copy products we are considering in this consultation.

5.14 Under the Code broadcasters ensure that material unsuitable for children is not shown between 5.30 and the 21.00 “watershed”. Programmes screened before the watershed must not, for example, condone, encourage or glamourise drug-taking or alcohol use and they must limit the depictions of violence (whether verbal or physical) and not show violence that is easily imitable by children. Offensive language cannot be used in pre-watershed programmes unless it is justified by the context and the most offensive language should not be broadcast at all. Under the Code, depictions of sexual intercourse must not be shown before the watershed unless there is a serious educational purpose and any discussion of, or portrayal of, sexual behaviour must be editorially justified. BBFC 18-rated films or their equivalent must not be broadcast before 21.00 on any service except pay per view services which may broadcast such content in the pre-21.00 and post 5.30 period provided they have mandatory restricted access during that time. The full Ofcom Broadcasting Code can be found here:

<http://stakeholders.ofcom.org.uk/broadcasting/broadcast-codes/broadcast-code/>

5.15 There are some voluntary classification or labelling schemes in place in respect of online content. Producers and digital service providers can, for example, join BBFC Online and use their voluntary online classification service. This allows them to display the BBFC age ratings (BBFC “U”, “PG”, “12”, “15” and “18”) that were awarded for a DVD or Blu-ray disc should this same content then be offered online. BBFC Online covers all kinds of non-physical moving image distribution including Download-To-Own (DTO), Streaming services, Video On Demand (VOD) and other forms of Electronic Sell-Through (EST). BBFC Online issues the companies with an “electronic black card” which can be affixed to the start of the content file. This replicates the way the BBFC certificates are shown at the beginning of films screened in cinemas which the BBFC suggests gives the consumer an element of trust and familiarity. The costs of joining BBFC Online are £100 per annum for content providers whilst annual membership costs for platform holders start at £1000.

5.16 Additionally, producers joining BBFC Online can apply for age ratings for content that has only ever been intended for online distribution under the BBFC’s Watch & Rate service which was launched in December 2010. Costs comprise a £20 administration fee plus £2.50 per minute of content. The BBFC aims to give a classification decision within 7 days and works submitted are reviewed against the same criteria as DVDs and Blu-ray. As of January this year, 214,000 BBFC Online certificates have been issued for individual video works. BBFC Online members include most of the major film studios and 10 aggregators/platforms including BT Vision and Netflix. More information on BBFC Online including the list of current members can be found on the BBFC website here: <http://www.bbfc.co.uk/bbfc-online>. Not all of the major digital service providers are members of the BBFC Online and some may apply their own age ratings to products offered via their service, as is the case, for example, with LoveFilm and iTunes.

5.17 Specifically for music video content, the trade organisation representing the UK’s recorded music industry, the BPI, operates a voluntary Parental Advisory Scheme (PAS) for producers and retailers to flag up content that is unsuitable for children. The PAS has been in operation for music CDs and DVDs since 1995. In 2011 the BPI updated the scheme to encourage UK digital music retailers and streaming services to display clearly the Parental Advisory logo or the word ‘EXPLICIT’ alongside any music or video files flagged as containing content that is unsuitable for children.

5.18 The PAS Guidelines say that the “EXPLICIT” logo should be displayed against products when they contain one or more of the following:

- Strong language
- Images of, or reference to, violence, physical or mental abuse
- References to or images of sexualised behaviour
- Racist, homophobic, misogynistic or other language or behaviour that could be considered discriminatory

- Dangerous or criminal behaviour which could glamorise such behaviour or may encourage others to imitate it

5.19 It is the content producer's responsibility to voluntarily check their product against the PAS criteria and decide whether an EXPLICIT label is appropriate. The PAS system is free to use. According to research by Ipsos Mori, 56% of parents demonstrate an awareness of the PAS logo. The PAS scheme is in practice applied not just in the UK but in other countries, most notably the important US market where we might assume a large proportion of the music video content of interest to UK consumers is published.

5.20 The BPI advises that to date online retailers and digital service providers compliant or partially compliant with the scheme include: iTunes, Amazon, HMV, 7Digital, Napster, TuneTribe, Deezer, MTV, Vevo, Muzo, Orange, Tesco, Asda, Fairshare Music, Badlands and Trackitdown. However, some major platforms offering access to music video content remain outside the scheme.

5.21 The BPI is currently working with internet service providers on possible filtering solutions for content that is labelled under the PAS. It is also in discussion with internet security software companies about aligning their online security products to the PAS so that parents can set controls to block PAS-labelled content. Meanwhile, individual online sites may offer the option of filtering against the PAS label. iTunes, for example, puts the word "EXPLICIT" in the data next to relevant music tracks and the parental controls can be set to block downloading of these.

5.22 We welcome the introduction of age rating and labelling schemes for online content. Our aim is that when age ratings or labels are in use for hard copy products, they should certainly, wherever possible, be applied when the same content is made available online, with the intention that these work together with parental controls to allow parents to restrict access by their children to inappropriate content. Where products have not been produced in hard copy but aimed for a direct online release, we would like to see producers and digital service providers also make full use of the rating or labelling schemes available to them, so that wherever content is unsuitable for children it is identified as such. We are intending to work as rapidly as possible with all stakeholders to make this happen.

The policy issue

5.23 In the early 1980s when the VRA was originally drafted and enacted it is unlikely that legislators would have envisaged the kinds of material now contained in some video works in the categories that are exempt from age rating. At that time, a work primarily concerned with music or sport for example would typically constitute a simple recording of a live event, such as a performance by a band or orchestra, a football match or Olympic competition. The policy issue is whether - and how - to adapt the existing regulatory regime to deal with the wider variety of genres we now see in the exempt categories, in a manner which is workable and proportionate to the issues at stake.

5.24 Music videos are mostly used as a marketing tool to promote bands and individual performers, with all that entails in terms of the image and branding the music industry wants to project to fans to encourage sales. As noted earlier, some

parents and members of the public have concerns that the content of some music videos might be inappropriate for younger viewers. According to the BBFC survey of Mumsnet users, among the range of inappropriate content are: sexualised posturing; violent or distasteful behaviour; and references to drug misuse which might suggest that drug-taking is a normal practice. However, it is important to acknowledge that very many music videos have no such content and are entirely innocuous.

5.25 A number of sports videos depict a level of violence that some might consider inappropriate for younger viewers – such as wrestling or fight videos containing strong, bloody un-simulated violence, including slow-motion replays of the strongest moves and violent behaviour which could be dangerous if copied; or sporting commentary which glorifies violence.

5.26 In terms of subject matter, images and language, the content of some documentaries - which in practice are regarded as part of the exempt educational genre - might also be regarded by some parents as inappropriate for viewing by children. Here the BBFC has cited works depicting such matters as: images from real crime scenes, such as mutilated corpses; sexualised violence; reconstructions of brutal murders; genuine footage of real executions; and drug misuse. In relation to products specifically for the education market, a number of Members of Parliament have recently raised concerns about some un-rated DVDs aimed at educating children about human sexual relationships.

5.27 It is important to keep this in proportion. The content of music, sports and educational/documentary works varies widely. It must be remembered that they represent a small proportion of the total number of video works published each year, and those of concern are in turn likely to be a very small percentage of those categories. Many of those works considered problematic – perhaps most – are not aimed at children. However, although these works may not be specifically aimed at the children's market, it is probably true that some, particularly those concerning music and sports, may hold appeal for them.

5.28 Section 2 (2) of the VRA already compels age rating for music, sport, religious and educational videos works if they contain adult-type material depicting gross violence, sex and criminal behaviour. However, there is concern that content which does not meet the current threshold over which an age rating is required is still inappropriate to be viewed by children and younger adults and at present can be widely available for sale without any age rating guidance or restriction. Furthermore, in the absence of statutory enforcement controls, these kinds of works do not have to carry any indication that they contain material that may be unsuitable for children. Taking into consideration the existing statutory safeguards, and the fact that much of this material is not marketed specifically for children, we are seeking views on the extent to which there is a problem that needs addressing and, if there is such a problem, what action would constitute a proportionate and effective response.

The Options – a summary

5.29 We set out here what we see as the main regulatory options, but there may be other possibilities. We welcome views on these and on any other solutions respondents may wish to put forward :

- **Part B option 0: Leave the existing exemptions in place and untouched**, on the basis that either the present arrangements do not give rise to concerns to an extent that would justify legislative change, or that removing exemptions would place unnecessary or disproportionate burdens on industry for limited benefit.
- **Part B option 1: Remove the exemptions from age rating for music, sports, religious and educational video works.** This requires primary legislation to achieve. Removing the exemption would mean that producers would have to submit all film material to the BBFC for classification before making them available for sale in the UK regardless of genre.
- **Part B option 2: Lower the existing content thresholds for exemption so that more products are brought within scope of the age rating requirement** (as we have done recently for video games). This can be achieved by secondary legislation.
- **Part B option 3: Ask other parts of the video industry to introduce a self-regulatory ‘parental advisory’ system** for the currently exempt genres, similar to the BPI’s PAS labelling scheme for the music-themed products.

5.30 As noted earlier, the Government is in the process of implementing changes to the regulatory regime for video games following recommendations made in the Byron Review and a subsequent public consultation. This will mean that the age classification of games rated “12”, “16” or “18” under the PEGI (Pan European Game Information) system will have statutory backing but games suitable for the younger age groups will remain exempt from age rating. We are not actively seeking views on the exemption in place for video games suitable for the under-12s. However respondents are free to offer views and evidence on any possible options as they wish.

5.31 Under the new regulatory regime for video games it is possible there are games that could expect a 12 rating by PEGI but could have the option of claiming exemption if they are primarily about music, sports, religion or education. Publishers would lose the potential to claim such an exemption under Option 1 discussed in this VRA exemptions consultation. However, on currently available data it has not been possible to estimate how many video games products could possibly be relevant here, if indeed there are any. Also it’s worth noting that, in practice, publishers of boxed video games voluntarily refer all of their products for PEGI classification (retailers generally will not carry boxed video games that have not been PEGI rated) so may not claim the exemption even where it is available. We would particularly welcome evidence on the possible impact of Option 1 on video games publishers.

The Options – in more detail

Part B option 0 No change to the existing system

5.32 Under this option the existing exemptions from classification for music, sports, religious and educational video works would remain in place and, as currently, only those containing the kinds of material described in section 2(2) of the VRA (gross violence, human sexual activity or criminal behaviour) would have to obtain an age rating from the BBFC.

5.33 The BVA charts⁶ of the best-selling DVDs for 2011 offer some context on how the regime is currently applied to the mainstream market for music and sports-themed products:

Top 10 DVDs in 2011 – Music

1	Take That Progress Live	Claimed exemption
2	Cast Recording Phantom Of The Opera At The Albert Hall	Claimed exemption
3	Original Cast Recording Les Misérables - In Concert – 25th	Claimed exemption
4	Justin Bieber - Never Say Never	Rated BBFC “U” for theatrical release
5	Adele Live At The Royal Albert Hall	Claimed exemption
6	Michael Jackson This Is It	Rated BBFC “PG” for theatrical release
7	George Harrison Living In The Material World	Rated BBFC “12” for theatrical release
8	André Rieu & Johann Strauss Or The Last Rose - Live In Dublin	Claimed exemption
9	André Rieu The Christmas I Love	Claimed exemption
10	AC/DC Live At River Plate	Claimed exemption

Top 10 DVDs in 2011 – Sport/Fitness

1	Davina - Body Buff	Claimed exemption
2	10 Minute Solution - Blast Off Belly Fat	Claimed exemption

⁶ Source : BVA/Official Charts Company/West10

3	Jillian Michaels - 30 Day Shred	Claimed exemption
4	Pump It Up - Body Burn	Claimed exemption
5	Clare Nasir's Boot Camp	Claimed exemption
6	Ashes Series 2010/2011 - Complete	Claimed exemption
7	10 Minute Solution - Belly Butt & Thigh	Claimed exemption
8	Nadia Sawalha's Fat To Fab Workout	Claimed exemption
9	Step Up - The Official Dance Workout	Claimed exemption
10	Dancing On Ice - The Live Tour 2011	Claimed exemption

5.34 The BVA does not collate a separate chart for educational/documentary or religious DVDs.

5.35 Of the exempt categories, the biggest market is in music-themed DVDs/Blu-ray discs. Research by the BPI suggests that the vast majority of sales here relate to footage of live performance, and this would appear to be borne out by the BVA's 2011 best-seller chart. Meanwhile, any concerns raised have tended to be about video collections (a compilation of promotional videos) which are likely to form only a small part of the market.

5.36 In the sports genre, looking at the number and variety of titles available, it may be possible to show that the type of products cited as potentially inappropriate for children represent a small proportion of the overall market. The BVA tells us that a large proportion of releases in their market surveys (275 out of 571) are about keep fit and body care or are football-related. Our assumption is that if consumers have had concerns these will most likely relate to products concerned with combat sports such as wrestling, boxing or martial arts. According to the BVA in 2011 only 2 of the 72 wrestling titles identified in their survey did not carry age ratings. Of the 33 martial arts-themed products, 27 claimed exemption from age rating as did all 9 of the boxing titles released.

5.37 Religious and educational DVD and Blu-ray disc products include a wide range of product types and subject matter. The largest number of releases related to general, military and historical documentaries, nature, wildlife and travel. But there are smaller numbers of titles on topics as varied as arts and antiques, gardening, biblical stories, the supernatural and the Royal Family. While it is undoubtedly possible to seek out some video works in the religious and educational genre with content that would be inappropriate for young children to watch, there is little, if any, evidence presented to date to support the view that children generally are sufficiently interested in acquiring and watching such works or that they would be harmed by exposure to them. Furthermore, it is of course the case that documentary programmes containing hard-hitting, unpleasant imagery

and other types of challenging content are often broadcast on mainstream media, and in the case of news reports this might well be before the 9.00pm watershed.

5.38 Respondents should consider whether the existing regulatory regime might be regarded as a proportionate response given the small numbers of products that have raised concerns set in the context of the overall market for products in the exempt categories.

Part B option 1 : Remove exemptions for music, sports, religious and education video works (by primary legislation)

5.39 Under this option all DVDs, Blu-ray discs etc, regardless of their content, would be referred to the BBFC for classification. All products would be required to carry the assigned BBFC age rating on their packaging and the age restrictions would be applied at point of sale and supply.

5.40 This option would remove all ambiguity over whether a work benefits from exemption, or over whether it contains material that would cause it to lose exemption from age rating. Arguably, this would make matters simpler for industry and for the enforcement agencies. It would also provide absolute clarity for parents, especially as there is some indication that parents already have an expectation that this material is classified. This evidence stems from the results of research carried out by Goldstone Perl on behalf of the BBFC in November 2010 available here: (<http://www.bbfc.co.uk/classification/downloads/>).

5.41 Removing the exemption would impose an additional cost to industry because each work would have to be submitted for classification to the BBFC which charges at the rate of £6.00 per minute of the video plus a handling fee of £75 per submission. The BBFC has calculated that the average running time of hard copy video works submitted for classification in 2011 was 66.4 minutes. Classification fees for such a submission would be £473.40. There would also be an administrative burden for industry attached to that process as well as additional time constraints to manage. Industry suggests that the additional burden of seeking a BBFC age rating could result in some businesses deciding not to produce a physical copy of a specific video work for the UK market, preferring instead to offer it solely online or indeed not at all.

5.42 This option would also impact on retailers who would have to impose the age ratings at point of sale (as they already do for other classified products), Trading Standards who would have more products to deal with in terms of enforcement and the BBFC who, of course, would need to process a significant number of additional submissions each year.

5.43 Under the new regime that Government is implementing for video games, games suitable for younger children are exempt from statutory age rating. However, games suitable only for the over 12s could additionally be exempt if they are concerned primarily with music, sports, religion or education, provided they don't include scenes depicting gross violence, sex or criminal activity specified in section 2 (2) of the VRA. Under Option 1 of this VRA exemptions consultation, such video games could lose the potential to claim this exemption, though it is unclear how many products could be affected, if any.

Part B option 2 : Lower the existing statutory thresholds for exemption so that more products are subject to classification (by secondary legislation)

5.44 Under the VRA, music, sports and educational video works currently lose their exemption from age rating if they contain content of the kind described in section 2(2) of the VRA (see earlier). There is a view that the current criteria for exemption in this context catches only the most extreme material, and that this leaves the market open for a wide range of content which, while not at the high end of adult-type content, is still unsuitable for viewing by children, especially younger children and vulnerable adults.

5.45 Government is in the process of lowering the threshold for video games (which were largely exempt) to be submitted for statutory age rating by setting new content definitions which cause the product to require classification. A possible regulatory option is to use this model for the currently exempt film material. Under changes enacted in the DEA, video games will in future lose their exemption from classification if they include any of the following:

- depictions of violence towards human or animal characters, whether or not the violence looks realistic and whether or not the violence results in obvious harm,
- depictions of violence towards other characters where the violence looks realistic,
- depictions of criminal activity that are likely, to any extent, to stimulate or encourage the commission of offences,
- depictions of activities involving illegal drugs or the misuse of drugs,
- words or images that are likely, to any extent, to stimulate or encourage the use of alcohol or tobacco,
- words or images that are intended to convey a sexual message,
- swearing, or
- words or images that are intended or likely, to any extent, to cause offence, whether on the grounds of race, gender, disability, religion or belief or sexual orientation or otherwise.

5.46 We could consider applying these same definitions to film material in the music, sports, religious and education genres, or devise alternative descriptive definitions that would address the key underlying concerns here and attain general acceptance.

5.47 Clearly under this option producers would have to submit more products to the BBFC for classification than currently - and absorb the costs this would involve - though it could be considerably less burdensome than Option 1.

5.48 This option would also impact on retailers, Trading Standards and the BBFC, though they would have a smaller number of additional products to deal with than would be the case with Option 1.

Part B Option 3 : A voluntary, self-regulatory ‘parental advisory’ scheme

5.49 The music industry accepts that certain material in some music videos can be offensive to some people. It already recognises that music lyrics reflect the idiom and attitudes of certain groups that can shock and offend others, and it understands that parents might not want their children to be exposed to such material. For these reasons, as described in paragraphs 5.16 to 5.20, it created its voluntary PAS labelling system, warning consumers about potentially offensive content. It has been used since 1995 and is now widely recognised as a helpful guide for parents.

5.50 Typically, the packaging highlights the fact that the audio work contains “explicit” content. This concept could be applied to other works currently exempt from age rating. This option would incur some costs for industry, but they would be of a limited nature. Such a self-regulatory approach could potentially use the definitions set out in Option 2, although the existing BPI criteria (paragraph 5.17) could also be used.

5.51 There is no such existing scheme to build on as far as sports, religious or documentary videos are concerned, so the industry would be starting from scratch in respect of these. But it could certainly learn from the model provided by the music industry’s PAS scheme.

5.52 This option would minimise the burdens on industry but of course would entail a regime that has no statutory backing or enforcement. There would therefore be no legal barriers to the sale of the products directly to children but it may be enough to rely on self-regulation and an adherence to the scheme by businesses.

5.53 This option would impact primarily on content producers, industry organisations and retailers.

Conclusion

5.54 At this stage, Government’s preference is to lower the threshold for exemption (Option 2). Under this option the specific products that have raised concerns could be brought into scope of the statutory age rating regime whilst avoiding new regulatory burdens for a large proportion of the market which evidence to date suggests comprises material that is suitable for all audiences. We have presented the threshold definitions used for video games classification as an illustrative model but would certainly be interested in other suggestions. We have an open mind on this matter and **would of course also welcome views and evidence for all of the other options before a final decision is taken.**

5.55 We are aware that – apart from “no change” - all of the options under consideration may significantly impact on businesses. Whilst we have some very useful data on the mainstream markets for exempt works it is not fully

comprehensive, making an accurate costs and benefits assessment difficult. Through this consultation we would be particularly keen to receive additional data from industry to help us develop a better evaluation of the business impacts of all of the options.

CONSULTATION QUESTIONS ON PART B

When answering any questions please provide your reasons and any relevant evidence to substantiate your views where ever possible.

General questions

- Q B.1 To what extent do you think material that might be unsuitable for children is available in unclassified hard copy videos? Please provide any evidence to support your view.
- Q B.2 Do you consider that some producers are not submitting works to the BBFC for classification when, in fact, their work does not meet the existing criteria for exemption? If so, please provide any evidence for your view.
- Q B.3 What measures do producers have in place for assessing the content of potentially exempt video works? How are decisions taken by producers on the exempt status or otherwise of video works?
- Q B.4 Are there significant numbers of music, sports and educational products on the UK market which are not identified in published market data? If so, please supply evidence.
- Q B.5 Is there any evidence to suggest that producers currently claiming the exemptions would include micro businesses⁷?
- Q B.6 For videos offered online, how frequently do individual products carry advice about their age-suitability or the nature of their content? How helpful are classifications and labels applied online?
- Q B.7 What more can be done to help parents determine whether specific online video content is, or is not, suitable for their children to see?

Questions on Options

Part B Option 0 (no change) :

- Q B.8 What is your overall assessment of whether this option would work, and why?
- Q B.9 Are there any key disadvantages to this option in your view? Could this option be adapted to overcome any problems?
- Q B.10 What are the key advantages to this option in your view?

⁷ The UK Government introduced a three-year freeze on new domestic regulation for businesses with fewer than 10 employees – micro businesses – on 1 April 2011. Waivers from this moratorium can be considered on a case by case basis and must be cleared by the Cabinet's Reducing Regulation Committee and the Economic Affairs Committee

- Q B.11 How do you think this option would work for the following key stakeholders:
- consumers
 - industry
 - enforcement agencies
- Q.B 12 Is there anything that would improve this option for any of the stakeholders?
- Q B.13 Is this option a proportionate way of achieving regulatory control?
- Q B.14 Are there any other data, facts, figures or information you think that Government should take into account when considering this option?
- Q B.15 Are there any other observations or representations you wish to make? Please provide details here.

Option 1 (remove exemptions for music, sports, religious and education video works) :

- Q B.16 What is your overall assessment of whether this option would work, and why?
- Q B.17 Are there any key disadvantages to this option in your view? Could this option be adapted to overcome any problems?
- Q B.18 What are the key advantages to this option in your view?
- Q B.19 How do you think this option would work for the following key stakeholders:
- consumers
 - industry
 - enforcement agencies
- Q.B 20 Is there anything that would improve this option for any of the stakeholders?
- Q B.21 Is this option a proportionate way of achieving regulatory control?
- Q B.22 Are there any other data, facts, figures or information you think that Government should take into account when considering this option?
- Q B.23 This option could remove the potential for some video games that are primarily concerned with music, sports, religion and education to claim exemption. What evidence is there that there are significant numbers of such products? What might be the impact on them of this this option?

Q B.24 Are there any other observations or representations you wish to make? Please provide details here.

Option 2 (lower the existing statutory thresholds for exemption so that more products are subject to classification):

Q B.25 What is your overall assessment of whether this option would work, and why?

Q B.26 Are there any key disadvantages to this option in your view? Could this option be adapted to overcome any problems?

Q B.27 What are the key advantages to this option in your view?

Q B.28 How do you think this option would work for the following key stakeholders:

- consumers
- industry
- enforcement agencies

Q.B 29 Is there anything that would improve this option for any of the stakeholders?

Q B.30 Is this option a proportionate way of achieving regulatory control?

Q B.31 Are there any other data, facts, figures or information you think that Government should take into account when considering this option?

Q B.33 Are there any other observations or representations you wish to make? Please provide details here.

Option 3 (a voluntary, self-regulatory 'parental advisory' scheme) :

Q B.34 What is your overall assessment of whether this option would work, and why?

Q B.35 Are there any key disadvantages to this option in your view? Could this option be adapted to overcome any problems?

Q B.36 What are the key advantages to this option in your view?

Q B.37 How do you think this option would work for the following key stakeholders:

- consumers

- industry
- enforcement agencies

Q.B 38 Is there anything that would improve this option for any of the stakeholders?

Q B.39 Is this option a proportionate way of achieving regulatory control?

Q B.40 Are there any other data, facts, figures or information you think that Government should take into account when considering this option?

Q B.41 Are there any other observations or representations you wish to make? Please provide details here.

ANNEX A

EXTRACT FROM SECTION 2 OF THE VIDEO RECORDINGS ACT

2. Exempted works.

— (1) Subject to subsection (2) or (3) below, a video work is for the purposes of this Act an exempted work if, taken as a whole—

- (a) it is designed to inform, educate or instruct;*
- (b) it is concerned with sport, religion or music; or*
- (c) it is a video game.*

(2) A video work is not an exempted work for those purposes if, to any significant extent, it depicts—

- (a) human sexual activity or acts of force or restraint associated with such activity;*
- (b) mutilation or torture of, or other acts of gross violence towards, humans or animals;*
- (c) human genital organs or human urinary or excretory functions;*
- (d) techniques likely to be useful in the commission of offences;*

or is, is likely to any significant extent to stimulate or encourage anything falling within paragraph (a) or, in the case of anything falling within paragraph (b), is likely to any extent to do so.

(3) A video work is not an exempted work for those purposes if, to any significant extent, it depicts criminal activity which is likely to any significant extent to stimulate or encourage the commission of offences.

ANNEX B

LIST OF ORGANISATIONS CONSULTED

British Video Association
British Phonographics Association
British Board of Film Classification
Entertainment Retail Association
British Retail Consortium
British Independent Retailers Association
National Market Traders Association
Local Government Association
Advertising Standards Authority
Video Standards Council
UK Interactive Entertainment (UKIE)
MumsNet
NSPCC
Association of Teachers and Lecturers
CEOP
Childnet International
Children and Youth Board
Christian Concern for Our Nation
Cinema Exhibitors Association
Consumer Focus
Film Distributors Association
Focus Multimedia
Internet Watch Foundation
ISFE
Media Literacy Task Force
Mediawatch
Metropolitan Police Service
British Psychological Society
Advertising Association
Cinema Advertising Association
Digital Cinema Media
Pearl and Dean

ANNEX C

SEVEN CONSULTATION CRITERIA

1. **When to consult**
Formal consultation should take place at a stage when there is scope to influence the policy outcome.
2. **Duration of consultation exercises**
Consultations should normally last for at least 12 weeks with consideration given to longer timescales where feasible and sensible.
3. **Clarity of scope and impact**
Consultation documents should be clear about the consultation process, what is being proposed, the scope to influence and the expected costs and benefits of the proposals.
4. **Accessibility of consultation exercises**
Consultation exercises should be designed to be accessible to, and clearly targeted at, those people the exercise is intended to reach.
5. **The burden of consultation**
Keeping the burden of consultation to a minimum is essential if consultations are to be effective and if consultees' buy-in to the process is to be obtained.
6. **Responsiveness of consultation exercises**
Consultation responses should be analysed carefully and clear feedback should be provided to participants following the consultation.
7. **Capacity to consult**
Officials running consultations should seek guidance in how to run an effective consultation exercise and share what they have learned from the experience.

Confidentiality & Data Protection

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for

disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.



department for
culture, media
and sport

2-4 Cockspur Street
London SW1Y 5DH
www.culture.gov.uk