



British Video Association response to the DCMS Consultation on Exemptions to the Video Recordings Act

Introduction

The British Video Association (BVA) welcomes the opportunity to respond to the Government's Consultation on Exemptions to classification under the Video Recordings Act 1984. The BVA and its members, which comprise film companies, television companies and independent labels which produce, license and distribute video content, share the British Board of Film Classification's (BBFC) aim of enabling works to reach the widest possible audience whilst also ensuring that they do not cause harm to consumers in the category at which they have been classified.

The BBFC's current classification standards provide comprehensive advice to parents and viewers, ensuring that they have clear information about the suitability of video entertainment for buying, renting and viewing and helping parents to restrict access by children to material they consider inappropriate. The classification criteria are updated regularly on the basis of extensive public consultation. UK regulation, as determined by the Video Recording Act (VRA), is amongst the strictest in the world. In their latest consultation 82% of respondents said the BBFC was an effective regulator, with that same group of people stating that they agreed with 99% of the classification decisions for the films they had watched.¹

Nevertheless, the BVA recognises the concerns of parents, as outlined in Reg Bailey's Report, "Letting Children be Children", about the suitability of some video works currently exempt from statutory classification by the BBFC. The content of exempt works, including music, sport, religious and educational titles, has changed considerably over the 28 years since the VRA was passed, leading to increased public concern that some inappropriate and potentially harmful content is not being classified by the BBFC and is therefore freely available for purchase by children.

The desire to ensure that all video entertainment receives the appropriate age-restriction is the reason why the BVA supports the Government's preference for lowering the threshold for exemption, along the lines presented in Option 2 of this consultation. Although music works raised the greatest concern among parents in Reg Bailey's Review last year, the BVA welcomes the Government's intention to bring all currently exempt works into the scope of a modified age-rating regime. This will provide greater clarity and reassurance to parents and serve to increase the public's long-established understanding and trust in the BBFC's classification system and accompanying consumer advice.

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.

The BVA has no statistics on the number of exempt video works that are on sale containing unsuitable material for children. The BBFC has indicated it might be around 200 titles per annum.

¹ <http://www.bbfc.co.uk/newsreleases/2009/06/new-classification-guidelines-published-by-the-bbfc/#more-15>

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.

It is possible that some producers and distributors (who are ultimately responsible for making works available to retailers) take advantage of the exemption by choosing not to submit works they believe may contain unsuitable material for children's viewing for BBFC classification because of the costs and added time-burden this imposes. However, it is worth noting that BVA members, who we estimate distribute 83% of video works currently exempt from statutory classification, do not knowingly choose to withhold content from classification. Nevertheless, the number of works distributed by BVA members varies considerably within the different exempt categories. For example, an analysis of Official Charts Company (OCC) data indicates that only 26% of sports titles are distributed by BVA members, which makes it difficult to estimate with any confidence whether some works in this genre are deliberately withheld from BBFC examination when containing content unsuitable for children.

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?

There are several ways for producers and distributors to evaluate whether their works should be sent for classification. The BBFC's classification criteria and guidelines are available on its website along with information about exemptions. Recent classification decisions are also published which may help producers/distributors gauge whether their own works require BBFC examination. Distributors can also ask the BBFC to carry out an advisory viewing at a reduced cost (75% of the standard rate) in order to help them determine whether to send the work for official classification. In addition the BVA and Video Standards Council (VSC) can be and on occasions are consulted for guidance on content and packaging.

The fact that the Video Recordings Act 1984 has been in existence for so long and the lack of prosecutions for wrongful supply of otherwise legitimate but unclassified works would suggest that distributors have a clear understanding of UK classification criteria and the law that underpins it. The BBFC website provides a detailed explanation of all the legislation that affects classification standards, including the VRA, the Human Rights Act 1998, the Obscene Publications Acts 1959 and 1964 and the Protection of Children Act 1978.

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.

The BVA has obtained statistics from data services company West10 Entertainment which indicate that 2,920 works exempt from BBFC classification were released in 2011. The largest proportion (1,269, slightly lower than the BPI's figure of music videos released, perhaps because some were voluntarily submitted for classification) were categorised by West10 as music titles, ranging from opera and orchestral to folk, ballet and rock/pop. Over one third (1,048) were "special interest" titles, covering a wide range of topics from trains and transport to art and antiques. 331 titles were categorised as sport, including such diverse sports as fishing, football and cycling.

Q B.5 Is there any evidence to suggest that producers currently claiming the exemptions would include micro businesses?

Small producers supplying special interest works either distribute to the retail trade directly or license larger distributors to supply independent labels as part of their wider portfolio. It is likely that some are micro-businesses but the BVA has no statistics on the number involved.

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?

All content classified for DVD or Blu-ray release is also now given an online classification by the BBFC free of charge. The BBFC has also removed membership fees for its voluntary 'Watch and Rate' service, enabling producers and distributors planning an online only release to obtain trusted BBFC classification for their work.

These are important developments; BBFC research suggests that 82% of parents prefer to download content with BBFC classification symbols and 92% of those who regularly download films find BBFC ratings and advice useful. Over 200,000 works have been given online classification certificates and an increasing number of online platforms carry BBFC ratings, including BT Vision, Netflix, Blinkbox/Tesco, Sony PlayStation, and British Airways². This should encourage more distributors to obtain BBFC classifications when planning exclusively online releases.

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?

There is a number of places where parents and children can obtain targeted advice to help make informed decisions about the suitability of video works they are considering viewing. For example <http://www.pbbfc.co.uk/> provides extensive classification information and links to trailers of popular films so that parents can get a sense of the type of issues raised in works classified in each age category. <http://www.cbbfc.co.uk/> is a service provided by the BBFC dedicated to children which offers trailers and news about the latest film releases as well as explanations about how and why audiovisual content is classified.

As increasing numbers of internet platforms carry BBFC ratings, parents will feel ever more confident in being able to determine whether online video content is suitable for their children.

Ofcom's media literacy service is another useful source of information for parents on how to protect their children from unsuitable and easily accessible material offered online: <http://stakeholders.ofcom.org.uk/market-data-research/media-literacy/>

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?

There exist loopholes in the current system which does not prevent the availability of works with potentially harmful content to young people and children to buy or rent by dint of falling into an exempt category. The type of content being produced in these genres has changed significantly over the past three decades and the VRA should be adapted to take account of this. Although at present most unsuitable works are submitted for classification by the BBFC, there is evidence that a few distributors, either deliberately or unknowingly, release works which, were they to belong in a different genre, would be classifiable under the VRA due to the nature of some of the content.

The BVA does not therefore support Option 0.

² http://www.bbfc.co.uk/download/annual-reports/BBFC_AnnualReport_2011.pdf, p. 4 & 8

Q B.9 Are there any key disadvantages to this option in your view? Could this option be adapted to overcome any problems?

Unless a video title carries the appropriate BBFC symbol parents are not provided with any indication of whether content is appropriate for viewing by their children. Most distributors print an E for Exempt symbol on the sleeve of relevant titles, which many people mistakenly believe to be a BBFC decision following examination. However, without being submitted for examination by the BBFC there is no guidance on its content or age-appropriateness and the public must make its own decision as to the likely suitability for children's viewing.

Q B.10 What are the key advantages to this option in your view?

To a great extent the current classification criteria is proportionate and sensible with regards to the exempt categories, with the large majority of potentially unsuitable content being submitted to the BBFC. When appropriate, works are classified more strictly for video than for theatrical release to take account of the increased possibility of under-age viewing and the likely audience.

The public, industry and enforcement bodies all have a good understanding of how the current system functions. Option 0 would impose no additional regulatory burden or cost on industry.

Q B.11 How do you think this option would work for the following key stakeholders:

- consumers

Reg Bailey's Report demonstrated that there is significant concern among parents that video entertainment considered unsuitable for children is being sold without the appropriate age-rated certification. Option 0 would not address this problem.

- industry

The main advantage of this option to industry is that it would entail no change to current practice. The VRA is well understood and clearly states that music, sport, religious and educational video works must be sent for age rating if they contain adult-type material depicting gross violence, sex and criminal behaviour. For this reason the large majority of works containing such material are already classified by the BBFC.

- enforcement agencies

This Option would not affect the work of Police or Trading Standards who have a long-standing working appreciation of the current system.

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?

As stated in Q B.8 and B.10, the current system is largely proportionate because it is predicated upon the BBFC's well-established guidelines and procedures for fulfilling their role as the designated body under the Video Recordings Act, and these are regularly assessed and updated. The VRA compels age rating for all video works unless they fall into the exempt genres which means that the large majority of works which parents might deem inappropriate are already classified.

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?

Requiring all video works to be age-rated would not constitute a proportionate response to the concerns outlined by parents, media and politicians about the unsuitability of some works currently exempt from classification. As outlined in Q B.8, the vast majority of exempt works do not contain harmful content; necessitating all material to be sent to the BBFC is unnecessary and would impose financial and administrative burdens on industry that would reduce the ability of some companies to release content or encourage them to distribute works online only.

Inducing more works to be released exclusively online could result in less content being subject to statutory classification, having an opposite effect from the one anticipated under this Option. Currently all works that are classified for DVD and Blu-ray by the BBFC also receive an online classification. An unintended consequence could be a wider range of potentially unsuitable content is published online and a reduction in age-rating and parental advice to alert users.

A reduced number of works released on disc would also have a negative impact on customer choice and enjoyment. The large majority of consumers still prefer to watch video content on disc rather than online³.

Option 1 would hit SMEs and micro businesses in this field disproportionately hard as they are less well-resourced and the commercial viability of small releases of specialist works would be jeopardised.

It could also affect producers of time-sensitive content. Titles which are made to coincide with or closely follow a particular real-life event or broadcast only have a very short window in which to produce, manufacture and distribute a DVD/Blu-ray Disc, otherwise the marketing opportunity to optimise sales is significantly reduced. This is demonstrated by the importance of Week 1 sales and indeed Day 1 sales to the success of a video release. For example, *Manchester City Champions – Official*, released on 12 June 2012 to celebrate the Club's first league title since 1968, has sold almost 15,000 copies to date, with 8,245 (55%) being sold in the first week and 40% of first week sales being achieved on the first day of release. This is well above the average proportion of Week 1 sales to the total sales of a video release.

It should be recognised that while the volume of titles released in exempt categories such as music and sport is high, the sales volume and value takes a relatively small share of the total market. Thus Music Videos accounted for 16.5% and Sport & Fitness 8.1% of DVD releases respectively in 2011, yet only made up 2.0% and 1.5% of sales volumes⁴. This demonstrates the large number of video titles that fulfil demand from specialist audiences, rather than the mass market. The BVA believes that unnecessarily requiring them to obtain age-rating certificates for works which contain no unsuitable content will jeopardise the commercial viability of these niche markets, consequently reducing consumer choice.

The BVA does not therefore support Option 1.

Q B.17 Are there any key disadvantages to this option in your view? Could this option be adapted to overcome any problems?

The BVA believes Option 1 would lead to a significant reduction in the number of video works being produced and certain content only being released in a digital format because of the extra

³ Over 75% of total market value is generated by physical retail. Click her to view the BVA report '[Ready to Face the Future](#)', p. 5

⁴ BVA Yearbook 2012, p. 42

costs and increased turn-around times which would result from having to submit all material for BBFC classification.

As stated in Q B.16, works that would have been released and classified on disc could be substituted by digital-only distribution, beyond the reach of statutory classification. Option 1 would also have a negative impact on consumer choice.

Statutory classification would also adversely affect the release of time-sensitive titles. Although the BBFC turn-around time for video classification was reduced to an average of 8.6 days in 2011⁵, this would still create a significant delay to production prior to manufacturing and distribution of video works, reducing sales potential. There is a series of processes involved in classification of a work by the BBFC: after submitting the work for technical examination, an examination of its contents is carried out and then approved by senior staff at the BBFC. Payment must be received prior to the start of this process and packaging is also automatically entered into the voluntary Video Packaging Review Committee Schedule, although a distributor can opt out of this at any time. For the majority of distributors of currently exempt works this process would amount to an unnecessary and not-insignificant regulatory burden.

The BVA believes that this additional administrative delay and cost will dissuade some publishers from bidding for video distribution rights to works most at risk of becoming commercially unviable in the event that they lost their exemption. The uncertainty of a return on investment associated with acquiring rights in advance of an event is well demonstrated by a comparison of sales for the *Rugby World Cup Official Review* in 2003, when England won the competition, and in 2007 when they finished runners-up. In 2003 the *Official Review* of the tournament was the best-selling sports video of the year, achieving over 300,000 sales. This amounted to almost four times as many sales as the best-selling sports video of 2002 and was the first time that a rugby title had made it into the Top 10 sports videos since 1998⁶. By contrast the 2007 release achieved only 9,027 sales in that year, despite being released almost two weeks earlier than its 2003 equivalent⁷. Indeed, the extent to which UK sporting success influences disc sales is demonstrated by the fact that the total market volume of Sports and Fitness titles decreased in 2011 from 2010, the year in which Europe won the Ryder Cup and England retained the Ashes⁸.

The titles in this example are not intended to imply the presence of unsuitable content; the case study is used to highlight the potential impact of additional cost and delays on specific exempt works. This is also the case for TV programmes, which often go on sale very soon after having been broadcast in order to capitalise on the audience and publicity generated on television.

It is important to consider that Sport, Fitness, Music, Documentary/Special Interest titles generate profit for individuals and businesses other than those directly associated with the making of the work itself. Football clubs, for example, release video works at the end of the season or to celebrate successes which helps generate additional revenue.

Although modification of the VRA is needed to help ensure that all video works are appropriately age-rated, lowering the threshold of exemption can achieve this goal without endangering the huge range of currently exempt works released to fulfil the market for these genres by adopting Option 1.

Q B.18 What are the key advantages to this option in your view?

⁵ http://www.bbfc.co.uk/download/annual-reports/BBFC_AnnualReport_2011.pdf, p. 8

⁶ BVA Yearbook 2004, p. 68

⁷ Information provided by the Official Charts Company: <http://www.officialcharts.com/>

⁸ BVA Yearbook 2012, p. 45

This Option would remove all ambiguity for parents as to whether some exempt works may contain material unsuitable for viewing by their children. As indicated by this consultation, many parents are actually unaware that certain categories of video are exempt from classification (p.30); this Option might therefore provide greater clarity by making this expectation a reality. Nevertheless, this is not a proportionate response to the problem at hand and would go far beyond what is needed to satisfy public concern.

Q B.19 How do you think this option would work for the following key stakeholders:

- consumers

It would provide clarity for parents who are concerned that the current system does not provide total protection from access to unsuitable material. However, if the increased costs and administrative delay associated with this Option did reduce the range of new and innovative video content, this would limit the availability of video titles which currently fulfil a consumer demand. It could also result in titles being released online only and therefore avoid classification by the BBFC.

- industry

The BVA doubts that the removal of exemptions for Music Video would help broadcasters and internet companies ensure that content offered via these methods is made available responsibly, as suggested by the Bailey Review. They are under no statutory obligation to acknowledge BBFC classifications and there is little evidence to suggest they would be followed. See also our response to QB18.

- enforcement agencies

This option would remove any uncertainty as to whether a particular DVD or Blu-ray should contain a BBFC logo on the packaging.

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?

No, for the reasons stated above.

Q B.22 Are there any other data, facts, figures or information you think that Government should take into account when considering this option?

Of the over 53,000 titles available for sale in the present UK retail market, over 10,000 are music videos and over 4,000 are sports titles⁹. Were all video works to be classified in future, the Government would have to consider making amendments to the law retrospective in order to deal with the many thousands of currently exempt works on sale. This gives an indication of the scale of the huge extra burden this would place on industry and unreasonable disruption to the retail trade.

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.

⁹ Information provided by West 10 Entertainment: <http://www.west10entertainment.co.uk/>

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?

In a letter to Creative Industries Minister Ed Vaizey from the BBFC, BVA, BPI, VSC and ERA, we expressed our common support for the Government's preference for lowering the threshold for exemption to enable the BBFC to classify all works which could contain material harmful to children (see Annex 1). We believe Option 2 is sensible and proportionate and will bring added reassurance to parents without undue adverse impact on consumers, industry or enforcement bodies.

Lowering the threshold would empower parents to make more informed choices about the type of material they allow their children to view and would therefore help protect children from unsuitable and potentially harmful material. The BVA agrees that the current threshold at which works currently lose their exemption is too high. Ensuring that works which contain strong violence, explicitly sexualised behaviour, including nudity, racist, homophobic or other discriminatory behaviour or language, imitable dangerous behaviour, including drug and other substance misuse and repeated use of strong language lose their exemption will address the concerns raised in Reg Bailey's Report.

The BVA believes it is important to maintain perspective on this issue and recognise that exempt works represent a small percentage of the total number of video works released each year and among these some titles can and do lose exemption under Section 2 (2) of the VRA, which compels age rating for video works if they contain adult-type material. Accordingly, for example, information provided by West10 Entertainment indicates that only two of the 72 wrestling titles released in 2011 did not carry BBFC age ratings.

While the content of exempt videos has changed considerably since the passing of the VRA in 1984, the BVA estimates that the number of additional works that would require statutory classification if Option 2 were adopted would be relatively few; for example the majority of Music videos continue to be recordings of live performances and do not often contain content that would be considered suitable for adults only. It is worth noting that there were more works released in 2011 which fell into the opera, orchestral/symphonic, ballet and classical/soloist genres than fell into the categories containing the majority of the content that caused concern among parents according to the Bailey Report, namely rock/pop, hip-hop and heavy metal¹⁰.

It is essential that the extent to which video entertainment differs from video games is recognised in terms of the nature of their content, the ways in which is viewed by the user and how this determines the criteria by which works are classified. The key difference is the linear nature of video entertainment compared to the interactivity of video games; this contrast is highlighted by the repetitiveness of certain elements required to gain access to the next stage of the video game. Because these levels are likely to be viewed numerous times when the game contains content which is considered inappropriate or harmful to children this increases the PEGI age rating of the material. The PEGI classification system takes account of factors which are peculiar to video games and as such we would expect a greater number video games to be age-rated than video titles containing the same type of content.

The BBFC, in consultation with the BVA, BPI and others, has therefore drafted a detailed recommendation of the new types of content in exempt video works that would lose a video work its exemption if the Government were to take forward this Option (Annex 2). This accompanied the jointly signed letter to the Minister (see Annex 1).

¹⁰ Information provided by West10 Entertainment: <http://www.west10entertainment.co.uk/>

Since the Digital Economy Bill's passage through the House of Lords, when the Government committed to consult on this matter, the BVA has been in discussion with the BBFC about the potential outcome of a lowering of the threshold at which exempt works might be subject to statutory classification and we have applied recommended guidelines to a number of existing video works to determine if this would be an appropriate solution. The wording of our joint recommendation has been carefully drafted to ensure it captures the kinds of exempt works which contain content that BVA considers would receive an age rating under the Video Recordings Act were they in a non-exempt genre.

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

The BVA is concerned by the suggestion in the consultation that the Government might seek to apply the principals used in the designation of the VSC to classify video games against currently exempt video material. In Q B.25 we outline key differences between video games and video entertainment to demonstrate why any amendment to the VRA needs to be tailored to video works. Although factors which cause video games to lose exemption could be applied to video entertainment, they would not suit the particular needs for change to exempt video works. Applying PEGI qualifications for video classification would adversely affect some titles that ought not to be caught under this Option.

To avoid this unintended consequence, the BVA urges the Government to adopt the BBFC drafted guide (Annex 2) delineating the kind of content that would lose a video work its exemption under Option 2.

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

Lowering the threshold is the proportionate way to up-date the Video Recordings Act to bring all potentially harmful works under the regulatory remit of the BBFC, ensuring that they display the trusted BBFC logo and consumer advice on the packaging. Option 2 has industry support and the endorsement of Reg Bailey, Mumsnet, Local Government Regulation and the Peers who put down the amendment to the Digital Economy Bill during its passage in the House of Lords.

Given that all works classified for DVD or Blu-ray release also receive an online classification certificate under the BBFC Online system, this Option 2 will have the added benefit of providing greater protection for children from unsuitable video entertainment material available through digital services, which are beyond the scope of the Video Recordings Act. The BVA believes this is therefore the best solution.

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

- consumers

Lowering exemption thresholds specifically responds to public concern over the suitability of some video works being sold without age-restrictions. Updating the VRA to take account of the way in which the content of exempt works has changed since the passing of the Act in 1984 will engender renewed confidence in the classification system on which the public rely.

As outlined in Q B.6, there is considerable public understanding, trust and use of BBFC classification symbols; to ensure that this continues and even furthered it is important that public concerns over exempt works are heeded and acted upon. It will also reduce public confusion as to the meaning of the E symbol printed on the sleeves of exempt works.

- industry

There is widespread support for this Option within the audiovisual industry and across the wider creative sector, as demonstrated by the signatories to the joint letter sent to the Minister (Annex 1).

Lowering the threshold would make it much clearer for distributors of exempt works to know when to submit works to the BBFC. It is also in industry's interest to be corporately responsible and to promote trust in the classification system, as this increases consumers' confidence when buying or renting video entertainment. The need to ensure that parents' concerns are addressed is why the BVA has been discussing the lowering of the classification threshold with the BBFC for over three years.

As we have indicated throughout our response to this consultation, we anticipate Option 2 causing minimal detrimental impact to video distributors. Increasing the number of works subject to classification will impose extra financial and administrative burdens that may affect the commercial viability of some titles and dissuade distributors from commissioning or acquiring rights to certain types of works currently exempt from statutory classification. We anticipate that producers of niche works or those operating on low overheads might cease releasing these works on physical formats because of the additional costs involved, possibly opting to release only on digital platforms. Nevertheless, most distributors, including BVA members, would accept that if works unsuitable for children's viewing should be identified as such and receive the appropriate consumer advice supplied by the BBFC to accompany the age classification certificate.

- enforcement agencies

We do not believe Option 2 would affect Trading Standards' ability to carry out enforcement.

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

We believe this is Option will properly address the concerns of the public about the suitability of currently exempt works. However, as explained in response to B.26m the BVA recommends that the Government adopts the guidelines (Annex 2) developed by the BBFC and industry bodies, including the BVA, so as to avoid capturing more titles than necessary in lowering the threshold under which works lose their exemption under the VRA.

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

Yes, as explained in Q B.25.

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.

As explained in Q B.28 it is likely that this Option would encourage some small distributors to distribute content solely online, increasing the trend towards greater availability of digital content but at the expense of physical, which is still the preferred viewing option for most consumers of video entertainment. Nevertheless, the impact of Option 2 on industry would be far less significant than if Option 1 were to be adopted.

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?

Although a voluntary system might offer some additional help to parents in deciding whether content will be appropriate viewing for their children, we do not think it would represent a suitable alternative to the proposed lowering of the threshold of exemption.

As indicated by this consultation, research suggests that only 56% of parents demonstrate an awareness of the EXPLICIT label used by the music industry under its voluntary PAS scheme. That pales in comparison to the proportion of parents who not only recognise but also value BBFC labels and consumer advice¹¹. It would take time for the public to understand and trust a new voluntary labelling system for exempt video works, which would be likely to increase confusion, particularly in the early stages of its implementation.

The BVA does not support this Option.

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

The key disadvantage of Option 2 is that it would introduce a second type of regulation into the UK DVD and Blu-ray market which would confuse consumers and retailers. A voluntary scheme, as proposed under this Option, will not provide a level of regulatory control that takes accounts of the ways in which the content of exempt works has changed since the passing of the VRA in 1984. Given that we already have statutory regulation, an amendment to bring the VRA up to date and allay public concerns about the availability of potentially damaging works to children would appear to be a more effective solution.

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

It would not introduce significant financial or administrative burdens on industry.

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

- consumers

Two types of regulation applied to the content and packaging in one creative sector would increase consumer confusion.

- industry

BVA distributors do not wish to be liable for producing consumer advice descriptions that may not live up to the public's expectations, preferring the designated body to undertake this responsibility as it does for all other works. Although there are models on which industry could base a voluntary scheme for labelling exempt works, it would effectively have to develop, test and implement and promote a new system, which the BVA believes is unnecessary given the alternatives in Option 2.

- enforcement agencies

New regulations would also be confusing for enforcement agencies.

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

A possible course of action that could be examined by the Government is mandatory self-regulation under the Audiovisual Media Services Directive (AVMS), as that implemented by ATVOD, which would strengthen the existing online consumer protection afforded by the BBFC's Watch & Rate service.

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?

¹¹ For example, according to the BBFC's latest survey 85% of parents with primary school aged children found their Consumer Advice useful. See <http://www.bbfc.co.uk/newsreleases/2009/06/new-classification-guidelines-published-by-the-bbfc/#more-15>

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

About the BVA

The British Video Association exists to represent video entertainment in all its forms, from packaged media such as DVD and Blu-ray Discs through to digital services available on demand, to rent or to own on portable devices and for home viewing.

The proliferation of content delivery channels, now with more than 40 digital video services, is constantly increasing consumer choice and the video industry releases about 7,000 titles a year, on which consumers spent over £2.3 billion in 2011. It is the single most valuable part of the audiovisual sector in terms of generating returns on investment for production.

The BVA's members include film and television companies and independent labels who produce, license and distribute pre-recorded video entertainment, covering film, sport & fitness, music, TV, children's and special interest programming. Its members account for some 90% of the sector's retail value. A full list of members can be found at www.bva.org.uk.

The BVA consulted with its members over the period 2010 to 2012 about how to address the issue of material that might be deemed unsuitable for children in video titles exempt from BBFC classification. Independent distributors most likely to be affected by any change in regulation actively contributed to the BVA's final position.

1st August 2012

APPENDIX 1



9 July 2012

The Hon Ed Vaizey MP
Minister for Culture, Communications and Creative Industries
Department for Culture, Media and Sport
2-4 Cockspur Street
London
SW1Y 5DH

Dear Ed

The BBFC, BVA, BPI, VSC and ERA welcome the opportunity to respond to the Government's consultation on the Video Recordings Act and wish to submit a common position in support of Part B Option 2 and propose criteria under which a video work would lose its current exemption.

We recognise that content in exempt categories has changed significantly since 1984. Although the majority of presently exempt works do not cause harm or offence, there is material in a small number of works claiming exemption from classification which is unsuitable and even potentially harmful to children, but which may be supplied without restriction to them. We know that most parents rely on age classifications and consumer advice on packaging to decide whether a video work is appropriate for their children's viewing. We acknowledge the genuine concern about the availability to children of unsuitable content and confusion about the exempt categories which risks undermining their confidence in the UK's statutory classification system. Although music videos have been the subject of most media discussion, the majority of exempt works causing concern are other types of exempt work, including combat sports and documentaries.

We agree, therefore, that it is right to update the Video Recordings Act to lower the threshold at which videos lose their exemption (your Option 2). This would be a sensible and proportionate measure to ensure that the small number of video works which are problematic are subject to trusted, independent regulation. We do not favour any of the other three options.

In line with the principles set out in Option 2, we propose that any works being distributed in future in exempt genres which contain the content set down below should be submitted to the BBFC under the Video Recordings Act for age-appropriate classification to be given along with bespoke consumer advice to empower consumers and protect children from potentially harmful material. This would strengthen the existing grounds for a video work losing exemption. They are slightly different criteria than those which apply to video games and reflect the differences between the two media.

BBFC/BVA/BPI/VSC/ERA Proposed new criteria for threshold under which a video work would lose exemption from classification:

- ***Strong violence***
- ***Explicitly sexualised behaviour, including nudity***
- ***Racist, homophobic or other discriminatory behaviour or language***
- ***Imitable dangerous behaviour, including drug and other substance misuse***
- ***Repeated use of strong language***

We attach draft guidance for each of these areas which the BBFC and VSC would apply to advise distributors as to whether or not a work is likely to have lost its exemption.

Local Government Regulation and individual Trading Standards officers with responsibility for VRA compliance contributed to the drafting of the proposal and guidance. The proposal and guidance therefore reflect their views. However, because Local Government Regulation no longer exists, they are unable formally to put their name to it.

The proposal also enjoys cross party support across Parliament. We understand that Lord Clement Jones and Baroness Howe, who put forward an amendment to the Digital Economy Bill along the lines of the attached proposal, have written to you expressing their support for it.

We believe that such an amendment to the Video Recordings Act would be an effective and proportionate means of protecting children from inappropriate content and of empowering consumers to make appropriate viewing choices.

We are ready and willing to discuss the detail and how our proposal may be implemented in an amendment to the VRA with your officials.

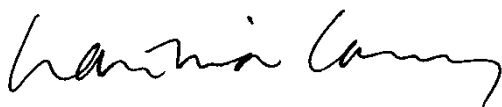
Yours sincerely,



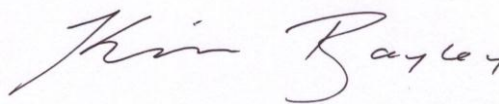
David Cooke, BBFC



Laurie Hall, VSC



Lavinia Carey, BVA



Kim Bayley, ERA



Geoff Taylor, BPI

ANNEX 2



EXEMPTIONS CONSULTATION: JOINT PROPOSAL BY BBFC, BVA, BPI, VSC AND ERA

A joint BBFC, BVA, BPI, VSC and ERA proposal that any works being distributed in future in exempt genres containing the content described below should be classified under the Video Recordings Act and an age-appropriate classification decision given, along with bespoke consumer advice to empower consumers and protect children from potentially harmful content.

Strong violence

Strong violence means a focus on the depiction of realistic violence, whether real or simulated, including an emphasis on injury or blood. Of particular concern are depictions of strong violence which feature an enhanced focus on violence through for example slo-mo replays of violent moves and any potentially dangerous combat techniques which may be copied. It includes depiction of the aftermath of violence, including self-mutilation, scarification, DIY surgery and self-harm. It includes depictions of violent acts in which the "victim" is consenting to those acts. It also includes material which may stimulate or encourage strong violence, including verbal references which may promote or glamorise violence or present violence as a normal solution to problems. It includes depictions of strong violence involving animals where a human agent is involved (eg arranged animal fights). It includes any portrayal of sexualised or sexual violence.

Explicitly sexualised behaviour, including nudity

This includes images which involve genital, buttock or breast nudity which are designed to titillate and arouse. It includes topless dancing, including lap and pole dancing. It includes strong images of simulated human sexual activity.

It includes strong, explicit verbal descriptions of human sexual activity.

It does not include natural breast or buttock nudity in a non sexual context.

Racist, homophobic or other discriminatory behaviour or language

Racist language includes derogatory terms and dialogue relating to race which criticise an individual or a group of individuals on the grounds of, or by making reference to, race. Homophobic language includes derogatory terms and dialogue relating to sexual orientation which criticise an individual or a group of individuals on the grounds of, or by making reference to, sexual orientation. Other discriminatory language includes derogatory terms and dialogue relating to issues such as gender or disability which criticise an individual or a group of individuals on the grounds of, or by making reference to, these matters.

Imitable dangerous behaviour, including drug and other substance misuse

This includes content featuring drug and alcohol misuse. Of particular concern are verbal or visual depictions which glamorise, normalise or otherwise promote such misuse, especially if the misuse is carried out by a figure with significant appeal to children or young people. Depictions of drug misuse which offer instructive detail are also of particular concern.

It also includes verbal or visual depictions of tobacco use which glamorise or otherwise promote tobacco use, particularly where tobacco is being used by a character or characters with significant appeal to children or young people. Also of concern are depictions of tobacco use which suggest its use is normal for children or young people.

This content also includes potentially dangerous behaviour which is presented as safe or fun or attractive and can be relatively easily imitated by children or young people.

Repeated use of strong language

Strong language means: fuck and its variants, motherfucker, cocksucker and cunt.

It does not include infrequent (ie fewer than five uses in a feature length work) use of strong language.

BBFC/BVA/BPI/VSC/ERA

July 2012