

Before the Film and Publication Appeal Tribunal

In the matter between:

Electronic Arts

and

The Film and Publication Board

3/2012

Award

In re: Appeal against the classification of the trailer of the interactive computer game:

The Secret World

Professor K. Govender
(Chairperson)

1. The trailer of the interactive computer game, *The Secret World*, was assigned a 13(V) classification by a classification committee on the 14th of February 2012. This game is described in the trailer as a war for world domination, featuring three separate groups of conspirators. Quite unusually, the distributors appealed against the classification, arguing that the game ought to attract a more restrictive classification, and suggesting that a restrictive classification of 16 would be more appropriate. The trailer that we viewed appeared quite innocuous, and certainly did not appear to justify a classification more restrictive than that assigned by the classification committee.
2. Members of the Appeal Tribunal viewed the trailer individually, and a teleconference was held on the 15th of March 2012, during which we arrived at our decision.
3. According to the applicant, the game comprises more than 200 hours of gameplay, and it argued that the strong language, partial or low impact nudity, some moderate violence, and a reference to illicit drugs justifies the more restrictive classification of 16.

4. It became apparent to us that none of these featured in the trailer. It appears that the practice that has been adopted for classifying interactive computer games is for the trailer alone to be examined, and then for the classification assigned to the trailer to be applied to the whole game. In this instance, the duration of the trailer is less than four minutes; yet we are informed that the game itself has approximately 200 hours of game play. It is obviously not practical to do a proper assessment of the game itself because of the number of hours of game play involved. In this matter, the classifiers confirmed that they assigned a 13(V) classification to the game after viewing and assessing the trailer only.
5. 'Film' is defined in the Films and Publications Act as any sequence of visual images recorded on any substance, whether film, magnetic tape, disc, or any other material, in such a manner that by using such substance such images will be seen as a moving picture.¹ This definition is wide enough to include an interactive game. However Game is defined as a computer game, video game or other interactive computer software for interactive game playing, where the results achieved at various stages of the game are determined in response to the decision, inputs and direct involvement of the game player and players.
6. In terms of section 18 of the Act, games must be treated in the same manner as cinematographic films. This will require both the trailer and the game itself to be independently assessed. In terms of section 18(4) of the Act, the classification committee is obliged to 'examine a film referred to it' and assign an appropriate classification. This requires the film classified to be examined by the classification committee. If this is applied to games, there is a legal obligation to examine the game itself.
7. Viewing the trailer, determining a classification, and then simply attaching this classification to the game will not meet the legal obligation on the classification committee to 'examine the film'. We understand the serious practical difficulties in assessing games; but the present practice falls far short of what is required by the Act, as the game is not examined at all. The trailer may be utterly innocuous, while the game may be very different. The game itself must be assessed at some level.
8. We recommend that the FPB's Legal Department, as a matter of urgency, conduct research on how other jurisdictions are classifying games, and how they deal with the administrative challenges that go with it. This may provide useful guidance to us.
9. We were informed that these games are designed to enable the participants to progress to higher levels of complexity with the skills and abilities that they demonstrate. In order to comply with the legal requirements, specifically section 18(4) of the Act, and to guard against an impossible administrative burden being placed on the Board, the following is suggested:

¹ Section 1 of the Film and Publication Act, (Act 65 of 1996).

- A) The distributors must in a written report accurately and fully describe the game, and are required to make full disclosure about whether there any scenes or segments that may be harmful or disturbing to children. They must be notified that if there are any significant omissions, and these are subsequently drawn to the attention of the Board, then a different classification may be assigned to the game.
 - B) The classification assigned to the game in other jurisdictions must be placed before the classification committee by the distributor.
 - C) The copy of the game that is submitted for classification should, if it is feasible, have the bars removed that prevent players from graduating to more advanced levels, so that a person representing the distributors who is familiar with the game can demonstrate at least one hour of game time to the classification committee. The classification committee may also require the demonstrator to display segments or scenes from different levels of the game, if they deem this to be necessary and if the nature of the game permits this. A reasonable explanation should be provided if the distributors cannot comply with any aspect of this request.
10. In examining the game, regard must be had to all these and any other relevant factors. We have not heard argument on the feasibility of the suggestions made, but in our opinion they should not impose an undue burden on either the Board or the distributors. These are suggestions rather than prescriptive conditions. However, it must be emphasised that it is not legally permissible to examine the trailer and then classify the game without in anyway engaging with it. This is a matter that needs to be addressed urgently. Until guidelines are provided by Council and the Board, the suggestions provided in paragraph 9 of this award should be followed.
11. I now sum up the facts of this case. The classification committee only classified the trailer; it did not engage with the game at all, and therefore cannot be said to have examined the game. The classification of 13(V) that the classification committee assigned to the trailer is reasonable. However, as the game itself was not examined as required, the game must be referred to the classification committee for a decision. The classification committee must determine an appropriate classification after taking cognisance of the information listed in paragraph 9 above.

Decision:

- I. The decision of the classification committee assigning the trailer of the game ‘The Secret World’ a restrictive age classification of 13(V) is affirmed.**
- II. The game ‘The Secret World’ must be resubmitted to the classification committee for evaluation.**
- III. The information listed in paragraph 9 of this award must be available to the classification committee prior to their making the decision.**

Concurred:

Adv. D. Bensusan

Ms H. Devraj

Prof. A. Magwaza

Revd M. McCoy

Ms K. Moodaliyar

Ms D. Terblanche

Dated at Durban on the 20th of March 2012.