

## Your response

### Introductory statement

*Industry questions (1-18) have been omitted as this is not an industry response but a response from a fellow regulatory body.*

*Because the Video Standards Council has no formal remit in terms of the regulation of VSPs or purely linear video content, and no direct experience of working with or regulating such providers, the following comments are intended to reflect aspects of the VSC's experience of rating and regulating video games, and working with video games companies, that may have general relevance, or be of interest to, Ofcom in developing its own regulatory structures and principles for VSPs. As such, some of the following answers do not directly offer suggestions regarding how VSPs should be regulated or assisted but instead suggest parallels in the VSC's experience and within its own field.*

Questions for all stakeholders	Your response
<p data-bbox="204 864 738 999"><b>Question 19: What examples are there of effective use and implementation of any of the measures listed in article 28(b)(3) the AVMSD 2018?</b></p> <p data-bbox="204 1043 778 1285"><b>The measures are terms and conditions, flagging and reporting mechanisms, age verification systems, rating systems, parental control systems, easy-to-access complaints functions, and the provision of media literacy measures and tools. Please provide evidence and specific examples to support your answer.</b></p>	<p data-bbox="807 864 1018 891">Confidential? – N</p> <p data-bbox="807 936 1385 1644">The Video Standards Council Rating Board (VSC) is an administrator of the PEGI (Pan European Game Information) system, which is used to rate video games in nearly forty countries across Europe (the system is additionally used in some non-European countries, including Israel). Game publishers fill in an online questionnaire about the content of their game, after which the content of the questionnaire is assessed, along with video footage of gameplay and a copy of the game itself, by one of the two PEGI administrators: NICAM (Netherlands Institute for the Classification of Audio-visual Media), for games expected to receive a PEGI 3 or 7 rating, and the VSC for games expected to receive a PEGI 12, 16 or 18 rating. In order to use the system, the publisher must enter into a contractual obligation to comply with the terms of the PEGI Code of Conduct (more details of which are given below).</p> <p data-bbox="807 1688 1385 1995">PEGI ratings are displayed on the outer packaging of games supplied on physical formats (eg game discs used in Xbox and Playstation consoles, and game cards used in Nintendo devices), in participating nations, as well as being displayed on the majority of the major online storefronts from which games can be downloaded. In the UK, it is illegal, under the Video Recordings Act 1984 (VRA), to supply</p>

games rated 12, 16 or 18 to persons under those ages, if the games are being supplied in physical form (eg on discs, cartridges or chips). There is no similar legal restriction for games supplied online.

Under the PEGI system, games are rated 3, 7, 12, 16 or 18 according to the levels of violence, sex and nudity, fear and horror, bad language, drug use, gambling and discrimination they contain. Ratings are accompanied by visual content descriptor icons explaining the reason for a game receiving a particular rating (eg 'violence', 'sex'), as well as whether the game includes the ability to make in-game purchases using real money.

The rating criteria were created and developed by the PEGI Council, which is made up of representatives from national ratings bodies and governments across Europe, as well as child psychologists and legal advisers with experience in the protection of minors. The PEGI Council is further advised by the PEGI Experts Group, which involves specialists and academics in the fields of media, psychology, ratings, the law and technology. The rating criteria can be adjusted in response to changes in legislation in member countries, or in response to public opinion research. For example, during 2018, the VSC undertook qualitative and quantitative research into public attitudes towards violence in video games, the results of which are summarised in our Annual Report for 2019, while the full research report is available on our website

Full details of the PEGI rating criteria, including the questions asked of game publishers, can be found in the appendix to the VSC Annual Report which can be accessed here:-

<https://videostandards.org.uk/>

The purpose of the PEGI system, which is supported by the European Commission, is to protect minors from content that might be unsuitable for them, or harmful to them, by enabling parents to make informed decisions about the nature of the games their children play. Further information about the PEGI

system, its ratings and content descriptor icons, can be found on the PEGI website here:-

<https://pegi.info/what-do-the-labels-mean>

Details of PEGI ratings for individual games are available on the PEGI website, the PEGI app and the VSC website, where the ratings and the content descriptor icons are supplemented by more detailed written information about the content of specific games, known as Additional Content Information.

The PEGI and VSC websites additionally contain a range of information for parents about how to set up parental controls on gaming consoles, computers and other devices to prevent access to inappropriate and harmful material. Many game consoles permit parental controls to be linked directly to PEGI ratings. Parental controls can also be used to restrict other elements of concern to parents, including time spent playing, in-game spending and online interactions with others. The PEGI and VSC websites contain suggestions for parents and children regarding how to report upsetting or inappropriate behaviour online, something signatories to the PEGI Code of Conduct are required to have measures in place to address.

Companies that use PEGI ratings agree to sign up to the PEGI Code of Conduct, which governs areas such as labelling, advertising, promotion and marketing of PEGI rated games, as well as setting out the penalties for breaches of the system, including fines. The stated purpose of the Code is to ensure that the PEGI system provides “information to the public on the content of interactive software products in a responsible manner and also to ensure safe online gameplay for children” and “to provide parents and educators with objective, intelligible and reliable information regarding the minimum age for which a given product is deemed suitable with specific reference to its content”.

Full details of the Code can be accessed on the PEGI website:-

<https://pegi.info/pegi-code-of-conduct>

	<p>The VSC is also an administrator of IARC (International Age Rating Coalition), which was developed by a coalition of rating bodies from around the world. Because the sheer volume of mobile games and apps released (estimated to be around 10,000 every day), it is not possible for these to be regulated prior to release in the same manner as games supplied in physical form or major games released on key platforms. The IARC system allows developers of games and apps to assess their own content by means of a questionnaire, after which an algorithm created by IARC produces localised ratings for that mobile game or app, including for most of Europe, North America (US, Canada and Mexico), Australia, Brazil and South Korea. In countries that use PEGI age ratings, PEGI ratings are generated and displayed.</p> <p>Major online storefronts, such as Google Play, Nintendo eShop, Oculus and EA's Origin have incorporated the IARC system as a mandatory requirement for all app/game developers. Targeted checks are carried out by IARC member regulators to ensure the ratings issued are correct. The VSC and NICAM, the joint PEGI administrators, usually carry out around 10,000 checks per year.</p> <p>The IARC system offers a possible scalable model for allowing content creators to self-rate large quantities of UGC according to standards set and overseen by national regulators, and which can be subject to spot checks and reviews in the event of complaints.</p> <p>Information on the VSC's involvement in media education and outreach can be found under question 28, below, and information on complaints procedures can be found under question 25, below.</p>
<p><b>Question 20: What examples are there of measures which have fallen short of expectations regarding users' protection and why?</b></p> <p><b>Please provide evidence to support your answer wherever possible.</b></p>	<p>Confidential? – N</p> <p>In 2018, in response to a request from the Minister for Digital and the Creative Industries, the VSC undertook research to ascertain the extent of voluntary compliance with age labelling by online game providers and the extent to which online games providers enable</p>

	<p>the use of parental controls. At the same time, the VSC commissioned quantitative research into public attitudes (of parents and children) towards age ratings on online games.</p> <p>The research demonstrated that there was high parental demand for PEGI ratings online (92% of parents agreed that PEGI ratings should be used for online games, rather than alternative rating systems). It also demonstrated that the majority of online game providers surveyed displayed ratings on all titles (80%) and that the majority used PEGI ratings (70%).</p> <p>Nonetheless, around a quarter of parents experienced difficulties in finding age ratings online and only a minority of services offered the opportunity to filter searches by age rating. This illustrates that it is not sufficient to simply provide age ratings online. The age ratings must be clearly displayed, easy to locate, use and understand. The same is true of parental controls. While parents tend to think controls are a good idea, once such features are explained, they often lack awareness of their existence or functionality.</p> <p>The research also made clear, as did parallel research carried out by the British Board of Film Classification, that parents may be confused by multiple rating systems being used across different platforms and that they prefer consistent rating systems, such as PEGI and BBFC, with which they already have familiarity and which they trust.</p> <p>Separate qualitative and quantitative research published by the VSC in 2018 demonstrated that 84% of respondents claimed to check for age ratings when buying video games, that 93% thought it was important for video games to always show age ratings and that four out of five trust PEGI ratings all or most of the time.</p> <p>Details of both pieces of research can be found on the VSC website.</p>
<p><b>Question 21: What indicators of potential harm should Ofcom be aware of as part of its ongoing monitoring and compliance activities on VSP services?</b></p>	<p>Confidential? – N</p> <p>The Video Recordings Act 1984 (VRA), under which the VSC is designated to classify games</p>

Please provide evidence to support your answer wherever possible.

distributed on physical formats in the UK, directs the VSC to have special regard to any harm that may be caused to potential viewers, or through their actions to society, by the manner in which a game deals with criminal behaviour, illegal drugs, violent behaviour or incidents, horrific behaviour or incidents, or human sexual activity.

The VRA starts from the position that video games are, by default, exempt from the need for a legally enforceable age restriction (12, 16, 18) to be placed upon them **unless** they contain: depictions of violence towards human, human-like or animal characters; realistic-looking depictions of violence towards other characters; depictions of criminal activity likely to stimulate or encourage the commission of offences; depictions of activities involving illegal drugs or the misuse of drugs; words or images likely to stimulate or encourage the use of alcohol or tobacco; words or images intended to convey a sexual message; swearing; words or images intended or likely to cause offence based on race, gender, disability, religion, belief or sexual orientation.

The inclusion of any of these types of material requires a mandatory age restriction of 12, 16 or 18, under UK law, with the level of restriction depending on the specific nature of the depiction. The differences between which types of content merit a 12, 16 or 18 restriction are determined by the application of the PEGI rating criteria, which were developed by specialists and academics in the fields of media, psychology, ratings, the law and technology, as described in question 19, above

These legal tests give a good indication not only of how the VSC operates the PEGI system in the UK but the types of material Parliament has determined should require regulation and be subject to formal age restrictions.

**Question 22: The AVMSD 2018 requires VSPs to take appropriate measures to protect minors from content which 'may impair their physical, mental or moral development'. Which types of content do you consider**

Confidential? – N

Please see question 21, above, for a list of types of content on which the VSC places formal age restrictions (12, 16 or 18), in accordance with both UK law and the structure of the PEGI

**relevant under this? Which measures do you consider most appropriate to protect minors?**

**Please provide evidence to support your answer wherever possible, including any age-related considerations.**

rating system, in order to protect minors from mental and moral harm.

Given the additional emphasis placed here on 'physical' harm, it is also important to consider the potential for certain types of material to have a directly physical effect on some viewers. This could include strobing and other lighting effects that may provoke medical reactions in those with photosensitive epilepsy. Video games often begin with a warning about the risks of such physical harms, which may also be notified in the packaging for a game.

More generally, there is a need for all media to be consumed as part of a balanced and healthy lifestyle. Parental controls on game consoles often include the ability to place limits of play time or to monitor time spent playing. Signatories to the PEGI Code commit to advising users of the desirability of taking breaks from gameplay. Warnings about this occur both onscreen and in packaging for games supplied in physical form, and in online contexts. It is preferable to emphasise these notes of caution within the context of the many corresponding benefits that gaming can bring, in terms of promoting problem-solving, literacy and socialisation.

**Question 23: What challenges might VSP providers face in the practical and proportionate adoption of measures that Ofcom should be aware of?**

**We would be particularly interested in your reasoning of the factors relevant to the assessment of practicality and proportionality.**

Confidential? – N

As discussed in question 19, above, it can be difficult or impossible to regulate very large quantities of material, particularly UGC, using traditional regulatory means. The IARC system discussed in question 19, above, which operates in the context of rating mobile games and apps, offers a potential scalable model that could be practical and proportional for VSPs. The creation of a suitable content questionnaire, for example by independent regulators and experts, would potentially enable content creators or uploaders to generate their own ratings and content information before uploading to a platform. The use of such a system could be mandated by platforms as a condition of uploading, as is the case with the major game/app providers that use the IARC system. Such ratings can then be audited, whether randomly, in a targeted

	<p>manner (for example, through searching for particular terms), or in response to complaints, by the platform and/or by a regulatory body. This would avoid imposing a disproportionate burden on platforms to pre-vet all content they host, provided that appropriate mechanisms are in place to review content and ratings as necessary.</p>
<p><b>Question 24: How should VSPs balance their users' rights to freedom of expression, and what metrics should they use to monitor this? What role do you see for a regulator?</b></p>	<p>Confidential? – N</p> <p>The PEGI system is an age rating system and its purpose is to inform consumers, and parents in particular, about the contents of a game, in order to assist them to make informed choices. Its purpose is not to censor material, nor to place unnecessary limits on freedom of expression, subject to the material in question being legal.</p> <p>Companies who use the PEGI system are required to sign up to the PEGI Code of Conduct, which requires that all material they distribute under PEGI licenses is legal in member countries. The Code also requires that, in any online gaming environments in which players may interact, they must take steps to ensure there is no "illegal, offensive, racist, degrading, corrupting, threatening, obscene or might permanently impair the development of minors".</p> <p>In the UK, the VSC has additional powers regarding games supplied on physical formats. These powers derive from the VRA, which gives the VSC the power to refuse to classify a game, effectively rendering its supply within the UK illegal on physical formats, such as game discs and game cartridges and chips. Since the VSC was designated under the VRA, in 2012, only one game has been formally refused classification, for sexualising children in a potentially harmful manner.</p> <p>The content in question stopped short of breaching UK law, because the images in question were animated rather than photographic (meaning there was no breach of</p>



	<p>the Protection of Children Act 1978) and the game in question was not purely pornographic (meaning there was no breach of the Coroners and Justice Act 2009). However, the sexualisation of children was considered to raise the potential for harm to viewers, in the manner set out by the VRA, and the game was refused classification on that basis. This decision was taken only after referral to the VSC's Advisory Panel, made up of experts in child development, media effects and the law.</p> <p>The publisher of the game had the right to an independent appeal (see question 25 below) but did not exercise this option. It remains illegal to supply the game, on physical formats, within the UK.</p>
<p><b>Question 25: How should VSPs provide for an out of court redress mechanism for the impartial settlement of disputes between users and VSP providers? (see paragraph 2.32 and article 28(b)(7) in annex 5).</b></p> <p><b>Please provide evidence or analysis to support your answer wherever possible, including consideration on how this requirement could be met in an effective and proportionate way.</b></p>	<p>Confidential? – N</p> <p>The VSC maintains an independent appeals board, made up of experts in the protection of minors, the law, media regulation and media effects. While the appeals board is constituted under the terms of the VRA, and functions as a quasi-judicial body, it is separate from the courts. Its role is to hear appeals by game companies who wish to appeal against a decision made by the VSC that they regard as unduly restrictive. This formal mechanism is only open to publishers of games rather than members of the public.</p> <p>Should a complaint be received from a consumer or publisher regarding the rating given to a game, and no satisfactory settlement can be reached by the PEGI administrators (VSC and NICAM) through discussion, explanation or negotiation, the complainant may formally request the PEGI Complaints Board to mediate. The Complaints Board considers complaints from consumers and publishers against PEGI ratings where the rating of a game, or the criteria that defined it, require an investigation in more detail. The Complaints Board is made up of representatives from national regulatory bodies and experts in the protection of minors. Publishers using the PEGI system are bound by the decision of the Complaints Board. Their decisions are then shared with the PEGI Experts Group, which ensures that mistakes,</p>

	<p>misinterpretations or inconsistencies in the PEGI criteria are corrected, and the same situation is less likely to recur.</p>
<p><b>Question 26: How might Ofcom best support VSPs to continue to innovate to keep users safe?</b></p>	<p>Confidential? – N</p> <p>As discussed under question 23 above, this can best be done by promoting innovative rating systems that permit large quantities of ratings to be produced quickly and efficiently by the creators of uploaders of content. These ratings can then be audited, or checked in the case of complaints, by the VSP, before a complaint is escalated to Ofcom. In the context of games and linear video content, the public have expressed a clear preference for consistent rating systems to be used across platforms, rather than multiple bespoke rating systems (see question 20 above).</p>
<p><b>Question 27: How can Ofcom best support businesses to comply with the new requirements?</b></p>	<p>Confidential? – N</p> <p>See question 26 above.</p>
<p><b>Question 28: Do you have any views on the set of principles set out in paragraph 2.49 (protection and assurance, freedom of expression, adaptability over time, transparency, robust enforcement, independence and proportionality), and balancing the tensions that may sometimes occur between them?</b></p>	<p>Confidential? – N</p> <p>While the current key focus of Ofcom is on the essential functionality of VSPs, which comprises the delivery of video content, it is worth considering the fact that, like games, VSPs may offer additional functionality, such as the ability to post messages and communicate with other users. In the VSC’s experience with games, such functionality has the potential to contain upsetting and offensive material, including material that may promote hatred.</p> <p>In the context of companies who sign up to the PEGI system, Section 9 of the PEGI Code requires that signatories shall “use their best endeavours to ensure that Online Gameplay Environments are kept free of content which is illegal, offensive, racist, degrading, corrupting, threatening, obscene or might permanently impair the development of minors” and that “When Online Gameplay Environments also contain user generated content, Signatories shall use their best endeavours to immediately take down any such content which is illegal, offensive, racist, degrading, corrupting,</p>

threatening, obscene or might permanently impair the development of minors”.

Additionally, the Code requires that there must be reporting mechanisms in place for players to notify signatories of the existence of any such content and that, in the context of chatrooms, “Signatories should take reasonable precautions to ensure that Online Gameplay Environments which allow voice or video chat, protect children from access to age-inappropriate content introduced by other users”. The Code also emphasises the need for Signatories to protect the privacy of minors by ensuring stringent standards regarding the publication of warnings about the supply or display online of private email addresses and promoting responsible purchasing practices.

Media education also has an important role to play in informing users, including children, about what to do when inappropriate or harmful content is encountered in these contexts. The VSC and PEGI offer advice for parents and for children on their websites, as well as a variety of educational resources for use in schools. This focuses on the desirability of activating parental controls to limit communication with other players, how to report inappropriate or upsetting content and communications, and tips about remembering not to share any personal information online with people children don’t know.

The VSC also engages in educational presentations and training, which are detailed in full in our annual report. These presentations cover a range of issues related to the wider context around gaming, including online interactions and reporting of inappropriate behaviour, in addition to game ratings.

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