

NOTICE OF DECISION UNDER SECTION 38(1)

TO: Secretary for Internal Affairs

Title of publication: Disaster: Day Of Crisis

Other known title(s): Not stated

OFLC ref: 0900871.000

Medium: Console Game

Distributor: All Interactive Distribution

Country of origin: Japan

Language(s): English

Classification:	Objectionable except if the availability of the publication is restricted to persons who have attained the age of 13 years.
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Excisions: No excisions recommended

Descriptive note: Contains violence.

Display conditions: None

	Components	Running time
Game:	Disaster: Day Of Crisis	
Total running time:		

A direction has been given to the Film and Video Labelling Body Inc. to issue a label for this publication.

REASONS FOR THE DECISION

The Office of Film and Literature Classification (Classification Office) examined the publication and recorded the contents in an examination transcript. A written consideration of the legal criteria was undertaken. This document provides the reasons for the decision.

Submission procedure:

The Secretary for Internal Affairs submitted this publication for classification on 18 June 2009 under s13(1)(b) of the Films, Videos, and Publications Classification Act 1993 (FVPC Act).

All Interactive Distribution (as distributor) and Nintendo Australia Pty Ltd (as an interested party) were notified of the submission of the publication. As persons with an interest in the publication they were informed of their right to make a written submission on the classification.

Under s23(1) of the FVPC Act the Classification Office is required to examine and classify the publication.

Under s23(2) of the FVPC Act the Classification Office must determine whether the publication is to be classified as unrestricted, objectionable, or objectionable except in particular circumstances.

Section 23(3) permits the Classification Office to restrict a publication that would otherwise be classified as objectionable so that it can be made available to particular persons or classes of persons for educational, professional, scientific, literary, artistic, or technical purposes.

Synopsis of written submission(s):

The letter accompanying the submission of the publication states that "the game has received a higher age restriction, for example the game was assigned 16+ for all the nations covered by the PEGI guidelines. I believe there may be grounds to have the game classified at a higher rating than the current M."

No other written submissions were received.

Description of the publication:

Disaster: Day Of Crisis is a console game formatted for the Nintendo Wii gaming platform. The game was cross-rated as M in Australia, with the descriptive note "Violence, themes and infrequent coarse language". The game is played in third-person perspective, with subtitled text accompanying English dialogue throughout the game.

In *Disaster: Day Of Crisis* the player controls Ray, an emergency rescuer who must survive natural disasters, such as volcanic eruptions and earthquakes, save civilians and engage in armed shootouts with a rogue special forces unit who have taken two people hostage. One of the hostages, Lisa, is the sister of Ray's emergency rescue colleague, Steve. During the first tutorial stage on a volcano, Ray and Steve are caught out by the massive eruption. Both men try to escape the natural disaster but Steve falls from a cliff to his death. Steve's final words to Ray are for him to take care of Lisa and make sure no harm comes to her. When Ray returns to his home of Blue Ridge City, he is called upon by Special Agent Olsen to assist in tracking down and defeating the rogue special forces unit, Surge, who are holding Lisa and a seismologist hostage.

From this point on the gameplay involves two distinct objectives. Firstly, the player must save civilians from natural disasters by giving them first aid or helping them back to safety from perilous situations. Secondly, the player must engage in regular gun battles with the Surge soldiers. The player is rewarded with points for saving civilians during natural disasters and by

shooting Surge soldiers. The accumulated points allow for better weapons and health at the end of each completed level.

The meaning of "objectionable":

Section 3(1) of the FVPC Act sets out the meaning of the word "objectionable". The section states that a publication is objectionable if it:

describes, depicts, expresses, or otherwise deals with matters such as sex, horror, crime, cruelty, or violence in such a manner that the availability of the publication is likely to be injurious to the public good.

The Court of Appeal's interpretation of the words "matters such as sex, horror, crime, cruelty or violence" in s3(1), as set out in *Living Word Distributors v Human Rights Action Group (Wellington)*, must also be taken into account in the classification of any publication:

[27] The words "matters such as" in context are both expanding and limiting. They expand the qualifying content beyond a bare focus on one of the five categories specified. But the expression "such as" is narrower than "includes", which was the term used in defining "indecent" in the repealed Indecent Publications Act 1963. Given the similarity of the content description in the successive statutes, "such as" was a deliberate departure from the unrestricting "includes".

[28] The words used in s3 limit the qualifying publications to those that can fairly be described as dealing with matters of the kinds listed. In that regard, too, the collocation of words "sex, horror, crime, cruelty or violence", as the matters dealt with, tends to point to activity rather than to the expression of opinion or attitude.

[29] That, in our view, is the scope of the subject matter gateway.¹

The content of the publication must bring it within the "subject matter gateway". In classifying the publication therefore, the main question is whether or not it deals with the following matters in such a manner that the availability of the publication is likely to be injurious to the public good:

Matters of violence

The game deals with matters of violence under s3(1) of the FVPC Act. The strongest depictions of violence will be dealt with under s3(3)(a)(i).

Certain publications are "deemed to be objectionable":

Under s3(2) of the FVPC Act, a publication is deemed to be objectionable if it promotes or supports, or tends to promote or support, certain activities listed in that subsection.

In *Moonen v Film and Literature Board of Review (Moonen I)*, the Court of Appeal stated that the words "promotes or supports" must be given "such available meaning as impinges as little as possible on the freedom of expression"² in order to be consistent with the Bill of Rights. The Court then set out how a publication may come within a definition of "promotes or supports" in s3(2) that impinges as little as possible on the freedom of expression:

Description and depiction ... of a prohibited activity do not of themselves necessarily amount to promotion of or support for that activity. There must be something about the way the prohibited activity is

¹ *Living Word Distributors v Human Rights Action Group (Wellington)* [2000] 3 NZLR 570 at paras 27-29.

² *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9 at para 27.

described, depicted or otherwise dealt with, which can fairly be said to have the effect of promoting or supporting that activity.³

Mere depiction or description of any of the s3(2) matters will generally not be enough to deem a publication to be objectionable under s3(2). When used in conjunction with an activity, the Classification Office defines "promote" to mean the advancement or encouragement of that activity. The Classification Office interprets the word "support" to mean the upholding and strengthening of something so that it is more likely to endure. A publication must therefore advance, encourage, uphold or strengthen, rather than merely depict, describe or deal with, one of the matters listed in s3(2) for it to be deemed to be objectionable under that provision.

The Classification Office has considered all of the matters in s3(2), but none are relevant to this publication.

Matters to be given particular weight:

Section 3(3) of the FVPC Act deals with the matters which the Classification Office must give particular weight to in determining whether or not any publication (other than a publication to which subsection (2) of this section applies) is objectionable or should in accordance with section 23(2) be given a classification other than objectionable.

The Classification Office has considered all the matters in s3(3). The matter relevant to the publication is:

s3(3)(a)(i) The extent and degree to which, and the manner in which, the publication describes, depicts, or otherwise deals with acts of torture, the infliction of serious physical harm, or acts of significant cruelty.

The publication depicts the infliction of serious physical harm to a moderate extent and degree. There is no way to avoid conflict in the game, with each level entailing numerous shootouts with Surge special forces soldiers. The player uses a variety of guns to kill Surge soldiers, including handguns, shotguns and assault rifles. When the Surge soldiers are shot they recoil in a realistic manner then vanish from screen, preventing any post-mortem damage from being inflicted. Seldom is blood seen when enemy soldiers are shot. The infliction of serious physical harm is encouraged during the game by rewarding the player with points for killing Surge soldiers, allowing better weapons and vitality for the player.

The game's graphics are not particularly realistic imparting a cartoonish feel to the violence and gaming environment in general. In addition, the need to save civilians from natural disasters and crumbling buildings on each level detracts the player's attention from the violent aspects of the gameplay.

Additional matters to be considered:

s3(4)(a) The dominant effect of the publication as a whole.

The dominant effect of the publication as a whole is a fast-paced action game incorporating regular violent episodes within an apocalyptic setting of natural disasters.

³ Above n2 at para 29.
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s3(4)(b) *The impact of the medium in which the publication is presented.*

The Wii gaming platform is highly interactive giving the player complete control, including when and how to inflict violence. The Wii console senses the position of the controller and direction in which it is pointed. This enables the player to aim and fire guns by pointing the controller directly at the screen, and inflict violence with weapons by making corresponding arm movements.

s3(4)(c) *The character of the publication, including any merit, value or importance it has in relation to literary, artistic, social, cultural, educational, scientific or other matters.*

The publication has no merit, value or importance in relation to the above considerations.

s3(4)(d) *The persons, classes of persons, or age groups of the persons to whom the publication is intended or is likely to be made available.*

The game is intended for a teenage and adult audience.

s3(4)(e) *The purpose for which the publication is intended to be used.*

The game's purpose is entertainment.

s3(4)(f) *Any other relevant circumstances relating to the intended or likely use of the publication.*

There are no other apparent circumstances that need considering.

Publication may be age-restricted if it contains highly offensive language likely to cause serious harm:

Section 3A provides that a publication may be classified as a restricted publication under section 23(2)(c)(i) if it

contains highly offensive language to such an extent or degree that the availability of the publication would be likely, if not restricted to persons who have attained a specified age, to cause serious harm to persons under that age.

"Highly offensive language" is defined in s3A(3) to mean language that is highly offensive to the public in general.

The publication does not contain any highly offensive language.

Publication may be age-restricted if likely to be injurious to public good for specified reasons:

Section 3B provides that a publication may be classified as a restricted publication under section 23(2)(c)(i) if it

contains material specified in subsection (3) to such an extent or degree that the availability of the publication would, if not restricted to persons who have attained a specified age, be likely to be injurious to the public good for any or all of the reasons specified in subsection (4).

The Classification Office has considered all the matters in s3B(3), but none are relevant to this publication.

New Zealand Bill of Rights Act 1990:

Section 14 of the New Zealand Bill of Rights Act 1990 (NZBR Act) states that everyone has "the right to freedom of expression, including the freedom to seek, receive, and impart information and opinions of any kind in any form". Under s5 of the NZBR Act, this freedom is subject "only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society". Section 6 of the NZBR Act states that "Wherever an enactment can be given a meaning that is consistent with the rights and freedoms contained in this Bill of Rights, that meaning shall be preferred to any other meaning".

Conclusion:

The unrestricted availability of *Disaster: Day Of Crisis* is likely to be injurious to the public good given the manner in which it deals with matters of violence. The game lacks strategy or skill to play, giving way to repetitive attacks on human opponents. The emphasis on killing, as well as being acknowledged and rewarded for such success, is likely to desensitise children to violence in general. This effect is exacerbated given the interactive role that users of the Nintendo Wii console have on gameplay. Teenagers and adults are more able to put this kind of material in the context of a fantastical console game. Likelihood of injury to the public good is avoided by restricting this publication to those audiences that have attained the age of 13 years.

The Classification Office has considered the effects of the NZBR Act on the application of the classification criteria elsewhere in these reasons. The classification of this publication interferes with the freedom of expression, but this is an outcome that is consistent with Parliament's intention that publications of this type be restricted to an appropriate age group.

Display conditions:

Where the Classification Office classifies any publication as a restricted publication, it is required under s27(1) of the FVPC Act to consider whether or not conditions in respect of the public display of the particular publication should be imposed.

In considering the issue of public display, the Classification Office must have regard to the matters set out in s27(2) of the FVPC Act, namely:

- (a) *The reasons for classifying the publication as a restricted publication;*
- (b) *The terms of the classification given the publication;*
- (c) *The likelihood that the public display of the publication, if not subject to conditions, or as the case may be, any particular condition, would cause offence to reasonable members of the public.*

The public display of the publication is not likely to cause offence to reasonable members of the public, due to its innocuous title.

Date: 11 August 2009

For the Classification Office (signed):

Note:

You may apply to have this publication reviewed under s47 of the FVPC Act if you are dissatisfied with the Classification Office's decision.

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