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**UNDER** the Films, Videos and Publications Classifications Act 1993

**IN THE MATTER** of an application under s47 by Matthew Codd for a review of the publication entitled **“Gal\*Gun: Double Peace”**

**DECISION OF FILM AND LITERATURE REVIEW BOARD OF AN APPLICATION UNDER s47 BY MATTHEW CODD FOR THE REVIEW OF THE PUBLICATION OF
“Gal\*Gun: Double Peace”**

Dated 7th April 2017

**Board Meeting on 27 March 2017**

**Members:** KG Davenport QC

 Dr T Brown

 G Ferguson

 J Sissons

 S Gill

1. This review concerns a console/video game called **Gal\*Gun: Double Peace.** This is a game for PlayStation 4, PlayStation Vita, and Windows. It is described as a “Japanese rail shooter game”. It has been classified as objectionable by the Office of the Film and Literature Classification.
2. Mr M Codd, a journalist whose work includes review of such games has been given leave to apply for a review of the decision. Mr Codd submits that the appropriate classification would be objectionable unless restricted to those over eighteen years of age.
3. The Board watched part of the game in Wellington. The Board were advised that the average time to completely explore the content of the game was in the vicinity of fifty hours. This time was not available but a selection of the features of the game were shown to the Board.

**Description of the game**

1. The game is from the perspective of Houdai, a young male high school student. He is the only male character depicted in the game. At the beginning of the game he is shot by an angel with too much of a love/ attractiveness spell and becomes irresistible to young women. He is told he must find true love by the end of the day or he will never be loved. Once shot he is attacked by High School students (all young women or girls) who he has to shoot with a “pheromone shot” to bring them to “euphoria” and which allows him to move through the levels of the game looking for his true love. When shot the victim makes a sighing “ahh..” noise and sinks down to the ground displaying her underwear. Her skin flushes pink. Houdai can romance any woman in the game and these include touching, stroking, and patting the women. This part of the game is called being in “doki-doki” mode.
2. The possible options for Houdai include rescuing young women from being stuck in a window, stuck in honey and a scene in the gym. During the rescue missions the actions that the young women perform are sexual (their hips gyrate up and down); they sigh as if in ecstasy and in one scene viewed (the window scene) the player can spank and stroke the young woman.
3. Other than the many young women shot the two main female characters are sisters Maya and Shinobu. Maya is meant to be a year 1 high school student (about 15) but seems much younger, and has a breathless childlike voice and a round child like face. Her sister is older (17 or so) and is portrayed as an older young woman. Maya’s clothing and general appearance seem young and childlike. There are three possible endings for the game - where Houdai choses Maya or choses Shinobu or chooses both. The young woman frequently say that Houdai is “perverted” or wrong but the game still allows the player to stoke or touch the young woman to “ecstasy”. On the version of the game that has a touch screen the player can touch or stroke the screen directly. Players can earn points to see through clothing (with “angel eyes”), and buy underwear.
4. The overall impression of the game is a highly sexualised game in which young girls and young women are sexualised and having no ability to say no or to stop the touching and stroking. They make sexualised noises, are all dressed in various forms of very short school uniform and by getting points and add ons the player is able to see the girls almost nude (hearts over the nipples and a g-string).
5. The Classification Office in its classification decision found the game objectionable because it dealt with a matter of sex, and tended to promote or support the exploitation of children for sexual purposes. The game was therefore objectionable under s.3(2).

**Submissions of Mr Codd**

1. Mr Codd submitted:

***“****However, I don’t believe it’s a game that’s worthy of the outright ban that the Objectionable rating entails. As my submission will attempt to explain, it’s a game that I don’t think meets the Classification Act’s criteria for an objectionable work. Though it depicts sexual activity involving young persons, the impact is reduced by its satirical tone, lack of realism, and subversive elements. There’s a reasonable concern about how it might impact younger, more impressionable viewers, but I think an R18 rating strikes a good balance.*

**Why an Objectionable rating is not justified**

*I'm sure that many people will find Gal\*Gun: Double Peace offensive, puerile, and obscene. That is entirely their right, and their criticism is welcome and encouraged. After all, that's how we engage with art and learn from it.*

*At the same time, justification of an Objectionable rating under the Classification Act is a high bar, as well it should be. Simply depicting something deemed objectionable under Section 3 isn’t enough; it has to “promote or support” it. There is, of course, an element of judgement in interpreting that, but the intent is clear: it's to restrict availability of materials that would encourage viewers to recreate such behaviour.*

*I don't believe that Gal\*Gun meets that benchmark. It's certainly a crude, sexualised game, but it's an overtly satirical work that takes its sexual content to ludicrous extremes. Moreover, though the content of the game is incredibly suggestive, it's not very explicit. There are a lot of allusions to sexual activity (moaning, orgasm expressions, etc), but there's not much that could be re-enacted even if a viewer was inspired to do so. …..*

*The distinction between depiction and promotion is important, because art - and that includes video games - needs to be able to depict objectionable content. Without that protection, the ability to explore these difficult, important topics through art is restricted, and by extension, so is art’s ability to challenge thinking and effect change. It's important to that interpretation of “support or promotion” be held to a high bar of demonstrable cause of harm, as there is a lot of value in transgressive, subversive works that might look, at a glance, to be supporting the very thing they criticise.*

*Even a game like Gal\*Gun, as low-brow as it may seem, has things to say on matters of sexual abuse, harassment, and objectification. An Objectionable rating silences the work, and shuts down any chance of learning from it. The content of the game doesn't justify a rating that should only be used in extreme circumstances.*

*I also think it’s worth noting that no other country has banned Gal\*Gun. Even classification boards as conservative as those of Australia and Germany gave it an R18+ and 16 respectively. In Europe, which generally classifies games similarly to New Zealand, it has a PEGI rating of 16+. Obviously, New Zealand isn’t beholden to any other jurisdictions and their classifications, but when our rating is the anomaly, it’s worth at least considering why that is and whether it should be.*

***Why an R18 setting is appropriate***

*Though I think an Objectionable rating is unjustified, I think an R18 rating is fair. Gal\*Gun is a game that deals with matters of sex and sexuality in a subversive and satirical way that could be harmful to young people who aren't able to engage with it on those terms. Young people are particularly vulnerable to media influence on things like body image and attitudes towards women, and an uncritical reading of Gal\*Gun could contribute to those things.*

*Conversely, for adults, we have to assume that they're well-adjusted and able to engage critically even with potentially offensive media, and to be able to choose how and what they consume. An R18 rating is a good balance between these needs.”*

**The Classification Office submission**

1. The Classification Office supports its earlier rating decision. In summary the Office submits that the publication must be deemed objectionable because the content falls squarely within s.3(2)(a) – that is, it deals with a matter of sex (the gateway provision) and it also promotes or supports the exploitation of children or young people for sexual purposes. The Office submits that the game also falls within s.3(2)(b) as it tends to promote or support the use of coercion to compel any person to submit to sexual conduct.
2. The Classification Office submitted:

*20. It is therefore submitted that the legislation is concerned with the vulnerability of young people and with the corrosive injury to the public good of depicting persons perceived to be children or young people as subjects for exploitation. It is not limited to the impact on particular persons depicted in a publication or viewing it. An inquiry under s.3 does not require the ascertainment of the precise age of the person photographed.*

*21. Parliament's intention therefore was that s.3(2)(a) should apply to any publication that promotes, supports, or tends to promote or support, the exploitation of children or young persons for sexual purposes. As long as a publication at least tends to promote or support such exploitation, whether or not it depicts underage models, no underage models or no models at all is irrelevant to the proper application of s3(2)(a). The issue is whether, on the evidence presented by the publication itself, the publication at least tends to promote or support the exploitation of children or young persons for sexual purposes.*

*22. The characters in the game are young. The game states that they are high school students. The two main romantic options for the player are the second-year Shinobu and first-year Maya.[[1]](#footnote-1) The entirety of the game takes place at their high school. All of the girls are seen in their school uniforms (and occasionally in their track uniform or swimming uniform) which act as a continuous reminder of the age bracket these young persons fall into. Although Maya is stated to be first year (15 or 16 years old) she is depicted more like a child than a teenager. She is described as being “too pure”, lacking in any understanding of “lust”, and she refers to Houdai by the child-like diminutive as “Ho-nii”. Her character is depicted with a lack of the pubic and bust development which typically denotes mature sexualized female characters in Japanese anime.*

*23. This separation of stated and exhibited ages place the girls squarely into the moé genre of Japanese animated entertainment. Moé is an offshoot of lolicon a genre typically targeted at adult men and featuring cartoons of very young-looking girls engaged in varying degrees of erotic behavior[[2]](#footnote-2). The very nature of the publication therefore it is submitted reinforces the youth of the characters depicted engaging in sexual activity.*

*24. These young characters are depicted throughout the game engaging in sexual activity. Indeed the core and only focus of the entire game is for the player to pursue and sexually conquer the young female characters.*

*25. The sexualisation of the female characters throughout the game is unremitting. For example, each of the female characters is given a profile recording her bust, waist and hip circumference, and has a “weak spot”. In general gameplay ‘weak spots are head, chest, hips, or legs, and in Doki-doki mode they include forehead, nape of neck or buttocks. This focus on the physical attributes of the characters unquestionably tends to encourage the viewing of young persons as objects of sexual desire.*

1. And then submitted:

*34. The game under review continuously frames young persons as sexually compliant objects to be fetishized and touched regardless of their consent. In one example Maya falls out of a tree and the player can take advantage of her incapacity by choosing to while “rub her boobs”. While Houdai is chastised for being a “disgusting old man”, Maya herself does not react negatively to this violation and the player suffers no further consequences from the action. The perpetuates the belief that it is acceptable to take advantage of someone’s misfortune for one’s own sexual gratification, including non-consenting sexual contact, that such behaviour will not incur a negative response form the victim and at most will be met with mild, sniggering social approbation.*

*35. As submitted above in terms of s.3(2)(a) in Doki-doki mode the camera circles around targets of the player’s choice while the player touches and rubs them. The girls are posed in a sexualised way, they yelp and react defensively when touched and exhibit clear reluctance to engage in the sexual advances initiated by the player. In order to overcome this reluctance and to progress through the game the player is required to become more insistent and to increase the intensity of his physical contact with the girls. Eventually the player is able through his persistent non consenting sexual contact to bring the girls to orgasm (“euphoria”). The enduring message this repeatedly reinforces is that persistent non-consensual sexual contact will, in spite of obvious displays of resistance, ultimately be positively received.*

1. Finally the Classification Office analyses the provisions of s.3(3) and s.3(4) of the Act and concludes at paras 45 to 48 as follows:

*45. Dominant effect*

*The cumulative and dominant effect of the game is a repetitive sequence of sexualised depictions of young persons. The game has no strategic dimension and the player is not required to achieve any real level of mastery or skill in order to finish the game; the sexualisation of young persons is the sole focus of the game.*

*46. Impact of the medium*

*The game’s 1st person player perspective heightens the player’s level of engagement with the problematic sexually coercive gameplay involving children and young persons, aggravating the likely injury to the public good.*

*47. Social merit*

*This game has no particular social merit which might in some degree balance the injury to the public good it otherwise causes. .*

*48. Audience*

*The likely audience is adult men with prurient interest in sexual conduct with girls or young women.*

*49. Purpose*

*The game is simply for entertainment and serves no higher social purpose.*

**The Board’s decision**

1. The first question for the Board is whether the game passes through the gateway test contained in s3(1) of the Act. This provides 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.
2. The game deals with matters of sex and therefore meets the gateway classification.
3. The next step is to determine whether the game should be deemed objectionable within s.3(2). This provides:

##### *3* ***Meaning of objectionable***

*(2) A publication shall be deemed to be objectionable for the purposes of this Act if the publication promotes or supports, or tends to promote or support,—*

##### *(a) the exploitation of children, or young persons, or both, for sexual purposes; or*

##### *(b) the use of violence or coercion to compel any person to participate in, or submit to, sexual conduct; or*

##### *(c) sexual conduct with or upon the body of a dead person; or*

##### *(d) the use of urine or excrement in association with degrading or dehumanising conduct or sexual conduct; or*

##### *(e) bestiality; or*

##### *(f) acts of torture or the infliction of extreme violence or extreme cruelty.*

1. As set out above the Classification Office submits that the game does support or tend to support the exploitation of children for sexual purposes and tends to encourage or advance that position.
2. As the Court of Appeal said in *Moonen v Film and Literature Board of Review[[3]](#footnote-3)* at paragraph 17:

“After determining the scope of the relevant right or freedom, the first step is to identify the different interpretations ... of the Act ... which are properly open. If only one meaning is properly open that meaning must be adopted. If more than one meaning is available, the second step is to identify the meaning which constitutes the least possible limitation on the right or freedom in question. It is that meaning which ... the Court [is required] to adopt. Having adopted the appropriate meaning, the third step is to identify the extent, if any, to which that meaning limits the relevant right or freedom”.

1. The Board’s role is to give the game the classification which is least restrictive to promote Freedom of expression. However, the Board must also examine the publication and see if it does fall within the objectionable category.
2. The Board have considered this issue very carefully and consider that the point is finely balanced. The game does have a sexualised aspect to it and the object of the sexualisation are the young women in the academy. Some appear very young and undoubtedly fall within the definition of “children or young person”[[4]](#footnote-4). However, after careful consideration the Board did not consider that the game fairly tended to support the exploitation of children for sexual purposes. Rather, in our view, the game showed sexual exploits involving school children but the overall impression of the game was not that the exploitation of children was being promoted or supported under s.3(2)(a). The game itself does not portray scenarios that are themselves sexual but rather are shown in a sexualised way. Further the fantastic nature of the plot and the accompanying music and the overall impression of the game and its design do not meet the high threshold the Board needs to reach to determine that the game was promoting or supporting or tending to promote or support the exploitation of children for sexual purposes . To a similar end the Board did not conclude that the game tended to promote or support the compelling of any person to submit to sexual conduct. The game does not explicitly show sexual conduct or any coercion of any person to submit to this. The factors set out above (colour, music, design of the game) and the actual content of the game itself all mean that the game does not fall within s.3(2)(b).
3. The Board have therefore concluded that the game is not deemed objectionable.
4. The Board must then consider s3(3) and s3(4) which provide –

##### *3* ***Meaning of objectionable***

 *(3) In determining, for the purposes of this Act, whether or not any publication (other than a publication to which subsection (2) applies) is objectionable or should in accordance with**[section 23(2)](http://www.legislation.govt.nz/act/public/1993/0094/latest/link.aspx?id=DLM313453" \l "DLM313453) be given a classification other than objectionable, particular weight shall be given to the extent and degree to which, and the manner in which, the publication —*

#####  *(a) describes, depicts, or otherwise deals with —*

##### *(i) acts of torture, the infliction of serious physical harm, or acts of significant cruelty:*

##### *(ii) sexual violence or sexual coercion, or violence or coercion in association with sexual conduct:*

##### *(iii) other sexual or physical conduct of a degrading or dehumanising or demeaning nature:*

##### *(iv) sexual conduct with or by children, or young persons, or both:*

##### *(v) physical conduct in which sexual satisfaction is derived from inflicting or suffering cruelty or pain:*

##### *(b) exploits the nudity of children, or young persons, or both:*

##### *(c) degrades or dehumanises or demeans any person:*

##### *(d) promotes or encourages criminal acts or acts of terrorism:*

##### *(e) represents (whether directly or by implication) that members of any particular class of the public are inherently inferior to other members of the public by reason of any characteristic of members of that class, being a characteristic that is a prohibited ground of discrimination specified in* *[section 21(1)](http://www.legislation.govt.nz/act/public/1993/0094/latest/link.aspx?id=DLM304475" \l "DLM304475)* *of the Human Rights Act 1993.*

*(4) In determining, for the purposes of this Act, whether or not any publication (other than a publication to which subsection (2) applies) is objectionable or should* *in accordance with* [*section 23(2)*](http://www.legislation.govt.nz/act/public/1993/0094/latest/link.aspx?id=DLM313453#DLM313453) *be given a classification other than objectionable, the following matters shall also be considered:*

##### *(a) the dominant effect of the publication as a whole:*

##### *(b) the impact of the medium in which the publication is presented:*

##### *(c) the character of the publication, including any merit, value, or importance that the publication has in relation to literary, artistic, social, cultural, educational, scientific, or other matters:*

##### *(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:*

##### *(e) the purpose for which the publication is intended to be used:*

##### *(f) any other relevant circumstances relating to the intended or likely use of the publication.*

1. The publication may also be restricted under s3A and s3B -

 ***3B Publication may be age-restricted if likely to be injurious to public good for specified reasons -***

*(1) A publication to which subsection (2) applies may be classified as a restricted publication under*[*section 23(2)﻿(c)﻿(i)*](http://www.legislation.govt.nz/act/public/1993/0094/latest/link.aspx?id=DLM313453#DLM313453)*.*

*(2) This subsection applies to a publication that 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).*

*(3) The material referred to in subsection (2) is material that—*

##### *(a) describes, depicts, expresses, or otherwise deals with—*

##### *(i) harm to a person’s body whether it involves infliction of pain or not (for example, self-mutilation or similarly harmful body modification) or self-inflicted death; or*

##### *(ii) conduct that, if imitated, would pose a real risk of serious harm to self or others or both; or*

##### *(iii) physical conduct of a degrading or dehumanising or demeaning nature; or*

##### *(b) is or includes 1 or more visual images—*

##### *(i) of a person’s body; and*

##### *(ii) that, alone, or together with any other contents of the publication, are of a degrading or dehumanising or demeaning nature.*

*(4) The reasons referred to in subsection (2) are that the general levels of emotional and intellectual development and maturity of persons under the specified age mean that the availability of the publication to those persons would be likely to—*

##### *(a) cause them to be greatly disturbed or shocked; or*

##### *(b) increase significantly the risk of them killing, or causing serious harm to, themselves, others, or both; or*

##### *(c) encourage them to treat or regard themselves, others, or both, as degraded or dehumanised or demeaned.*

1. The Board must also be aware of the right to freedom of expression embodied in s14 Bill of Rights Act. Restriction of any publication should only be done where absolutely necessary and to the least extent possible in keeping with the requirements and considerations of the Act.
2. The Board has taken into account the following factors set out in s3(3) to determine whether this game should be deemed objectionable:
3. **The dominant effect of the game**

Mr Codd argues that the game is a satire – saying that *“it’s an overtly satirical work that takes its sexual content to ludicrous extremes”*. He submits that the Board should be aware that there *“is a lot of value in transgressive, subversive works that might look, at a glance, to be supporting the very thing that they criticise”.*

There is merit in this statement and the right to freedom of expression enshrined in s.14 of the Bill of Rights Act means that there is a need to protect publications which satirise other publications. The genre of the game is Japanese Anime – and characters in the game can deliver much information to the informed viewer because of the colour of their hair, clothing and other visual cues. But the Board must determine the dominant effect of the game for the New Zealand audience. Some of course will understand the satire and the subtext of the Anime characters but many in New Zealand will not. The Board itself found it difficult to pick up the satire and to see the game in this light. Rather the dominant effect of the game was a continuous bombardment of sexualised poses of young women moaning, displaying their underwear and being able to be stroked and touched by the male player. It portrays an extreme sexualisation of the young woman and girls depicted in the game. The women do not fight back (except in a dominatrix way in certain circumstances) and despite their oral protests seem accepting of the player touching them. In the occasional case where a young woman or girls raises her hands to shield her body, this does not prevent ongoing contact. The Board have concluded that the New Zealand population as a whole are unlikely to see this as a satire.

1. **Impact of the medium**

The first person aspect of the player of the game heightens the sexualisation impression. The ability of some of the consoles on which the game can be played to use a touch screen to touch and stroke the young women to orgasm is a striking feature of the game.

1. **The artistic merit of the publication**

The Board can see no particular artistic, social, cultural or educational merit in the game. It’s an arcade type game, requiring very little skill.

1. **The persons to whom the publication is directed**

The game is directed at members of the public who like to play video games. There is nothing in the game which suggests it is directed at a certain age group – except perhaps the teenage male - but the game would be equally directed at older players who are likely to be predominantly men.

1. **The purpose for which the publication is likely to be used**

The sole purpose is as a game but because of its sexual nature could also be attractive to that part of the population which likes to view publications which deal with sexualisation of children and young persons.

1. **Other matters**

The Board consider that there are a number of concerning features about the game:

* The game depicts young women and girls saying “no” to the actions of the player and being ignored and then apparently enjoying the activities that they have previously resisted- so no does not mean “No”.
* The touch screen allows players to actually touch and stroke the young women who also have “weak spots” – groin, breast, nape of the neck etc. This is worrying when this can be done to characters that are depicted as children.
* Some of the characters are very young – with baby like faces (round and soft) breathless voices and naïve poses. This all suggests sexualisation and sexual content on children and a form of exploitation of them.

**Conclusion**

1. The Board have therefore concluded that the game is objectionable for its depiction of sexual activity with children and young persons and its depiction of the girls’ objections to this activity being ignored or overridden.
2. New Zealand society has a particular concern with sexual activity on children and young persons and our legislation places emphasis on protecting depiction of them in any form of publication as being sexual objects.
3. The Board have considered whether it is possible to deem the game objectionable unless sold to those over 18. However the age restriction does not address any of the issues with this game – it does not have themes and content which are best restricted to older adults. Rather it depicts inappropriate sexual activity on children and this is no less objectionable because it is sold to an 18 year old as opposed to a 16 year old. In fact, there are members of society who are over 18 who seek out material which involves the depiction of sexual activity on children. The Board therefore have determined that the Classification of the game is that the game is objectionable.
4. Pursuant to the Act the Board hereby directs the Office of Film and Literature Classification under s55(1)(e) to enter the Board’s decision in the register.

Dated at Auckland this 7th day of April 2017

……………………………………..………………………..

**Kate Davenport QC**

President

1. In Japan a first-year in high school is typically 15 or 16, a second-year 16 or 17, and a third-year 17 or 18. [↑](#footnote-ref-1)
2. Lolicon is a “… Japanese term derived from the English phrase ‘Lolita complex,’ lolicon describe[ing] a fascination with cartoons of very young-looking girls engaged in varying degrees of erotic behavior […] in the nineteen-nineties creators reared on [lolicon] absorbed, defanged, and desexualised it for the mainstream. Today, it has morphed into an animation style called moé, after a kanji character meaning both ‘burning’ and ‘bursting into bud’. In moé, sexuality is treated indirectly; rather than showing overtly pornographic images, it focusses on ‘slice of life’ dramas that allow consumers – mainly adult men – to observe the budding sexuality of pre-teen and teen-age girls from a discreet remove.” Matt Alt, “Pharrell Williams’s Lolicon Video” The New Yorker (online ed, New York, 15 October 2014). [↑](#footnote-ref-2)
3. [1999] NZCA 329 @ para 17. [↑](#footnote-ref-3)
4. This is a reference not to the actual stated age of the character but how that person is depicted. For example, in this case Maya was said to be 15 but seems much younger because of how she has been portrayed and sounds. [↑](#footnote-ref-4)