

NOTICE OF DECISION UNDER SECTION 38(1)

TO: Chief Censor

Title of publication: Gal*Gun: Double Peace

Other known title: Not stated

OFLC ref: 1600969.000

Medium: Computer Game

Distributor: Valve Corporation

Publisher: PQube Limited

Country of origin: Japan

Language: Japanese, English

Classification: Objectionable.

Excisions: No excisions recommended

Descriptive note: None

Display conditions: None

	Components	Running time
Game:	Gal*Gun: Double Peace	
Total running time:		

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 Chief Censor called in this game for classification on 5 December under s13(3) of the Films, Videos, and Publications Classification Act 1993 (FVPC Act) due to concerns that the sexual

content found within the game focuses on children and young persons.

Valve Corporation, which distributes the game in New Zealand via its Steam platform, and PlayStation (the distributors) and PQube (the publisher) were notified of the submission of the game. As persons with an interest in the publication they were informed of their right to make a written submission on the classification. The Secretary of Internal Affairs, who has an automatic right to make a submission, was also notified. The due date for submissions was 16 December 2016.

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.

Description of the publication:

*Gal*Gun: Double Peace* is a Japanese rail shooter for the PlayStation 4, PlayStation Vita, and Microsoft Windows. The player assumes the role of Houdai Kudoki, a high-schooler who has no luck with girls. Ekoro, a Cupid-type angel, accidentally shoots Houdai with a laser that condenses all of Houdai's romantic opportunities (for the rest of his life) into the next day.

The game is played entirely in the first-person. In the main mode of gameplay, the player shoots at targets (almost always schoolgirls) using a “pheromone shot” which gives her orgasm-like “euphoria” and subdues her. As the game is a rail shooter, the player has very little control of the camera; the game dictates what the player sees. However, there is a “Doki-doki mode”¹ in which the player, along with targets of their choice, is transported into another realm; the camera circles around the girls who stand in the middle of the screen. Through the course of the game the player can buy items that allow them to choose different camera angles with which they can view the girls.

The player is given the option of romancing any of the female characters that are in the game. Some of the story elements alter depending on the player’s romantic interest but none of the paths show significantly different levels of classifiable content. Players can also buy downloadable content for the game. Notable pieces of downloadable content (DLC) are the Pheromone Z item and the Sexy Ribbons costume. The office examined the Steam version of the game, with the Pheromone Z downloadable content enabled. This allows players to see through the girls’ clothing when the field-of-view is zoomed in (i.e., the girls are in their underwear). In combination with the Sexy Ribbons DLC, in which girls are clothed in carefully positioned ribbons, the player is able to see the girls almost nude, with only hearts covering the girls’ nipples and a thin g-string. Another effect of the Pheromone Z item is to depict the girls solely in their underwear during Doki-doki mode. Even without this DLC, players are able to buy “angel eye

¹ “Doki-doki” is the Japanese onomatopoeia for a pounding heartbeat, generally denoting love or excitement

“drops” which allow the player to make the girl’s clothes more transparent while zoomed in; this does not cost any real-world money.

Synopsis of written submission(s):

A submission was received by email from PQube Entertainment on 9 December 2016. The submission states:

Although the player “shoots” the girls coming at them, the entirety of the contentious material will be related to sex, as the violence is too cartoon-like to be considered realistic. The main points of the sexual content are:

- Girls wear revealing clothing (that can be customised by the player, including through DLC purchases)
- The player target reticule allows the player to see through the girl’s clothing, viewing underwear (or bright lights if nude)
- During “Doki-doki” mode, the player must rub and touch the girl’s clothing, viewing them in a state of euphoria, creating an area explosion that takes out other girls on the stage
- The boss fights feature girls in suggestive poses (stuck in a window, sitting on a chair with foot in the player character’s crotch)
- Sexual moaning sounds
- CG images contain partial nudity and suggestive themes
- Dialogue in text contain heavy innuendo, “are you sure you can pull on time?”, “You’re doing it so hard … I think I’m about to…” etc.

We’re happy to accept a high level of restriction because of the sexual nature of the game, but believe that the content does not warrant an outright ban due to the cartoon anime style, the light-heartedness of the environment, visuals, and narrative, the arcade nature of the gameplay, and no mention of the “enemy” girl’s ages (the institution is referred to as an academy throughout).

An email about the availability of the game in New Zealand was received from Sony on 19 December 2016. They advise that although the game was listed on the PSN (PlayStation Network) site it was not yet available for purchase. The game information has been removed from the site pending the classification outcome.

No other written submission were received.

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".

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.²

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 any s3(1) matters in such a manner that the availability of the publication is likely to be injurious to the public good:

Matters such as sex

Included as a "matter such as sex" is any publication that in terms of s3(1A) -

- (a) ... is or contains 1 or more visual images of 1 or more children or young persons who are nude or partially nude; and
- (b) those 1 or more visual images are, alone, or together with any other contents of the publication, reasonably capable of being regarded as sexual in nature.

The game has a narrative which deals extensively in matters of sex. The main purpose of the game is the gratuitous sexualisation of its high-school aged female characters, who throw themselves at the player in order to confess their love to him. Defeating them requires providing them with so much pleasure that they experience "euphoria" (this is depicted as a kind of faux-orgasm), which causes them to fall down with hands covering their pubic area or reclined in such a way that their underwear is completely visible. The girls remain clothed throughout.

As the vast majority of the girls depicted in the game are young persons, matters of sex will be discussed further under s 3(2)(a).

Matters such as crime

Sexually coercive elements will be discussed further under s 3(2)(b).

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.

² *Living Word Distributors v Human Rights Action Group (Wellington)* [2000] 3 NZLR 570 at paras 27-29.

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"³ 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 described, depicted or otherwise dealt with, which can fairly be said to have the effect of promoting or supporting that activity.⁴

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). The relevant matters are:

s3(2)(a) The exploitation of children, or young persons, or both, for sexual purposes.

In *Moonen v Film and Literature Board of Review (Moonen II)* [2002] 2 NZLR 754, the Court of Appeal stated that the absence of definitions of "young persons" and "children" in s3(2)(a) was deliberate. The provision does not require proof of the models' ages; it requires an assessment of whether or not the publication in which the models appear promotes or supports the exploitation of children or young persons for sexual purposes:

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. The Board properly assessed whether the publication of the photographs would tend to promote or support the exploitation of children or young persons, not limited to the impact on the particular persons photographed. The inquiry under s3 does not require the ascertainment of the precise age of the person photographed.⁵

Parliament's intention therefore was that s3(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.

The publication tends to promote or support the exploitation of young persons for sexual purposes. The girls depicted in the game are unquestionably young persons as the game states that they are high school students; the entirety of the game takes place at their high school and all of the girls are seen in their school uniforms (and occasionally in their track uniform or

³ *Moonen v Film and Literature Board of Review* [2000] 2 NZLR 9 at para 27.

⁴ Above n2 at para 29.

⁵ *Moonen v Film and Literature Board of Review* [2002] 2 NZLR 754 at para 40.

swimming uniform) which act as a continuous reminder of the age bracket these young persons fall into.

The two main romantic options for the player are the second-year Shinobu and first-year Maya.⁶ It is important to note that the depictions of the girls in the game are not congruent with their stated ages – in particular, Maya looks and speaks more like a child than a teenager.⁷ Further emphasizing this is the way Maya is described as being “too pure”, her lack of understanding around the concept of “lust”, and the way in which she refers to Houdai as “Ho-nii”.⁸ This separation of stated age and exhibited age place the girls squarely into the moé genre, an offshoot of lolicon.⁹

Furthermore, each girl the player encounters in the game has a unique bust, waist and hip circumference that is provided in their character roster. The player obtains these naturally in the course of play. Each girl also has a “weak spot” in general gameplay (head, chest, hips, or legs) and in Doki-doki mode (including places such as forehead, nape of neck or buttocks). The game’s focus on the physical attributes of these young persons unquestionably tends to encourage the viewing of young persons in general with this kind of sexual intent.

Particularly strong instances of sexual material occur when the game breaks from the main mode of gameplay in the course of the story called “action events”. In this mode, the camera focusses closely on the girls’ bodies, and the player interacts with targets (such as images of demon heads, or plasters) and then performs actions on the girl (such as tugging or rubbing) in order to progress the story. The girls are presented in suggestive poses and camera angles. One notable example in this mode is when Maya is trapped by a sticky substance and the player needs to help her out. After a couple of attempts to pull her out, she falls onto her buttocks and, with her legs open and her underwear visible the player gets on top of her and begins to tug at her; Maya jerks forward with each pull. There is no legitimate reading of this sequence that does not take into account the visual innuendo. Shinobu has a similar sequence where she is stuck in a window; the player pushes at her from behind. In another example, Shinobu, possessed by a demon, strips down to her underwear and sexually taunts Houdai in a manner reminiscent of a dominatrix. At one point she kicks him down and steps on what is implied to be his genitals (as the game is played from a first-person perspective Houdai’s genital area is not shown); the player is given the command to “suffer and rub” by the game.

Also notable is the Doki-doki mode, in which the camera circles around targets of the player’s choice while the player touches and rubs them. The girls are posed in a way that emphasises their underwear; they yelp and moan when either touched or rubbed, and move defensively when this occurs. The objective of this mode is to bring the girls to a state of ‘euphoria’, which causes them to experience a faux-orgasm; flowers appear in the foreground and bloom in the background; the girls sigh with flushed faces before the camera fades out to white.

⁶ To clarify, in a Japanese high school, a first-year will be 15 or 16, a second-year 16 or 17, and a third-year 17 or 18.

⁷ While Shinobu is similarly youthful, the presentation of Shinobu and Maya is clearly differentiated within the game itself.

⁸ She abbreviates the term for older brother “onii-san” into the extremely informal suffix “-nii”; the effect is to not only characterise the relationship between Maya and Houdai as one that is close but also Maya as cute.

⁹ “A Japanese term derived from the English phrase ‘Lolita complex,’ lolicon describes 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).

While this level of sexual material could be seen as being at a low level when taken out of context, its almost constant extent amplifies the impact that it has, particularly as the player is an active participant. The cumulative and dominant effect here is that the sexualisation of these young persons is the primary (and sole) purpose of the game. There is no real level of mastery the player is required to gain in order to finish the game which weakens any argument that play is an important focus of the game and not the sexualisation of these young persons.

The lack of sexual activity on the part of the girls aggravates the touching and rubbing behaviour the player has to perform in order to progress through the game, as it reinforces the idea that it is all right to sexually advance on young persons, and that their confusion or lack of knowledge (which results in a lack of consent) can be overcome through tenacity and persistence.

While the game nominally punishes the player for acting overtly predatory towards the girls (e.g., Ekoro makes a comment that Houdai is “dangerous” when he tells Maya that he wants to “lick her tears”), the girls themselves do not respond particularly negatively to this; certainly they remain romantically interested in Houdai even in the bad endings (e.g., in Maya’s bad ending, she is eliminated from the picture by a small effigy of Houdai rather than through any actual disgust on her part). Some of the predatory requests are even rewarded by the game, which will be discussed further under s 3(2)(b), below.

The main purpose of the publication is to present a puerile and warped version of sexuality. While there are nominal attempts to play Houdai’s perverted actions off as humorous, there is no possible reading of the material that can outright dismiss the sexualisation of young persons. The humour within the game does not diminish or detract from the sexual focus. Certainly those with a prurient interest in young persons will be particularly interested in this material. The animated medium mitigates this somewhat but ultimately allows for greater creative manipulation of the imagery to the benefit of the sexual exploitation of young persons.

s3(2)(b) The use of violence or coercion to compel any person to participate in, or submit to, sexual conduct.

The game tends to promote and support the use of coercion to compel any person to submit to sexual conduct. It continuously frames young persons as sexually compliant objects to be fetishized and touched regardless of their consent. One example of problematic material surrounds the character of Maya – at one point, having fallen out of a tree, the player can choose to “rub her boobs”. While Ekoro chastises Houdai (telling him that he is a “disgusting old man”), Maya herself does not react to this violation and the player suffers no further consequences from the action.

Another scenario involves asking both sisters to be the player’s girlfriend. While Shinobu seems intrigued by the idea of a threesome (as it is described in the game’s own words), Maya rejects the idea and clearly protests. After defeating Shinobu and Maya in combat, the player then uses the Doki-doki field on them in order to convince them to agree to the arrangement. By employing touch as the primary gameplay mechanic to overwhelm the girls’ (in particular Maya’s) agency and will, the sexually coercive element is not just blatant but actually endorsed by the game.

Conclusion:

The game has been deemed objectionable because it tends to promote and support the exploitation of children and young persons for sexual purposes, and also the use of coercion to compel any person to submit to sexual conduct. It depicts young female high-school students in a

way that emphasises their sexuality and availability. The game's lack of difficulty means that this content is available to even unskilled players and further supports the idea that the intention of this game is for the titillation and arousal of the viewer, rather than for any interest in gameplay mastery. It is therefore likely not only to attract people with a prurient interest in young persons, but also to reinforce the belief that a sexual interest in young persons is acceptable, which contributes to their sexual exploitation in wider society.

The classification of the publication interferes with the right to freedom of expression set out in the New Zealand Bill of Rights Act 1990. However, this is an outcome that is consistent with Parliament's intention and is a reasonable limitation on the freedom of expression. The classification reflects the concern of a free and democratic society to protect its young and vulnerable members from exploitation.

Date: 12 January 2017

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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