SUMMARY OF REASONS FOR DECISION

Under the Films, Videos, and Publications Classification Act 1993 (FVPC Act)

HEADNOTE

Title of publication:

Crysis 3

Other known title(s):

Not stated

OFLC ref:

1201043.000

Medium:

Console Game

Classification:

Objectionable except if the availability of the publication is restricted

to persons who have attained the age of 16 years.

Descriptive note:

Contains violence and offensive language.

Display conditions:

None

Crysis 3 is a first-person sci-fi game examined on an Xbox console. Unlike other games in the Crysis series it is played in an open-ended environment (a "sandbox" game).

The Prophet has returned to New York City after the failed alien invasion. It is the year 2047, 17 years after Crysis 2 was set. The city is encased in a giant Nanodome by the corrupt CELL Corporation who leaves it to grow over as a wasteland of swamps and rainforest terrain. The area is an apparent ghost town that hints at the New York of the previous game. Prophet, who is humanoid, has been reactivated by the resistance movement who assigns him a series of missions to destroy CELL and left-over aliens. He is assisted by a foul-mouthed, cockney mercenary from the first game code-named "Psycho". Prophet must kill numerous CELL soldiers and occasional alien hordes to achieve his missions. With regard to the sandbox environment Prophet is stealthier than in previous games and can use weapons such as a powerful crossbow. The gameplay is very fluid and challenging.

Under under s3(1) of the FVPC Act the publication deals with matters of violence and cruelty. There is nothing under s3(2) of significance to the classification.

The game is predominantly violence based action, mainly futuristic warfare. The extent and degree to which, and the manner in which, the game depicts the infliction of serious physical harm is discussed under s3(3)(a)(i).

The game requires the repetitive killing of enemies in a frantic manner. The player can use a variety of weapons to achieve this including guns, missiles and grenades. Players can also utilise 'special powers' such as invisibility, speed burst, and super strength – made accessible through the player's nanotech combat suit. Blood spurts, sometimes large depending on what part of the opponent's body is hit, are depicted when enemies are shot and killed. These spurts stain the environment and, when close enough, the character's visor. In the case of a melee kill, the player grabs an opponent in a choke hold. As the player advances through the game they must kill humanlike enemy soldiers as well as varying sizes of mechanical or biological aliens. The nature

OFLC Ref: 1201043.000

of this game means the player must fight strategically and at times use stealth. However, each level of the game has a major combat scene that inevitably requires the player to abandon this strategy and unleash a torrent of firepower to overcome hordes of advancing enemies. High-quality graphics and realistic war scenarios (despite the occasional presence of aliens) give the game a realistic edge, however, the fantastical nature of the game and the fact that the majority of the game's characters look and behave the same reduces the impact somewhat. The violence, while extensive, generally has little focus on pain or death. The game is aimed at, and caters for, both older teenagers and adults alike.

Highly offensive language (s3A) regularly features during gameplay, mainly "fuck" and its derivatives. While clearly contextual, the language adds impact to a number of scenes. There is a risk of serious harm to children who may inadvertently hear and then repeat the language in an everyday context, perceiving it as socially acceptable and without consequence.

The game's dominant effect is of a polished futuristic war game entailing exciting and flexible gameplay Children and young teenagers may be upset or disturbed by the game's violent content, particularly the stalking and bloody killing of opponents. The impact of the violence is mitigated somewhat by its repetitive nature, however, the extent of the violence and the realism used to depict the victims' death throes increases the effect on the player, as does the high extent of killing. The unrelenting barrage of war sound effects and gunfire add to this effect. Constant exposure to the game's killings of human characters, in which the player is an active participant, has the potential in impressionable younger players to lead to a desensitisation in general towards violent behaviour and its consequences in real life. Older teenagers and adults possess sufficient maturity to recognise the game's contrived representations and distinct separation from real-world violence. Therefore the game is classified as objectionable except if the availability of the publication is restricted to persons who have attained the age of 16 years.

Note:

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CONSIDERATION SHEET

OFLC ref:

1201043.000

Submission channel:

s12(1)

Title of publication:

Crysis 3

Other known title:

Not stated

Medium:

Console Game

Distributor:

Electronic Arts

Country of origin:

United States

Language:

English

Applicant:

Film & Video Labelling Body

Examination transcript No:

584 p131

Examination date:

20 November 2012

Classification Officer(s):

Other identifying information:

COMPONENTS OF FILM

Components of film originally examined:

	Components	Running time
Game:	Crysis 3	
Total running time:		

Components of film excised:

EXAMINATION

Section 23 Examination and classification -

...the Classification Office shall examine the publication to determine the classification of the publication.

Section 24 Soundtrack to be considered -

Where a film is intended to be viewed with an accompanying soundtrack (whether or not the soundtrack is an integral part of the film), an examination of the film under s23 of the Act shall also take into account the content of the soundtrack and its relationship to the film.

Description of Publication:

Crysis 3 is first-person sci-fi game examined on an Xbox console. Unlike other games in the Crysis series it is played in an open-ended environment (a "sandbox" game).

The Prophet has returned to New York City after the failed alien invasion. It is the year 2047, 17 years after Crysis 2 was set. The city is encased in a giant Nanodome by the corrupted CELL Corporation who leaves it to grow over as a wasteland of swamps and rainforest terrain. The area is an apparent ghost town that hints at the New York of the previous game. Prophet, who is humanoid, has been reactivated by the resistance movement who assigns him a series of missions to destroy CELL and left-over aliens. He is assisted by a foul-mouthed, cockney mercenary from the first game condemned "Psycho". Prophet must kill numerous CELL soldiers and occasional alien hordes to achieve his missions. With regard to the sandbox environment Prophet is stealthier than in previous games and can use weapons such as a powerful crossbow. The gameplay is very fluid and challenging.

Statutory Submissions

Section 20 - Synopsis of Written Submissions

Not Applicable X

Section 21 Other Assistance

None Requested	
See Record of Assistance	,

Other Relevant Information

None	Considered	
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In reaching a classification decision the Classification Office may consider a variety of information including previous decisions of the Classification Office or other censorship bodies, research, books, articles, reviews, and information obtained from the Internet. If you have used any of this information please record this below.

Previous decisions			•
Classification Body	OFLC	VRA	
	Chief Censor of Film	IPT	
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Publication/Certificate/I	Decision No.		
			
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Other Sources (please sp	pecify and reference):		
Wikipedia; Gamespot			
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CLASSIFICATION

Section 3 Meaning of "objectionable"-

s3(1)

... 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.

Subject Matter Gateway

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)* [2000] 3 NZLR 570; (2000) 6 HRNZ 28, must also be taken in to 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.

The content of the publication must bring it within the "subject matter gateway". In classifying the publication therefore, the question is whether or not it deals with the following:

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.

N/A

Matters such as horror

Some of the alien enemies that appear occasionally are moderately horrific as fast-moving raptors with claws shaped like curved blades.

Matters such as crime N/A Matters such as cruelty See s3(3)(a)(i) below

Matters	such	as	violence

The game is predominantly violence based action, mainly futuristic warfare. The extent and degree to which, and the manner in which, the game depicts the infliction of serious physical harm is discussed under s3(3)(a)(i).

Or – The content of the publication does not bring it within any "subject matter gateway".

For publications that fall outside the "subject matter gateway" go to s3A and s3B

Section 3(2) 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" 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.²

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.

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

² Above n2 at para 29.

¹ Moonen v Film and Literature Board of Review [2000] 2 NZLR 9 at para 27.

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.³

It was Parliament's intention therefore that s3(2)(a) should apply to any publication as defined in the Act, 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.

N/A

14/21	
s3(2)(b)	The use of violence or coercion to compel any person to participate in, or submit to, sexual conduct.
N/A	
s3(2)(c)	Sexual conduct with or upon the body of a dead person.
N/A	
s3(2)(d)	The use of urine or excrement in association with degrading or dehumanising conduct or sexual conduct.
N/A	
s3(2)(e)	Bestiality.
N/A	
s3(2)(f)	Acts of torture or the infliction of extreme violence or extreme cruelty.
N/A	

If the publication promotes and supports, or tends to promote and support, any of the 3(2) provisions above and is deemed objectionable go to the <u>Bill of Rights</u> section.

However, section 32 of the FVPC Act directs the Classification Office to consider whether it would classify the publication differently if the material falling under s3(2) were excised or altered. If an excision were made, the publication would no longer fall under 3(2) of the FVPC Act. If the publication contains material that falls under 3(2) which can be excised or altered, go the Excisions section and then return to s3(3) and 3(4) below.

Otherwise, if the publication does not fall under s3(2) consider the following matters:

Section 3(3) Matters to be given particular weight -

In determining, for the purposes of the Act, whether or not any publication (other than a publication to which subsection 3(2) of this section applies) is objectionable or should in accordance with section 23(2) be given a classification other than objectionable, the following matters shall also be considered:

...particular weight shall be given to the extent and degree to which, and the manner in which, the publication describes, depicts, or otherwise deals with...

³ Moonen v Film and Literature Board of Review [2002] 2 NZLR 754 at para 40.

The game requires the repetitive killing of enemies in a frantic manner. The player can use a variety of weapons to achieve this including guns, missiles and grenades. Players can also utilise 'special powers' such as invisibility, speed burst, and super strength — made accessible through the player's nanotech combat suit. Blood spurts, sometimes large depending on what part of the opponent's body is hit, are depicted when enemies are shot and killed. These spurts stain the environment and, when close enough, the character's visor. In the case of a melee kill, the player grabs an opponent in a choke hold. As the player advances through the game they must kill humanlike enemy soldiers as well as varying sizes of mechanical or biological aliens. The nature of this game means the player must fight strategically and at times use stealth. However, each level of the game has a major combat scene that inevitably requires the player to abandon this strategy and unleash a torrent of firepower to overcome hordes of advancing enemies.

High-quality graphics and realistic war scenarios (despite the occasional presence of aliens) give the game a realistic edge, however, the fantastical nature of the game and the fact that the majority of the game's characters look and behave the same reduces the impact somewhat. The violence, while extensive, generally has little focus on pain or death. The game is aimed at, and caters for, both older teenagers and adults alike.

s3(3)(a)(ii) N/A	Sexual violence or sexual coercion, or violence or coercion in association with sexual conduct.
s3(3)(a)(iii) N/A	Other sexual or physical conduct of a degrading or dehumanising or demeaning nature.
s3(3)(a)(iv) N/A	Sexual conduct with or by children, or young persons, or both.
s3(3)(a)(v)	Physical conduct in which sexual satisfaction is derived from inflicting or suffering cruelty or pain.
N/A particular we publication	ight shall be given to the extent and degree to which, and the manner in which, the
s3(3)(b)	Exploits the nudity of children or young persons, or both.
N/A	
s3(3)(e) N/A	Degrades, dehumanises or demeans any person.
s3(3)(d) N/A	Promotes or encourages criminal acts or acts of terrorism.
s3(3)(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

3A Publication may be age-restricted if it contains highly offensive language likely to cause serious harm

section 21(1) of the Human Rights Act 1993.4

N/A

⁴ The grounds of discrimination prohibited by s21(1) of the Human Rights Act 1993 are sex, marital status, religious belief, ethical belief, colour, race, ethnic or national origins, disability, age, political opinion, employment status, family status and sexual orientation.

3A(1) A publication to which subsection 3A(2) applies may be classified as a restricted publication under section 23(2)(c)(i).

3A(2) This subsection applies to a publication that 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.

3A(3) In this section, **highly offensive language** means language that is highly offensive to the public in general.

Highly offensive language regularly features during gameplay, mainly "fuck" and its derivatives. While clearly contextual, the language adds impact to a number of scenes. There is a risk of serious harm to children who may inadvertently hear and then repeat the language in an everyday context, perceiving it as socially acceptable and without consequence.

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

3B(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).

The material referred to in subsection (2) is material that
describes, depicts, expresses, or otherwise deals with—
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.
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Conduct that, if imitated, would pose a real risk of serious harm to self or others or both
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Physical conduct of a degrading or dehumanising or demeaning nature.
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is or includes 1 or more visual images—
of a person's body; and
that, alone, or together with any other contents of the publication, are of a degrading or
dehumanising or demeaning nature.

3B(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—

3B(4)(a) Cause them to be greatly disturbed or shocked; or
3B(4)(b) Increase significantly the risk of them killing, or causing serious harm to, themselves, others, or both; or

3B(4)(c)

Encourage them to treat or regard themselves, others, or both, as degraded or dehumanised or demeaned.

N/A

3C Procedure for classification under sections 3A and 3B

In determining whether to classify a publication as a restricted publication in accordance with section 3A or section 3B, the Classification Office must consider the matters specified in paragraphs (a) to (f) of section 3(4).

Section 3(4) Additional matters to be considered -

In determining, for the purposes of the Act, whether or not any publication (other than a publication to which subsection 3(2) of this section applies) is objectionable or should in accordance with section 23(2) be given a classification other than objectionable, the following matters shall also be considered:

53(4)(a) The dominant effect of the publication as a whole.

The game's dominant effect is of a polished futuristic war game entailing exciting and flexible gameplay.

The impact of the medium in which the publication is presented.

The game is played on an Xbox and commonly viewed on a television that is connected to an Xbox console. The impact of the medium may be increased by its interactive nature that gives the player complete control, including when to commit violence. However, the main game requires considerable skill to reach advanced levels and it is arguable that the fast paced interactive nature of the game results in the player focusing on manipulating the controls in order to win the game rather than focusing on the depictions of violence.

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 game is characterized by superior graphics and has technological and artistic merit.

The persons, classes of persons, or age groups of the persons to whom the publication is intended or is likely to be made available.

Due to the requirement of the infliction of violence and cruelty depictions the game is intended for mature game players.

The purpose for which the publication is intended to be used. The publication is primarily intended for the purpose of entertainment.

s3(4)(f) Any other relevant circumstances relating to the intended or likely use of the publication. The game will be available in other game formats.

BILL OF RIGHTS CONSIDERATIONS

New Zealand Bill of Rights Act 1990

Section 14 Freedom of expression -

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.

Section 5 Justified limitations -

Subject to section 4 of this Bill of Rights, the rights and freedoms contained in this Bill of Rights may be subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society.

Section 6 Interpretation consistent with Bill of Rights to be preferred -

Wherever an enactment can be given a meaning consistent with the rights and freedoms contained in this Bill of Rights, that meaning shall be preferred to any other meaning.

Discussion of Bill of Rights Considerations:

Considerations under s3 of the Films, Videos, and Publications Classification Act 1993 have been weighed against the relevant provisions of the New Zealand Bill of Rights Act 1990. Given the manner, extent and degree in which the publication deals with matters of violence and cruelty a limit on its availability to older teenagers and adults is considered to be a reasonable and demonstrably justifiable restriction. A limitation on the publication's availability is the minimum restriction that can be applied in order to prevent likely injury to the public good.

CONCLUSION

Injury

If s3(1) applies to the publication the question is whether or not it deals with the matters discussed in a manner that the availability of the publication is likely to be injurious to the public good. In discussing injury consider the nature and severity of that injury, the likelihood of it occurring and who would be injured by the publication's availability. The classification recommended must remedy the injury identified.

If s3B applies to the publication, the injury to the public good must be explained in terms of s3B(4) of the FVPC Act.

If s3A applies to the publication, explain the age restriction in terms of how the language is likely to cause serious harm to persons under the age of the restriction.

Classification:	R16	Western .

Children and young teenagers may be upset or disturbed by the game's violent content, particularly the stalking and bloody killing of opponents. The impact of the violence is mitigated somewhat by its repetitive nature, however, the extent of the violence and the realism used to depict the victims' death throes increases the effect on the player, as does the high extent of killing. The unrelenting barrage of war sound effects and gunfire add to this effect. Constant exposure to the game's killings of human charcters, in which the player is an active participant, has potential in impressionable younger players to lead to a desensitisation in general towards violent behaviour and its consequence in real life. Older teenagers and adults possess sufficient maturity to recognise the game's contrived representations and distinct separation from real-world violence. Therefore the game is classified as objectionable except if the availability of the publication is restricted to persons who have attained the age of 16 years.

EXCISIONS/ ALTERATIONS

Section 32 - Excisions from and alterations to film -

In the case of a film submitted for classification under any part of the Act other than s29(1) and 41(3) (court referrals), if the Classification is of the opinion that it would classify the film differently according to whether any specified part or parts of the film are excised from or left in the film, it shall, before making a final determination in respect of the classification of the film, follow the procedure prescribed by section 33.

Section 33(1) directs the Classification Office to notify the authorised distributor of the film of the classification that would be given if part or parts of the film were excised or altered, and, the classification that would be given if the specified part or parts were not excised or altered.

Section 33(5) provides that, in deciding whether or not to propose excisions or alterations, the Classification Office may consider the effect that any such excision or alteration may have on the continuity of the film or on its overall effect.

EXCISIONS SUMMARY		
None (for non-moving image and s29(1) / 41(3) publications)	
No excisions recommended (for all other moving image publications)	X	
Excisions/alterations recommended		
Number of Excisions/Alterations:		
Brief Description:		

PUBLIC DISPLAY CONDITIONS

Not Applicable	

Section 27 Conditions relating to the display of restricted publications -

Where the Classification Office classifies any publication as restricted, the Office shall in every case consider whether or not to impose conditions on the public display of that publication, and may impose such conditions at the time of classifying the publication.

In determining whether or not conditions in respect of public display should be imposed, the Classification Office must have regard to:

s27(2)(a) The reasons for classifying the publication as a restricted publication. The publication contains depictions of violence and cruelty.

s27(2)(b) The terms of the classification given to the publication.

Objectionable except if the availability of the publication is restricted to persons who have attained the age of 16 years.

s27(2)(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.

Public display of the publication is unlikely to offend reasonable members of the public.

Section 27(3) directs that where the Classification Office considers that the public display of the publication, if not subject to conditions under this section, would be likely to cause offence to reasonable members of the public, the Classification Office shall, at the time of classifying the publication, impose such conditions under this section in respect of the public display of that publication as it considers necessary to avoid the causing of such offence.

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