



Australian Government
Classification Review Board

6, 8, 13 & 14 February 2006

**23-33 MARY STREET
SURRY HILLS, NSW**

- MEMBERS:** Ms Maureen Shelley (Convenor)
Mr Rob Shilkin
Mr Anthony Hetrih
Mrs Gillian Groom
- APPLICANTS:** The Hon. Philip Ruddock MP, Attorney-General,
represented by Mr Josh Faulks
- The Local Government Association of Queensland (LGAQ), represented by Mr Greg Hoffman ^{PSM}, Director of Policy and Representation, Ms Rachael Uhr, Youth Policy Project Officer, Councillor Ronald Clark ^{MBE}, Mayor Gold Coast City Council, and Mr Robert Livingstone-Ward, Solicitor, King & Company Solicitors Brisbane.
- INTERESTED PARTIES:** Atari Australia P/L, the original applicant for classification, represented by: Mr Ron Curry, Commercial Director, Mr Simon Slee, Product Manager, Mr Stephen O'Leary, Communications Manager.
- Mareeba Shire Council, not represented.
- BUSINESS:** To consider whether the LGAQ has standing to apply for review of the decision
- To simultaneously consider the LGAQ and the Attorney-General's applications for review of the decision of the Classification Board to classify the computer game *Marc Ecko's Getting Up: Contents Under Pressure* MA15+ (Mature Accompanied) with the consumer advice 'Strong violence, Strong themes'.

DECISION AND REASONS FOR DECISION

1. Decision

1.1 The Classification Review Board (the Review Board) in a majority decision classified the game RC (Refused Classification).

2. Legislative provisions

2.1 The *Classification (Publications, Film and Computer Games) Act 1995* (the Act) governs the classification of computer games and the review of classification decisions. Section 9 of the Act provides that computer games are to be classified in accordance with the National Classification Code (the Code) and the classification guidelines.

2.2 Relevantly, the Code in paragraph 1(c) of the Table under the heading 'Computer Games' provides that computer games that promote, incite or instruct in matters of crime or violence, are to be classified RC (refused classification).

2.3 Three essential principles underlie the use of the *2005 Guidelines for the Classification of Films and Computer Games* (the Guidelines), determined under s.12 of the Act:

- The importance of context;
- The assessment of impact; and
- The six classifiable elements – themes, violence, sex, language, drug use and nudity.

2.4 Section 11 of the Act requires that the matters to be taken into account in making a decision on the classification of a computer game include:

- (a) The standards of morality, decency and propriety generally accepted by reasonable adults; and
- (b) The literary, artistic or educational merit (if any) of the computer game; and
- (c) The general character of the computer game, including whether it is of a medical, legal or scientific character; and
- (d) The persons or class of persons to or amongst whom it is published or is intended or likely to be published.

3. Procedure

3.1 A four-member panel of the Review Board convened on 6 February 2006 to determine the validity of two applications for review of the decision of the Classification Board to classify the computer game *Marc Ecko's Getting Up: Contents Under Pressure* (the game) MA15+ on 18 November 2005 from the LGAQ, received on 16 December 2005 and from the Attorney General, the Hon Philip Ruddock MP, dated 19 January 2006.

Preliminary Issues

3.2 The Convenor advised the applicants and the original applicant that she is a currently-serving councillor for a NSW local government authority and invited submissions on this point. No submissions were made by the parties.

3.3 The Review Board unanimously determined as a preliminary issue, that the LGAQ had standing as a “person aggrieved” under subsection 42(1)(d) of the *Classification (Publications, Films and Computer Games) Act*, for the following reasons.

3.4 The LGAQ is a peak body created under the *Queensland Local Government Act 1993* and is charged with responsibility in connection with representing local government. The business of the LGAQ includes areas of finance, governance and community, roads, transport, infrastructure, environmental protection, planning and development public buildings and infrastructure.

3.5 The Review Board noted that there existed a clear, direct link between the theme of the game – namely graffiti – and the responsibilities of local governments and the LGAQ. Local councils are charged with the responsibility of graffiti removal and the Review Board noted evidence supplied by LGAQ as to the continuing and substantial cost of its removal for councils, in particular the Gold Coast City Council. The LGAQ therefore has more than a mere interest or an intellectual inquiry or an emotional interest in the matter of graffiti; it’s a direct responsibility that its members have and the LGAQ is charged under the *Queensland Local Government Act 1993* with representing the interests of local councils in Queensland.

3.6 Further, the Review Board noted that the Retail Traders Association had been granted standing in *Brown v. Classification Review Board* (1997) 145 ALR 464 (“**Brown I**”, commonly known as the Rabelais Case), which went on appeal to the full Federal Court (*Brown & Ors v. Members of the Classification Review Board* (1998) 154 FCA 67) (“**Brown II**”). It appears that the Retail Traders Association would have a similar relationship in regard to retailers as does the LGAQ in regard to councils. Neither the Court in *Brown I* nor the Court in *Brown II* questioned the standing of the Retail Traders Association in that matter. The Review Board unanimously determined that the LGAQ has standing as a person aggrieved in relation to the game *Marc Ecko’s Getting Up: Contents Under Pressure*.

3.7 The Review Board also noted that the application for review by the Attorney General was lodged on the approved form, was signed and related to a decision of the Classification Board. The Review Board noted that the Attorney General may lodge an application for review at any time and is not required to pay a fee. The Review Board unanimously determined that it had received a valid application from the Attorney General.

3.8 In regard to the LGAQ, the Review Board noted the application was on the approved form and was signed and related to a decision of the Classification

Board, a partial fee waiver had been granted by the Director and the LGAQ had paid the balance of the fee required, the LGAQ's application was lodged within 30 days of the Classification Board's decision being notified to the general public. The Review Board unanimously determined that it had received a valid application from the LGAQ.

Substantive Issues

3.9 At its meeting on 6 February 2006 the Review Board watched a video of what the original applicant stated was the contentious material contained in the game. The Review Board then observed a demonstration of the game through the interactive game play of the applicant's Communications Manager Mr Stephen O'Leary. The original applicant's representatives made oral and written submission to the Review Board.

3.10 The LGAQ's representatives also made oral submissions to the Review Board on 6 February 2006 and these were provided in addition to written submissions. The Attorney General's representative declined to make submissions, written or oral, to the Review Board but accepted the opportunity to attend and hear submissions from other parties to the Review. The Review Board then met in camera to begin considering the application.

3.11 Finding that it had viewed insufficient game play to reach a decision, the Review Board members, having obtained copies of the game in X-Box console format from the original applicant, proceeded to play the game themselves. Individual members then played the game during several days, totalling more than 30 hours of game play.

3.12 The Review Board reconvened on 8 February 2006 to consider the substance of the application. At its meeting on 8 February 2006 the Review Board determined it was not yet ready to reach a decision and agreed to reconvene via teleconference at a later date for further deliberations.

3.13 The Review Board convened again via teleconference on 13 February 2006 and on 14 February 2006 and, after careful consideration of all of the issues, determined that the members were equally divided in opinion. In accordance with section 79(2)(a) of the Act the Convenor exercised a casting vote and the Review Board, in the majority, reached a determination that the game should be refused classification as it promotes matters of crime.

4. Evidence and other material taken into account

4.1 In reaching its decision the Review Board had regard to the following:

- (i) LGAQ's application for review;
- (ii) The Attorney General's application for review;
- (iii) LGAQ's written and oral submissions;
- (iv) Atari's written and oral submissions;
- (v) The game;

- (vi) The relevant provisions in the Act;
- (vii) The relevant provisions in the Code, as amended in accordance with s.6 of the Act;
- (viii) The Classification Board's report; and
- (ix) The *Guidelines for the Classification of Films and Computer Games 2005*.

5 Synopsis

5.1 The game is set in a city called New Radius (the buildings are stylised versions of the New York skyline, Brooklyn Bridge and other areas of New York) where graffiti has been banned and freedom of expression has been suppressed by a tyrannical city government. The product is a role playing game with Trane as an anti-hero. He rises to win back his 'hood (neighbourhood) and become an urban legend (graffiti artist with the respect of his peers) of the city of New Radius. The player starts the game as a "toy" (beginner) graffiti artist with the "street-smarts", athleticism and "vision" necessary to become an "All City King" (the most reputable of all graffiti artists).

5.2 The player is the son of an imprisoned graffiti artist whose false imprisonment is uncovered as Trane risks his life navigating vertical landscapes while battling rival graffiti "crews" (other groups of graffiti artists), a corrupt mayor and the city's Civil Conduct Keepers (CCK) (who are charged, amongst other things with graffiti removal and prevention of the placement of graffiti) all in an effort to reach the "sweet spots" (the places where an artist can gain the most reputation by placing graffiti – these are usually in seemingly-inaccessible places) of New Radius where a well-placed "tag" (stylised signature of the artist) brings respect and rep (reputation).

5.3 The Review Board noted that the game is divided into:

- Main Mode – the normal game-play mode involving several game-play levels, featuring an ongoing, continuous narrative of Trane working through different challenges, attempting to tag the city. Main Mode contains "cut scenes", which are short cinematic-style scenes over which the player has no control. These scenes advance the narrative and put the game-play into context.
- Black Book Legends – a separate feature, containing written narrative, images of five graffiti artists who the gamer "meets" in game play, reproductions of the work of 56 real-life graffiti artists, their personal biographies, including detail of their "achievements" including, the placement of graffiti on public property and infrastructure and on private property. In the game, the Black Book allows the gamer to select pieces and tags for the next mission, browse the graffiti legends' art and information and view the game credits. The manual states that the Black

Book is “a graffiti artist’s life” and that “there are 56 graffiti legends whose art you can find and photograph in the game”.

(A Black Book is a book with plain sheets of art paper that artists, particularly graffiti artists, use to record particular styles or techniques or aspects of some design. The books are usually spiral bound for ease of having the pages flat when recording some technique or detail.)

- And has the further elements of “unlocks” to unlock concept art, films and Beat Down content and “statistics” to view the current profile, rep, graffiti bonus objectives, freeform challenges completed, legend photos taken and secrets found.

6 Findings on material questions of fact

6.1. **Themes** – The majority of the Review Board found that *Marc Ecko’s Getting Up: Contents Under Pressure* contains aspects and scenes of importance under the classifiable element of ‘Themes’, namely the depiction of graffiti, which is a crime in all Australian States and Territories and under Commonwealth law. This game is about drawings and designs commonly depicted on public infrastructure. The CRB understands that not all graffiti is illegal, however this game deals with the illegal kind and not graffiti as legal art. Further, the Review Board understands that graffiti crime is conduct which is prohibited with penal consequences in all States and under Commonwealth law.

6.1.1 The game is “dedicated to all the graf (an abbreviation for graffiti) writers whose art was dismissed as filth”, according to the manual and has as a theme the use of graffiti as a political protest.

6.1.2 The majority determined that the game contains a very strong message about the effectiveness of graffiti as a tool for political activism. During the game, comment is made about placement of graffiti for maximum impact. The crime of graffiti is depicted as smart, cool, clever and daring. The game glorifies graffiti by depicting the artists as “Robin Hood” figures.

6.1.3 Other crime depicted related to the application of the graffiti during the game includes:

- jumping transport ticket machines so as to evade the fare;
- trespassing on railway tracks;
- breaking and entering;
- train surfing; and
- wilful damage to property.

6.1.4 In the game, graffiti is depicted as a quick, simple, low-cost way to get a message across. It is portrayed as an accessible activity.

6.1.5 During the course of gameplay the player meets five “legends” (graffiti artists with high levels of respect from their peers and with a reputation that extends beyond their city) who are real, living graffiti artists, all of whom are still active on the US graffiti art scene, who provide tips and detail techniques in the art of graffiti.

6.1.6 Further, within the game play the gamer is introduced to the language of the graffiti artist. This language is obtuse to those unfamiliar with it, however, the gamer learns what the terms mean in reproducing the styles and techniques of the living legends in the game. For clarity, the Review Board used definitions from the *Graffiti Management Strategy for the Australian Capital Territory, Prepared by Canberra Urban Parks and Places (CUPP) Policy and Planning Unit* (August 2004) and the honours thesis of Ilse Scheepers *Graffiti and Urban Space* (2004 University of Sydney). The glossary is appended.

6.1.7 In ordinary game play, the gamer is rewarded with the phrase “no drips” as praise. If a piece is well executed in the game, then a number of phrases appear on screen over the work. The phrase “no drips” refers to what happens in the real world, when using an aerosol can in graffiti. If the work is performed quickly, with an even spray “no drips” will be the result – that is the artwork will have a clean, even finish and outlines where excessive paint hasn’t run. This can be learned by the gamer in the game when repeatedly going over the one spot with an aerosol can. If too much paint is “applied” in the game, the piece will “run” and visuals of drips of paints will run down the screen. If the action of applying the paint is done for an appropriate amount of time – simulating the real-world action of painting – then “no drips” will be the result. Drips on a work are the mark of a “toy”, so “no drips” means the beginner artist is learning the techniques required to be a better artist.

6.1.8 Other written “rewards” include the words or phrases “time” – as in the piece is completed in the allotted time, “go big” – an encouragement to produce large works of graffiti and/or works that make a “big” impact, and “go over”, which means to place a graffiti piece over someone else’s work.

6.1.9 Sweet spots are good places to place graffiti, usually on public or private property. Heaven spots are dangerous places where graffiti art can be placed within the game (these are usually over freeways on freeway signs, or seemingly-inaccessible places on trains, buildings or public infrastructure).

6.1.10 The gamer, as Trane, “meets” the legends and acquires more graffiti styles – starting with freeform graffiti including tagging, stencils, markers, spray paint, stickers, posters and moving on to painting with a squeegee mop, using wheat paste (posters), glass etching, wild styles, roll ups and murals. As Trane meets each legend they give him tips such as “don’t rush, make it look good”. These phrases have limited application within the game play. Trane is told that he shouldn’t stay still in one spot for too long as he will be seen by security cameras” “the trick to beating security cameras is to know where they’re looking. Just don’t let ‘em track ya for too long or they’ll call down the heat (the authorities)”. Trane sprays the lens of the security

cameras with paint, rather than avoiding them as he becomes more experienced.

6.1.11 The gamer earns more points in the Main Mode, as do graffiti artists earn more reputation in the non-gaming world – based on information within the game from the legends, if the graffiti is placed in hard-to-get at places such as freeway signs, high places on walls, or if large pieces are executed with several colours and extensive styling. Alternatively, the gamer (or artist) can earn more points by bombing – that is by creating many pieces in a short space of time over an area.

6.1.12 Also in the game, as with reputation for the graffiti artist in the real world, the gamer can earn more points by placing graffiti in dangerous places such as on trains, roofs of buildings, freeway signs over freeways.

6.1.13 In the game, Trane uses Montana Gold aerosol paints, a proprietary brand spray paint favoured by graffiti artists and an Apple iPod to hear current real, hip-hop and other popular music artists.

6.1.14 In regard to the use of the aerosol paint, Trane is shown using an aerosol can as a flamethrower. This is demonstrated as an animation in the game. The position of the lighter and the can and the appropriate distance between the two is shown from several angles. That the arms are to be held out straight, to avoid injury to the holder of the can, is also shown.

6.2 **Violence** – The game is a linear one. As the gamer becomes more proficient in performing the in-game graffiti acts, they move up levels and gain more skills. However, much of the game is typical of the fighting/action genre.

6.2.1 There are frequent scenes of violence that have strong impact contained throughout the game play. Whilst the Review Board noted these scenes, and the submission of the LGAQ that these scenes were of sufficient impact for the game to be refused classification on this ground, it was the view of the Review Board that the majority of the violence in the game play could be accommodated in an MA15+ classification.

6.2.2 However, one scene – where Trane ignites the spray from an aerosol can with a cigarette lighter and uses the can as a flame thrower to ignite his opponents is dealt with under themes in regard to instruction or promotion in matters of crime.

6.3 **Sex** – There are some fleeting visual and significant verbal sexual references in the game, mostly in the cut scenes or in the lyrics of the songs. The sexual references could be accommodated in an MA15+ classification.

6.4 **Drug use** – There are some verbal and visual detail of drug use in the game. These could be accommodated in an MA15+ classification.

6.5 **Language** – There is frequent use of strong coarse language in the lyrics of the songs contained in the game and some strong coarse language in the

game play. The coarse language could be accommodated in an MA15+ classification.

6.6 Nudity – There are some scenes of fleeting partial female nudity in the cut scenes of the game. These could be accommodated in an MA15+ classification.

7 Reasons for the decision

7.1 In *Brown v. Classification Review Board* (1997) 145 ALR 464 ("**Brown 1**"), Merkel J (at 481-2), stated that no aspects of the Code should be "*twisted against speech nobody means to bar*".

7.2 On appeal in the full Federal Court (*Brown & Ors v. Members of the Classification Review Board* (1998) 154 FCA 67 ("**Brown II**"), French J noted (at 76) that "*the value accorded to freedom of expression will support a conservative approach to the construction of statutes which would impair or abrogate it.*"

7.3 "Promote" is defined in the Macquarie Dictionary, as "to further the growth, development, progress, etc., of; encourage." However, as noted by French J in *Brown II* at 81, the dictionary meaning of the term "instruct" is not automatically the appropriate meaning to use in interpreting that term under the Code. The same would apply for the term "promote".

7.4 The word "Promote" in the context of the Act should contain some element of instruction and incitement. French J notes in *Brown II* (at 81) that "*the phrase 'promote, incite or instruct' is a collocation of overlapping meanings. the word 'instruct' does not have to be construed in a way which excludes all elements of promotion or incitement. To do so would lead to a broad construction satisfied by the mere fact that a publication furnishes the reader with knowledge on 'matters of crime'...*"

7.5 Given this collocation of overlapping meanings, so too the word "promotes" does not exclude all elements of instruction and incitement. Otherwise the term could be satisfied by the mere fact that a film, publication or game provides a favourable depiction of a criminal character, without spurring the viewer, reader or player to undertake the activity, or giving any tangible detail about how such criminal activity could or should be undertaken. At least some element of specific instruction and incitement is required.

7.6 The term "instruct" is explained by Merkel J in *Brown I*, at 476-7 (subsequently endorsed by French and Sundberg JJ in *Brown II*):

- an instruction, to fall within the Code, must do more than state the obvious;
- an instruction must do more than inform or convey knowledge of matters in such a general way that, in a real and practical sense, no instruction has really been given.
- a publication does not instruct in matters of crime when it merely

provides information as to how one may go about obtaining instruction in matters of crime.

7.7 To "incite" can be defined as to urge on; stimulate or prompt to action, by persuasion or threat (see *Invicta Plastics v Clare* [1976] RTR 251).

7.8 The need for the game to encourage a "disposition towards crime"

7.8.1 In *Chief Executive Officer of Customs v. Carman* [2004] QVC 433 ("**Carman**"), McGill DCJ interpreted the word "promotes", stating (at paragraph 20) that to promote crime a publication must do more than merely aid a person who is otherwise disposed towards crime. It must "encourage a disposition" towards crime in someone who does not otherwise have one, or "magnify a pre-existing disposition".

7.9 Objective purpose and the importance of context

7.9.1 French J also noted, in defining the term "instruct" in *Brown II* at 81, the following principles:

- "*reflecting the theme of promotion or incitement*", the provision of information on matters of crime will constitute instruction if it appears from the content and context of the article that its objective purpose is to encourage and equip people with the information to commit crimes;
- The existence of words in the publication which, literally read, constitute such instruction, is not definitive - the publication must be read as a whole and in context.

7.9.2 An assessment of a game's objective purpose in this holistic way is also required when determining whether it "promotes" crime.

7.10 Presumption that mere fictional depictions of crime do not promote, instruct or incite in matters of crime

7.10.1 French J, quoted in *Brown II* at 81 and Heerey J at 83, have indicated that mere fictional depictions of crime are not the target of this particular aspect of the Code.

7.10.2 Numerous games exist in Australia featuring crimes and violence such as the use of guns, weapons, attacks on police officers, attacks on civilians, carjackings, reckless driving, assaults, thefts, property damage, break-and-enter and graffiti. Consistent with the Court's view - which in turn recognises the intent of the classification regime - there is a well-recognised gulf between fictional depictions of crime, and material that should be refused classification for promoting crime.

7.10.3 The mere depiction of, description of, on-screen glamorisation of, in-game mission tips for and rewards for the performance of on-screen criminal activities are the routine, ordinary stuff of fictional computer games. Much more than this is required before a game "promotes" crime under the Code.

7.11 Interactive game play increases impact/ need for game to “instruct”

7.11.1 It was the determination of the majority that for a game to promote crime – that is to encourage or enable “the persons or class of persons to or amongst whom it is published or is intended or likely to be published” to commit crime – the interactive nature of the game must be harnessed to “train” those persons in the crime, in this instance in the crime of graffiti. It was the view of the majority that such conditions exist in the game.

7.11.2 It is a matter of common knowledge that simulations are used by educators and industry to instruct in matters from learning the rules of the road, to touch typing, through to flying jumbo jets and military aircraft. Conditions are reproduced that simulate what the learner may face when undertaking a task in the real world in a safe, re-created environment.

7.11.3 An examination of learning methods show that the techniques used by trainers are all present in the game. Training is more effective when it is Student-centred, when it Motivates the student to persist with the training, when there is simulated or real Activity related to the subject to be learned, where the training is Reinforced within the training module, when the learning that takes place within the training situation can be readily Transferred to the real world and when an Environment is created that fosters the learning in the trainee.

7.11.4 The game is a role-playing game and can be played in the first person – that is that all the “camera angles” and situations presented are depicted from the perspective of the gamer. Role playing is a technique used by trainers to make learning student-centred. The student is motivated to practice the game by the in-game rewards and by the real-world rewards of being able to emulate the living “legends”. Motivation is both positive and negative – the gamer is a “toy” at the beginning but as they learn the techniques of the game – and of the crime of graffiti – they are rewarded with in-game praise, in-game points, and real-world knowledge which is readily transferable to the real world. The game has a linear construction whereby the learning is doled out in small chunks (another established training technique), which is reinforced by real live graffiti artists, with whom the gamer interacts within the game, and the gamer is given the opportunity to repeatedly practice the techniques demonstrated in a safe, simulated environment.

7.11.5 The game offers a familiar world in terms of the interaction with the built environment and the types of obstacles to be overcome in regard to that environment. All the road and other signs used, the freeway and railway infrastructure, including the tiles and styling of the subway stations in the game is directly comparable to that in use in cities today, in particular to New York.

7.12 The game as fantasy/ real-world instruction

7.12.1 The original applicant said in its submission that the game is placed in the future in a fantasy world. It was the view of the majority that whilst the game contained some fantastical elements, much of the game play was

based in current experience. All the buildings depicted looked similar to that of any modern city; the trains, cars and helicopters all had the appearance, motion and sounds of transport currently in use, the dress of the characters was similar to that currently in vogue. The depiction of and interaction with real graffiti artists, who currently are all alive, in the game play would not lead a gamer to suppose that the game is set in any futuristic setting – rather that it reflects a simulation of today.

7.12.2 Had the game been set in some *Matrix*-like scenario or other fantasy-style setting then the original applicant's statement that the game was pure fantasy may have been given more weight by the majority. Further, it would reduce the likelihood of the transfer of the game-world knowledge of graffiti to the real world.

7.12.3 Whilst the styles of the legends are reproduced in the game, the tips and techniques are not used in playing the game rather they are tips and techniques that would be of benefit in performing graffiti art in the real, non-gaming world. The game instruction goes beyond that necessary to perform the limited actions available to the gamer in the game. For example in the game script a legend is giving advice: "Use fat caps (modified aerosol caps that allow different paint spray to be achieved) for top-to-bottom outlines, you'll get greater coverage . . . faster". Such a tip cannot be used in the game, due to the restricted way in which the in-game graffiti is applied.

7.12.4 Also, in the extras to the game a demonstration is given as to how to make a stencil out of cardboard, and a detailed description of the creation of stencils is given in the script. As the stencils are supplied for in-game play, it is the determination of the majority that this instruction is provided to enable or encourage the gamer to make stencils in the real world.

7.12.5 Further, in the Black Book mode the gamer has the opportunity to interact with the images, styles, biographies and tips of 56 real graffiti artists.. All 56 of these artists began their careers as graffiti artists by applying graffiti to public infrastructure and public and private property. The interactive nature of the game, including the Black Book mode, provides greater impact than would be the case in the act of reading a magazine or passively watching a film that provided the same information.

7.12.6 Some of the tips given in the Black Book mode include "never take your black book bombing (performing large amounts of illegal graffiti in a short space of time) with you. It will get taxed (taken)"; "If you get caught between two trains, stand still between them and you won't get hit"; and "make sure you know who you're going over if you don't want beef (trouble) with writers (graffiti writers) you don't even know"; "doing whole car (railway carriage) productions will put you on the road to legend status"; "always be different. Develop you own style like it's your DNA"; "develop your tag style. This is the signature of a true master." Whilst some of these tips are so obvious as to not provide any real knowledge, others enable or encourage the gamer to perform graffiti in the real world and implicitly, this graffiti will be in illegal circumstances.

7.12.7 The majority of the Review Board noted that the game has a fictional storyline and the exaggerated, stereotypical depictions of the anti-hero action game genre. It also noted that the “leaping buildings in a single bound” style of athleticism demonstrated by Trane is unlikely to be reproducible in the real world. However, these elements do not provide a barrier to the game promoting crime by encouraging or enabling the gamer to commit graffiti crime through the methods outlined.

7.13 Instruction in matters of crime/ promotion in matters of crime

7.13.1 For the Review Board to accept that a game promotes crime it must determine whether the objective purpose of the game, when looked at as a whole, and in context, is to actively encourage a disposition towards crime, or to magnify a pre-existing disposition towards crime – in this game the crime of graffiti.

7.13.2 It was the determination of the majority of the Review Board that by the use of interactive game play in realistic simulations (although with some fantastical elements) and with the in-game interaction with living graffiti artists – five who are encountered in game play and those five and a further 51 who are interacted with in the Black Book mode – that the objective purpose of the game is to encourage or enable the likely audience of the game to undertake graffiti and participate in the graffiti culture.

7.13.3 This participation would include using the materials – real-world brands of paint, brands of music players, popular music artists and ranges of clothing, – of the graffiti artists. That the placement of products in popular films or games encourages the audience to purchase those products is a commonly-known, marketing technique. Objectively, the producers of this game understand that by placing the Montana Gold brand of paint in the game, that it is likely that gamers will be encouraged to purchase it to perform graffiti art.

7.13.4 Further, this encouragement is not to perform graffiti art in some art course or college or to practice at home with paper or on public or private property with permission. Rather, all the situations encountered in the game world, and articulated by the real graffiti artists in their biographies, is the performance of this art in illegal situations. That many of the real graffiti artists now earn a living from legal graffiti art, does not detract from this conclusion. All of them commenced by performing illegal graffiti, many of them still do so. All of them have gained fame – or at least notoriety – from their illegal graffiti art and many of them derive income as a result of this. The crime of graffiti is not only glamorised it is normalised by this game.

7.13.5 It was the submission of the LGAQ that the majority of those charged with graffiti crimes are males aged 15 to 24. The Review Board noted that this is the same group of persons that would be the likely audience of the game.

7.14 The minority view

7.14.1 It was the view of the minority that the game does not contain any promotion, in the relevant sense, of crime, or detailed promotion of crime.

7.14.2 It is the considered view of the minority, based on their experience and game-play that the game is likely to appeal most to 15 to 30 year olds.

7.14.3 It is the view of the minority that the game, on any objective assessment, is intended as a piece of fantasy, rather than a serious work designed to bear any direct relevance to the real world.

7.14.4 The main elements that keep the player engaged are the storyline, physical fights and incentives such as earning points and unlocking music and the “graffiti legends” profiles that appear in the Black Book in the game.

7.14.5 The tone of the game is escapist and has been designed as entertainment.

8 Summary

8.1 The Review Board determined, in the majority, that the theme of graffiti as depicted and detailed in the game was beyond that of fantastical game play and provided elements of promotion of the crime of graffiti.

8.2 The Review Board in a majority decision determined that the computer game is Refused Classification as it promotes the crime of graffiti.

8.3 It was the view of the minority, that the game was a fantasy and that all elements could be accommodated by the MA15+ classification with the consumer advice Strong violence, Strong themes.

Appendix A:

Graffiti Management Strategy for the Australian Capital Territory (August 2004): Glossary of graffiti terms

<i>Bomb</i>	To undertake prolific graffiti writing.
<i>Bombing</i>	Tags, throw-ups and pieces are done in a spree. As much graffiti as possible is done as quickly as possible.
<i>Crew</i>	A locally organised group of writers.
<i>Graffiti</i>	Graffiti incorporates an entire culture including legal art and graffiti murals.
<i>Graffiti vandalism or illegal graffiti</i>	Any illegal message or image – painted, written or scratched on a surface that will be seen by the public.
<i>Hit</i>	To tag any surface with paint or ink.
<i>Panel</i>	A mural painted on a section of wall or panel.
<i>Piece</i>	Painted graffiti, short for masterpiece. Pieces are intended to be complete art works most often done with spray paint.
<i>Legal street art</i>	Legalised graffiti on public and private assets with artistic merit.
<i>Offensive graffiti</i>	Graffiti vandalism, which is offensive in nature. For example, racial, homophobic, or abusive language which may be degrading to a section of society.
<i>Tag</i>	A graffiti writer's signature stylised in form.
<i>Tagging</i>	Written in one colour, a tag is usually done with curves and letter deformations.
<i>Tagging vandalism</i>	A written, spray-painted or scratched communication between members of the graffiti subculture, usually including a tag. The preferred sites are in a prominent place, such as along main roads or rail lines.
<i>Throw-up</i>	A tag painted quickly with one layer of spray paint and an outline.
<i>Writer</i>	A person who writes graffiti.
<i>Writing</i>	This term encompasses the simplest illegal tag to the most elaborate legal mural.

Glossary taken from: *Graffiti Management Strategy for the Australian Capital Territory, Prepared by Canberra Urban Parks and Places (CUPP) Policy and Planning Unit* (August 2004), p. 21.

<http://www.parksandplaces.act.gov.au/policiesandpublications/graffitistrategy>

Appendix B:

Student thesis 'Graffiti and Urban Space' (2004): Glossary of graffiti terms

<i>Tag</i>	stylised signature, done quickly and in many areas and on many surfaces. Throw up: an outline of a name, or a few letters, usually outlined in one colour and roughly filled in with another.
<i>Piece</i>	a full colour masterpiece, done over a significant amount of time and with a great deal of planning.
<i>Panel</i>	a piece painted onto the side of a train.

Materials:

<i>Solids</i>	compressed oil paint sticks.
<i>Textas</i>	ink markers, often with a broad tip and often with ink mixed by writers themselves from various staining elements.
<i>Cans</i>	spray cans
<i>Caps, fat or skinny</i>	the nozzle on the can that creates a thick or thin line of paint.

Terms:

<i>[to] bite</i>	to copy or rip off another's style.
<i>[to] bomb</i>	to cover in graffiti, most often to cover with tags.
<i>[to] buff</i>	to clean off graffiti, using chemicals or by painting over.
<i>[to] cap</i>	to cross out or deface another writer's work a.k.a. to 'line out' or to 'cross out'.
<i>[to] rack</i>	to steal, usually paint.
<i>The line</i>	the train line.
<i>The yard</i>	a place where trains are housed over night or when not in use.
<i>layup</i>	see, yard.

<i>Toy</i>	a young, inexperienced writer, also a dismissive insult insinuating another writer is inferior.
<i>King</i>	an experienced, dedicated and prolific writer, also referred to as 'king of the line'.
<i>Writer</i>	graffiti writer, also called a graffiti artist, but for the sake of neutrality in this study they will be referred to as 'writers' rather than 'artists'.

Glossary taken from: 'Graffiti and Urban Space,' by Ilse Scheepers 2004 - University of Sydney (Australia), p.1.
http://www.graffiti.org/faq/scheepers_graf_urban_space.html