

# The Privatization of Age Classification

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This chapter is based on more than ten years of work in the Danish Media Council for Children and Young People. I was appointed as a council member in 2005 and served as chair person in 2012. According to Danish film law, the Media Council is assigned to classify films according to age, based on their potentially harmful content. In addition, the council is responsible for advising the public about children, young people and media in general. Part of this work has involved extensive collaboration with EU networks, as well as industry actors such as the Pan European Game Information Systems (PEGI), a self-regulatory body under the International Software Federation of Europe (ISFE). Due to political currents as well as changes in the marketplace, the weight is presently shifting from traditional state regulation toward self-regulation with PEGI as a key example. The wider implication of this development is that the age classification of media content gradually moves out of the sphere of democratic deliberation, and into an industry-consumer issue. In this chapter, I will confront the way the changing media landscape challenges traditional approaches to age classification of computer games and other media content. I will present two alternatives that are often perceived as opposites, that is, age classification as undertaken by government councils and age classification as undertaken by the industry. While the latter alternative is often put forth as the most plausible response to the changing structures in the marketplace, there are important implications for the notion of age classification in democratic societies – at least if we want to maintain a general view of children as democratic citizens.

## WHY AGE CLASSIFICATION?

It is not a given fact that a media regulation system should include age classification of content. Not all societies have chosen to do this and in those countries that have, age categories and criteria differ considerably. There are many other ways of regulating media and specific historical reasons that age classification represents a common sense approach in many Western countries. This is due to a specific Western approach to the child as an individual who deserves special protection against potentially harmful content (Cunningham, 2012). Moreover, it is due to a firm belief in age as a primary parameter for describing cognitive characteristics and sensitivities as compared to, for instance, gender or cultural background (Muschinsky, 2002). Finally, age classification has been seen as an acceptable and ‘neutral’ way of handling extreme content in democratic societies where censorship is not considered a viable solution. In Denmark, the legal framework that supports age classification of film content was introduced along with a complete abolition of censorship. Each of these rationales obviously comes with built-in paradoxes and can be contested in different ways. Although some of these rationales will be commented on in the coming sections, an in-depth discussion is beyond the scope of this chapter. For now, let it be acknowledged that there are other ways of dealing with media regulation and harmful content.

## AGE CLASSIFICATION IN A CHANGING MEDIA LANDSCAPE

In recent decades, the digitization and globalization of media production, distribution and consumption have posed new challenges to the way age classification has traditionally been undertaken. This, most notably, has to do with the changing structure of the market place, with new online media services such as *Netflix* and *Steam*<sup>1</sup> as cases in point. While media content such as films and television programs have traditionally been consumed in cinemas and on national television, both within the realm of national jurisdiction, streaming services such as *Netflix* and game platforms such as *Steam* make content available on a broader number of platforms across national borders. Moreover, due to the Audiovisual Media Services Directive<sup>2</sup> emphasizing the *country of origin* principle with regard to the regulation of media in the EU, services such as *Netflix*, being seated in Luxembourg, do not fall within the realm of other EU countries’ national jurisdiction and

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1 [www.store.steampowered.com](http://www.store.steampowered.com)

2 A key directive in the EU regulation of media across member countries.

for this reason are not obliged to send content for age classification in the respective countries.

In addition to such legal issues, the general transformation of the market place brought about by digital media means that the range of potential providers of audio-visual content has greatly expanded. The film industry and the game industry have previously been dominated by a few, highly influential publishers who were responsible for a majority of the available media content and who were held legally responsible by national governments. This system is currently being challenged by a number of “‘extended’ marketplace[s]” (Doyle, 2013, p. 36) on the Internet where a plethora of small, middle-sized and large actors compete for the audience, and where actors that have not traditionally been considered media companies have suddenly entered the competition. The large and somewhat accountable media institutions that dominate the “era of electronic media” (Meyrowitz, 1994) have been joined by private persons and companies that have not traditionally been seen as belonging to the category of *media*. In Denmark Jyske Bank, an ordinary banking business launched its own television service<sup>3</sup> on the Internet where it offers a range of program series with varying degrees of relevance to their traditional banking services. Similarly, any citizen can set up a channel on Youtube or publish his or her own game on *Steam*, making the traditional notion of editorial responsibility a highly complex issue. Obviously, this process of globalization, market convergence and dissolution of editorial responsibility calls for a reconsideration of the way age classification and the protection of minors are being dealt with. This is often viewed as a choice between two general models: the governmental council as represented by the Scandinavian media councils, and the self-regulation system as represented by PEGI.

## **AGE CLASSIFICATION IN THE SCANDINAVIAN COUNTRIES: THE CASE OF THE DANISH MEDIA COUNCIL**

The standards used to determine age classification of media content vary considerably across countries and cultures. In some cases, this is entirely or partly considered an industry endeavour managed by industry bodies such as MPAA in the US, BBFC in the UK and NICAM in the Netherlands. In other cases, it is considered a democratic concern in the domain of public bodies such as the media councils in Denmark, Norway and Sweden and IGAC in Portugal. In Denmark and in

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3 [www.jyskebank.tv](http://www.jyskebank.tv)

the Scandinavian countries in general, a child's right to communication has received relatively more attention in comparison to other European countries. This entails that the age classification of media content is approached as a continuous balancing of two potentially opposing considerations: the child's right to protection against harmful content and the child's right to freedom of expression.

According to Danish film law, the Danish Media Council for Children and Young People is responsible for age classification of films that are shown or sold publicly. This classification is based on the potential harmfulness of films to particular age groups. The Danish Media Council is responsible for communicating classifications to parents and other relevant persons, in addition to defining the criteria by which the harmfulness of films is assessed. A considerable part of the ongoing work in the Media Council for Children and Young People involves the continuous qualification and development of these criteria according to a range of sources, with the UN Convention of the Rights of the Child as a core value. This Convention asserts not only a child's right to protection, but also their right to communication. This includes the right to state their own point of view, the right to seek and obtain information and the right to freedom from control. That is, children have democratic rights. This perspective has led to the following principles with regard to age classification of media content in Denmark: 1) That children have a right to access any type of media content unless we can explicitly demonstrate its harmfulness and 2) that the definition of harmfulness should not be based on a consideration of what grown-ups find harmful to children but rather on what the children themselves find harmful – operationalized as frightening or transboundary experiences. To ensure the latter, the Danish Media Council carries out so-called *children's panels* on a regular basis in which children are interviewed about their film experiences. The same approach has been taken in Norway and Sweden and most recently the councils have experimented with shared children's panels in order to be able to compare and discuss criteria of harmfulness across Scandinavia. These criteria are made publicly available on the councils' respective homepages, but they are unfortunately not translated into English. In practice, film distributors are legally obliged to send in their titles to the Media Council in order for assigned experts to make an individual assessment informed by the criteria developed. It is specifically this procedure that is under pressure because of changes in the market structure described above. Due to the globalisation of the media market and the emergence of the extended marketplace, providers of media content are no longer neatly organized within geographical regions of national jurisdiction. One system that has responded to this challenge from an early point in time is the Pan European Game Information system (PEGI).

## THE PEGI SYSTEM AND IARC AS A RESPONSE TO CHANGES IN THE MARKET STRUCTURE

PEGI represents an instance of industrial self-regulation in which producers and distributors of computer games carry out the age classification themselves. Computer games are sold and consumed across national borders to a much wider degree than films and have represented a challenge to national age classification systems since their inception. For this reason, the Danish Media Council has taken part in PEGI since 2003 as an alternative to establishing a national system. The other Scandinavian media councils have taken a similar approach. PEGI is owned by the industry and is authorized by the leading publishers in the market, including Sony, Nintendo, Microsoft, Ubisoft and Electronic Arts. Publishers in the game industry commit themselves to a set of codes of conduct and commit to having their games age classified. In practice, age classification is determined through a questionnaire answered by either the game's producers or distributors, depending on who brought the game to the marketplace. The classifications are systematically screened in order to ensure consistency and compliance with the system. The criteria used in the questionnaire mainly focus on what is considered inappropriate (according to the PEGI officers) in different European countries such as *sexual innuendo*, *bad language* or *gambling*. Consequently, this often results in ratings that are somewhat higher than those you would find in the Scandinavian countries, which as mentioned, rest on a child's perspective.

As pointed out in the introduction, the domain of digital games has been subject to radical changes in the market structure. For this reason, PEGI launched the International Age Rating Coalition (IARC) in 2013 – in collaboration with the Entertainment Software Rating Board (ESRB), which rates computer games in the US and Canada, together with a range of industry self-regulation bodies across three continents. This collaboration involves an alternative model of financing classifications, a more streamlined questionnaire, a localisation (i.e. region-sensitive rating) of age ratings and, importantly, an expansion of the rating of relevant content from games to apps in general. As regards the financial model, the original classification system was financed by the individual publishers on a title-by-title basis, whereas the new system is financed by the platform owner. As regards the questionnaire and the localisation of age ratings, all content providers, irrespective of region, will fill in the same simplified questionnaire, whereas the resulting age ratings will depend on the region in which the title is sold. Finally, as regards the content to be rated, games are only one among several types of content in the

extended marketplace IARC targets and for this reason the system has been expanded to cover apps in general. This system is currently running on Google Play, while Apple has chosen to retain its own classification system on its App Store.

As a technical solution, IARC has proven to be a viable response to the challenges created by changing market structures. In collaboration with other self-regulation bodies, PEGI has managed to establish a global, or at least, a cross-Atlantic system, in which a general questionnaire is presented to any content provider and their apps are given a specific age classification based on the region in question: Europe, the United States, Brazil, etc. However, this comes at the cost of democratic control of the criteria on which the classifications are based. Of course this is not just the case with PEGI and IARC, this is a problem with any self-regulation system undertaken by the industry. The specific criteria included in the questionnaire, as well as the principles of localisation determining the specific age classification, are highly relevant to the affected communities since they concern an understanding of childhood and responsible upbringing. Nevertheless, as a part of an industrial self-regulation system, they are decided upon and developed within the context of the industry and outside the reach of public scrutiny. What makes PEGI interesting in this regard is that it has partially responded to the issue by establishing a ‘council’.

## **THE PEGI COUNCIL AS A MEANS FOR DEMOCRATIC CONTROL**

The PEGI Council includes members from all participating European countries. It is responsible for “making recommendations so that national as well as European developments are communicated and reflected in the PEGI system and its code of conduct” (PEGI, n.d., para. 2). The individual members of the PEGI Council represent a range of local authorities, including governmental councils (Denmark, Norway, Sweden, Finland, Ireland), ministries of culture (Estonia, Lithuania), ministries of health (Austria) and ministries of commerce (Italy, Spain). This council meets once or twice a year in order to discuss issues related to the age classification of games. As indicated by the list, the PEGI Council hosts a multitude of cultural and professional perspectives and diverse ways of approaching the protection of minors across Europe. While in some national contexts child protection is considered a health concern, in others it is a cultural concern or a concern about the regulation of commerce. This turns the child-as-citizen into a minor concern at best and a contested concern at worst. This represents a challenge to the media authorities in the Scandinavian countries that have child-as citizen as a key

concern. Considerations regarding the balance of democratic rights and protection do not apply in the same way if games are purely considered a consumer good and not a cultural statement. In the first case, it can be seen as an aspect of regulation of commerce; in the second case it involves much wider considerations of cultural diversity and democracy, including freedom of speech.

By and large, the specific status of the discussions going on in the PEGI Council is not particularly clear. “Making recommendations” (ibid.) does not necessarily entail actual implementation, and the degree to which the PEGI Council makes a real difference in the management of the PEGI system is unclear. On the one hand, by offering a forum for general discussion, PEGI and the platforms it covers definitely offer more transparency than, say, Apple’s App Store, where the age classification system and its workings are kept more or less hidden from public scrutiny. On the other hand, the actual mandate of the PEGI Council is highly convoluted. From a more critical point of view, the PEGI Council might just be another instance of stakeholder care in which support for the PEGI system on behalf of European governments is ensured to serve industrial and commercial perspectives.

## INDUSTRIAL PERSPECTIVES ON SELF-REGULATION SYSTEMS

The most obvious industrial interest in this regard involves avoiding state or external regulation. As an industry addressing a wide range of European markets, the game industry has an interest in avoiding national and EU regulation in order to ensure easy access and avoid the possible burden of dealing with many different legal frameworks in Europe. This type of interest was phrased more or less directly by Murad Erdemir from LPR Hessen<sup>4</sup> in his welcoming speech at the International Classifier’s conference in Berlin in 2015. Erdemir took the story about Odysseus and the sirens as a point of departure, emphasizing the way Odysseus tied himself up in order to save himself from the sirens. In the same way, Erdemir stated, “we” regulate ourselves in order to retain “our” freedom. The personal and possessive pronouns in this sentence clearly refer to the industry, that is, the freedom of the industry. The industrial interests of avoiding state or external regulation as a key perspective in age classification, is only rarely stated as directly as this and is often

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4 The *Hessische Landesanstalt für privaten Rundfunk und neue Medien* (Institution for private broadcast and new media in the federal state Hessen) is the industrial self-regulation body of the state of Hessen in Germany.

a more implied aspect of self-regulation systems. In this way, it can be a difficult endeavour to create an object of analysis and to claim that the perspective put forth by Erdemir is actually representative of self-regulation systems in general. However, it is obvious that PEGI works much better as a tool for avoiding political regulation when the system can showcase support and participation from European governments in the form of the PEGI Council.

Another industrial or commercial perspective is age classification as an ever expanding business. This perspective is less obvious as most of the self-regulation bodies, including PEGI, are non-profit and for this reason not expected to produce any turn over. However, even non-profit self-regulation bodies tend to function in accordance with the commercial logic that expansion and growth are objectives. This could be observed, for instance, in the BBFC's and PEGI's negotiations in the UK game market a few years ago. Ultimately, this competition was about defining the correct authority to age classify games in Britain, and the BBFC and PEGI both had an interest in expanding or ensuring their territory in this regard. This interest went well beyond the concern of protecting minors and had more to do with the organizational logic of maintaining or expanding the business.

Recently, the logical targets of expansion and growth have taken on a new perspective regarding the extension of age classification to the Internet in general. At the aforementioned conference, examples of age classifications of web pages ranging from social media and online shops to campaign sites were given. Much of the discussion unfolded around the website *GegenHund*<sup>5</sup>, allegedly a website for friends of mankind against dog-ownership which offers various pieces of advice concerning eliminating these animals through the use of poison and more. At the conference, the discourse revolved around which appropriate age classification would be suitable for such content, as opposed to debating the relevancy of age classification in this case or whether other measures, such as supporting media literacy, would represent a more relevant approach. From a commercial standpoint, which relies on expansion and growth, it makes good sense to extend the age classifications in this way to a broader range of content types. However, from a democratic perspective this might not make sense. The Internet supports a very broad range of communication genres, including public deliberation and ordinary chit chat, and making such communication genres the object of age classification may have wider democratic implications.

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5 [www.gegenhund.org](http://www.gegenhund.org)

## POLITICAL IMPLICATIONS

The industrial or commercial perspectives presented in the former section are neither surprising nor illegitimate. Indeed, these are interests that industrial actors can be expected to pursue. However, it is important to bear in mind that they have implications for the way the protection of minors is being practiced, including the key values governing this work. On the one hand, this has to do with how concerns about the child – the centre of the entire discussion – are constituted, and on the other hand, this has to do with the degree to which age classification is seen as a relevant response to extreme content on the Internet.

As regards the first perspective, what is at stake is basically whether the concern about the child is constituted around the child as a minor or around the child as a democratic citizen. The first perspective is rather dominating in the current self-regulation systems primarily aimed at helping parents regulate their children, not least because games are chiefly seen as consumer goods and thus irrelevant in a more democratic perspective. Moreover, even if self-regulators set out to emphasise the democratic rights of the child to access certain content, this could easily be interpreted as a commercial strategy aimed at broadening the consumer base and thus, discrediting the entire system. This discussion is so much easier to lead as a commercially independent actor.

As regards the second concern, this chapter is initiated with questioning age classification as a universal tool for regulating media content and protecting minors. This is not to write off age classification altogether, but to emphasise that age classification applied indiscriminately and irrespectively of the genre and context of communication, may end up being in conflict with basic democratic values such as the free democratic deliberation open to all. Though the example used above, *GegenHund*, may seem frivolous, is it worth considering whether or not an age classification of any sort of content on the Internet is really what society wants? This may not be economically reasonable in terms of protection obtained (except for those companies carrying out the classification), whilst also being at odds with freedom of speech as a basic democratic value.

Although the traditional state based model of age classification as practiced in the Scandinavian countries may be under pressure, we should avoid jumping directly into self-regulation. Rather, we should ask ourselves which aspects of the process can be un-problematically undertaken by the industry and which parts should remain within democratic control in order to ensure that the entire system is working with and not against more general societal aims. There are several ways of ensuring democratic control in age classification systems involving industry partners. For instance, USK in Germany has a government representative with

veto-right on its classification board. In Finland, the national film authority defines classification criteria and educates classifiers in the media industry. Norway has chosen a somewhat different approach with the film authorities classifying films in cinema, in this way elaborating and communicating classification principles that are followed by the industry's own classifiers on other platforms. In principle and in practice, the age classification of content opens the possibility of keeping citizens away from this content, in other words, censorship. It is crucial that the criteria, on which this classification is based, as well as the genres of content this involves, remain within the sphere of democratic control. Even though it may seem futile to uphold a regulation system as the one represented by the Danish Media Council in its current form, it is important to uphold transparency and democratic control as principles that should govern any classification system.

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