

VRA Compliance Failures

Introduction

The BBFC is not an enforcement agency but our legal advice suggests that we would be failing in our duty as a semi-statutory body responsible for classification if we took no action in relation to instances which had come to our attention regarding the illegal supply of video works. Not to take any action would serve to undermine both the intention and correct application of the Video Recordings Act 1984 (VRA), bringing the BBFC and the Act itself into disrepute. This in turn could lead to a loss of public and political confidence in the current system.

Distributors and retailers can both commit compliance failures. It is therefore important for any VRA enforcement action to target the appropriate party. Because law enforcement agencies (LEAs) conduct checks on retailers in their area (eg test purchases to identify underage sales, 'R18's on sale in an unlicensed sex shop), they are therefore in the best position to investigate VRA breaches at the retailer level. With regard to distributors, many are customers of the BBFC. Therefore, for issues relating to VRA classification and labelling offences, the BBFC is able to act as an 'honest broker' between LEAs and those distributors with whom we already have a relationship.

The BBFC and LEAs have therefore agreed to work together to deal with compliance issues involving a distributor who is a customer of the BBFC. This will add to the notifications we already receive from third parties (eg members of the public via our website).

LEA investigations and the BBFC

This section sets out the ways in which we can assist LEAs in their investigations into compliance failures. (See also 'Appendix 1: Template for LEA referral to the BBFC'.)

Underage sale – The LEA raises the issue with the retailer. The BBFC will still provide Certificates of Evidence as usual on request.

R18 on sale in unlicensed sex shop – The LEA raises the issue with the retailer. The BBFC will still provide Certificates of Evidence as usual on request.

Unclassified non-exempt work/Labelling offence – The LEA may contact the BBFC, who will deal with the issue as follows:

- If the distributor is a BBFC customer, the BBFC will raise the issue with the distributor. See 'BBFC handling of compliance failures from LEAs or other third parties' below.
- If the distributor is not a BBFC customer, the BBFC will refer the issue back to the LEA.

NB. If another third party (eg a member of the public) draws our attention to a work which is being sold in breach of the VRA and for which the distributor is **not** a BBFC customer, the BBFC will advise the third party to bring it to the attention of the relevant LEA, and will copy this advice to LACORS.

BBFC handling of compliance failures from LEAs or other third parties

When we receive notification of a compliance issue involving a distributor who is a BBFC customer, we will deal with it according to the following guidance:

1. a) Unclassified non-exempt worksⁱ
- b) Major infringements relating to the labelling regulationsⁱⁱ

The BBFC will send a standard email advising the distributor that the work should be urgently withdrawn from sale until the infringement has been put right. We will normally expect an undertaking to complete the process of withdrawal within 48 hours.

If the work is not withdrawn within a reasonable time period, the BBFC will refer the matter to LACORS. If the infringement has been referred to us from an LEA, we will copy the LEA into the communication we send to LACORS.

If repeated offences are committed by the same distributor, the BBFC may withdraw the distributor's extranet access or bar the issue of register numbers to the distributor prior to formal classification.

2. Minor infringements relating to the labelling regulationsⁱⁱⁱ

The BBFC will inform the distributor by email of their error. If repeated offences are committed by the same distributor, the BBFC may refer the matter to LACORS and/or withdraw the distributor's extranet access or bar the issue of register numbers to the distributor prior to formal classification.

3. All other instances

These should be dealt with on their merits taking into account the above guidance.

Appendix 1: Template for LEA referral to the BBFC

If an LEA contacts the BBFC with information as to the release of an unclassified non-exempt work or a work which infringes the labelling regulations, this is what we will need to know:

- Title of work
- Type of work (DVD, Blu-ray, game etc)
- Category on box/outer packaging/disc (if any)
- Compliance issue
- Name of retailer

Please email evidence@bbfc.co.uk with these details. Please note: we are not able to issue Certificates of Evidence for this type of query.

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ⁱ For example, works submitted for classification but released while the process is still ongoing, works released in a version which is significantly different from the classified version, non-exempt works released without being submitted to the BBFC (including those which are contained on a video recording which also contains exempt video works)

ⁱⁱ For example, wrong category symbols, total absence of category symbols

ⁱⁱⁱ For example, category symbols below size, errors in explanatory wording