

Before the Film and Publication Appeal Tribunal.

In the matter between:

Megarom Interactive

and

The Film and Publication Board

7/2012

Award

Skylanders Giants

Professor Karthy Govender

This electronic game is a sequel to the original 'Skylanders' and, like its predecessor, is about the struggle of good over evil. Giants, after having fought battles thousands of years ago, were banished from Skyland. The object appears to be to bring them back so that they can join forces with Skylanders and save Skyland. A fantastical world is created, with the players having to go through challenges, accumulating points in order to save people. Many of the characters are comical, and the players who assume the role of various Skylander characters are assisted by a narrator and a narration that appears on the screen. It was common cause that there are frequent scenes of comic and unrealistic violence. The sound effects sometimes conveyed the impact or consequence of the violence, but neither blood nor gore is portrayed. Much of the action was presented against a comic, fantastical and unrealistic background.

After a demonstration on the 29th of June 2012, a three-person classification committee decided that the game should be assigned a 13(V) classification. The examiners were concerned about the frequency of the mild cartoon violence and by the themes which, in their opinion, could be disturbing to children. They concluded that the themes and the frequency of the violence

may have an impact which may be disturbing to children. After discussion, the classification committee settled on a classification of 13(V).

The appellants simply state that they are unhappy with the classification and are of the opinion that it is too restrictive, as this was a game designed for and targeted at children. They indicated that this game is not much different from the predecessor, which received a PG classification. They request a similar classification for this game.

In a previous award¹, we indicated our concern about the process of classifying games without having an expert demonstrate aspects from the various levels of the game, and we made various suggestions about how electronic games should be classified. In the award following the appeal against the classification of the electronic game 'The Secret World', we stated:

6. We recommend that the Legal Department, as a matter of urgency, conduct research on how other jurisdictions are classifying games and how they deal with the administrative challenges that go with it. This may provide useful guidance to us.
7. We were informed that these games are designed to enable the participants to progress to higher levels of complexity on the skills and abilities that they demonstrate. In order to comply with the legal requirements, specifically section 18(4) of the FPB Act, and to guard against an impossible administrative burden being placed on the Board, the following is suggested:
 - A) The distributors must in a written report accurately and fully describe the game and they are required to make full disclosure as to whether there any scenes or segments that may be harmful or disturbing to children. They must be notified that if there are any significant omissions and if these are subsequently drawn to the attention of the Board, then a different classification may be assigned to the game.
 - B) The classification assigned to the game in other jurisdictions must be placed before the classification committee by the distributor.
 - C) The distributors must, if it is possible, remove the bars preventing players graduating to more advance levels and they must ensure that a person familiar with the game demonstrates at least one hour of gametime to the classification committee. A reasonable explanation must be provided if the the distributors cannot comply with either of these requests.
 - D) The classification committee may require the demonstrator to display segments or scenes from different levels of the game, if they deem this to be necessary and if the nature of the game permits this.

¹ Appeal in respect of the electronic game 'The Secret World', 3/2012.

- 9) In examining the game, regard must be had to all these and any other relevant factors. We have not heard argument on the feasibility of the suggestions made, but in our opinion, they should not impose an undue burden on either the board or the distributors. These are suggestions and are not meant to prescriptive conditions. However it must be emphasized, that it is not legally permissible to examine the trailer and then classify the game without in anyway engaging with it. This is a matter that needs to be addressed urgently. Until guidelines are provided by Council and the Board, the suggestions provided in paragraph 8 of this award should be utilized.

In order to deal with the matter as fairly as possible, we decided that two of our colleagues on the Appeal Tribunal should attend a demonstration of the game. Prof K. Moodaliyar and Ms H. Devraj witnessed a demonstration on the 18th of August 2012 at the offices of Megarom Interactive. The game was demonstrated by Mr Jason Borea at the 'medium' level of complexity. The following is the essence of the report submitted by Prof Moodaliyar and Ms Devraj:

This game is multiplatform which means it can be used on any console (PS3, Xbox360 etc). The game comes with character figurines (one of which is the giant "Tree Rex") and a portal. To play the game the figurine is placed on the portal and transforms into the character on screen. The game is narrated by Master Eon, and the player is the portal master in charge of ensuring that the Skylanders are protected from the Arkeyans.

Mr Borea played the game to level 3 to show us what various characters look like, how they operate, and the different scene scenarios. There are about 15 levels in total. He explained that the game is still under development; he had been given a demo without all the codes to progress further in the game. This is due to the high security risk in maintaining the intellectual property before the game gets to market. The game is due to be released in South Africa in November.

Skylanders Giants is an animated game and a sequel to Skylanders. Most of the characters are the same as in the first game – about 30 in total, except for the fact that the new characters are giants. Characters are divided into various elements such as water, fire, life, undead, etc. Skylanders are the heroic characters in the game. The game has a monotonous melody throughout the levels, and the player is guided by a narrative and subtitles.

The Giants represent different elements such as Life, Air, Magic, etc. Tree Rex, for example represents "Life". The write-up on Tree Rex is as follows: "Long before the Giants protected Skylands, Tree Rex was a majestic tree living peacefully in the ancient woods. But this tranquil existence came to an end when the Arkeyans built a nearby factory to produce war machines. After years of his soil being poisoned by the magic and tech waste from the factory, he mutated into who he is now – a powerful Giant who will crush anything that threatens the natural order of things." Tree Rex therefore uses his arms to destroy the evil characters.

The difference between the Skylanders and the Skylanders Giants is that the giants are bigger in size and also have greater powers. The giants are able to open new areas of the Skylander world, able to pick up large objects, pull Skylander islands together, and are stronger yet slower than the other characters.

- Theme: Good against evil.
- Objectives: Giants are required to help rescue the Skylanders from the evil genius. There are also other puzzles and items or treasures to pick up along the way. The prizes once the objectives are completed are items such as hats, cloaks, music players, and new or enhanced powers. The prizes allow the player to transform their characters, thus making their Skylanders characters look unique and differentiated compared with those of their friends. One of the protagonists that was viewed was the character named Kayus. Kayus was in no way intimidating or scary: rather, his face is painted in colours of black and blue. Furthermore, he is portrayed in quite a humorous manner. There is nothing dark or scary about any of the characters.
- Violence: The Skylanders hold different weaponry. For example, Gill Grunt carries a spear gun and water gun. He pushes things out of the way, shoots the water gun at the bad guys to save his friend, and defeats the enemies to open a gate to free the Skylanders. Another character, Spyro, flies and shoots fire. The evil characters are tiny little jumping objects that do not look very threatening. The giants use their strength to pick up large objects and bash through walls. Chop Chop, one of the undead characters, uses a sword to get through his obstacles.

The violence is not explicit. If a character is defeated, the player is told that the character is “resting” and the character merely disappears from the screen. The narrative is not at all threatening or violent. For example, the narrative said that the evil character is “getting angry” and “getting really angry”.

As the levels progress the scenery changes with different puzzles and tasks and new creatures. The concept and theme appear to remain the same through the levels. The game lacks complexity, and appears to be aimed at young children. Even when the Skylanders defeat their opponents, the characters disappear. There is no blood. The game has the same, somewhat monotonous theme, of ensuring that different giants are used in different scenarios to destroy the evil characters. For example, the character Flynn is humorous and funny. Our impression was that the parts of the game that we viewed would be not be scary to children.

DVDs containing ‘vidcaps’ of parts of the game were sent to the rest of the panel. After viewing the excerpts, the panel discussed this appeal during a teleconference held on the 7th of September 2012. It was the view of the panel that the scenes/segments would not be particularly threatening to children. However, there were a number of issues that caused us concern. Prof Moodaliyar and Ms Devraj were informed that only three levels of a 15-level game were available to be viewed. They were told that some of the stages had not as yet been developed. It is generally accepted that the complexity and intensity of the game and the action increases as the player graduates to the

higher levels or stages. We must therefore assume that the action is likely to be much more intense at level 15 than at level 3.

We attempted to ascertain the classification assigned to the game in other jurisdictions, and were not able to ascertain this conclusively. The US-based Entertainment Software Rating Board assigned this game a rating of E10+, which indicates that the game is suitable for “everyone 10 or older”. We assume that the fact that the game is still incomplete is the reason for the dearth of classifications.

The classifiers were obliged, as is the Appeal Tribunal, to use the 2009 guidelines² to classify this game, as these are the guidelines that are currently operative. These guidelines provide for four classification categories for interactive computer games: ‘PG’, ‘13’, ‘16’, and ‘18’. It was clear that the only classification that could be reasonably applicable to this game was either ‘PG’ or ‘13’, because those are the only relevant choices offered in the existing guidelines.

The ‘PG’ classification in respect of violence states that there may be minimal violence in playful, comic or highly stylized settings. According to the guidelines, a ‘PG’ classification is appropriate if the game contains nothing that could be considered harmful or disturbing to children of any age. By contrast, the ‘13’ classification in respect of violence states that sequences of mild violence may occur with the protagonist shown in unsafe or violent situations.

We cannot ignore the fact that an electronic game involves the players as active participants: they are not passive observers as is the case in DVDs or films. As in other similar electronic games, the players in this game are rewarded for overcoming obstacles and removing characters placed in their way. Given the participatory nature of electronic games, we cannot conclude that this game displays ‘minimal violence’. We acknowledge that the violence engaged in by the player is comical and unrealistic, but it is repetitive and constant. It cannot accurately be described as minimal. Given the stark choice between ‘PG’ and ‘13’, then a ‘13’ classification would be more appropriate.

Further, given that the later stages of the game are still to be developed, and are likely to be more intense and possibly more threatening, we cannot conclude with confidence that this game contains nothing that could be considered harmful or disturbing to children of any age. In the circumstances,

² *Government Gazette*, 1 September 2009, No. 32542.

we are of the opinion that the classification of '13' would be most appropriate if a classification is required immediately.

The new classification guidelines, which have been submitted to the Minister of Home Affairs for approval, afford a greater degree of flexibility, defining other classification categories between 'PG' and '13'. This would allow the Appeal Tribunal wider discretion, as it would then be possible to assign to assign 'PG', '7-9PG', '10', '10-12PG', or '13' classifications.

However, we suggest that the following proposal be put to the distributors of this game by the acting Head of Classification:

- 1) This application be held in abeyance until the game has been substantially completed and the distributor provides information as to the classification assigned to the game in other countries.
- 2) The application be re-considered when the new classification guidelines have been promulgated.

If the applicant agrees to suspend this application temporarily, this application can be referred directly to the Appeal Tribunal for a final decision once the game is completed and the new guidelines have been promulgated.

If the applicant requires a classification immediately, a restrictive age classification of 13(V) will be assigned to the game.

In the circumstances the following ruling is made:

Decision:

- a) **If the applicant requires an immediate ruling, the electronic game 'Skylanders Giants' is assigned a restrictive age classification of 13(V).**
- b) **If the applicant is prepared to hold this application in abeyance until the new classification guidelines are promulgated and until the game is substantially completed, the pending application can be referred directly to the Appeal Tribunal for reconsideration in terms of the guidelines that are operative at the time.**

Dated at Durban on the 14th of September 2012.

Concurred by:

1. Adv. D. Bensusan
2. Ms H. Devraj
3. Revd M. McCoy
4. Prof K. Moodaliyar