Submission in response to Review of Australian Classification Regulation

February 26, 2020

The Australia New Zealand Screen Association (ANZSA)[1] appreciates the opportunity to respond to this consultation document. Our members are responsible participants in the screen content eco-system**.** ANZSA's members produce and distribute content in Australia in all release windows, including theatrical, pay and free TV, digital and physical home entertainment, and subscription VOD, and two of our members now also provide direct-to-consumer streaming services in Australia (Netflix and Disney+). They are responsible participants with a long track record of compliance. We also note that in the United States our members, through the Motion Picture Association, run a voluntary classification scheme that has proven to deliver consistent outcomes and met consumer expectations.[2]

ANZSA suggests competitive neutrality should be a guiding principle for consideration by the Department when considering the scope of content that should be required to be classified.

ANZSA notes that this consultation implements a recommendation made by the Australian Competition and Consumer Commission's Digital Platforms Inquiry. The terms of reference for the ACCC's Digital Platforms Inquiry were limited to the effect of digital search engines, social media platforms and other digital content aggregation platforms on the state of competition in media and advertising services markets, in particular, in relation to the supply of news and journalistic content and the implications of this for media content creators, advertisers and consumers.

The ACCC found that media regulation disparity can distort competition by providing some digital platforms with a competitive advantage. To address this finding, the ACCC recommended a process to implement a harmonised media regulatory framework.

The consultation paper proposes to reform regulation of those services or formats that take editorial responsibility for their content and proposes to leave unregulated those players, including YouTube and Snapchat, that do not take the same level of responsibility for produced content on their platforms. This proposed regulatory asymmetry would exacerbate a distorted market in a manner contrary to findings of the Digital Platforms Inquiry and the recommendations made by the ACCC to address this exact problem in the first place.

ANZSA further notes that the industry competes with pirate sites that do not face the same regulatory or taxation obligations our industry does. These pirate sites free ride on the industry's investment. In contemplating any regulatory approach, consideration must be given to this regulatory asymmetry between those subject to classification obligations and other legitimate services not subject to classification obligations, as well as pirate sites.

[1] See Appendix 1 for more information about ANZSA's members.

[2] Nielsen Parents ratings Advisory Study – 2015, CARA, <https://www.motionpictures.org/wp-content/uploads/2015/11/Parents-Rating-Advisory-Study-2015.pdf>

Question 1 – Are the classification categories for films and computer games still appropriate and useful? If not, how should they change?

With respect to classification categories, ANZSA notes the current classification categories are working well and have strong level of recognition by Australian consumers.[3] The classification categories are, mostly, internationally compatible with similar classification categories in comparable markets (e.g. New Zealand, the United Kingdom, the United States).

ANZSA has sighted the MPDAA submission and supports their recommendation to introduce a PG13 rating.

Question 4 - Considering the scope of entertainment content available in a modern media environment, what content should be required to be classified?

ANZSA suggests that all produced content should be treated equally with a view to ensuring that content should only need to be classified once, regardless of platform, and that all platforms should face a level playing field.

The ACCC Digital Platforms Inquiry Final Report recommended a focus on content rather than platforms or format type:

> "Developing a coherent regulatory framework is important to competition and innovation in the media sector and the existing system requires reform. As noted in the ALRC Classification Report:
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> > In the context of media convergence, there is a need to develop a framework that focuses upon media content rather than delivery platforms, and which can be adaptive to innovations in media platforms, services and content. Failure to do so is likely to disadvantage Australian digital content industries in a highly competitive global media environment."[4]

The challenge for the Department is how to adapt these policy objectives into a regulatory framework that regulates professional, commercial content, encompasses all delivery methods, and has ease of compliance for industry.

A broad content definition would bring many services within scope that may affect compliance rates, whereas a format-based approach, as proposed by the consultation paper, is inconsistent with previous reviews.

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[3] <https://www.classification.gov.au/sites/default/files/2019-10/classification-ratings-research-with-the-general-public.pdf>

[4] ACCC, Digital Platforms Inquiry Final Report, p 202.

Moreover, a format-based approach would exclude YouTube and Snapchat, both of which have partnered with Screen Australia to produce professional, scripted commercial content that rightly should be subject to the same media regulation as other forms of distribution.[5]

The Department may consider an inclusive definition of content which might have criteria such as professionally produced, narrative arc, length (e.g. more than 10 minutes) and source of funding (i.e. whether funding from any state, territory or federal government), as well as whether the content has been produced for commercial exploitation and distribution. Use of freely-available online classification tools and endorsed self-regulation would assist ease of compliance.

Question 5 – Should the same classification guidelines for classifiable content apply across all delivery formats (e.g. television, cinema, DVD and Blu-ray, video on demand, computer games)?

ANZSA supports the principle that the same classification guidelines apply across all delivery formats for the same type of content. We ask the department to consider a media-centric definition as per our response to Question 4 as a way to give effect to that.

ANZSA does not represent our members interest in computer games, and as such do not express an opinion as to whether the guidelines for games should be identical or not.

Question 6 – Consistent with the current broadcasting model, could all classifiable content be classified by industry, either using Government-approved classification tools or trained staff classifiers, with oversight by a single Government regulator? Are there other opportunities to harmonise the regulatory framework for classification?

Industry self-regulation is consistent with the concept of editorial responsibility and has a history of success, both domestically on broadcast television and internationally. ANZSA strongly supports the principle of industry self-regulation and being afforded flexibility in classification methodology, whether through Government-approved classification tools, trained staff classifiers or a combination thereof. Flexibility in classification methodology would increase compliance and trust in the system, particularly if the Government decides on a broad content definition.

Moreover, the most efficient allocation of resources for classification decisions is self-classification, which allows classification processes to be factored into production and distribution timelines. This is especially relevant given the vast volumes of content being made available through online services, as this would ensure Australian users are able to access original content at the same time as viewers around the world.

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[5] *Screen Australia announces over $500,000 for five online productions*, February 3, 2020 <https://www.screenaustralia.gov.au/sa/media-centre/news/2020/02-03-500-000-for-five-online-productions>, *Screen Australia and Snapchat to develop two scripted series*, January 28, 2020, https://www.screenaustralia.gov.au/sa/media-centre/news/2020/01-28-screen-australia-snapchat-develop-two-script. Indeed, some Screen Australia-supported YouTube content has been viewed far more than Screen Australia-supported theatrical content. 60% of all Australian films released in the past 5 years did not exceed a box office taking of $100,000 (source; MPDAA box office data). Based on an average ticket price of $14, that equates to just over 7,000 admissions. Compare that to, for instance, *the RackaRacka*, recipients of the Screen Australia/YouTube Skip Ahead program in 2016, who have created videos that have cumulatively been viewed 912 million times, and who have 5.98 million subscribers (numbers correct as of February 3, 2020, source: https://socialblade.com/youtube/user/therackaracka)

One of the problems with the current system is regulatory overlap, with ACMA, the Classification Board and the Review Board all regulating various content delivery methods for the same piece of content. A single Government regulator is a common-sense approach to achieve media harmonisation and one of the recommendations of the ALRC Review.

See answer to question 8 below on further opportunities to harmonise the regulatory framework for classification.

Question 7 – If a classification decision needs to be reviewed, who should review it in a new regulatory framework?

ANZSA does not support any increase in regulatory burden arising from Government efforts to stabilise and harmonise regulation across platforms. ANZSA notes the review process that free-to-air television broadcasters follow starts at first instance with a complaint to the broadcaster and then if the complainant is not satisfied, they may take their complaint to the ACMA. This model is one that may be expanded to all industry participants that self-classify, with the Government regulator the final decision maker. Any fees payable for a review by the Government regulator must be proportionate and shared between complainants and the Government regulator.

Question 8 – Is the current co-operative scheme between the Australian Government and the states and territories fit for purpose in a modern content environment? If not, how should it be changed?

The current system is not fit for purpose in a modern content environment. A harmonised media regulatory environment requires harmonised law. Currently, classification laws are not harmonised or enforced evenly across the states and territories. The ALRC found there is scope for the Commonwealth to enact federal classification laws and a new classification system should be regulated at a Commonwealth level.

Question 9 – Are there other issues that a new classification regulatory framework needs to take into account?

ANZSA does not support any increase in regulatory burden arising from Government efforts to stabilise and harmonise regulation across platforms. Any increase in regulatory burden on legal industry players will benefit piracy and other illicit sites. Imposition of fees and an increase in regulatory burden in connection with industry self-classification would negatively impact competitive neutrality. It would be inequitable to impose fees and regulatory burden on some industry participants and not others.

Distributors and the larger streaming services are investing hundreds of millions – if not billions – more than they generate in revenue at this stage of their lifecycle. Any classification costs imposed further increase the risk profile of this investment. The imposition of additional classification costs would reduce the number of titles being made available legally in Australia. Releasing a title into Australia is a commercial decision based on potential return for that title and the cost of classification is a factor in making this decision.

Several of our members also operate physical home entertainment distribution companies which are in long-term decline as consumer consumption migrates to online models. The high costs currently imposed on them have a direct impact on the breadth of new titles that can be made available in the traditional home entertainment distribution model. This would negatively affect the wellbeing of less affluent or regional and remote Australians who do not have the capacity to invest in the technology or ongoing cost of broadband subscriptions which are necessary to use online curated content services.[6]

Where industry self-classifies content under its own accredited system and bears the cost of self-classification (including costs related to their classification-related software tools and/or training or employment of in-house classifiers), ANZSA recommends the Government regulator shoulders the burden of costs related to the oversight and review of the framework. In addition, where a classification decision is reviewed and affirmed by the Government regulator, ANZSA suggests no cost should be passed on to industry. With respect to any quality assurance processes conducted by a Government regulator, consideration must be given to reducing regulatory and financial burdens of auditing compliant industry participants over time.

We have sighted the MPDAA's comment with regards to commensurate trailering and support their recommendation. The role of classification is to rate the content itself, in this case a trailer, and allow that content to be screened in an appropriate environment.

We thank you for the opportunity to contribute to this consultation process and would appreciate the opportunity for further consultation.

Sincerely,

Paul Muller

Chief Executive Officer

Australia New Zealand Screen Association

[6] 12% of Australians do not have access to a broadband internet connection, a number that has remained constant during the past four years. Source: Statista, <https://www.statista.com/statistics/680142/australia-internet-penetration/>

Appendix 1:

Australia New Zealand Screen Association (ANZSA) represents the film and television content and distribution industry in Australia and New Zealand. Its core mission is to advance the business and art of film making, increasing its enjoyment around the world and to support, protect and promote the safe and legal consumption of movie and TV content across all platforms. This is achieved through education, public awareness and research programs, to highlight to movie fans the importance and benefits of content protection. ANZSA has operated in New Zealand since 2005 (and was previously known as the New Zealand Federation Against Copyright Theft and the New Zealand Screen Association). ANZSA works on promoting and protecting the creative works of its members. Members include: Village Roadshow Limited; Motion Picture Association; Walt Disney Studios Motion Pictures; Netflix Inc.; Paramount Pictures; Sony Pictures Releasing International Corporation; Universal International Films, Inc.; and Warner Bros. Pictures International, a division of Warner Bros. Pictures Inc., and Fetch TV.