19 February 2020

Director, Policy and Research
Classification Branch
Department of Communications and the Arts
Locked Bag 3
Haymarket NSW 1240

Dear Sir/Madam

The Australian Subscription Television and Radio Association (**ASTRA**) appreciates the opportunity to comment on the Review of Australian classification regulation – discussion paper, released for comment in January 2020 (**Discussion Paper**).

Executive Summary

ASTRA supports the current co-regulatory approach to classification for subscription television, which devolves classification to industry under Codes, using common classification criteria and categories that are well understood by consumers, and which is administered via a complaints-based enforcement model under a single regulator.

Acknowledging the extensive burden already felt by the STV broadcasting industry in managing the classification of its content, ASTRA does not support any increase in the regulatory burden for broadcasters arising from Government efforts to stabilise and harmonise classification regulation across platforms. However, ASTRA does support greater consistency in the approach to classification and classification enforcement, and therefore supports the introduction of a single regulator to ensure consistency in the administration of the classification regulatory framework.

Further views covered in this response are:

- support the ongoing use of industry classifiers in classifying subscription broadcast content;
- no support for any increase in regulatory burden arising from Government efforts to stabilise and harmonise regulation across platforms;
- support a "classify once" for all platforms approach;
- support existing classification categories and classifiable elements; and
- support existing requirements for which genres must be classified.

Background – STV industry classification framework

Current arrangements for the classification of content provided on subscription television are set out in the ASTRA codes of practice, which are registered by the ACMA under section 123 of the *Broadcasting Services Act 1992* (**BSA**).

The Codes provide for the application of the classification system contained in the Guidelines for the Classification of Films of Computer Games (the **Guidelines**), the legislative instrument under which the Classification Board classifies films for cinema-release, DVDs and computer games. This ensures consistency between classification decisions across platforms and ensures that STV viewers are familiar with the classification symbols provided.

As an aside, we note that the above described regulatory requirements and industry practice contradicts the incorrect statement in the Discussion Paper that:

> *Under broadcasting codes of practice, Free TV Australia (Free TV), the Australian Subscription Television and Radio Association (ASTRA), ABC and SBS each use their own classification guidelines…[1]*

Classification decisions are made internally by industry employed classifiers, who classify in accordance with the Guidelines and the Codes. These decisions are subject to the complaints based mechanism found in the ASTRA Codes, which are also reviewable by the ACMA (see below for more information regarding the complaints mechanism).

Further, under the Codes:

- Films, drama programs, documentaries and reality television programs must be classified;
- A classification symbol must be displayed at the commencement of programs and in program guides, for programs classified PG or higher; and
- Consumer advice providing reasons for the classification must be given at the commencement of programs classified M or MA15+.

The STV industry also has a strong business interest in providing reliable classifications and targeted consumer advice to ensure subscribers remain satisfied with the service to which they are subscribed. For example, while STV licensees are only required to classify films, drama programs, documentaries and reality television programs under the Codes, STV licensee Foxtel exceeds its base regulatory requirements and classifies all content on its platform (other than news, sport and music), largely as a service benefit for its customers.

Industry classifiers

Industry classification has significant benefits for both consumers and the broadcasting industry at large. These benefits largely relate to cost and time-saving efficiencies as product familiarity means that content can be classified in both a timely, comparatively

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[1] Page 9, Review of Australian classification regulation – discussion paper, published for comment in January 2020.

cheap and accurate fashion. In addition, industry classification is particularly important in the broadcast TV industry where pressing timeframes and voluminous quantities of content mean that the use of external classifiers is impractical.

Industry classifiers are also highly experienced and technically trained, ensuring that not only is content classified in an efficient fashion, but that classification is applied accurately and consistently across products, resulting in significant consumer benefit.

Co-regulation

Co-regulation remains the most effective and efficient model for broadcasting classification regulation. A scheme facilitating the ongoing development of industry codes of practice, supported by a legislative framework, allows rules to be updated flexibly as community standards evolve, and it is on this basis that ASTRA strongly supports the ongoing role of industry-developed codes of practice.

Under the Codes, complaints about compliance with the classification and consumer advice provisions, are first to be made to the broadcasting licensee. Complainants can also refer the complaint to the ACMA if no response is received from the licensee within 60 days, or if the complainant is dissatisfied with the response they receive from the STV licensee. This process of allowing the community to lodge complaints about program classifications works well to identify matters of concern and ensure that community expectations are met, and also ensures that industry manages its relationship with its customers and the broader community appropriately.

ASTRA strongly supports the retention of a co-regulatory arrangement under which the licensee remains the first port of call for customer complaints. This is particularly important for STV providers who have a business interest in ensuring that customer complaints and queries are dealt with effectively and efficiently. The use of a complaints based model also ensures that STV providers remain adept at responding to community concerns and also across issues of greater public concern.

Low classification complaint numbers support ASTRA's argument that the current STV classification regulatory framework is operating well for viewers.

For example, from 1 January 2019 to date, STV provider Foxtel has only received 21 complaints relating to classification, with zero classification complaints received by Foxtel since 1 January 2020. To put these figures into perspective, in FY19 Foxtel broadcast approximately 500,000 hours of classifiable content on its linear broadcast platform. This means that in 2019 Foxtel received only one classification complaint for approximately every 23,809 hours of classifiable content that was broadcast.

"Classify once" approach

Noting discussion in the Paper regarding the harmonisation of classification regulation, ASTRA supports a "classify once" for all platforms approach.

Such an approach would make clear that content classification requirements need only apply once along the production and distribution chain and that once already classified content should not have to be reclassified for other platforms. With the distribution of video and broadcast content across multiple platforms, a "classify once" approach would

result in significant efficiencies for content acquirers and distributors.

Single regulator

ASTRA supports the establishment of a single regulator responsible for enforcement of classification decisions, on the proviso that the complaints-based model is retained for broadcasters. Given the multitude of distribution platforms on which classifiable content may now be accessed, it is difficult to understand how the review of classification decisions and complaints is undertaken in an efficient and consistent manner under the current classification enforcement model.

ASTRA's view is that for the sake of both efficiency and licensee certainty, it would be more efficient to have a single regulatory agency responsible for administering any revised regulatory framework for classification and assessing compliance and, where necessary, taking enforcement action in relation to classification of content across all media platforms.

Classification categories

ASTRA considers that the current classification categories are thoroughly understood by the community, and whilst specific changes to the categories are not proposed by the Discussion Paper, ASTRA wishes to clarify that it opposes any changes to the existing categories.

ASTRA's key reasons for opposing any change to the classification categories are:

- The extensive cost and practical impact of implementing any new categories, particularly without any identifiable public policy reason to introduce any such change. Category changes will result in the imposition of significant costs on broadcasters, and other media providers, who would be required to adjust systems and processes and also re-train staff.

- The potential confusion which would be caused to the community by implementing any change. The current classification categories are both well established and well understood by the broader community, and any change to their structure will involve an enormous effort in terms of re-educating the public as to the application of the new categories.

ASTRA's responses to the relevant specific questions contained in the Discussion Paper are provided in **Attachment A** to this submission.

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Yours sincerely

Holly Brimble
Regulatory and Policy Manager

<u>**Attachment A**</u>

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

   The current classification categories are well understood and ASTRA supports their retention. Please refer to the attached cover letter for ASTRA's reasons for opposing any changes to the current classification categories.

2.
   a. **Do the provisions in the Code, the Films Guidelines or the Computer Games Guidelines relating to 'themes' reflect community standards and concerns? Do they need to change in any particular classification category or overall? Are 'themes' understood and is there sufficient guidance on what they mean?** Support existing requirements.

   b. **Do the provisions in the Code, the Films Guidelines or the Computer Games Guidelines relating to 'violence' reflect community standards and concerns? Do they need to be changed in any particular classification category or overall?** Support existing requirements.

   c. **Do the provisions in the Code, the Films Guidelines or the Computer Games Guidelines relating to 'sex' reflect community standards and concerns? Do they need to be changed in any particular classification category or overall?** Support existing requirements.

   d. **Do the provisions in the Code, the Films Guidelines or the Computer Games Guidelines relating to 'language' reflect community standards and concerns? Do they need to be changed in any particular classification category or overall?** Support existing requirements.

   e. **Do the provisions in the Code, the Films Guidelines and the Computer Games Guidelines relating to 'drug use' reflect community standards and concerns? Do they need to be changed in any particular classification category or overall?** Support existing requirements.

   f. **Do the provisions in the Code, the Films Guidelines or the Computer Games Guidelines relating to 'nudity' reflect community standards and concerns? Do they need to be changed in any particular classification category or overall?** Support existing requirements.

3.
   a. **What aspects of the current Code, Films Guidelines or Computer Games Guidelines are working well and should be maintained?** Support existing requirements.

   b. **Are there other issues that the Code, the Films Guidelines and/or the Computer Games Guidelines need to take into account or are there any other aspects that need to change?** Support existing requirements.

4. **Considering the scope of entertainment content available in a modern media environment, what content should be required to be classified?** No comment.

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)?**

   There should be consistency in the assessment and classification of content across platforms.

   ASTRA considers that platform-neutral guidelines are appropriate for classification categories. However, in relation to other community safeguards, careful consideration should be given to both the unique features of each media platform and the way in which consumers use them. E.g. classification time zones whilst appropriate for some platforms, are inappropriate for others.

   As outlined in the attached cover letter, ASTRA also supports a "classify once" for all platforms approach.

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?**

   As outlined in the attached cover letter:

   - ASTRA supports the establishment of a single regulator responsible for the administration and enforcement of classification decisions, on the proviso that the complaints-based model is retained for broadcasters.
   - ASTRA is also highly supportive of industry self-classification for broadcasters, and would support the industry classification of all classifiable content.

   However in light of the effectiveness of the current broadcaster classification model, we don't believe that a case is made out for any additional regulation. As we have noted above very few classification issues arise for STV broadcasters, which is a clear indication that the current broadcaster classification model functions effectively for both STV providers and the community.

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

   As outlined in the attached cover letter, the same single regulator should be responsible for the final review and enforcement of all classification decisions.

   However ASTRA also strongly supports the retention of a co-regulatory model for the reasons outlined in the cover letter.

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?** No comment.

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

   ASTRA cautions against any recommendation that requires separate classification codes and/or code development processes.

   Any such recommendation is strongly opposed as it is likely to result in an increase in resources required in broadcast regulation more generally and most significantly, industry codes may then no longer be a 'one-stop-shop' for consumers and industry, as different provisions may be set out in different instruments registered at different times.

   Please also refer to ASTRA's response above to question 6 regarding the importance of retaining the status quo for STV classification regulation.