

Submission to the Review of Australian classification regulation

Kurt Bryant – 19 February 2020

The current classification scheme, as far as it applies to online content, is largely unworkable and currently has low levels of compliance. This submission will look at how the use of approved classification and trained content assessors could improve compliancy in the fast-growing online media industry. It will analyse how streaming services currently classify content and will look at the impacts the use of tools such as the Netflix classification tool and IARC classification tool have had and how they compare to decisions by the Board.

This submission will suggest that the use of classification tools and trained content assessors be expanded in order to maintain the confidence and integrity of the Australian classification system.

Classification processes

Currently, compliance with classification laws outside of physical media is poor. While some streaming services ensure content is classified by the Board prior to its publication, the extent to which this occurs is limited, and often the classification and consumer advice provided by the Board are not displayed alongside the content regardless.

Netflix is in an advantageous position when compared to other streaming services given its ability to self-classify content using the approved Netflix classification tool. Other streaming services, which also provide vast libraries of content, do not have this flexibility.

Given the immediacy of publication by streaming services of content following its initial release, it may be impractical for the service to have the content classified by the Board if it wishes for the content to be published in a timely manner. Streaming services providing content from international suppliers may only have access to the content itself shortly prior to publication. Likewise, it is illogical to require free to air catch up TV services to obtain Board classifications for content while they can self-classify content for terrestrial broadcast.

Below is an analysis of other streaming services to ascertain what level of compliance with the classification laws is adhered to within the industry.

- **Stan**

Stan appears to correctly have its original TV series and films classified by the Board with recent productions such as the *The Gloaming*, *Bloom*, *True History of the Kelly Gang*, and *Romper Stomper* all being given classifications by the Board prior to their release through the service.

However, other Stan content is presented with a classification and consumer advice despite not having been classified by the Board or an approved tool. *The Loudest Voice* is classified MA15+ with the consumer advice "Strong threat of sexual

violence, Themes, Coarse language". *Looking For Alaska* is classified M with the consumer advice "Coarse language, Themes, Bullying, Suicide themes, Sexual references, Drug use". Neither of these productions has a classification within the classification database.

- **Disney+**

Disney+ appears to display the correct classification as determined by the Board for much of its content. However, it only displays a single classification for an entire TV show, whereas the Board typically classifies TV series per season based on a physical media release. For instance, it lists *The Simpsons* as being classified G, while the Board classified the physical release of some seasons as having a higher maturity rating than this. For instance, *The Simpsons* season 17 was given an M classification with the consumer advice "Sexual references, mature themes, animated violence, drug use and coarse language".¹

Other Disney+ content such as *The Mandalorian* are given a classification by Disney+ despite there not being one recorded in the classification database. This suggests Disney+ is self-classifying content.

Regardless of whether content is classified by the Board or self-classified, Disney+ does not provide any corresponding consumer advice.

- **Amazon Prime**

Amazon Prime within Australia uses its own age based "maturity rating" system, with a grid on its support website listing the corresponding Australian classification rating; All being G, 7+ as PG, 13+ as M, 16+ as MA15+, 18+ as R18+ and X18+.² It also provides a PDF which list its content and the corresponding Australian classification.³ Many items listed, such as *The Marvelous Mrs. Maisel*, appear to be classified by Amazon as they do not appear in the Australian classification database.⁴

- **Apple TV+**

Apple TV+ originals appear to have each individual episode classified individually by the Board. However, Apple TV+ only presents a single classification rating for the entire season of a TV series, with *Morning Wars* S1E3 given an M classification by the Board, but presented as MA15+ by Apple TV+.⁵ Apple TV+ does not present the Board's consumer advice.

¹ "THE SIMPSONS SEASON 17", *Australian Classification*
<<https://www.classification.gov.au/titles/simpsons-season-17>>.

² "Maturity Ratings", *Prime Video*
<https://www.primevideo.com/help/ref=atv_hp_nd_cnt?nodeId=GFGQU3WYEG6FSJFJ>.

³ "Australian Maturity Ratings for Prime Video Content", *Prime Video* <<https://s3-us-west-2.amazonaws.com/av-maturity-rating-customer-documentation/AU+Maturity+Ratings+Documentation/Australia+Maturity+Ratings+for+Prime+Video+Content.pdf>>.

⁴ The Marvelous Mrs. Maisel Season is given the classification M with consumer advice "Brief Nudity, Sexual References, Drug References".

⁵ "MORNING WARS - EPISODE 103", *Australian Classification*
<<https://www.classification.gov.au/titles/morning-wars-episode-103>>; "Chaos is the New Cocaine"

- **YouTube**

For its original series productions, YouTube obtains classifications for its content from the Board. For example, the YouTube series *Retro Tech* has 6 episodes, with each classified separately by the Board.⁶ YouTube presents the classification rating to consumers but does not provide the associated consumer advice.

- **Television network catch-up services**

ABC iView appears to label content with the classification it was given upon its television broadcast. *Frayed* for instance is labelled with an M classification on some episodes and an MA classification on others. The consumer advice provided on iView is various combinations of “coarse language, sexual references, sex scenes”. The classification given by the Board upon its DVD release is, however, MA for the entire season 1, with the consumer advice “Strong violence and coarse language”.⁷

Among the other television network associated streaming services, 9Now, Tenplay, and 7plus all provide a classification rating but no consumer advice, while SBS On Demand provides classification ratings and consumer advice somewhat consistent with consumer advice present in the database when applicable. All five television network streaming services appear to use the classification determined by the network according to its code of practice, even if that same content has since been classified by the Board.

- **Online game classification**

Compliance with classification laws for online and mobile video games has improved considerably since the introduction of the IARC classification tool. Among the platforms that support it, compliance is nearly universal. For an unknown reason, the largest mobile app store, the iOS App Store does not support IARC classifications and instead uses its own age-based rating system.

Should an industry classification model be considered?

The current somewhat disparate levels of compliance with classification laws is likely to lead to poorer outcomes for consumers.

The use of classification Board classification ratings gives consumers the confidence that content is classified in accordance with Australian classification law, whether this be by the Board or through approved tools or in accordance with code of practices approved by the ACMA.

Apple TV+ <<https://tv.apple.com/au/episode/chaos-is-the-new-cocaine/umc.cmc.46jj9umm1yreelsiofjquc1ym>>.

⁶ “RETRO TECH - EPISODE 101 – WALKMAN”, *Australian Classification* <<https://www.classification.gov.au/titles/retro-tech-episode-101-walkman>>.

⁷ “FRAYED - SEASON 1”, *Australian Classification* <<https://www.classification.gov.au/titles/frayed-season-1>>.

When these classification labels are used incorrectly in ways that don't correspond to existing classification decisions or in accordance with approved guidelines, this could reduce consumer confidence in the classification system.

The current classification system is unworkable for the large amount of content that is currently available. This has previously been recognised in relation to mobile video games which lead to the introduction of the IARC tool. Likewise, Netflix's use of a non-standard classification system prompted the introduction of the Netflix classification tool, allowing Netflix to comply with classification laws without the burdensome cost of having the bulk of its catalogue classified by the Board.

Much of the streaming industry has already appeared to have moved to a self-classification model, currently not in compliance with the classification laws, with popular services Stan, Disney+, Amazon, and free-to-air catchup TV services all self-classifying at least some of their content. Where compliance does exist, the classification given by the Board is not always correctly presented to the consumer, and often consumer advice is completely excluded.

If an approved industry self-classification model was implemented, many of the current issues could be avoided. Compliance would likely be significantly higher due to reduced cost and logistical issues, and consumers would have greater confidence that the classification provided would be in-line with the classification guidelines. Likewise, greater clarity as to how classification rating and consumer advice information ought to be presented to consumers via an online platform would lead to greater certainty among consumers as to the availability of this information.

Efficacy of self-classification

While there is a level of concern about the accuracy of an industry lead classification model, on the available evidence, the use of self-classification tools appears to lead to good results. The two approved tools within Australia's classification system appear to produce classifications ratings and consumer advice broadly consistent with that of the Board.

Similarly, industry classification for broadcast television is largely uncontroversial with low levels of complaints by consumers.

Classification tools

- **Netflix classification tool**

Following the introduction of the Netflix tool, the Board conducted an "evaluation phase" audit of 127 different titles, to ensure the tool was generating classifications in-line with the relevant guidelines. Of the 127 titles audited, 117 received an identical classification rating by the Board, with five receiving a classification one level higher, and five receiving a classification one level lower.⁸ No titles were given classifications by the tool more than one level away from the classification determined by the Board. The Board also determined that nine of the 127 titles audited received consumer advice from the tool that was not broadly consistent with

⁸ *Report on the Pilot of the Netflix Classification Tool* (August 2018) 9.

the consumer advice it determined.⁹ This evaluation phase audit showed the tool was generating classification largely consistent with what the Board would determine. Consistency during an earlier diagnostic phase of the tool's implementation was significantly lower.¹⁰ However, as this initial phase of the trial of the Netflix tool was aimed at improving the logic of the tool, this should be disregarded.

As part of an ongoing monitoring program following the pilot of the Netflix tool, the Board determined that 59 of 66 (89%) titles audited between 2018 and 2019 were 'broadly consistent' with how the Board would classify such content.¹¹ It determined that only 4 titles audited (6%) would have been given a higher classification by the Board.

- **IARC tool**

Following the implementation of the IARC classification tool for online and mobile video games, the Board conducted a random audit of 432 different titles, with 72 from each classification level including RC. Of the titles classified G by the tool, only 10% were given a higher classification by the Board. At higher classification levels, this accuracy is significantly lower with 40% of PG titles, 53% of M titles, and 82% of MA15+ titles being given a lower classification by the Board. All titles given an R18+ classification by the Board were given a lower classification upon audit, while 71 of the 72 refused classification titles were given a lower classification.¹²

However, only 7% of PG titles and 3% of M titles were given a higher classification by the Board, with no titles of MA15, or R18 receiving higher classification than was given by the tool.¹³

The Board considered this accuracy level to be acceptable given 82% of the nearly 500,000 titles classified by the tool at the time of the report were of G classification, with G having a 90% accuracy rate. It also considered that one of the risks identified in approving the tool, that the tool may provide a classification lower than required, was not realised given most of the incidences of misclassification were of over classification.¹⁴

Of the content classified G by the tool but a higher classification by the Board, the report set out that in the majority of cases this was due to the content in in-game advertising rather than the content of the game itself. Of the content overclassified, the report identified that this was largely due to over-declaration of content by game developers.¹⁵

⁹ Ibid 10.

¹⁰ Ibid 11.

¹¹ *Monitoring program for the Netflix Classification Tool 2018–19* (September 2019) 8.

¹² *Pilot of the International Age Rating Coalition (IARC) Classification Tool Final Report* (August 2016) ("IARC Report") 13.

¹³ Ibid.

¹⁴ Ibid 14.

¹⁵ Ibid 15.

The Board determined that only a small minority of consumer advice provided by the tool was “grossly incorrect or misleading”, but found the tool was limited in nuance in a majority of its consumer advice decisions.¹⁶

Improvements to self-classification tools

Many of the issues identified during the Netflix tool and IARC tool pilot periods are avoidable. Greater explanation in the questionnaires used within such tools would aid users of the tools in correctly identifying the levels and impact of types of content present within the material. Where differences between a decision by the tool and a decision by the Board appear, the logic of the tool can be improved to prevent such errors in the future. As noted in the IARC report, even decisions between different Board members can differ with many decisions being reached by majority decision.¹⁷ Given the subjective nature of classifying to a set of community standards, it cannot be expected that a classification tool will generate classifications with 100% accuracy.

Industry trained classifiers

There already exists a system of self-classification for broadcast television content, and a training scheme already exists for classifying certain types of content or to aid Board decisions.¹⁸ An expansion of such schemes to allow self-classification by the broader industry without the need to have all content classified by the Board is a desirable outcome.

A training scheme would ensure classifications are broadly consistent with decisions of the Board and would significantly reduce costs and barriers to entry or compliance.

Conclusion

Greater access to classification tools would allow others in the industry, outside of Netflix and mobile app stores, to quickly and cost-efficiently obtain classifications in-line the Australian classification guidelines for large amounts of content.

At present, the only content consistently in compliance with classification laws is physical media. As discussed above, while many streaming services and online content stores do display Australian classification ratings, many do not appear to be derived from Board decisions, and even fewer display the associated consumer advice.

Online is a regulatory grey area in the sense that while it is clear that classification laws apply to online content to the same extent that it does physical media, no action has been taken against the high levels of non-compliance. This is likely due to the inability of the Board to cope with the high levels of content classification such a move would present, and also due to fears about impacts such a move would have on the industry.¹⁹

The current non-compliant use of self-classification by streaming services such as Stan, Disney+, Amazon Prime, and free to air catchup TV services presents a danger that any failures in such decision making could reduce confidence in the Australian classification

¹⁶ Ibid 17.

¹⁷ Ibid 20.

¹⁸ “Content assessor training”, *Australian Classification* <<https://www.classification.gov.au/for-industry/content-assessor-training>>.

¹⁹ *IARC Report 3*.

system more broadly. Likewise, the use of alternate classification systems, such as the age-based system used by the iOS App Store, could lead to greater consumer uncertainty.

Having a greater amount of available content classified in-line with the Australian guidelines can only benefit consumers and ensure confidence in the Australian classification system.

An industry-wide classification tool, such as that used by Netflix, would ensure all services have equal access to a cost-efficient means of obtaining classifications in-line with Australian guidelines. Likewise, a training scheme for content assessors, would ensure any decisions made by people independent of the Board would be in-line with Australian guidelines.

Fears about under-classification of content appear to be unfounded given the results of the IARC pilot period where the bulk of content with higher classifications was overclassified due to over-declarations of content by developers.

In any case, oversight for such industry made classification decisions would exist regardless. In an industry self-classification model, reviews of decisions by classification tools or trained content assessors should be by the Board, as is currently the case, with the Classification Review Board or a similar body being given the power to review decisions of the Board itself.

Additional points

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

The definition for film content proposed in the discussion paper is desirable. However, some clarity should be given as to what constitutes a commercial video-on-demand service. For instance, it isn't clear whether a subscription-based service such as YouTube Premium be required to classify all content available under it. Nor is it clear whether an ad-supported streaming service such as Facebook Watch ought to have content classified under this definition.

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)?

Many films/series have multiple classifications depending on cut or additional content or physical format. This is confusing and unnecessary. If a different release contains content of no greater impact than that originally classified, reclassification is a costly and largely redundant exercise.

Usefulness of consumer advice

Consumer advice can be unhelpful where only one of the classifiable elements receives a strong impact level but receives moderate impact levels in relation to other elements. A film might be classified MA with the consumer advice "strong coarse language", but the presence of sex scenes, nudity, or violence of moderate impact goes unmentioned. This may give consumers the impression that the content contains only coarse language, whereas in reality other classifiable elements of lesser impact are present. This means

consumer advice serves no benefit to consumers who place different values on these different elements.