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Director, Policy and Research
Classification Branch
Department of Infrastructure, Transport, Regional Development and Communications

Via email: consultation@classification.gov.au

RE: Review of Australia's classification regulation

Introduction

Netflix appreciates the opportunity to provide our comments on the consultation paper reviewing Australia's classification regulation.

Netflix is supportive of the Government's goals for this review, ensuring that classification laws reflect the greater availability of content by a number of streaming providers, within a framework that ensures appropriate classification information for Australians and their families.

Appropriate classification is essential to the Netflix service, and to our members in Australia. Classifications and advisories assist parents making informed viewing choices for themselves and their families. Netflix also uses classifications to support our parental control features including-- in conjunction with human curators-- filtering content for Netflix 'Kids' profiles. Ultimately, content classifications and consumer advice are integral to our members enjoying the Netflix service.

Netflix's 'approved classification tool'

In 2015 a seismic shift happened in the way Aussies watch movies and tv shows. This was the year that several new streaming services launched in Australia, including Stan, Netflix and AnimeLab. Australians now had access to thousands of hours of content at home, and on their mobile devices and could access new seasons of globally popular shows like *Orange is the New Black* or *House of Cards* at the same time as the rest of the world. New entertainment services have continued to bring additional content offerings to Australian consumers, from DocPlay, YouTube Premium, Amazon Prime Video, to the recently launched Apple TV+ and Disney+.

The explosion of content suddenly available to Australians also posed challenges for the classification system. The amount of new content available outpaced the capacity of one entity to physically watch and rate content in the time needed to ensure that Australians were able to watch content at the same time as it was released across the globe.

New films and series are added to the Netflix service every month, many of which have never been previously classified. It is unfeasible to submit this volume of content for manual classification, or to evaluate content manually using a third-party tool.

This is why Netflix decided to work with the Government to design and implement a world-first classification tool for use in Australia, which enables Australians to receive local ratings and consumer advice on Netflix content. The Tool is designed to produce classification decisions that are in accordance with the Classification Act, the National Classification Code (the Code) and the Guidelines for the Classification of Films (Guidelines).

This means that Australians can watch films and series on Netflix at the same time as the rest of the world without placing an unnecessary burden on Australia's classification system.

Government evaluation of the Tool

In December 2016, the then Minister for Communications and the Arts approved a pilot of the Netflix classification tool to produce Australian classifications and consumer advice for films and television series available online in Australia via the Netflix service. The pilot was administered by the Department of Communications and the Arts (the Department) in consultation with Netflix and the Classification Board.

An evaluation of the pilot (conducted between December 2016 and May 2018) found that the tool generated classifications that were broadly consistent with Australian community standards and decisions of the Classification Board. Overall, the tool was found to be capable of producing classification decisions and consumer advice that adequately protect and inform Australian Netflix members about content in a film or television show. On this basis, the former Minister approved the tool for ongoing use on 17 October 2018.¹

A further recent evaluation of the Tool by the Australian Government found that the tool continues to provide classifications that “align with Australian community standards and consumer advice that informs the Australian public”.² It also found that Netflix has demonstrated an ongoing commitment to feedback on the tool and making the necessary adjustments to further align tool decisions with those of the Board.³

The importance of a flexible approach to self-regulation

Netflix's partnership with the Australian government to develop the Netflix classification tool is a good example of a best practice approach to self-classification, where Australian

¹ Department of Communications and the Arts, *Report on the Pilot of the Netflix Classification Tool*, August 2018.

² Department of Communications and the Arts, *Monitoring Program for the Netflix Classification Tool 2018-19*, September 2019. p4

³ p12

consumers can get timely access to accurate and appropriate classification information in a manner that does not place undue burden on the classification system from the volume of content available on our service.

Netflix is supportive of a flexible, harmonised approach to classification in Australia, which continues to support the capacity of organisations to self-rate content. Other providers may wish to use a different system, such as trained ‘in-house’ classifiers to watch content and provide an appropriate Australian classification and relevant consumer advice. It is important that the classification system is flexible enough to enable content providers to develop an approach to self-classification that works best for their business model, provided that such a system produces classifications and consumer advice that are reflective of Australian consumer standards and useful to Australian viewers.

Any such system should be supported by a complaints and oversight mechanism to ensure that Australians continue to receive accurate and localised information to inform the viewing choices of themselves and their families.

Providing consumer advice

Australia’s classification framework requires content to be labelled with an accurate classification (eg G, PG, M, MA15+, or R18+) and consumer advice (such as “violence” or “coarse language”). Consumer advice is an integral part of the classification system and essential to ensuring that people can make informed viewing decisions.

Netflix agrees that content providers should be required to provide Australians with a minimum standard of consumer advice (for example, to identify and advise consumers about the existence of a classifiable element present in a film or tv show). However, we believe the classification system should provide flexibility in the way consumer advice is provided, and not impose disincentives to provide the most accurate information to Australian consumers.

The current legal standard is that an “approved classification tool” (such as the Netflix classification tool) must operate in a manner that is “broadly consistent” with the Classification Board. We believe that there is merit in the Reviewer examining how this standard has operated in practice in relation to consumer advice generated by the Netflix tool, and whether the current legislative framework is incentivising the creation and display of the most accurate and comprehensive classification information in the interests of Australian consumers.

Consider a tv show that is given a classification of MA15+. It is likely that a show is given a higher level rating such as MA15+ due to the existence of multiple classifiable elements in the show. For example, it may have elements of violence, nudity, drug references, drug use, sex scenes, sexual references, other strong themes and coarse language. A show such as this

may cause a classifier or classification algorithm to identify perhaps 8 or more elements about which consumer advice could be generated.

Providing our members with accurate information about the content of shows they are considering watching is of utmost importance to Netflix. Netflix encourages the Reviewer to ensure that a new classification framework sets minimum standards for the consumer advice that must be shown to Australian consumers. This might include a limited set of essential advisories that must be displayed if the elements described are present in the content.

Currently, the Netflix tool is required to be capable of producing over 60 possible unique consumer advisories. Such a degree of specificity may not be necessary in all cases for a viewer to make an informed decision. For example, the Dutch Kijkwijzer system only uses six unique advisories: Violence, fear, sex, discrimination, drug and/or alcohol abuse and coarse language.⁴ The Korean Media Ratings Board uses seven: Themes, violence, horror, imitable behaviour, sex, profanity, and drug use.⁵

The Reviewer should also ensure flexibility in the manner this advice is provided. The system should not impose any regulatory disincentives or penalties for providing *additional* information to consumers to inform their viewing preferences and also ensure flexibility is provided in the way consumer advice is written. In some instances, the classification decision generated by the Netflix tool has been revoked by the Classification Board not because of an incorrect rating, but as the result of a variance in consumer advice information generated by the tool as compared to the Board's approach.

The recent Departmental monitoring report found:

In developing the Tool, the Board provided the Department with a list of consumer advice that is generally used by the Board. The Department provided this list to Netflix who calibrated the Tool to be able to produce the advisories on the list. The Board has greater flexibility than an automated tool to determine advisories and maintains discretion on the range of consumer advice at its disposal.

On occasion, as evidenced with the series, Chilling Adventures of Sabrina: Part 1 (Sabrina), the consumer advice generated by the Tool was represented differently to how the Board would formulate consumer advice. For this series, the Tool generated the consumer advice of 'Strong Horror Themes Strong Blood and Gore Strong Violence'. The consumer advice generated by the Board was 'Strong horror themes and violence'. Although, in this instance, the Tool has not produced consumer advice exactly like the Board's advice, the advice generated by the Tool provides information about the content of the series. Based on research^[7] about the comparative use of ratings and consumer advice, it is unlikely that such consumer advice, when viewed alongside the correct rating, would jeopardise a consumer's ability to make an informed choice about viewing the series for themselves or their children.⁶

⁴ <https://www.kijkwijzer.nl/about-kijkwijzer>

⁵ <http://www.kmr.or.kr/kor/CMS/Contents/Contents.do?mCode=MN091>

⁶ Monitoring Report p9

There were accurate classification decisions that were revoked solely on the basis of differences in consumer advice between the Board and the tool⁷. For example:

Title	Board rating	Netflix rating	Board consumer advice	Netflix consumer advice
Chicken Soup for the Soul's Being Dad	M	M	Coarse language	Coarse language, Mature Themes
Bilu Rakkhosh	M	M	Mature Themes	Violence, Coarse Language, Mature Themes
Dukhtar	M	M	Mature themes and violence	Violence, Mature themes
Angela's Christmas	G	G	General	Some scenes may scare very young children

We look forward to continuing to work closely with the Australian Government and the Department and would be pleased to discuss any of the issues raised in this response further if this would be of assistance.

Respectfully Submitted,

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⁷ Monitoring Report pp13-14