



Outdoor Media
Association Inc.

ADDRESS
SUITE 504
80 WILLIAM STREET
EAST SYDNEY
NSW 2011

PHONE
(02) 9357 9900

FAX
(02) 8356 9500

EMAIL
info@oma.org.au

ABN
59 004 233 489

15 July 2011

Australian Law Reform Commission
National Classification Scheme Review

By email: classification@alrc.gov.au

Dear Sir/Madam

Re: National Classification Scheme Review

Please find attached a submission from the Outdoor Media Association in relation to the above Review. The submission responds to the questions raised in Issues Paper 40, as far as they relate to outdoor advertising.

We would appreciate an opportunity to discuss any further concerns you may have in relation to outdoor advertising in due course.

If you would like any further information please don't hesitate to contact me.

Yours sincerely

Charmaine Moldrich
Chief Executive Officer
enc.

Outdoor Media Association



Submission to

Australian Law Reform Commission

**NATIONAL CLASSIFICATION
SCHEME REVIEW:**

ISSUES PAPER 40

15 July 2011

Contents

About the OMA and the outdoor advertising industry.....	2
Question 1:.....	3
Question 2:.....	5
Question 3:.....	6
Question 4:.....	6
Question 5:.....	7
Question 6:.....	8
Question 9:.....	8
Question 10:.....	8
Question 11:.....	9
Question 16:.....	9
Question 17:.....	10
Question 18:.....	10
Question 29:.....	11

About the OMA and the outdoor advertising industry

The Outdoor Media Association (OMA) is the peak industry body representing 97% of Australia's outdoor media display companies and production facilities, and some media display asset owners.

Outdoor media display companies advertise third-party products¹ including:

- on buses, trams, taxis, pedestrian bridges, billboards² and free-standing advertisement panels;
- on street furniture (e.g. bus/tram shelters, public toilets, bicycle stations, phone booths, kiosks); and
- in bus stations, railway stations, shopping centres, universities and airport precincts.

The industry members build, clean³ and maintain the pedestrian bridges and street furniture, and provide other community infrastructure such as park benches, bins and bicycles.⁴

The OMA does not represent businesses that install 'on-premise' advertisements (vehicles, billboards and other structures that advertise the business, services and products on the advertiser's property). On-premise advertising is more prolific than third-party advertising. For example, along Parramatta Road between Broadway and Leichhardt, NSW, there are about 2140 on-premise signs compared to 14 third-party advertisements.

Advertising and marketing plays a fundamental economic role in society and contributes in excess of \$31.1 billion to the Australian economy annually. The Australian advertising industry alone raises annual revenue of about \$12.58 billion.⁵ In 2010 the outdoor advertising industry raised revenue of \$477 million, making up 5% of advertising spend in Australia.⁶

Deloitte Access Economics has recently released results of a study into the economic contribution of the outdoor media industry. This study found that in 2010 the industry:

- directly employed 1013 people;
- made a direct contribution (value added) to the national GDP of \$244.3 million;

¹ Advertising in which the advertisement is not associated with the premises on which it is displayed. That is, a land or asset owner allows an outdoor media display company to display an advertisement for a third-party product.

² Standard billboard sizes range from about 13 to 84 square metres, though they can be as big as 1000 square metres. Billboard sizes are set or approved by State Governments or Local Councils.

³ Cleaning includes the removal of graffiti.

⁴ For example, 2000 public bicycles have been provided for the Brisbane CityCycle scheme.

⁵ Commercial Economic Advisory Service of Australia (CEASA), for the year ending 31 December 2009.

⁶ Nielsen Adex reporting for 2010.

- contributed an additional \$102M to build, clean and maintain public infrastructure; and
- donated an additional \$13.25M in funds and free advertising space to charities and not-for-profit organisations.

The OMA's submission in relation to Issues Paper 40 only addresses the questions that are directly relevant to the outdoor advertising industry. We also ask the ALRC to review the OMA's submissions to the two recent parliamentary inquiries, which can be accessed via the following links:

1. <http://www.aph.gov.au/house/committee/spla/outdoor%20advertising/subs.htm> (submission number 32)
2. http://www.aph.gov.au/Senate/committee/legcon_ctte/classification_board/submissions.htm (submission number 57)

Question 1:

In this inquiry, should the ALRC focus on developing a new framework for classification, or improving key elements of the existing framework.

The OMA submits that outdoor advertising should not be brought into a system of national classification. The basis for this submission is that the current system of self-regulation for outdoor advertising is efficient, effective, privately funded and subject to continuous improvement.

Information about the effectiveness of the current self-regulatory system has been provided to recent parliamentary inquiries. In summary, these submissions refer to the following factors that demonstrate the effectiveness of the current system of self-regulation:

- Most advertisements posted do not receive complaints. Of 30,000 ads posted by OMA members in 2010, no more than 66 received complaints.⁷
- Of those ads that receive complaints, most of them are found not to breach the Australian Association of National Advertisers (AANA) Codes that our members are committed to. Only 7 of the 30,000 ads posted by OMA members in 2010 were the subject of adverse findings by the Advertising Standards Bureau (ASB).⁸ In other words, OMA members made the correct judgments about which ads to post 99.98% of the time. This clearly reflects an industry that is committed to abide by the self-regulatory system. It also demonstrates that OMA members already have

⁷ Please note that the ASB and the OMA have undertaken to run a campaign on outdoor formats to advertise the role of the ASB as the complaint adjudicator.

⁸ A small error was noticed in the statistics recorded in the submission to the House of Representatives inquiry. The subsequent statistics provided in the submission to the Senate inquiry are accurate.

effective systems in place to facilitate compliance with the self-regulatory system.⁹

- On the rare occasions when an OMA member has made an error of judgement about posting an ad, they are 100% compliant with findings of the ASB and remove the ad from display.¹⁰ Again, this reflects an industry that is committed to abide by the self-regulatory system.
- The commitment of the industry to the self-regulatory system is underpinned by the social responsibility of the industry. The social responsibility of the industry is reflected in the following facts:
 1. In 2010, the industry spent over \$100M to build, clean and maintain 17,690 items of public infrastructure, including bus/tram shelters, public toilets, telephone booths, kiosks, bicycle stations and pedestrian bridges. This infrastructure has a replacement value of over \$274M.
 2. In 2010 the industry donated \$13.25M in funds and free advertising space to charities and not-for-profit organisations.
 3. The industry actively participates in environmental projects to help improve environmental conditions in Australia. Some of these initiatives include reduced energy consumption through sustainable strategies, reduced water consumption, reduction of landfill waste, use of energy efficient systems and funding revegetation programs.¹¹

In these circumstances, we submit that incorporating outdoor advertising into the national classification scheme is unnecessarily costly and burdensome, both for government and for industry.

The nature of the outdoor advertising industry is also such that it would not adapt easily to going through a classification process, as follows:

1. The outdoor industry is fast-paced and relies on quick processing of advertisements for installation. As a result of the fast-paced nature of the industry, any classification delay in outdoor media is likely to cause difficulties for advertisers, with the result that outdoor advertising will become less suitable.
2. Advertising aims to communicate with target markets. As such, an advertisement that is appealing to one demographic of the population may not be appealing to another demographic of the population. Any black and white regulation of this subjective medium would lead to the homogenisation of outdoor advertisements. Again, outdoor advertising would become less suitable to advertisers as a result.

⁹ OMA members have internal review procedures and regularly refuse to post advertisements that they consider may breach the various AANA Codes.

¹⁰ In fact, we understand that even outdoor advertisers who are not members of the OMA have demonstrated close to 100% compliance with findings of the ASB.

¹¹ Study of the Economic Contribution of the Outdoor Media Industry – 2011 Update, Deloitte Access Economics, 2011.

In view of the above, classification of outdoor advertising would enable other media to gain an advantage. The OMA submits that the small number of complaints that have been upheld by the Advertising Standards Board do not justify this loss of advantage. Further, the invariable loss of industry revenue would affect:

- employment in the industry;
- the contribution of the industry to the national economy; and
- the industry's ability to continue making significant contributions to the community.

Such consequences do not appear reasonably justified where only 0.02% of third-party advertisements have been the subject of an adverse finding by the Advertising Standards Board.

Question 2:

What should be the primary objectives of a national classification scheme?

The OMA supports the principles in the current National Classification Code, namely:

- Adults should be able to read, hear and see what they want.
- Minors should be protected from material likely to harm or disturb them.
- Everyone should be protected from exposure to material that they find offensive.
- Account should be taken of community concerns about violence and the portrayal of persons in a demeaning manner.

The OMA submits that these principles are already applied under the advertising self-regulatory system. For example, the Australian Association of National Advertisers (AANA) Codes do not permit advertising that, inter alia:

- Portrays people or depicts material in a way which discriminates against or vilifies a person or section of the community on account of race, ethnicity, nationality, sex, age, sexual preference, religion, disability or political belief.
- Presents or portrays violence unless it is justifiable in the context of the product or service being advertised.
- Fails to treat sex, sexuality and nudity with sensitivity to the relevant audience.¹²
- Uses language which is inappropriate in the circumstances.

¹² In relation to outdoor advertising, the relevant audience is a broad audience, including all sections of the community.

- Depicts material contrary to prevailing community standards on health and safety.¹³
- Contravenes prevailing community standards for advertising to children.
- States or implies that children are sexual beings and that ownership or enjoyment of a product will enhance their sexuality.¹⁴

The OMA suggests that a key objective of the national classification scheme should be to step in and spend government funds where effective self-regulatory systems are not possible. The current self-regulatory system for advertising is effective and efficient, and should be maintained.

Finally, any regulation should be reasonably practical. The OMA submits that the appropriate measure of “offensiveness” should be prevailing community standards. For example, it is simply not possible to censor outdoor advertising so that no member of the community will be offended. Some vegetarians have objected to the advertisement of meat products, whereas other members of the community like advertisements which inform them about such products. Some members of the community have objected to anti-smoking advertisements, whereas such advertisements can be said to serve a public benefit. It is clear that unless there is a complete ban on outdoor advertising, the standard for the content of outdoor advertising should be the prevailing community standard. This is effectively embedded in the AANA Codes.

Question 3:

Should the technology or platform used to access content affect whether content should be classified, and, if so, why?

Most importantly, the regulatory systems across technology or platform should be effective, efficient and inexpensive. This may be achieved under self-regulatory systems and therefore need not necessarily involve classification. As such, the technology or platform alone does not appear to be a suitable measure.

Question 4:

Should some content only be required to be classified if the content has been the subject of a complaint?

Commenting only from the perspective of outdoor advertising, the current system is quite simple:

¹³ This includes advertisements that may cause harm to a member of the community.

¹⁴ Refer to the AANA Code of Ethics, the AANA Code for Advertising and Marketing Communications to Children, and other AANA Codes for more detail about what types of advertising are not permitted: www.aana.com.au

- Before an advertisement is posted by an OMA member, it goes through the advertiser and the creative agency. At each of these stages, there is a review of the content in line with AANA Codes.¹⁵
- If an OMA member is asked to display an advertisement which may breach one of the self-regulatory codes, they will get copy advice from the OMA in accordance with the OMA's Content Review Policy (available at <http://oma.org.au/content/id/55/OMA-Policies/>).¹⁶
- If there is a complaint about an ad that has been posted, the ASB will consider the complaint. Please note that from August 2011 the ASB and the OMA are running a regular campaign on outdoor formats to advertise the role of the ASB as the complaint adjudicator.
- If the ASB upholds a complaint, the outdoor advertisement is taken down and cannot be re-posted.

The OMA sees no reason to complicate this system or re-invent the wheel with an alternative form of classification.

Question 5:

Should the potential impact of content affect whether it should be classified? Should content designed for children be classified across all media?

99.98% of the time, the content of outdoor advertisements is not "higher-level content." We submit that the remaining 0.02% is most appropriately addressed through increased education of our members, in conjunction with the OMA Content Review Policy, so that they are better able to judge when to refuse to post an ad. In this regard, the OMA is facilitating a regular programme of education for its members, in conjunction with the AANA and the ASB, to commence in August 2011. The numbers (7 out of 30,000 in 2010) are not sufficient to warrant a costly and onerous system of classification.

The OMA does not support classification of outdoor advertisements that are designed for children, because the current system of self-regulation is effectively managing advertisements for children's products. This management is underpinned by the AANA Code of Ethics and the AANA Code for Advertising and Marketing Communications to Children.

¹⁵ However, where the advertiser is not a member of the AANA and the agency is not a member of the Communications Council, the review of content may not happen until the ad gets to the OMA member.

¹⁶ This Policy commenced in June 2010, and the OMA expects that it will have the effect of improving the 99.98% accuracy record of the industry.

Question 6:

Should the size or market position of particular content producers or distributors, or the potential mass market reach of the material, affect whether content should be classified?

The OMA considers that all outdoor advertising, both on-premise and third-party, should be treated equally, under the existing and effective self-regulatory system.

Question 9:

Should the potential size and composition of the audience affect whether content should be classified.

The audience for outdoor advertising is broad, and it includes members of all sections of the community. The current self-regulatory system takes this into account as reflected in:

- the content of the various AANA Codes that our members subscribe to – the 'relevant audience' in relation to outdoor advertisements is a broad audience;
- our members' commitment to those Codes and their 99.98% success rate in complying with them; and
- the determinations made by the ASB in relation to outdoor ads, which take the broad viewing audience into account.

The OMA does not consider that the size or composition of the audience are appropriate determinants of whether content should be classified, because self-regulatory systems can, and do, effectively take these factors into account.

Question 10:

Should the fact that content is accessed in public or at home affect whether it should be classified?

This is not an appropriate measure for classification. While outdoor advertising is in the public realm, it is managed very effectively under a self-regulatory system so a system of classification is unnecessary.

Our members take into account the broad audience that views the content, and regularly refuse to post advertisements that may be in breach of the AANA

Codes. On the very small number of occasions when they have misjudged this, the advertisements have been taken down after a decision from the ASB.

The OMA submits that no practical system of regulation can be perfect, with no complaints and no breaches. The small public impact of outdoor advertisements that do not comply with the AANA Codes is greatly outweighed by the benefits of the self-regulatory system. Those benefits include:

1. Complaint resolution times are generally quicker than in regulatory and co-regulatory schemes. Any delays in complaint handling timeframes impact upon both the complainant and the respondent.
2. Self-regulatory schemes are adaptable and able to respond quickly to changes in circumstance or community attitudes. In contrast, legislative frameworks take more time and effort to amend.
3. Both the spirit and the letter of self-regulatory codes should be complied with, as opposed to legislation which generally demands compliance with the strict letter of the law.
4. Self-regulation is funded by industry. Government regulation would require public funds to establish, apply and enforce the scheme.
5. Self-regulation has the support of industry. A system enforced by Government can undermine the goodwill of the industry that is committed to the success of the self-regulatory scheme.

Question 11:

In addition to the factors considered above, what other factors should influence whether content should be classified?

Content that can be managed under efficient, effective and inexpensive self-regulatory systems should not be subject to classification.

Question 16:

What should be the respective roles of government agencies, industry bodies and users in the regulation of content?

In the regulation of outdoor advertising, the ACCC should be involved to make findings on misleading and deceptive advertising. No other government agencies need to be involved where the self-regulatory system is managing other aspects of content effectively.

Industry bodies should be involved to manage the self-regulatory system as it relates to outdoor advertising:

- The AANA to oversee the various self-regulatory codes.

- The ASB to adjudicate complaints about breaches of the codes, advertise their service to members of the public, and investigate prevailing community standards.
- The Communications Council and the AANA to provide pre-vetting copy advice to advertisers and creative agencies who are preparing outdoor advertisements.
- The OMA to facilitate transfer of information and education from the AANA and the ASB to OMA members.
- The OMA to facilitate its members' compliance with the AANA Codes and the ASB decisions.

Members of the public can engage with the ASB if they consider that an outdoor advertiser has misjudged the appropriateness of an advertisement. While this leaves community members to make some effort, it frees up government funds which can be spent on serving the community. As noted above, the ASB and the OMA are running a regular campaign to advertise the ASB complaint process on outdoor formats from August 2011.

Question 17:

Would co-regulatory models, under which industry itself is responsible for classifying content, and government works with industry on a suitable code, be more effective and practical than current arrangements?

Again, the OMA considers that the current system of self-regulation for advertising is effective and government involvement is an unnecessary expense. We consider that a co-regulatory system would be more cumbersome and less responsive than the current self-regulatory system, which is founded upon community and stakeholder comment.

However, the OMA notes that advertising of alcohol is subject to a quasi-regulatory scheme and we understand that this is an effective way to manage advertising for such a regulated product.

Question 18:

What content, if any, should industry classify because the likely classification is obvious and straightforward?

99.98% of the time, the content of outdoor ads is in line with prevailing community standards. This success rate is achieved through the various checks and balances for reviewing content at the level of the advertiser, creative agency and OMA member.

The OMA submits that, therefore, outdoor advertisements should not be subject to a formal system of classification, and that the complaints-based self regulatory system is appropriate. The OMA acknowledges that while its members make correct judgments about content 99.98% of the time, there are odd occasions when an ad has been posted that is not in line with the AANA Codes. The OMA considers that the best way to address this is to educate its members so they may increase their ability to judge which ads to post and which should be refused. The OMA is facilitating an ongoing program of education for its members, in conjunction with the AANA, the ASB and the Communications Council.

Question 29:

n what other ways might the framework for classification of media content in Australia be improved?

While the outdoor industry has an excellent compliance rate, the OMA considers that a regular program of education for its members is necessary to facilitate even greater compliance with the self-regulatory AANA Codes. This program is commencing in August 2011.