

15 July 2011

Ms Sabina Wynn
The Executive Director
Australian Law Reform Commission
GPO Box 3708
SYDNEY NSW 2001

By email: classification@alrc.gov.au

Dear Ms Wynn

**NFSA SUBMISSION ON ALRC ISSUES PAPER
NATIONAL CLASSIFICATION SCHEME REVIEW**

The National Film and Sound Archive of Australia (**NFSA**) is a statutory authority established by the *National Film and Sound Archive of Australia Act 2008*. It is Australia's national audiovisual archive, responsible for collecting, preserving and providing access to the nation's moving image and recorded sound heritage (**National Collection**).

The NFSA has considered the Issues Paper and welcomes this opportunity to respond to questions 3, 16, 17, 19, 23, 26 and 29 about the National Classification Scheme.

WHAT CONTENT SHOULD BE CLASSIFIED AND REGULATED?

Question 3 – Should the technology or platform used to access content affect whether content should be classified, and, if so, why?

The phenomenon of media convergence presents significant opportunities and challenges for the NFSA. The ability to deliver audiovisual content in new ways creates exciting opportunities for the NFSA to make its collection more publicly accessible across multiple platforms. The NFSA expects demand for digitised content to increase significantly. A significant constraint on the NFSA's ability to meet this demand is the fragmented approach of the current classification scheme to classifying films made available through different distribution channels.

As the Senate Legal and Constitutional Affairs Committee (**Senate Committee**) noted in its report on the classification scheme, the same content, when viewed on different screens, may be subject to different classification regimes.¹

¹ Senate Legal and Constitutional Affairs Legislation Committee, *Review of the National Classification Scheme: Achieving the Right Balance*, June 2011, (**Senate Committee report**) paragraph 12.2, http://www.aph.gov.au/Senate/committee/legcon_ctte/classification_board/report/report.pdf

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The NFSA believes that a uniform approach to classifying all content—regardless of the medium of delivery—would assist it in making more of the National Collection available and would assist audiences to access it. It recognises that there are practical difficulties in doing this, especially in relation to regulating online content. However, it agrees with the Senate Committee that making the classification scheme media-neutral (i.e. subject to the same treatment regardless of the delivery platform) is desirable.² It also endorses the Senate Committee's view that, in principle, the classification of online content should be focused on self-assessment.³

WHO SHOULD CLASSIFY AND REGULATE CONTENT?

Question 16 – What should be the respective roles of government agencies, industry bodies and users in the regulation of content?

The NFSA believes that some government agencies should have a role in making classification decisions relating to their public activities. As stated in answer to question 29, the NFSA believes that Commonwealth cultural institutions should have a role in self-classifying content for the purposes of these institutions providing public access. As noted in the Issues Paper, some Government employees (e.g. Customs officers and employees of the Attorney-General's Department (AGD)) already make classification decisions.⁴

By special arrangement with the former Office of Film and Literature Classification (OFLC), the NFSA already self-classifies the titles presented on the *australianscreen online* website.⁵ These classification activities are conducted by employees who have been trained internally under an OFLC-approved program based on the Classification Guidelines and the relevant codes of practice.

If the NFSA's status as a self-classifier was extended, it could arrange for some employees to attend training sessions provided by AGD or the Classification Board to extend its internal training to cover this expanded role.

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?

The Issues Paper describes a variety of co-regulatory models, including one where government agencies and industry share responsibility for classifying content, with industry decisions being subject to review and audit by government agencies.⁶ The NFSA believes that a co-regulatory model of this sort could apply to its proposal for cultural institutions to exercise self-classification functions.

The NFSA submits that a self-classification model based on the self-classification arrangements currently permitted for a limited number of industries (e.g. the television and advertising industries) would be more effective and practical. The preferred model is outlined in answer to question 29,

The NFSA considers that this variation would be appropriate to govern the relationship between the Classification Board and self-classifying cultural institutions. This would enable the NFSA to self-classify most content but allow it to seek exemptions from the Classification Board for any high risk or higher impact content. It envisages that, under any self-classification scheme, the Classification Board would have some sort of oversight role.

² Senate Committee report, paragraphs 12.49 and 12.51.

³ Senate Committee report, paragraph 12.62.

⁴ Issues Paper, paragraph 88.

⁵ <http://www.aso.gov.au>

⁶ Issues Paper, paragraph 80.

CLASSIFICATION FEES

Question 19 - In what circumstances should the Government subsidise the classification of content? For example, should the classification of small independent films be subsidised?

The NFSA submits that cultural institutions like it should be exempted from paying fees for classifying content intended for access and exhibition purposes. This would be consistent with the mandate of cultural institutions to provide public access to Australian culture and heritage. It would also be consistent with the Government's policy of remitting or partially remitting fees for 'public good' activities, as noted in the Issues Paper.⁷

Exempting cultural institutions would enable them to commit more resources for access activities by relieving them from the burden of fees. The Senate Committee has recommended that the classification of artworks should be exempt from application fees because of the difficulties that paying fees may present to artists.⁸ As paying fees may also inhibit cultural institutions from applying for classifications, they should also be entitled to fee exemptions.

CLASSIFICATION CATEGORIES AND CRITERIA

Question 23 – Should the classification criteria in the Classification (Publications, Films and Computer Games) Act 1995 (Cth), National Classification Code, Guidelines for the Classification of Publications and Guidelines for the Classification of Films and Computer Games be consolidated?

The NFSA considers that consolidated classification guidelines would assist it in its access and exhibition activities by simplifying and streamlining its classification decision-making under any self-classification scheme applying to it.

The main advantage would be that the NFSA would be able to apply a single set of guidelines to cover the various activities it conducts in promoting and disseminating audiovisual culture. These activities include screening films as part its Arc cinema program; promoting films, television programs and home movies in our exhibitions and Melbourne-based Australian Mediatheque; running touring film programs in regional areas around the country; and presenting Australian film heritage online through *australianscreen online*. Consistency in criteria would promote consistency in classification decision making, for the benefit of all audiences.

REFORM OF THE COOPERATIVE SCHEME

Question 26 – Is consistency of state and territory classification laws important, and, if so, how should it be promoted?

The NFSA has experienced difficulties in working with classification laws in different states and territories, especially when coordinating activities for a national touring program.

The NFSA regularly screens films, home movies and some television content around the country. With items in its collection dating back to the beginning of moving image production, it has a significant number of titles that had never been classified.⁹ The NFSA therefore has to obtain festival exemptions, which permit a limited number of screenings at specific events at specific locations.

⁷ Issues Paper, paragraph 95.

⁸ Senate Committee report, paragraph 12.23

⁹ The National Collection includes 118,055 film titles in addition to 18,000 non-theatrical film titles. A significant number of these are unclassified, but most of those which have been would be rated as M or below.

The process of obtaining exemptions for a national tour is particularly daunting as the NFSA must obtain separate exemptions from each jurisdiction and to comply with the various conditions that may be imposed under each one.

All state and territory classification legislation allows “approved organisations” to seek exemptions allowing them to screen unclassified films. Exemptions can be granted by the Classification Board or, in Queensland and South Australia, by the relevant minister. An approved organisation is one authorised by the Classification Board to apply for exemptions, having regard to matters such as the extent to which it engages in medical, scientific, education, cultural or artistic activities, and its reputation for screening films.

There are different types of exemptions, some of which are not available in all jurisdictions. The most common type—which is available in all jurisdictions—is a festival exemption. This allows approved organisations to screen particular unclassified films at a specific event or festival. The exemption works as a temporary classification, although conditions may be set for screening particular films (e.g. a requirement to show background material with a film to contextualise it).

Creating a more uniform classification system would assist the NFSA to achieve its role by avoiding the lengthy and sometimes cumbersome process of obtaining a festival exemption and making it easier to show unclassified films as part of a national tour.

The Senate Committee has acknowledged the NFSA’s concerns about the difficulties with obtaining festival exemptions for screenings in multiple jurisdictions.¹⁰

OTHER ISSUES

Question 29 – In what other ways might the framework for the classification of media content in Australia be improved?

The key reform sought by the NFSA is that cultural institutions like it should be entitled to blanket exemptions allowing them to self-classify. This would greatly assist the NFSA to streamline processes for making the National Collection more accessible, to show unclassified content more easily, and to satisfy the growing demand of the public for access to digitised content.

Enabling the NFSA to self-classify content for more purposes is important for the NFSA given the unique nature of the National Collection. As detailed in answer to question 26, the National Collection has a significant volume of unclassified content. Currently, the most practical way that the NFSA can undertake public exhibition activities is to apply for festival exemptions, whenever and wherever it plans to screen films and subject to any conditions imposed by the relevant classification authority.

As outlined above, there are precedents for a self-classification system, including the self-classification systems used by television broadcasters, Customs officers and the NFSA itself in publishing *australianscreen online* titles. There is also some overseas precedent. The National Film Institute—which is part of the British Film Institute and is responsible for collecting and screening UK films—has a blanket exemption for screening television content in its mediatheque in the United Kingdom.

As noted in response to question 17, the NFSA envisages that, under any self-classification scheme applying to it, the Classification Board would have an oversight role and the NFSA would continue seeking exemptions where appropriate.

The Senate Committee has endorsed the NFSA’s views, recommending that classification laws should be amended to allow cultural institutions—including the NFSA—to exhibit unclassified films under a self-classification scheme.¹¹ However the NFSA believes that cultural institutions should be able to self-

¹⁰ Senate Committee report, paragraph 12.28

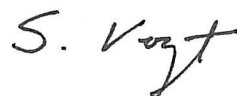
¹¹ Senate Committee Report, paragraph 12.25 and recommendation 9.

classify other content, including television programs, for the purposes of making their collections more publicly accessible.

Questions

If you have any questions regarding these comments, please contact Mark Murphy, Principal Legal Officer, by phone on 02 6248 2142 or by email at mark.murphy@nfsa.gov.au.

Yours sincerely



Steve Vogt
Acting Chief Executive Officer