



Australian Recording Industry Association Ltd.
ABN 72 002 692 944 ACN 002 692 944

Level 4, 19 Harris Street
Pyrmont NSW 2009

PO Box Q20
Queen Victoria Building
NSW 1230

Telephone: (02) 8569 1144
Facsimile: (02) 8569 1181
Website: www.aria.com.au

15 July 2011

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

Email: classification@alrc.gov.au

Dear Sir / Madam,

National Classification Scheme Review – ARIA / AMRA Submission

The Australian Recording Industry Association Ltd (**ARIA**) and the Australian Music Retailers Association (**AMRA**) thank you for the opportunity to comment on the Issues Paper for the National Classification Scheme Review. ARIA and AMRA submitted a response to the recent Senate Inquiry into the Film and Literature Classification Scheme and we would be happy to provide a copy of that submission upon request.

About ARIA

ARIA is the peak trade body for the recorded music industry in Australia. It is a national industry association proactively representing the interests of its members.

ARIA has more than 100 members ranging from small "boutique" labels typically run by 1-5 people, to medium size organisations and very large companies with international affiliates.

ARIA is active in many key areas of the music industry:

- acting as an advocate for the industry, both domestically and internationally
- supporting Australian music, and creating opportunities to help it be heard
- playing an active role in protecting copyright and the fight against music piracy
- collecting statistical information from members and retailers and compiling numerous ARIA charts with data provided by over 1,100 retailers
- providing, in certain cases, a reproduction licensing function for various copyright users
- staging the highly prestigious annual ARIA Music Awards.

ARIA's primary objective is to advance the interests of the Australian recording industry.

About AMRA

AMRA was established in 1993, by a group of leading independent and specialty music chain stores to represent the interests of music retailers in Australia. AMRA is an industry trade organisation in place to support music and entertainment retailers. It provides a forum for the retailers and the suppliers to the music industry. This forum is provided through AMRA's network of members.

AMRA represents around 800 speciality music and entertainment retailers nationally. Its membership does not include online retailers (iTunes and BigPond Music) nor the mass market retailers selling recorded music



such as Target and Big W.

AMRA works closely with the different industry sectors in the interest of music retailers. It supports its industry partners in a variety of industry issues, including:

- piracy prevention and detection
- the industry's labelling code of practice (with ARIA)
- the compilation of charts and industry statistics primarily through the provision of sales data to the AriaNet structure
- industry promotion

whilst playing no role in the trading relationships of individual members and their suppliers.

Response to the Issues Paper

We thank you for the opportunity to comment on the questions posed in the Issues Paper and to have input into the process of the National Classification Scheme Review.

The combined response from ARIA and AMRA comes as a result of the close working relationship that both organisations have in jointly administering the *ARIA/AMRA Recorded Music Labelling Code of Practice* (the **ARIA/AMRA Code**). As you will appreciate our connection with the National Classification Scheme is more narrowly focused than that of many groups who will respond to this review, therefore our comments are restricted to the questions that relate to the ARIA/AMRA Code and our respective members.

Question 2: What should be the primary objectives of a national classification scheme?

As set out in Code 2 of the ARIA/AMRA Code, a national classification scheme should be underpinned by the following factors:

- *Adults in a democratic society should be free to listen to what they wish*
- *Creative artists should be free to express themselves without fear of intervention*
- *Consumers should be supplied with sufficient information so that they can choose to avoid exposure to material which may offend them, and make informed purchasing decisions in relation to product which is not suitable for minors¹.*

When taking the factors set out above into consideration, the key objectives of a national classification scheme should include:

- **Consumer Advisory Information:** The primary function of a classification scheme is to provide the public with clear and comprehensible information about the nature of the content so that a person can make an informed choice about material they choose to access or consume (or allow their children to access or consume). A classification scheme should not operate as a means to censor otherwise legal material, but instead should serve as a means to provide consumers with adequate consumer advisory information. A classification scheme should restrict or prohibit access and dissemination of content that is unlawful, for example child pornography or acts that are prohibited under legislation such as the *Racial Discrimination Act (Cth) 1975*. By implementing a system of graduated consumer advisory warnings, consumers are provided with clear advice that can inform their purchases or when supervising the music purchases of their children.

¹ Code 2.1 (a) –(c) ARIA/AMRA Code



- **Providing a balance:** A classification scheme should provide a balance between groups with divergent views on matters of classification. It should reflect the midpoint of public opinion and community standards and strike an impartial balance between freedom of choice, creativity and social responsibility.
- **Consistent Advice:** An effective classification scheme is a scheme that provides a banner or brand under which classifications can be readily understood and recognised by the public in a consistent manner.
- **Consistent Criteria:** Additionally, a classification scheme should provide a framework upon which groups other than the Classification Board, can base their own classification decisions as applicable to their product, service or activity (recognising that many classification decisions for example decisions relating to television, music and some mobile and online content, are made outside of the Classification Board's remit). The criteria upon which classification decisions are made should be clear, consistent and easily identifiable and should form the basis upon which rational and transparent classification decisions can be made.

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

Please see our response to Question 22.

Question 8: Should music and other sound recordings (such as audio books) be classified or regulated in the same way as other content?

The question infers that all content, such as works of art, photography and visual arts, television and film (which can be considered as "content") either require classification or are all classified in the same manner – which is not the case.

The ARIA/AMRA Code was specifically developed in 1997 following concerns about the potentially offensive lyrics and adult themes that were featured in physical audio products (namely compact discs, cassettes and vinyl records).

The ARIA/AMRA Code was reviewed and improved in 2003 (a copy of the Code is attached at Annexure A). The revised ARIA/AMRA Code was approved by the Standing Committee of Attorneys General (**SCAGS**) at their meeting in Fremantle in 2002. The revised ARIA/AMRA Code commenced on 1 April 2003 - and it is still in effect today.

The significant amendments to the ARIA/AMRA Code included:

- A new 3 tier labelling regime
- A 'Not to be sold category' for material exceeding Level 3
- New point of sale materials for retailers
- The establishment of an ARIA/AMRA Code Labelling Review Sub-committee
- The appointment of a permanent Ombudsman
- Closer alignment of the ARIA/AMRA Code with the National Classification scheme (classification of products in each of the three ARIA/AMRA Code tiers is aligned to that of M, MA and R18+ classifications for film)
- The introduction of a Restricted 18+ label. This classification came with the requirement that sales by retailers of these types of products to minors are not permitted.

The classification criteria that is enacted in the ARIA/AMRA Code is inextricably linked to the classification criteria set out in the National Classification Scheme, as exemplified in the table set out below:



Classification Information

CDs, Tapes & Records

(products with audio content only)

Recorded Music Labelling Code of Practice

The Australian Recording Industry Association Ltd (ARIA) and the Australian Music Retailers Association (AMRA) have developed and administer an industry Code of Practice for labelling CDs and other recorded music products. The Code and the advice labels placed on recorded music products are designed to assist consumers in selecting their purchases and for providing advice to parents when supervising the music their children listen to.



Level 1

This product contains infrequent aggressive or strong coarse language and/or moderate impact (impact meaning the strength of the effect to the listener) references to drug use, violence, sexual activity or themes



Level 2

This product contains frequent aggressive or strong coarse language and/or strong impact references to drug use, violence, sexual activity or themes



Level 3

This product contains graphic descriptions of drug use, violence, sexual activity or very strong themes, which have a very high intensity and which are high in impact

The Recorded Music Labelling Code of Practice provides a consumer information and complaints service. For further information on the Recorded Music Labelling Code of Practice consumers should visit www.amra.org.au or www.aria.com.au. Where consumers have a complaint regarding the application or administration of the Code they should email complaints@amra.org.au or call 180025 2547.



DVD, Video & Enhanced CDs

(products with both audio & visual content)

The National Classification Scheme

All films and videos (including CDs and other products with visuals such as music video clips), are classified by the Classification Board. The consumer advice indicates the reason for the classification decision.



General

Very mild content



Parental guidance recommended

Mild content

G8+ is the same as PG.



Recommended for mature audiences

Moderate content

M15+ is the same as M.



Not suitable for people under 15. Under 15s must be accompanied by a parent or adult guardian

Strong content

People under 15 must be accompanied by a parent or adult guardian for the duration of the film in a cinema, and when hiring or buying these films or computer games.

RESTRICTED

Age restrictions apply



Restricted to 18 and over

High level content

People under 18 must not see these films in a cinema or buy or hire them. The R18+ classification applies to film only.

Visit www.oflc.gov.au for further information on the National Classification Scheme



Figure 1 Classification Information

When the ARIA/AMRA Code was revised in 2003, it was determined that recorded music would not be subject to the National Classification Scheme but instead the ARIA/AMRA Code would be developed and integrated with the classification criteria inherent in the National Classification Scheme.

The reasons for this decision at the time were:

- That it was felt by both industry and Government that an audio only environment requires a different classification approach to that of other products. So while the classification principles are the same as the National Classification Scheme, the interpretations would differ over the various mediums – it was thought that this had implications for the consistency of the classifications.



- The scale of the classification task is so much greater for music than it is for the other products being classified by the then Office of Film and Literature Classification. At the time, upwards of 6,000 and as many as 9,000 audio products were being released annually - many times that of film or video products.
- That only a classification undertaken by the Classification Board could justifiably carry a National Classification Scheme label for reasons of consistency.
- There was also the issue regarding the fact that the ARIA/AMRA Code is voluntary whereas the National Classification Scheme is supported through legislation.

One of five possible classifications can be applied to products in accordance with the ARIA/AMRA Code:

Classification under the ARIA/AMRA Code	Criteria	National Classification Scheme Marking
No classification required	If the audio recording does not contain any coarse language and /or themes, then the recorded audio product is not required to carry an advisory label. The vast majority of recorded audio products released each year do not require an advisory label.	
The language or thematic material is of a Moderate nature	If the audio recording contains coarse language and thematic material that is of moderate impact, then it is classified using a Level 1 label.	The classification of such recordings is carried out using the same criteria established by the National Classification Scheme for an M level film.
The language or thematic material is of a Strong nature	If the audio recording contains coarse language and thematic material that is of strong impact, then it is classified using a Level 2 label.	The classification of such recordings is carried out using the criteria established by the National Classification Scheme for an MA level film.
The language or thematic material is considered to be suitable only for adults	If the audio recording contains high impact themes (including graphic description of drug use, violence, sexual activity), then it is classified using a Level 3 label which means that it is not to be sold to persons under the age of 18.	The classification of such recordings is carried out using the criteria established by the National Classification Scheme for an R18+ level film. In this instance the same restrictions apply to an R18+ film as they apply to our Level 3 classified products principally that it is not to be sold to minors.
The recording is not to be sold	If the audio recording contains lyrics which for example, gratuitously depict drug abuse; cruelty; suicide; criminal or sexual violence; child abuse; incest; bestiality; or any other revolting or abhorrent activity in a way that causes outrage or extreme disgust to most adults, then these recordings would be refused classification and would not be permitted to be released and/or distributed by ARIA members or sold by AMRA members.	The classification of such recordings is carried out using the criteria established by the National Classification Scheme for Refused Classification.



It is clear that some sound recordings do not require classification. For example, an audio book such as *Little Women* or instrumental music that has no potentially offensive content would not require classification under the ARIA/AMRA Code. In general, most sound recordings released by ARIA's major label and larger independent label members do not require classification at all, as the content on the majority of releases does not contain themes or material that warrant classification. The table set out below indicates the percentage of titles released by key ARIA members that required classification since the implementation of the revised ARIA/AMRA Code in 2003:

	2003	2004	2005	2006	2007	2008	2009
Number of titles released	5965	5736	8267	7134	5469	4209	5806
Number of titles classified	371	283	231	305	260	293	358
Classified titles as % of titles released	6.2	4.9	2.7	4.3	3.6	6.9	6.3

Figure 2 Classification Information from ARIA /AMRA Labelling Code Ombudsman Report 2010.

The above figures are provided by ARIA, and consist of releases by EMI, Shock, Sony, Universal, Warner and Inertia (2009).

Other products that have language or themes that some people may find offensive or contains material that might require a mature or adult outlook are subject to classification. Therefore the classification scheme helps to provide the industry with a framework and benchmarks through which to provide consumer advice and upon which companies can base their distribution and marketing decisions.

It is important to note that many of the different art forms, such as music, photography and the visual arts have differentiating elements that may or may not exist in film, videogames, or publications. For this reason we believe that an overarching framework such as the National Classification Scheme coupled with industry specific classification schemes such as the ARIA/AMRA Code, work well and to the benefit of all. Furthermore the consistency of a national approach means that there is a level of uniformity across the various mediums.

Question 12: What are the most effective methods of controlling access to online content, access to which would be restricted under the National Classification Scheme?

In accordance with Code 4 of the ARIA/AMRA Code², products that are labelled as Level 3 (Restricted Criteria) are not to be sold to persons under the age of 18 years. Furthermore, products that exceed Level 3 are not to be released or distributed by ARIA members and may not be sold by AMRA members. The classification of such recordings is undertaken by applying criteria established by the National Classification Scheme for an R18+ level film. The restrictions that apply to an R18+ film are also applicable to products classified as Level 3.

One of the inherent difficulties in controlling access to online content has been replicated in the ongoing difficulties that the music industry experiences in relation to illegal file sharing. It has been estimated that 95% of music downloads on the internet are illegal³. While ARIA and AMRA can implement controls to restrict access to physical products, the issue of controlling access to online content is fraught and will require cooperation that spans multiple industries, territories and international jurisdictions.

Within Australia, we understand that in accordance with amendments made to the *Broadcasting Services Act 1992 (BSA)*, the Australian Communications and Media Authority (**ACMA**) has been provided with the authority under Schedule 7 of the BSA to require content service providers and content hosts to remove or prevent access to content hosted on websites or transmitted via mobile services if such content is deemed

² Code 4.0 ARIA/AMRA Code.

³ IFPI, *Digital Music Report 2009* – available at http://www.ifpi.org/content/section_resources/dmr2009.html.



as either “prohibited content” or “age-restricted content”⁴. Further to this, various internet industry codes of practice have been implemented to deal with such issues from an internet industry perspective.⁵ ARIA and AMRA do not have any association with these codes.

ARIA and AMRA acknowledge that a limitation of the ARIA/AMRA Code is that online music sales by ARIA members do not fall within the remit of the ARIA/AMRA Code and that online digital retailers are not members of AMRA. Although CD sales still remain the dominant form of music purchases within Australia – accounting for 73% of total sales value⁶, it is clear that digital music sales are on the rise.

Question 13: How can children’s access to potentially inappropriate content be better controlled online?

The music industry takes the issue of restricting children’s access and exposure to potentially inappropriate content very seriously. Education initiatives, especially initiatives targeted at parents and children are of particular importance to the music industry. In March 2011, Music Industry Piracy Investigations (MIPI) on behalf of the music industry worked in cooperation with the international children’s charity Childnet and the International Federation of the Phonographic Industry (IFPI) to roll out an education program and guide known as “*Music, film and TV on the Internet - A guide for parents and teachers*”.⁷ Although the guide had a strong anti-piracy focus, the program also stressed the importance of parents talking to their children about computer use and the availability of net software to restrict inappropriate content from being accessed by children.

In terms of the purchase of digital music by children, most legitimate digital retailers in Australia require credit card details as a part of the registration process which restricts minors from accessing restricted content.

In addition, legitimate digital music retailers such as www.getmusic.com.au and <http://www.bandit.fm/australia> (Bandit) set age restrictions in their terms and conditions which requires registrants to these sites to be aged either 18 years or 13 years or older respectively. Bandit also provides a note to parents on its site which provides that: “*Parents should supervise their children’s online activities and consider using parental control tools available from online services and software manufacturers that help provide a child-friendly online environment. These tools can also prevent children from disclosing online their name, address, and other personal information without parental permission*”.

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

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?

In our view, Question 16 and Question 17 are linked. Due to the sheer volume of content that is made available online and through other distribution platforms, it is not viable that a centralised government department be responsible for classifying all content. In our view, industry self regulation has been a model that has been operating effectively in respect of the music and music retail industries.

Since the introduction of the ARIA/AMRA Code we have come to appreciate that as an industry applying classification decisions we have had, what we believe to be, a solid base upon which to work.

⁴ See http://www.acma.gov.au/scripts/nc.dll?WEB/STANDARD/1001/pc=PC_310907

⁵ See http://www.acma.gov.au/scripts/nc.dll?WEB/STANDARD/1001/pc=PC_300106

⁶ See <http://www.aria.com.au/pages/documents/ARIARelease-2010wholesalesalesfigures17Feb2011.pdf>

⁷ See <http://www.mipi.com.au/issues--faqs/young-people-music-and-the-internet/>



The ARIA/AMRA Code is a prime example of a self regulated model that has been working effectively over the past fourteen years. Even though the ARIA/AMRA Code is operated on a self regulatory basis, we believe that the ARIA/AMRA Code is unique as it is closely aligned with the National Classification Scheme.

These classification principles which are set out in Code 2.2 of the ARIA/AMRA Code mirror those provisions set out in Section 11 of the *Classification (Publications, Films and Computer Games) Act 1995*.⁸ Consequently, the classification decisions made by our respective members reflect:

- *the standards of morality, decency and propriety generally accepted by reasonable adults; and*
- *the literary, artistic or educational merit (if any) of the Product; and*
- *the general character of the Product, including whether it is of medical, legal or scientific character; and*
- *the persons or class of persons to or amongst whom it is published or is intended to be published.*

The ARIA/AMRA Code is structured in a way that ensures that any shifts in community attitudes that occur by way of the National Classification Scheme (and the Classification Board's community consultation processes) will subsequently inform and guide the classification decisions of our respective members.

The ARIA/AMRA Code has been approved by SCAGS and the operation of the ARIA/AMRA Code, including compliance with the ARIA/AMRA Code is overseen by an independent Labelling Code of Practice Ombudsman. The Ombudsman is appointed by ARIA and AMRA jointly in consultation with the Attorney-General's Department. The Ombudsman provides an annual report regarding compliance with the ARIA/AMRA Code to SCAGS and secretariat of SCAGS each year. The appointment of an independent Ombudsman coupled with the close consultative arrangement with SCAGS has resulted in the operation of a code that is both effective and practical.

Since the implementation of the revised ARIA/AMRA Code in 2003, there have been 64 formal complaints that have been handled by the *Complaints Handling Service* that is established and administered in accordance with the ARIA/AMRA Code⁹. The *Complaints Handling Service* receives many more calls from consumers whose complaint concerns issues unrelated to the ARIA/AMRA Code such as broadcasting complaints (about 20-25 complaints per annum). These types of complaints for example are referred to either the relevant broadcaster, Free TV Australia or the Australian Subscription Television and Radio Association as appropriate. No complaints have been submitted to SCAGS and only one complaint has been escalated to the Ombudsman. We believe that the low level of complaints demonstrates that the current self regulated model is delivering sound consumer awareness and high levels of industry understanding and compliance.

From an international perspective, the self regulatory model adopted in Australia is far more robust and provides consumers with a higher level of advice about the nature of the content on the recordings. A voluntary consumer advisory scheme is in operation for example in the comparable international markets and music retail industries of the United States, Canada, New Zealand and the United Kingdom (**Comparable Territories**). In these Comparable Territories, a single warning label (or variation of the warning label) is used to advise consumers of the explicit content that is embodied on the audio product, rather than a graduated series of advice as in Australia. Example of these advisory labels can be viewed at:

- **United States:** http://www.riaa.com/toolsforparents.php?content_selector=parental_advisory
-
- **Canada:** <http://www.cria.ca/parentaladvisory.php>
- **United Kingdom:** <http://www.bpi.co.uk/members-area/article/parental-guidance-sticker-specification.aspx>

The consumer advisory notices set out in the ARIA/AMRA Code provide easily understandable and detailed information to consumers regarding the specific nature of the content embodied on the audio product.

⁸ http://www.austlii.edu.au/au/legis/cth/consol_act/cfacga1995489/s11.html

⁹ Code 5 of the ARIA/AMRA Code



Consequently, we believe that the self regulatory structure and principles in the ARIA/AMRA Code are sound and continue to serve consumers well.

There are significant practical considerations to consider if the ARIA/AMRA Code was moved from a self regulatory model to the jurisdiction of the Classification Board. The immense volume of audio recordings in a variety of formats and packages would have a detrimental impact on the efficiency of the classification of audio recordings.

In the Director's Overview in the Classification Board Annual Report 2009-10, the Director of the Classification Board noted that in that reporting year, "*the Board received 7,302 applications, including applications to classify 4,820 films, 1,101 computer games and 291 publications (228 single issue and 63 serial publications). These figures are generally consistent with the number of applications the Board has received over the previous two years*"¹⁰. With the increased number of video games, applications and other products that fall within the remit of the Classification Board, it is not unreasonable to surmise that shifting the responsibility of the classification of audio recordings from ARIA and AMRA members to the Classification Board would exponentially increase the Classification Board's responsibilities and could detrimentally delay the release and sale of recordings by our respective members.

The serious commercial implications of requiring all sound recordings to be classified by the Classification Board (or another government department) should not be understated as there would be a significant commercial impediment to legitimate Australian music companies and retailers. According to the Classification Board website, the Classification Board asks that for standard applications, an applicant should allow 20 working days for a classification determination¹¹. Apart from the cost implications involved in classifying the music products, the timeframes involved in getting the products classified by a third party would have detrimental consequences for Australian music companies and retailers.

Legitimate Australian music companies and retailers would not be able to compete with illegitimate ('pirate') music suppliers or even with legitimate overseas music suppliers as the overseas music suppliers (who largely operate in a less stringent regulatory environment) would release the sound recording before the product is classified here. This would result in a delayed local release which would diminish any local advantage and would damage local sales. From a practical perspective, due to piracy concerns and pre-release "leaks" that often occur in relation to new products, local music companies operate on very tight release timeframes and often do not receive the products for distribution until just prior to the release date. In an environment where piracy is prevalent, simultaneous release dates with the music companies' overseas counterparts is critical. The objective of classifying products should not impede innovation or competition and therefore it is important that the responsibility for classifying products remain within the respective industries.

Question 18: What content, if any, should industry classify because the likely classification is obvious and straightforward?

In accordance with the ARIA/AMRA Code, ARIA members must classify and, if appropriate, label all products released and/or distributed by them in Australia in accordance with the labelling guidelines set out in the ARIA/AMRA Code¹². As set out in Figure 2 above, not all products will require a consumer advisory label under the ARIA/AMRA Code. If a product does not contain any offensive content, it will be sold without a consumer advisory label.

¹⁰http://www.ag.gov.au/www/cob/classification.nsf/Page/InformationCentre_AnnualReports_ClassificationBoardAnnualReport2009-10

¹¹ http://www.classification.gov.au/www/cob/classification.nsf/Page/Industry_ApplyforClassification_ApplyforClassification-FilmnotforPublicExhibition

¹² Code 3.2 ARIA / AMRA Code



Question 22: How can classification markings, criteria and guidelines be made more consistent across different types of content in order to recognise greater convergence between media formats?

We recognise that our members now operate as part of the converged media environment where new online and mobile services are becoming more prevalent. As noted earlier in this submission, the ARIA/AMRA Code does not extend to cover digital releases. However, despite the fact that these types of products are not subject to the ARIA/AMRA Code, most legitimate digital music providers have adopted the common international practice of denoting the words “explicit” next to sound recordings that contain content that may be offensive. The adoption of this internationally and instantly recognisable marking means that consumers are adequately advised of the nature of the material on the recording before they purchase such content. If a consumer does not want to purchase a recording that is labelled as “explicit” they have the option of purchasing an unlabelled or “clean” version of the recording.

Imposing graduated classification markings on digitally distributed recordings within Australia is problematic for several reasons:

- 1. Global nature of the content:** It needs to be recognised that in the case of music, a significant proportion of the online distributors of recordings are multinational companies that are not based in Australia. The fact that Australia is a relatively smaller market for these online retailers (Australia represents 2% of global trade revenues in respect of digital music sales¹³) does not provide them with an incentive to adopt Australian markings in respect of their content. In these circumstances it is better to acknowledge the commonly held international advisory markings of “Explicit” or “Parental Advisory” which has been adopted in other territories. For example, some online retailers use the “explicit” marking as set out in the Recording Industry Association of America (**RIAA**) guidelines regarding the digital distribution of music.¹⁴
- 2. Piracy:** Due to piracy (particularly internet piracy) concerns Australian release dates are increasingly the same as or contemporaneous with foreign release dates. If classification requirements delay local release dates the industry will face increasing losses due to piracy. It is also highly probable that consumers may choose to purchase music products from (illegitimate) overseas sources if the Australian release date is delayed due to classification requirements – which will undermine the operation of an innovative and competitive digital economy that supports Australian businesses and consumers. The undue impositions on legitimate digital retailers and new business models will be detrimental to these businesses as they are unable to fairly compete or generate a return from their investments. The loss of sales would damage the local music and retail industries without effectively limiting local access to restricted or prohibited content.
- 3. New Business Models:** The proliferation of new business models has opened up the digital economy, and Australian consumers are now able to access a wide range of digital music services. For example, streaming services from territories outside of Australia are now available for Australian consumers. These services are akin to radio (although they often offer a higher level of interactivity) but are delivered via the internet. To impose classification markings on these types of services, when online simulcasts of terrestrial radio are not subject to such classifications seems incongruous. Furthermore, the application of classification markings to user generated content sites will require consideration.

Question 24: Access to what content, if any, should be entirely prohibited online?

In accordance with the ARIA/AMRA Code, our respective members are not permitted to sell or distribute products “containing lyrics which promote, incite, instruct or **exploitatively** (“exploitative” means appearing to purposefully debase or abuse for the enjoyment of listeners, and lacking moral, artistic or other values) or gratuitously (“**gratuitous**” means material which is unwarranted or uncalled for, and included without the

¹³ IFPI “Recording Industry in Numbers 2010” page 86

¹⁴ See http://www.riaa.com/toolsforparents.php?content_selector=parental_advisory



*justification of artistic merit) depict drug abuse; cruelty; suicide; criminal or sexual violence; child abuse; incest; bestiality; or any other **revolting or abhorrent activity** in a way that causes outrage or extreme disgust to most adults”.*

We acknowledge that in theory it would be illogical for music that is restricted for sale in a physical format be readily available for sale online. However, consideration should be given to access controls or increased adult supervision to mitigate the risk that minors will be able to access such material.

ARIA and AMRA welcomes the opportunity to provide additional information on these important issues. Please do not hesitate to contact ARIA or AMRA if you require any additional information.

Yours sincerely,

A handwritten signature in black ink, appearing to be "Lynne Small". The signature is written in a cursive style with a large, rounded loop at the end.

Lynne Small
Manager - Finance, Operations & Administration
Australian Recording Industry Association Ltd

A handwritten signature in black ink, appearing to be "Ian Harvey". The signature is written in a cursive style with several sharp, overlapping strokes.

Ian Harvey
Executive Director
Australian Music Retailers Association



ANNEXURE A

**LABELLING CODE OF PRACTICE FOR RECORDED MUSIC PRODUCT CONTAINING POTENTIALLY
OFFENSIVE LYRICS
AND/OR THEMES**

March 2003

ARIA/AMRA

**LABELLING CODE OF PRACTICE
FOR RECORDED MUSIC PRODUCT CONTAINING
POTENTIALLY OFFENSIVE LYRICS
AND/OR THEMES**



**AUSTRALIAN RECORDING
INDUSTRY ASSOCIATION**





INDEX

Introduction:	3
Underlying Principles:	3
Classification Responsibilities:	4
General	4
ARIA	4
AMRA	5
Classification Board	5
Labelling Guidelines:	6
Level 1 Criteria	6
Level 2 Criteria	6
Level 3 Criteria	7
Exceeding Level 3	7
General	8
Complaints Procedure:	8
Complaints Handling Service	8
Establishment	8
Complaint Referral	8
Process	9
Complaint Resolution	9
Labelling Code of Practice Ombudsman	10
Compliance	10
Reporting and Review Mechanisms	10
Public Education and Liaison with Retailers	11
Glossary	12



1 INTRODUCTION

ARIA members manufacture and/or distribute on a wholesale basis copies of audio only recordings in various formats (including CDs, cassettes, records, collectively 'Product'). AMRA members sell Product sourced from ARIA members and other parties to the public.

ARIA and AMRA are aware that some Product available for purchase in Australia may contain language and/or themes which may offend some members of the public ("themes" means social issues such as crime, suicide, drug and alcohol dependency, death, serious illness, family breakdown and racism). This Labelling Code of Practice ("Code") addresses the main issues relating to the classification, labelling and sale of such Product and gives guidance as to how ARIA and AMRA members ought to operate.

ARIA and AMRA are responsible for ensuring compliance with this Code by their respective members.

2 UNDERLYING PRINCIPLES

The principles underlying the Code are broadly based on those contained in the National Classification Code in relation to the classification of films, publications and computer games, and aim to balance the interests of consumers, artists, record companies and retailers:

2.1 Code Principles:

- a) Adults in a democratic society should be free to listen to what they wish.
- b) Creative artists should be free to express themselves without fear of intervention.
- c) Consumers should be supplied with sufficient information so that they can choose to avoid exposure to material which may offend them, and make informed purchasing decisions in relation to Product which is not suitable for minors.



- d) Record companies and recorded music retailers operate under a commercial imperative to respectively, release sound recordings and make them available for sale to members of the public.

2.2 Classification Principles

The following principles form the basis of the Labelling Guidelines (in Section 4 below) and are to be taken into account when applying the criteria in those guidelines:

- a) the standards of morality, decency and propriety generally accepted by reasonable adults; and
- b) the literacy, artistic or educational merit (if any) of the Product; and
- c) the general character of the Product, including whether it is of medical, legal or scientific character; and
- d) the persons or class of persons to or amongst whom it is published or is intended to be published.

3 **CLASSIFICATION RESPONSIBILITIES**

General

Product containing potentially offensive lyrics and/or themes will be classified as set out in the Labelling Guidelines.

ARIA Members

ARIA members must classify and, if appropriate, label all Product released and/or distributed by them in Australia in accordance with the Labelling Guidelines outlined in Section 4 below.

In instances where an ARIA member is uncertain as to how to classify a particular Product or where the ARIA member has received a complaint regarding a classification decision it has already made, it may refer the matter to the ARIA Labelling Subcommittee for a classification determination. If the ARIA Labelling Sub-Committee fails to reach a majority agreement, then



the decision will be referred to the Labelling Code of Practice Ombudsman ('Ombudsman' see Section 6 below) who will make a final determination.

No Product shall be distributed by an ARIA member until it has been classified.

AMRA Members

AMRA members must classify and, if appropriate, label all Product made available for sale by them (which is not sourced from ARIA members) in accordance with the Labelling Guidelines outlined in Section 4 below.

If an AMRA member is unsure of the appropriate classification category for a particular Product, they may refer the decision to the ARIA Labelling Subcommittee for a final classification determination. If the ARIA Labelling Subcommittee fails to reach a majority agreement, then the decision will be referred to the Ombudsman who will make a final determination.

AMRA members must ensure that Level 3 Product is not sold to minors and that Product exceeding the criteria for Level 3 is not sold to anyone.

The Classification Board

Product to be released and/or distributed in Australia which contains audio-visual and/or visual material must, pursuant to the national classification scheme, be classified by the Classification Board in accordance with the classification guidelines for film and computer games. Such product may require classification by the Classification Board, and the ARIA/AMRA member should refer it to the Attorney-General's Department for classification by the Classification Board.

Product classified by the Classification Board shall not require any separate classification or labelling under the Code as it is regulated by the Classification (Publications, Film and Computer Games) Act 1995 (as amended) and is therefore outside the scope of this Code. Enquiries should be directed to the Attorney-General's Department.



4 LABELLING GUIDELINES

All Product will be classified and, if required, labelled in accordance with the following criteria.

Level 1 Criteria

Product containing:

- infrequent aggressive or **strong coarse language**; and/or
- moderate impact ('impact' means the strength of the effect on the listener) **references** to drug use, violence, sexual activity or themes.

Level 1 Product will be labelled as follows:

Label:

(Black and White)



Level 2 Criteria

Product containing:

- frequent aggressive or strong **coarse language**; and/or
- strong **impact references** to or **detailed descriptions** of drug use, violence, sexual activity or themes.



Level 2 Product will be labelled as follows:

Label:

(Blue and White)



Level 3 (Restricted) Criteria

Product containing **graphic descriptions** of drug use, violence, sexual activity or very strong themes, which have a very high degree of **intensity** and which are high in impact.

These Products require an **adult perspective** and are therefore not to be sold to persons under eighteen years of age.

Level 3 Product will be labelled as follows:

Label:

(Red and White)



Exceeding Level 3 – Not To Be Sold:

Product containing lyrics which promote, incite, instruct or **exploitatively** (“exploitative” means appearing to purposefully debase or abuse for the enjoyment of listeners, and lacking moral, artistic or other values) or gratuitously (“**gratuitous**” means material which is unwarranted or uncalled for, and included without the justification of artistic merit) depict drug abuse; cruelty;



suicide; criminal or sexual violence; child abuse; incest; bestiality; or any other **revolting or abhorrent activity** in a way that causes outrage or extreme disgust to most adults.

These recordings are not permitted to be released and/or distributed by ARIA members or sold by AMRA members.

General

All labels should be of a standard design conforming to the following specifications:

- A rectangular shape with dimensions of 3.5cm x 2.5cm.
- Labels must be placed on the front of the relevant case (e.g. jewel box) holding the Product, so that they are clearly visible.
- In the case of locally printed slicks, the label can be worked into the artwork on the slick.
- In the case of imported titles with slicks already printed, the label must be placed on the case of the Product. In order to maintain a consistent system and achieve high consumer recognition, this should be attached irrespective of whether there is already an overseas warning printed on the slick.

Additional labels will be made available by ARIA/AMRA for retailer use in the event of case breakage or other damage.

5 COMPLAINTS PROCEDURE

COMPLAINTS HANDLING SERVICE

Establishment

AMRA will establish and administer a central Complaints Handling Service ('CHS') for handling and resolving all complaints (regardless of where they are originally received) relating to the classification, labelling and/or sale of Product.



Complaint Referral

The CHS will be available for consumers to contact via telephone (1800 number for ease of access), email, fax or post when they have a complaint or query regarding the classification, labelling and/or sale of Product in Australia.

The contact details and remit of the CHS shall be displayed on point of sale material at retail outlets and on the websites of ARIA and AMRA.

If ARIA, AMRA, any of their members, the Classification Board, any Federal or State government department/agency or the Ombudsman receive a complaint relating to the classification of Product as described above, they shall refer the consumer to the CHS.

Process

The procedure to be followed by the CHS shall comply with the requirements of Australian Standard 4269-1995 *Complaints Handling*.

Complaints received by the CHS will be dealt with according to their nature as follows:

- If the complaint relates to the sale of Level 3 Product to a minor, the CHS will in direct consultation with the relevant retailer resolve the complaint.
- If the complaint relates to the classification and/or labelling of Product sourced from non-ARIA members, the CHS will, in direct consultation with the relevant retailer, resolve the complaint.
- If the complaint relates to the classification and/or labelling of Product released or distributed in Australia by an ARIA member the CHS will, in accordance with its procedures, contact ARIA who will liaise with its member and provide its response to the complaint to the CHS.
- In instances where, after having been dealt with by the CHS, a complainant remains dissatisfied, the CHS will inform the complainant that they may refer their complaint to the Ombudsman for review.



Complaints Resolution

Complainants will at the time of registering their complaint be provided with written acknowledgement together with a consumer guide to the complaints handling process which will illustrate possible outcomes.

The complainant will be notified in writing of the outcome of the complaint by the CHS within four weeks of receipt of the complaint. This time frame will only be exceeded where it has been impossible to locate the relevant Product or where the complainant is not able to respond in a timely fashion to a request for further information.

6 LABELLING CODE OF PRACTICE OMBUDSMAN

ARIA and AMRA shall jointly appoint, in consultation with the Attorney-General's Department, an Ombudsman with knowledge of classification standards, relevant skills and a demonstrable understanding of the Australian music industry to perform the functions conferred by the terms of reference outlined in Appendix A to the Code.

7 COMPLIANCE

In administering the Code ARIA/AMRA will develop a number of specific measures to ensure compliance by their members with the terms of the Code. Such measures shall include the training of existing and new staff and other initiatives aimed at communicating the requirements of the Code and its importance to members.

If any ARIA member unreasonably fails to co-operate with the scheme, then that company's behaviour may be deemed under ARIA membership rules to be repugnant and the ARIA Board will be entitled to expel such member.

If any AMRA member unreasonably fails to co-operate with the scheme, then that company's behaviour may be deemed under AMRA membership rules to be repugnant and the AMRA Board will be entitled to expel such member.



8 REPORTING AND REVIEW MECHANISMS

The Ombudsman will produce annual reports on the following:

- The operation of the Code classification scheme during the reporting period;
- The level of compliance by AMRA members; and
- The level of compliance by ARIA members.

ARIA and AMRA shall provide information to the Ombudsman to enable the preparation of his/her annual reports including details of the quantity and identity of Product labelled and the number, type and outcome of complaints handled by the CHS in the reporting period.

ARIA and AMRA will conduct a regular review of the Code classification scheme to ensure it is meeting its objectives.

9 PUBLIC EDUCATION AND LIAISON WITH RETAILERS

Point of sale material detailing the new labelling scheme and the CHS will be supplied by ARIA and AMRA to retailers for the purpose of public education, with regular updates. Retailers will be required to display in store the ARIA/AMRA approved point of sale material so that it is clearly visible to consumers.

In order to ensure maximum co-operation for the scheme at the retail level, information detailing the scheme will be distributed to retailers on a regular basis so that they are fully informed of the new arrangements and equipped to handle the sale of labelled product with discretion. Retailers will be encouraged to flag Products requiring a Level 3 label within their point of purchase systems.



GLOSSARY

- “Complaints Handling Service”:
means the central AMRA administered service for handling and resolving complaints from consumers relating to matters relevant to the Labelling Code of Practice.
- “Depiction”:
means representation or portrayal.
- “Exploitative”:
means appearing to purposefully debase or abuse for the enjoyment of listeners, and lacking moral, artistic or other values.
- “Gratuitous”:
means material which is unwarranted or uncalled for, and included without the justification of artistic merit.
- “Impact”:
means the strength of the effect on the listener.
- “Product”:
means all formats containing sound recordings now known or hereafter developed, (including CDs, cassettes and records) which are distributed and made available for sale in Australia, excluding formats which contain audio visual and/or visual material.
- “Themes”:
means social issues such as crime, suicide, drug and alcohol dependency, death, serious illness, family breakdown and racism.