

15 July 2011

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

By email: classification@alrc.gov.au

Response to Issues Paper – National Classification Scheme Review

Dear Executive Director,

Thank you for providing the opportunity for interested stakeholders to provide comment on the Issues Paper for the National Classification Scheme Review (Issues Paper).

Background

Live Performance Australia (LPA) is the peak body for Australia's live entertainment and performing arts industry.

LPA was established in 1917 and is registered as an employers' organisation under the *Fair Work Act 2009*. We have over 360 members who work in the live performance sector across all artistic genres, including contemporary and classical music, musicals, theatre, comedy, dance, opera, circus and physical theatre. We represent producers, venues, promoters, performing arts companies, festivals and service providers such as ticketing companies and technical suppliers. LPA also represents some cinemas, negotiating wage agreements with the Media and Entertainment Arts Alliance (MEAA), on employers' behalf.

Australia does not currently have a classification system for live performance events, and LPA is strongly of the view that no classification system is needed.

Our response to the Issues Paper is concerned primarily with the filming of live events, for cinema screening and/or internet broadcast. The filming of live events for delayed or live on screen presentation is increasingly common¹ and does raise the question of whether opera, ballet, theatre and other live events (which are not classified when performed live) should be classified when presented on a screen.

¹ For example, the National Theatre (London), the Ballet de l'Opera Natinal de Paris (Paris), and the Berlin Philharmonic Orchestra (Berlin), have all had – or will shortly have – performances screened at the Cinema Nova, Carlton (Melbourne) and other venues around Australia.

Given our particular interest in the Issues Paper, we have restricted our responses to questions touching on this issue. Please see our responses below.

Issues Paper Questions

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

National classification schemes exist to inform consumers of the broad nature of media content, and assist them in whether they (or very often, their children), will view that content – be that by playing a computer game or watching a film or TV programme.

The primary objective of a national classification scheme is to act as a parenting aid, assisting parents to screen their children from inappropriate content. This is done to protect children from the emotional and/or psychological harm they may suffer if they view inappropriate content, and the negative impact such content may have on emotional and psychological development. More broadly, they allow adults to form a reasonable expectation of what to expect from content before it is consumed.

Classification schemes are powerful tools to maintain community social norms, which are often referred to as standards.

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

This question applies to the live performance industry to the extent that live performances are increasingly filmed for screen or online presentation, either on delay or live. No classification system applies to live performances, but given that film content is subject to classification, there is some question whether a classification system should be applied when that same entertainment is presented on a screen.

Currently, filmed live entertainment is presented in cinemas without classification. If the filmed live performance is likely to challenge some viewers, then cinema managers provide content warnings in much the same way that theatre managers do. Our advice from LPA cinema Members is that this system works well. As the industry body, LPA receives complaints on occasion about live theatre content; but we have not received any complaints from consumers concerning content presented in filmed live performances. Nor are we aware of any members receiving them directly.

LPA is of the view that the current self-regulatory system should remain, and there is no need to apply a classification scheme to live performances, or filmed live performances. Such a scheme is unnecessary and will generate an undesirable regulatory burden. It also creates an arbitrary division between live performance (unclassified), and filmed live performance (classified). We believe that live performance and filmed live performance can still be distinguished from content which is expressly made for film, television or gaming, and should be exempt from classification on that basis.

The practical restrictions of live staging inevitably limit the immersive nature of the audience's experience of live performance. By contrast, movies and computer games can achieve realism convincing enough to be extremely disturbing - particularly in the depiction of violence and physical harm. Computer games, where the player often immerses themselves in the experience of inflicting violence, may have the most powerful impact of any media. The intensity of response that can be generated through film special effects, close-ups, and skilful editing cannot be generated through live performance, where the barriers to the suspension of disbelief (and accordingly, the buffers to psychological harm through inappropriate content) are more robust. Simply - it is difficult to 'forget' when watching a live performance, that the presentation is a performance. This protects the viewer, and lessens the need for a strict classification system.

Those who present live performances can, in the vast majority of cases, be relied upon to provide fair warning to their audience. LPA is aware that live concerts have in some isolated cases generated complaints regarding the content presented, most commonly where radio edits of an artists' music have created an inaccurate impression of the suitability of their performance for children. These occurrences are self-correcting, however, as presenters quickly learn when warnings may be necessary, and how to provide them. By contrast, a classification system is cumbersome, administratively onerous, and slower to respond to shifting community standards. There is a practical consideration as well – a classification system for filmed live performance is likely to be impractical, as performances are often simulcast, or broadcast within 48 hours of the live presentation, leaving insufficient time for the classification process. The system of discretionary warnings for live performance has existed for decades and works extremely well – this point is discussed further below, in response to question 4. It would be a retrograde step to enforce a classification system for that same content simply because it is presented on a screen.

Another important distinction relates to the relative accessibility of entertainment content, which heavily affects the audience that is likely to consume it. Electronic media content (film, television, computer games), is generally more available and easily accessed than live performance. Live performances remain a 'destination' choice for consumers. To see a play, for example, a consumer will have to leave their home, perhaps hire a baby-sitter, find parking, and often pay a premium ticket price to enjoy the experience. Such a consumer generally informs themselves of the nature of the viewing experience they are about to experience before they do so. The same can be said of filmed live entertainment. When compared to cinema or television; ballet, opera and theatre are comparatively niche entertainment forms which attract a loyal and highly informed audience base. The knowledge of the audience base is bolstered by a strong culture of responsible presentation, where theatre and cinema managers provide discretionary warnings for content that is likely to offend or be unsuitable for children.

By contrast, when a consumer switches on their TV or computer at home, and 'surfs' through channels looking for something to watch they may need the assistance of a classification scheme to rate the content of a programme before they decide to watch it (or allow their children to). The same can be said for consumers who decide to head to a multiplex, and may decide on a movie on the strength of a title, or the lead actors alone.

In summary, the decision to consume live performance content (filmed or unfilmed) usually involves a high degree of consumer knowledge, which is not always the case with a film or TV programme. Film, television and computer games can be highly casual consumer choices - often watched simply because they're on, and the audience has nothing better to do. This makes the imperative to classify such material more urgent than in live performance.

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

No. Personal standards of what is considered 'acceptable' vary too greatly. To apply a classification to a presentation simply because it has received a complaint risks subjecting all consumers and content makers to a moral 'tyranny of the minority'.

Presenters of live entertainment have always been trusted to know their audience and the content they present. They are in the best position to know how the content is likely to be received by that audience, and provide fair warning as required. This system works well, and has done for many years. Apart from anything else, it is in presenters best interests to inform audiences as any bad experience may discourage repeat custom, and repeat custom is essential for live performance producers.

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

For decades, the live performance industry has shown a capacity to responsibly present content in accordance with community values, and to provide adequate and appropriate content warnings when those warnings are needed. This situation should be allowed to continue, and should continue to apply to the presentation of filmed live performance.

The live performance industry does not constitute a moral threat to the community, nor does the industry present goods that can be accessed freely and easily by consumers of any age, at any time. Consumers of live performance events are well-informed, and when content advice is required, presenters invariably provide it. Presenters are well aware that it is in their interests to do so.


Applying a content classification scheme to live performance, or filmed live performance, would be heavy-handed, and would impose an unnecessary regulatory burden on producers and presenters.

Conclusion

Again, thank you for the opportunity to provide comment to the Issues Paper.

Please do not hesitate to contact me, should you have any queries regarding our submission. We look forward to the results of the Review, and the development of the National Classification Scheme.

Yours sincerely

A handwritten signature in cursive script that reads "Suzanne Daley" followed by a small dash.

Suzanne Daley

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