OUTDOOR MEDIA ASSOCIATION

SUBMISSION TO
AUSTRALIAN LAW REFORM COMMISSION

DISCUSSION PAPER 77

National Classification Scheme Review

18 November 2011

BACKGROUND

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 products[1] including:

- on buses, trams, taxis, pedestrian bridges, billboards 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.

This submission comments only on those proposals in the Discussion Paper that are of relevance to the outdoor advertising industry, as outlined below.

PROPOSAL 8-5

"The Classification of Media Content Act should provide that, for media content that must be classified and has been classified, content providers must display a suitable classification marking. This marking should be shown, for example, … on advertising for the content."

The OMA has no objection to this proposal in theory, however in practice it will sometimes be difficult to achieve for outdoor advertising.

On occasion, an advertisement will be created and posted on an outdoor advertising site before the product (movie, computer game, television show) has been classified and would therefore not carry the classification marking.

Outdoor advertisements are typically displayed for at least 4 weeks. In this case, the classification may become known during the period of display, and such advertising will not carry the required marking of classification. The logistics of removing a an outdoor advertisement at short notice are difficult, and can sometimes involve cherry pickers, road closures and skilled abseiling contractors. Therefore, we submit that outdoor advertising that is already on display prior to classification should be

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

permitted to run its course, notwithstanding that it does not carry the classification marking.

Proposal 8-5 should be qualified so that advertisers or outdoor media display companies are not penalised for existing outdoor advertising that is already on display at the time that the classification is made, where such advertising was set up to run for a specified period.

PROPOSAL 8-6

"The Classification of Media Content Act should provide that an advertisement for media content that must be classified must be suitable for the audience likely to view the advertisement. The Act should provide that, in assessing suitability, regard must be had to:

a) the likely audience of the advertisement;
b) the impact of the content in the advertisement; and
c) the classification or likely classification of the advertised content."

We note the example given at paragraph 8.68 of the Discussion Paper, that an advertisement on the side of a bus for a MA 15+ film may have a very low impact and that the low impact may mitigate any potential harm caused by young minors seeing an advertisement for a film that is not suitable for them.

The OMA supports the inclusion of sub-section (b) of Proposal 8-6, which would allow advertisements for PG, T and MA films, television shows and computer games to be displayed on outdoor advertising sites, provided that the impact of the advertisements was appropriate for the likely audience. This requirement already exists in the advertising self-regulatory framework, which requires outdoor advertisements to be suitable for the broad audience that will view them.

We submit that Proposal 8-6 sensibly addresses the sensitivities involved without causing undue limitations on business.

However, paragraph 8.69 of the Discussion Paper states that industry "classifiers" would assess the likely classification of advertisements for media content that must be classified (i.e. advertisements for films, television shows and computer games). While we appreciate the proposal to leave the assessment to industry, we submit that the current system is nimble, efficient and effective and so assessment by a trained industry classifier is not necessary. Under the current system, outdoor advertisements go through several checks and balances before they are displayed:

1. Most advertisements are created by a creative agency. These agencies are generally aware of the codes of practice that are developed by the Australian

Association of National Advertisers (AANA). As such, the vast majority are in line with the requirements of those Codes before they are presented to our members to display.

2. On rare occasions, however, our members will receive requests to display advertisements that may breach the AANA Codes. In this case, they will refer the advertisement to the OMA for copy advice. If our advice is that the advertisement is likely to breach the AANA Codes, then it cannot be displayed under the OMA Content Review Policy. Since this Policy came into effect in June, there have been no upheld complaints about advertisements displayed by our members.

As this current system is working very effectively, we submit that trained industry classifiers are not needed to perform this function.

Further, at 8.70, the Discussion Paper suggests that advertisements should still comply with industry codes. Our members are committed to abide by the various industry codes, and we have no objection to this suggestion. However, the suggestion highlights the question of whether the proposed framework adds anything to the existing framework. The OMA submits that in relation to advertising, it does not. In this case, the proposal would be doubling up on an already effective system.

Outdoor advertising

Paragraph 8.77 of the Discussion Paper

We are supportive of the Commission's decision not to propose that advertising should be subject to the National Classification Scheme. Our support is based on our experience that the current system of advertising self-regulation is working extremely well. This was outlined in detail in our previous submission to the Commission, but in brief:

- The outdoor advertising industry posed 30,000 advertisements in 2010, of which 66 attracted complaints.
- The Advertising Standards Bureau (ASB) found that complaints about 7 of the advertisements should be upheld.
- In other words, 99.98% of outdoor advertisements in 2010 were in accordance with prevailing community standards.

However, the Commission has given consideration to where outdoor advertising may fit if the Government felt that it *should* come within the National Classification Scheme. We note the comment at paragraph 8.77 of the Discussion Paper:

> "However, this Discussion Paper provides for authorised industry classifiers and industry-specific codes. This means that, if advertising were brought into the proposed scheme, outdoor advertising could continue to be assessed or classified by industry, but decisions might be monitored by the Regulator and subject to review by the Classification Board."

We consider that the financial and administrative burdens that would be involved in a system of reporting to the Regulator or the Classification Board is simply not justified in circumstances where the industry makes the right judgements 99.98% of the time. Further, we are working hard to increase this accuracy rate, with two new industry initiatives:

1. The OMA has recently commenced a regular program of training for the industry, to help its members better understand and apply the various AANA codes of practice. These training sessions provide the industry with clarity about where the line in the sand is drawn, and have enhanced the already high compliance with the self-regulatory codes.
2. The industry has also recently adopted a Content Review Policy, under which contentious advertisements must be referred to the OMA for copy advice before they are displayed. If the advice is that an advertisement is likely to breach a code of practice, the advertisement must not be displayed. Our members are using this service regularly, and several advertisements have been kept from display or modified prior to display since the Policy came into effect in June 2011. This new second layer of review before advertisements are displayed will lead to a reduction in the small number of times the industry misjudges community standards.

While the OMA is supportive of continued industry assessment of advertisements, we cannot see the need for authorised industry "classifiers" to replace the current systems of review. In considering a new system of trained industry classifiers, one must weigh up the costs with the benefits to be achieved. In the context of the 30,000 advertisements that were displayed in 2010, and the 7 that were found to be in breach of the AANA Codes, the additional resources and costs associated with training and employing industry classifiers cannot be justified. The industry accepts that it has not judged correctly 100% of the time. However, the continuous industry improvements discussed above are measures that are appropriate to the scale of the issues.

The Government would also need to consider how it could appropriately bring on-premise outdoor advertising into the Scheme (advertising displayed by businesses on their own premises is called on-premise advertising). These businesses are not members of a relevant industry association and they display many more advertisements annually than the 30,000 advertisements displayed by our members

(third-party advertisers). If outdoor advertising was brought into the National Classification Scheme, the administrative and educational resources needed to include on-premise advertising would be immense.

However, if third-party advertising was brought into the National Classification Scheme, we submit that it would be neither sensible nor fair to exclude on-premise outdoor advertising. On this point, the Government should note that in 2010, on-premise advertising made up 53% of the complaints about outdoor advertisements that were upheld by the Advertising Standards Bureau.

Paragraph 8.78 of the Discussion Paper

Paragraph 8.78 of the Discussion Paper states that:

> "If the Australian Government chose to bring outdoor advertising into the co-regulatory National Classification Scheme, the ALRC would suggest that a law prohibiting the display in public places of media content likely to have a higher-level classification may be suitable."

Legislation of this nature would be costly, cumbersome and unjustified in the context of an industry that currently holds such a good record of self-regulation. The 99.98% accuracy rate of the industry is hardly the mark of a renegade industry that propagates a multitude of inappropriate advertisements, from which the community needs State protection. In this context, it is too harsh to propose penalties for those rare occasions on which the industry assessment is misjudged.

Further, we expect that "higher-level classification" would refer to any advertisements in the M category and above. However, some community service advertisements would likely fall into the M category, and these advertisements serve an important community function - for example, to advise of the dangers of smoking, drug use, reckless driving etc. These advertisements should not be excluded from display.

Finally, if such a prohibition were applied, it should be applied consistently to all media content and not limited to outdoor advertising. The high standard of outdoor advertising in the current Australian context does not justify being singled out for harsher regulation than other media content. Such a prohibition would be ineffectual if it were not also applied consistently to other media content, such as magazines on display in newsagents or petrol stations. Failure to apply such a prohibition consistently would undermine the goal of the National Classification Scheme.

Conclusion

We are grateful for the opportunity to respond to the Discussion Paper and we support the proposal not to bring advertising into the National Classification Scheme.

If the Government disagrees with the Commission's position in relation to advertising, the issues raised above will need further consideration and the OMA would expect to be involved in the discussions.

The OMA also considers that more thought needs to be given to proposals 8-5 and 8-6, so that the particular needs of outdoor advertisers are adequately met.