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**MOTION PICTURE DISTRIBUTORS ASSOCIATION OF AUSTRALIA (MPDAA)
SUBMISSION IN RESPONSE TO ALRC CLASSIFICATION REVIEW DISCUSSION PAPER**

Thank you for the opportunity to respond to the ALRC Discussion Paper for the Review of Censorship and Classification.

Once again, the MPDAA is aware of the wide-ranging scope of the inquiry and, for this reason, will restrict its responses to the ALRC proposals that pertain directly to the business of distribution for public exhibition of films.

The MPDAA wishes to express its support of the submissions from AHEDA (Australian Home Entertainment Distributors Association), AFACT (Australian Federation Against Copyright Theft) and NACO (National Association of Cinema Operators, Australia). Although these organisations share members, responses may vary on some issues due to the differing nature of our distribution platforms and the resultant shift in emphasis in our business models, interests and concerns.

The Motion Picture Distributors Association of Australia

The Motion Picture Distributors Association of Australia (MPDAA) is a non profit organisation formed in 1926 by a number of film distribution companies in order to promote the motion picture industry in Australia. The organisation represents the interests of motion picture distributors to government, media and relevant organisations, providing policy and strategy guidance on issues such as classification, accessible cinema, copyright piracy education and enforcement, and the distribution industry code of conduct.

The MPDAA also acts as a central medium of screen-related information for members and affiliates, collecting and distributing film exhibition information relating to box office, theatres, release details and censorship classifications. The MPDAA represents Twentieth Century Fox Film Distributors, Paramount Pictures Australia, Sony Pictures Releasing, Universal Pictures International Australasia, The Walt Disney Company (Australia) and Warner Bros.

CHAPTER 6: What Content Should Be Classified?

Theatrical feature classification

The MPDAA endorses the ALRC proposal that feature-length films produced on a commercial basis should continue to be classified prior to being sold, hired, screened or distributed in Australia. The MPDAA has previously maintained that classification is an essential tool to provide consumers with adequate advice and information to make informed decisions about what they or their children see.

Where theatrical is not the first release platform

However, we would argue that there may be occasions in the future where theatrical distribution of a feature film is not the first window for release. Films may, in the future, premiere on VOD, DVD or even television. It is the view of the MPDAA that the first window release should form the benchmark classification.

Where theatrical distribution follows another platform release, the onus would be on distributors to consider whether the film should be classified anew. This obligation will be monitored and enforced by the Regulator under a Code of Practice that will ensure a consistent and transparent framework for such determinations.

Modifications requiring a new classification

The MPDAA is concerned that the ALRC Proposal 6-7 lacks certainty in regard to modifications which might necessitate a new classification. The reason that 2D and 3D films have required separate classification in the past is the notion that remaking the film in a revised format is a “modification”, even where there was no change to the content.

The MPDAA proposes that the ALRC ensures regulatory clarity by articulating that the Act should define that it is only content modification, not format variation – such as 2D or 3D – that might require a new classification, and that the perceived impact of the format is not a relevant factor.

CHAPTER 7: Who should classify content?

Feature-length films for cinema release

The MPDAA supports the ALRC proposal that the Board should continue to classify feature-length films produced on a commercial basis for cinema release where this release is the first window release, as outlined above.

In its response to the ALRC Issues Paper in July 2011, the MPDAA reasoned that Government regulation of the classification process provides a consistent, independent and compliant framework for theatrical film classification. We are grateful that the ALRC has recognised the notion that these films provide a useful benchmark for classification decisions in other media and on other platforms.

In particular, the MPDAA supports the ALRC proposition that the benchmarking benefit is amplified as Board decisions carry over to the same content subsequently delivered in any other media format on any other platform.

Reviews of classification decisions

The MPDAA supports the proposal that, in the interest of efficiency, expertise and cost-savings, the Review Board ceases to exist and the review of classification decisions, on appeal, be undertaken by the Classification Board. However, the MPDAA strongly recommends that legislative provisions prescribe that:

- a. The majority of assessors on the Review committee were not involved in the classification decision being appealed.
- b. Distributors have the opportunity to present their case for a new classification decision in person to the Review Committee

It is the view of the MPDAA that these caveats would alleviate concerns of bias and allow for a fair exchange of views.

The MPDAA is in favour of the proposal to limit the definition of “person aggrieved” by classification decisions to ensure there is no increase in the number of spurious applicants. This should include restricting appeals by applicants who simply do not wish the film to be shown.

CHAPTER 8: Markings, Advertising, Display and Restricting Access

Removing mandatory access restrictions on MA 15+ content

The MPDAA strongly endorses the proposal to remove the mandatory access restriction on the MA 15+ classification category. It is our view that restrictions which are unenforceable in other environments should not be imposed on cinema management and staff.

Advertising for content that must be classified

The MPDAA supports proposal 8.6 which recommends that all advertisement for media content that must be classified should be suitable for the audience likely to view the advertisement.

We acknowledge that classification of trailers will no longer be solely dependent on the anticipated classification of the film but will take into account:

- 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.

It is hoped that both the proposal and the subsequent legislation place due emphasis on the role of the relevant industry bodies' Code of Practice to draft and maintain guidelines for suitable trailering to audiences.

The distribution and exhibition industries have an excellent history of co-operation via the Film Distribution and Exhibition Code Administration Committee (FEDCAC) which has successfully established a viable code of conduct and a strong track record for reviewing and resolving complaints and disputes. The MPDAA suggests that this platform might be expanded to establish, maintain and monitor a revised Code of Practice incorporating many of the operating issues raised in the ALRC Discussion paper.

CHAPTER 9: Classification Categories and Criteria

Classification categories under the proposed classification system

The MPDAA supports the proposal for uniform and consistent classification categories across all platforms and the need for these categories to provide greater clarity to the public about content.

However, it has the following concerns with the ALRC's proposed classification categories:

- a. The MPAA understanding is that the C rating categorises a film as being only for children or for children's education. We suggest that, where the content of a film is deemed suitable by the Classification Board for a C classification and a broader audience is intended, distributors may choose to use the higher G rating in a theatrical environment.
- b. The term "Teen", which identifies the new age category, is unlike the other categories and prescribes an audience that may not necessarily be the accurate or appropriate target of the content. As many films aimed at a mature audience may be classified Teen 13+, the MPDAA envisages that this terminology will cause confusion in the marketplace with audiences assuming content is targeted to teenagers.
- c. Whilst we welcome the removal of the legal restrictions on the MA category, we believe that misunderstanding is likely to arise over the modification of "Mature Accompanied" to "Mature Audience". We believe that rather than alleviate uncertainty, the subtlety of this adjustment will be overlooked by the public. To clearly distinguish this from the previously legally-enforceable MA category, new nomenclature is required.
- d. The distinction between the 13 year old and 15 year old classification categories is too narrow and does not, in our view, reflect realistic variables for content classification. The age indicator could be changed from 13+ to 12+ without compromise to the classification guidelines and with due regard to community standards. We note that several markets, including those in the UK, France, Ireland and South Africa use the age of 12 as a classification indicator

The MPDAA proposes the following set of classification categories that retain the intentions of the modifications suggested by the ALRC whilst allowing for consistency across platforms and avoiding confusion in regard to nomenclature and current understanding: Although there are two PG categories, the age-descriptor is comprehensible and unambiguous:

- C (Children)
- G (General)
- PG 8+ (Recommended for people over 8 years of age with Parental Guidance)
- PG 12+ (Recommended for people over 12 years of age with Parental Guidance)
- M 15+ (Mature - Recommended for people over 15 years of age)
- R 18+ (Restricted)
- X 18+ (Restricted), and
- RC (Refused Classification)

The MPDAA supports further industry consultation and discussion around this critical issue prior to adopting any recommendations.

Consumer advice

Currently, the aim of consumer advice is to identify the principal elements that contributed to the classification of the film and indicate the intensity and/or frequency of those elements.

This information is essentially inherent in the classification category provided to that film. For example, it is anticipated that, under the current rating structure, an MA film might reasonably contain sex scenes, violence, adult themes and language which are "... strong in impact"

The ALRC proposal to include age-advice on most of the classification categories could render consumer advice redundant unless unambiguous, consistent and specific to the category it is describing.

Consumer advice should therefore primarily be used to identify the strongest elements that determined the rating and, if other such elements fall below the expected impact of that category, a descriptor of "lower level..." should be applied to these elements. For example, an MA rated film with strong (MA-level) violence and moderate (M-level) sex scenes would be assigned a consumer advice of "Strong violence, lower-level sex scenes" if the Board was of the opinion that the Sex scene element was required to be flagged in the consumer advice.

The use of the descriptor "high-level" should be avoided as it is anticipated that any high-level activity – language, sex, violence, etc – would push the film into the next rating category where the public expectation would concur with the classification.

Whilst the MPDAA has no issue with Proposal 9-3 - that legislation ensure all content, other than C, G or RC, be accompanied by consumer advice - it proposes that such advice does not simply list the content of the film but be a consistent and clear indicator of the elements in the film that determined the rating. Given the current discrepancies in the practice of applying consumer advice to content across different release platforms, this is an area that requires broad legislation but specific guidelines and codes of practice.

CHAPTER 11: Codes and co-regulation

The MPDAA endorses the ALRC proposal that the classification legislation provide for the development and operation of industry classification codes of practice, and that these codes introduce some additional flexibility to the regulatory scheme.

We reiterate the effective history of co-operation between the distribution and exhibition industries via the Film Distribution and Exhibition Code Administration Committee (FEDCAC) with its track record for successfully reviewing and resolving complaints and disputes over many years.

CHAPTER 12: The New Regulator

The MPDAA supports the proposed role of a Regulator to approve and monitor industry classification codes of practice and to enforce compliance where relevant.

However, we firmly recommend that, for pragmatic reasons, the Regulator is the first point of contact for complaints about the classification of films, trailers and advertising material for theatrical release. As the Classification Board is the "point of origin" for classification decisions for films for cinema release, this accords with the ALRC proposal in 12.27.

CHAPTER 13: Enacting the New National Classification Scheme

The MPDAA understands the sensitivities around state and federal legislation and enforcement of classification decisions and supports the ALRC's view that there should be a consistent process for making classification decisions, to ensure consistency of state and territory classification laws. We agree with the need for a new intergovernmental agreement under which the states and territories agree to enact legislation to provide for the enforcement of classification laws with respect to films.

SUMMARY OF KEY RECOMMENDATIONS

The MPDAA recommends:

- That the first window release should be the benchmark classification. Where theatrical distribution follows another platform release, the onus would be on distributors to consider whether the film should be classified anew.
- That the ALRC modifies Proposal 6-7 to ensure that only content modification, not format variation – such as 2D or 3D – might require a new classification, and that the perceived impact of the format is not a relevant factor.
- That, where reviews of classification decisions are undertaken by the Board, legislative provisions prescribe that:
 - The majority of assessors on the Review committee were not involved in the classification decision being appealed.
 - Distributors have the opportunity to present their case for a new classification decision in person to the Review Committee
- That the definition of “aggrieved” persons able to trigger classification reviews be restricted to ensure there is no increase in the number of spurious applicants.
- That the following changes to classification categories are considered by the ALRC:
 - Distributors can choose to use the G category for theatrical release where the Classification Board has recommended a C rating.
 - The category T13+ (Teen) be replaced with PG12+.
 - The category MA be replaced with M15+ (Mature).
- That consumer advice should primarily be used as a consistent and clear indicator to identify the strongest elements in the film that determined the rating and not simply list elements that are consistent with the ratings category.