



ASTRA Submission to: Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Australian film and literature classification scheme

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Introduction

ASTRA welcomes the opportunity to provide a submission to the Inquiry by the Senate Standing Committee on Legal and Constitutional Affairs into the Australian film and literature classification scheme.

About ASTRA

ASTRA is the peak industry body for subscription television in Australia. ASTRA was formed in September 1997 when industry associations representing subscription (multi-channel) television and radio platforms, narrowcasters and program providers came together to represent the new era in competition and consumer choice. ASTRA's membership includes the major subscription television operators, as well as channels that provide programming to these platforms.

Overview of content classification on subscription television

ASTRA supports consistency in the assessment and classification of content to be delivered on any platform, in line with the National Classification Code and *Guidelines for the Classification of Films and Computer Games* ('Classification Guidelines') established under the *Classification Act 1995*.

The various regulatory schemes in place for regulating access to, and reception of, content on different delivery platforms (commercial and national broadcasters, subscription television, internet, mobile devices etc) recognise that consumers expect to be able to access and use the same content in different ways depending on the particular platform used to deliver and receive that content. ASTRA submits that the existing framework for regulating content on subscription television works effectively to protect and maintain community standards while enabling subscribers to view the content they want to see when they want to see it.

All licensed television broadcasting services (including commercial and national broadcasters and subscription television services) are responsible for ensuring the material that is broadcast under their licences is classified. Classification requirements are contained in the codes of practice developed for particular sections of the industry, and registered with the Australian Communications and Media Authority (ACMA), under section 123 of the *Broadcasting Services Act 1992* (BSA).

Subscription television providers are licensed to provide a number of subscription broadcast and narrowcast services. Requirements for classification of content broadcast by these services are in the Subscription Broadcast Television and Subscription Narrowcast Television codes of practice (the Codes). Classification categories under the Codes reflect the National Classification Code and Classification Guidelines. Commercial broadcasters have developed separate classification categories under the Commercial Television Industry Code of Practice (the CTV Codes). The CTV Codes have developed the Television Classification Guidelines that broadly follow the Classification Guidelines, but include an additional classification "AV" for adult programs that feature violence.

Under the BSA, subscription television licensees are subject to the same licence conditions as commercial and community broadcasters, and broadcasters operating under a class licence, in relation to the broadcast of political and controversial material, election advertisements, advertisements relating to medicines, tobacco advertising, and material that has been classified RC (refused classification) or X18+ by the Classification Board.

Under the Codes for subscription television, the classification symbol for programs classified PG or above must be clearly displayed at the commencement of the program and in the program guides. For material rated M and MA15+, consumer advice concerning the reasons for a classification

must be given at the commencement of the program. The advice will be consistent with the relevant aspects of the Classification Guidelines. Material rated R 18+ can only be broadcast by a subscription narrowcasting service, and only where access to that material is restricted.

FOXTEL and AUSTAR provide content classification information in printed guides and as part of the on-screen electronic program guide.

Complaints regarding any matter under the Codes, including in relation to the classification of content, are first directed to the relevant subscription television broadcasting licensee. If unsatisfied with the outcome of the complaint to the broadcaster, the complainant may take the matter to the ACMA.

Unlike commercial television broadcasting services, subscription television services do not have restrictions on the times at which material of a certain classification can be shown. This reflects the different model of content delivery for subscription television as opposed to free-to-air broadcasting – subscription television providers have a direct relationship with their subscribers, who expect to be able to see the material they want to see through the service they pay for at the time they wish to see it. It also recognises that subscription television providers have greater control over how content is delivered and accessed on their platforms.

Parental lock functionality

Subscription television platform operators including FOXTEL and AUSTAR have invested heavily in technology, such as the parental lock system which provides subscribers with a greater degree of control over the programmes they and their children watch via their set top unit, as well as other innovations that deliver unique capabilities to viewers.

The parental lock system enables subscribers to block programmes (based on their classification) utilising a PIN. Applying this viewing restriction enables viewers to select the classification category they wish to restrict (from PG, M, MA15+ and R18+) and access to programming with that classification requires a PIN. FOXTEL's parental lock system also allows its subscribers to block entire channels and AUSTAR is currently working on the implementation of channel blocking as an additional feature of its parental lock system for its MyStar and MyStar HD set top boxes. FOXTEL and AUSTAR also have the technology to allow subscribers to block Adults Only program titles from being displayed in the electronic program guide.

In addition, FOXTEL has a remote control - the 'Mini Mote' - specifically designed for children. The 'Mini Mote' provides an additional tool for parents to manage their children's television viewing through restricted channel availability. The 'Mini Mote' features eight pre-programmed buttons that link directly to children's channels. Two extra buttons exist for parents to program other channels they may wish to enable their children to view.

Comments on selected specific terms of reference

ASTRA provide the following comments on a select number of terms of reference directly related to the provision of subscription television broadcasting services.

b) the desirability of national standards for the display of restricted publications and films

ASTRA understands that this term of reference relates to the display of restricted publications and films at 'point of sale' as distinct from the display of classification information onscreen.

e) *the application of the National Classification Scheme to works of art and the role of artistic merit in classification decisions*

'Artistic merit' is currently enshrined in the Classification Act as a matter to be considered in classification. 'Artistic merit' is considered by all television classifiers and the Classification Board in all decision making to allow works of significant cultural merit to be viewed by wider audiences on subscription television, commercial and national broadcasters, online, at the cinema and on DVD. For subscription television, 'artistic merit' is notably important for content classified on specific film channels (e.g. World Movies, Showtime, FOX Classics) and all documentary channels (e.g. STVDIO, Crime & Investigation, Bio).

ASTRA submits that it is essential that the consideration of 'artistic merit' remains a factor in the decision making process. Its omission would likely prevent a number of award winning films and documentaries from being broadcast, or broadcast unedited.

f) *the impact of X18+ films, including their role in the sexual abuse of children*

ASTRA notes that X18+ content is not permitted to be broadcast on subscription television.

g) *the classification of films, including explicit sex or scenes of torture and degradation, sexual violence and nudity as R18+*

ASTRA notes that R18+ content is only broadcast on two channels on subscription television (World Movies and Adults Only) and is also available through FOXTEL and AUSTAR's On-Demand service. Access to R18+ content is restricted by the parental lock system.

R18+ content is legally restricted to adults. The Classification Guidelines provide that films classified R18+ may contain material that is of high impact, however the impact should not exceed high. Some material classified R18+ may be offensive to sections of the adult community. The Classification Guidelines already prohibit gratuitous, exploitative or offensive depictions of: violence with a very high degree of impact or which are excessively frequent, prolonged or detailed; cruelty or real violence which are very detailed or have a high impact; or sexual violence. While a very small number of R18+ narrative films may contain depictions of actual sexual activity, the Classification Guidelines clearly state that this is the exception to the rule.

ASTRA considers that these protections work well to balance community concerns about depictions of violence, particularly sexual violence, and the principle that adults should be able to read, hear and see what they want.

h) *the possibility of including outdoor advertising, such as billboards, in the National Classification Scheme*

ASTRA submits that advertising is already regulated by the Advertising Standards Bureau, an independent body consisting of both specialists and a diversity of members from the community.

i) *the application of the National Classification Scheme to music videos*

There are a number of specialty music channels available on subscription television platforms including: Channel [V], COUNTRY MUSIC CHANNEL, MAX, MTV, MTV Classic, MTV Hits, MTVN Live & [V] Hits. Different channels provide programming catering to different demographics and music tastes.

Subscription music video channels generally place particular classifications on particular programs or segments of content, and schedule music videos within that program or segment accordingly. Where a particular music video contains content that may be at a higher classification the music video may be edited so that the content of the music video can be contained within the classification of that segment. Classification billboards are placed at the commencement of such

segments advising the relevant classification as well as warnings on the content contained in those segments.

As discussed above, subscriber set top boxes have parental lock functionality that allows parents to prevent children from viewing content at particular classification levels.

ASTRA believes that the classification of music videos under the Codes, using the classification categories of the National Classification Scheme, is highly effective in providing appropriate information to subscribers regarding the types of music videos that may be shown during a particular program. Combined with measures for parents to prevent access to certain classifications of content, the existing framework ensures appropriate safeguards are in place while allowing consumers to view the content they want.

ASTRA notes that, in its July 2009 response to the Senate Environment, Communications and the Arts Committee Inquiry into the Sexualisation of Children in the Contemporary Media Environment, the Government stated its belief that the classification scheme is intended to reflect community standards and that, at present, complaints statistics indicate a low level of concern about music videos.¹

k) the effectiveness of the National Classification Scheme in preventing the sexualisation of children and the objectification of women in all media, including advertising;

Neither the National Classification Code nor the Guidelines for the Classification of Films and Computer Games specifically address these issues. However, the Code already contains significant protections for children, providing that minors should be protected from material likely to harm or disturb them, and that everyone should be protected from exposure to unsolicited material that they find offensive. The Guidelines expressly prohibit depictions of child sexual abuse or any other exploitative or offensive descriptions or depictions involving a person who is, or appears to be, a child under 18 years.

To the extent that the sexualisation of children and the objectification of women in the media are issues of community concern, it is noted that the Guidelines are intended to be interpreted in accordance with prevailing community attitudes.

As stated above, the Senate has recently addressed this issue through the Inquiry into the Sexualisation of Children in the Contemporary Media Environment conducted by the then Environment, Communications and the Arts Committee.

l) the interaction between the National Classification Scheme and the role of the Australian Communications and Media Authority in supervising broadcast standards for television and Internet content

As noted above, all licensed television broadcasting services (including commercial and national broadcasters and subscription television services) are responsible for classifying the material that is broadcast under their licences. Classification requirements are contained in the codes of practice for particular sections of the industry. These codes are developed through extensive consultation with government advisory bodies, community interest groups and the public, and are registered with the ACMA. The codes are subject to regular review to ensure that they keep pace with community standards. Classification categories for subscription television services under the Codes are taken directly from the National Classification Scheme and the Classification Guidelines.

ASTRA submits that the existing co-regulatory framework for the regulation of content under the BSA works effectively for consumers by ensuring appropriate community safeguards while

¹ Australian Government Response to the Senate Committee on Environment, Communications and the Arts Inquiry into the Sexualisation of Children in the Contemporary Media Environment, p.7.

recognising the different type of service that subscribers want and expect when paying for subscription television services.

ASTRA further submits that, when making determinations on the classification of programs that are the subject of subscriber complaints, the ACMA should have regard to determinations made by the Classification Board if that program has been classified by the Classification Board. It would be desirable for the ACMA to release a statement of policy on its use of Classification Board decisions in its investigation processes.

m) the effectiveness of the National Classification Scheme in dealing with new technologies and new media, including mobile phone applications, which have the capacity to deliver content to children, young people and adults

Subscription television services are primarily delivered to homes via cable or satellite distribution. However, some subscription television services are available on mobile devices (for example, *Mobile FOXTEL from Telstra*). Subscription television broadcasting services delivered by subscription television platforms on mobile devices would be regulated as subscription television broadcasting services.

ASTRA believes that, in relation to content provided by subscription television services, the existing co-regulatory model is effective in providing appropriate community safeguards, including protecting children from material that may be harmful, while enabling adults to watch what they choose.

ASTRA would be happy to discuss further with the Committee any of the issues raised in this submission.

Yours sincerely

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