

4 March 2011

Committee Secretary
Senate Legal and Constitutional Committees
PO Box 6100
Parliament House
CANBERRA ACT 2600

By email: legcon.sen@aph.gov.au

Dear Secretary

INQUIRY INTO THE AUSTRALIAN FILM AND LITERATURE CLASSIFICATION SCHEME

The National Film and Sound Archive (**NFSA**) is a statutory authority established by the *National Film and Sound Archive Act 2008*. It is Australia's national audiovisual archive, responsible for collecting, preserving and providing access to the nation's moving image and recorded sound heritage (**the National Collection**).

The NFSA has considered the Terms of References and welcomes this opportunity to comment. This submission relates to Terms of Reference (e), (f), (g), (i), (l), (m), (n) and (o).

SUMMARY

As part of its role in providing access to the National Collection, the NFSA regularly screens films, home movies and some television content around the country. At its Canberra headquarters, it operates a public theatre (Arc Cinema) and holds free public exhibitions featuring film and television footage. It also delivers content online and is looking for new ways of doing that by exploiting converging technologies.

Many of these access activities are subject to the National Classification Scheme. The NFSA wants to ensure that the scheme supports these activities while minimising the impact of classification regulation for cultural institutions like itself, distributors and audiences.

ISSUES

The following aspects of the National Classification Scheme present difficulties for the NFSA:

1. the absence of blanket exemptions or self-classification options for uses of the National Collection that are subject to the scheme;
2. the complexity of the scheme as it applies across different media; and

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3. potential changes to content regulation, precipitated by other reviews and initiatives, which could impact on the National Classification Scheme.

RECOMMENDATIONS

To address these issues, the National Classification Scheme could be modified by:

1. acknowledging the role of cultural institutions (like the NFSA) in providing public access to Australia's audiovisual heritage;
2. enabling those institutions to obtain blanket exemptions allowing them to self-classify titles for all their screening and access activities;
3. adopting a more uniform and streamlined approach to classification regulation to enable content to be distributed and accessed more efficiently through new technologies; and
4. making the scheme media-neutral.

CLASSIFICATION AT THE NATIONAL FILM AND SOUND ARCHIVE

The National Collection includes many unclassified films: for example films created prior to the introduction of classification schemes and Indigenous titles that have never been classified.

To screen these films, the NFSA must apply for festival exemptions for each event at which it plans to screen them. The process of obtaining exemptions for a national tour is particularly daunting as the NFSA must obtain separate exemptions from each jurisdiction and comply with the various conditions that may be imposed under each one.

For films screened at its Arc cinema, the NFSA complies with classification conditions by showing classification ratings for all titles featured in its advertising material and, where applicable, by seeking age identification from patrons attending screenings.

ISSUE 1: Exemptions and self-classification options

The NFSA would benefit from having a blanket exemption enabling it to screen unclassified titles without needing festival exemptions. This would assist the NFSA to achieve its role by:

1. avoiding the lengthy and sometimes cumbersome process of obtaining a festival exemption;
2. making it easier to show unclassified titles as part of a national tour; and
3. allowing it to expand its screening activities through other avenues, such as award ceremonies, seminars and film introductions.

Preliminary advice from the Classification Board is that this cannot be done without legislative change.

Types of exemptions

All state and territory classification legislation allows "approved organisations" to seek exemptions allowing them to screen unclassified films. Exemptions can be granted by the Classification Board or, in Queensland and South Australia, by the relevant minister. An approved organisation is one authorised by the Classification Board to apply for exemptions, having regard to matters such as the extent to which it engages in medical, scientific, education, cultural or artistic activities, and its reputation for screening films.

There are different types of exemptions, some of which are not available in all jurisdictions. The most common type—which is available in all jurisdictions—is a festival exemption. This allows approved organisations to screen particular unclassified titles at a specific event or festival. The exemption works as a temporary classification, although conditions may be set for screening particular titles (e.g. a requirement to show background material with a film to contextualise it).

The other type of exemption is a blanket exemption. This allows an approved organisation to screen unclassified films on an ongoing basis where its activities or functions relate to this. It essentially authorises an organisation to self classify titles and impose access restrictions accordingly. All jurisdictions except Queensland have now passed legislation allowing blanket exemptions,¹ although these are generally confined to restricted events at film festivals.

Self classification

If a blanket exemption of the sort proposed by the NFSA was available to cultural institutions, the NFSA expects that those institutions would self-classify the titles they want to screen or otherwise make available.

There are already precedents for a self-classification system. Television broadcasters are authorised to self classify the programs they air. Customs officials are also authorised to self classify titles being imported to Australia. By special arrangement with the former Office of Film and Literature Classification, the NFSA already self classifies titles for its *australianscreen online* website, www.aso.gov.au.

For accountability purposes, the NFSA envisages that management of a self-classification system would be overseen by the Classification Board, and that institutions would consider seeking specific exemptions for screening any higher risk titles.

ISSUE 2: Complexity of National Classification Scheme and the need for media neutrality

Complexity

The National Classification Scheme is complicated by its fragmented approach to classifying films and computer games made available through different distribution channels. Different access requirements and exceptions can apply to the same film, depending on whether it is viewable over the internet, at a film festival or at a cinema.

There is also the perennial problem of Australia's scheme and classification schemes in foreign jurisdictions having different classification standards for content accessed by the same audiences in the converged world.

Media neutrality

Media neutrality is essential in a converged media environment. This is one of the issues that will be addressed by the Convergence Review (see Issue 3 below).

ISSUE 3: Regulatory reviews, reforms and other impacts on the National Classification Scheme

The NFSA is aware of other impending reviews concerning the classification issues. To ensure consistency in approach, it considers that this review should take account of these other reviews, which may also impact on its operations.

¹ The enabling legislation in Western Australia (the *Child Pornography and Exploitation Material and Classification Amendment Act 2009*) has been passed but has not yet commenced.

The Australian Law Reform Commission will be conducting a National Classification review, details of which are available at www.alrc.gov.au/inquiries/national-classification-review. The terms of reference for that review are currently pending.

Another review involving the national classification scheme is the Convergence Review being conducted by the Convergence Review Committee. This review concerns the media and communications regulatory framework, but will also involve classification issues. The review has been prompted by technological innovations leading to a converging media environment, where digital content can be delivered through various devices and platforms.

The terms of the Convergence Review have just been announced and the committee is due to deliver its final report in the first quarter of 2012. Details of the review are available at www.dbcde.gov.au/digital_economy/convergence_review.

OTHER IMPACTS -National Broadband Network

The need to review classification laws will be heightened by the rollout of the National Broadband Network and the switch over to digital television, which will accelerate the trend towards convergence.

The NFSA is keen to take advantage of the National Broadband Network to make the National Collection more accessible by delivering more content online in innovative and engaging ways.

QUESTIONS REGARDING THIS SUBMISSION

We appreciate the Senate Committee's consideration of the issues and recommendations outlined in this submission. If you have any questions in relation to this submission, I would be willing to appear before the committee as a witness. Alternatively, you may wish to contact Mark Murphy, Principal Legal Officer

Yours sincerely

Ann Landrigan
Acting Chief Executive Officer