



The WALT DISNEY Company Australia

26 February 2020

Director, Policy and Research
Classification Branch
Department of Communications and the Arts
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Dear Sir/Madam

The Walt Disney Company (*Disney*) appreciates the opportunity to comment on the Consultation Paper issued in January 2020 by the Department of Communications and the Arts (the *Department*) entitled “Review of Australian classification regulation” (the *Consultation Paper*).

In this submission, we provide background on Disney’s long-standing presence and activities in Australia and input on three key overarching issues. We also include an appendix which details Disney’s responses to the relevant specific questions contained in the Department’s Consultation Paper.

I. Background

Disney in Australia operates multiple lines of business including feature film and TV content production, audio-visual post production, high-end animation and special effects, the production and distribution of pay TV channels, consumer products licensing, live stage shows, and distribution of our film and TV content via free TV, pay TV, physical and digital home entertainment and theatrical release. Most recently, in November 2019 we launched Disney+ in Australia.

The brands and business units related to these activities include **Disney, Marvel, Pixar, Star Wars, National Geographic, Industrial Light & Magic, Fox Studios Australia, American Broadcasting Company Studios International** and **ESPN**.

Australia is an important market for Disney and we believe accurate and consistent classification of film and television content is an important guide for Australian viewers in deciding which content they and their families will watch.

Disney’s content in Australia is classified pursuant to various classification processes and regulatory regimes as it is released and distributed across a range of platforms and formats:

- (i) Theatrical release;
- (ii) DVD & Blue Ray physical home entertainment & digital home entertainment;
- (iii) Licensed to the free-to-air broadcast networks;
- (iv) Channels distributed on subscription TV platforms; and
- (v) Disney+ a recently launched direct to consumer streaming service in addition to other streaming services.

We are unique in that Disney content enjoys distribution via all delivery means and platforms available to consumers in Australia, and must be classified accordingly.

The Department in its Consultation Paper explains the need to redesign the current classification law and processes given that *“the current system was not designed to manage media convergence or the large volumes of content now available via streaming services ... and other professionally produced content platforms.”*¹

We agree and explain why in more detail below.

II. Disney’s input on three overarching issues

1. The classification categories should be modified to include a PG13 rating

The Department asks if the classification categories - G, PG, M, MA, R18+, and X18+ - need modification.

Yes, we believe it is timely now to introduce a PG13 category in between PG and M. The rationale for this position is articulated by the Film Industry Associations (FIA) in its submission to the Department, which Disney supports.

2. Self-classification is the right approach for all delivery formats

The Department asks if self-classification is the best approach for all delivery formats.

The Consultation Paper summarises how varied the classification framework has become, with some industry segments relying on self-classification via trained assessors under a co-regulation model (free and subscription TV) and others required to submit to the Classification Board (theatrical and home entertainment) and with different timelines, processing and appeal fees attached.²

The Department’s Paper also describes the complex degree of “regulatory overlap” with the example of an episodic series first shown on Broadcast TV, which is classified by the broadcaster, and then when it is made available on DVD or a digital service, it must be classified by the Classification Board. The Department notes that “this can be time-consuming and costly for industry and potentially confusing for consumers if the classification rating and consumer advice is different across platforms.”³

Disney has first-hand experience with the inefficiency of double classification where often content is first broadcast on a Disney pay TV channel, then later released via home entertainment. In the first instance, the programme is classified by our own qualified staff of content assessors for delivery to the viewer on the channel, then later the exact same programme must undergo formal review and classification by the Classification Board before being allowed to be distributed in a different format. We agree with the view in the

¹ Page 5 of the Consultation Paper

² See Page 15 of the Consultation Paper: “Television broadcasters can self-classify content under a co-regulatory system administered by the ACMA ... Netflix can self-classify content using the Netflix tool, with monitoring by the Board ... Films and episodic series on DVD and Blu-Ray, in cinemas at present are classified by the Board for a fee ... “

³ Page 15 of the Consultation Paper

Consultation Paper that this duplication is time-consuming and costly for the industry and potentially confusing for the consumer.

We are encouraged that the Department appears committed to addressing this situation, suggesting that now is the time to implement a “new classification framework” which will “enable industry to self-classify content across all platforms ...”.⁴

Specifically, “under this possible model ... television broadcasters could continue to self-classify content under their codes of practice” ... while “all other industry sectors could use either trained staff classifiers (like television broadcasters) or classification tools approved by the Minister or new regulator...”.⁵

The Department notes that this approach – self classification across all platforms - is consistent with recommendations made by the ACCC in its Digital Platform’s Inquiry final report.

Disney, which has content classified across all delivery platforms, enthusiastically supports this approach.

We believe self-classification, in accordance with a code and done by trained staff, benefits both industry and consumers. Well-trained and experienced industry classifiers ensure that content is classified in an efficient cost-effective fashion (important for industry) while also classifying content accurately and consistently across delivery formats (benefitting viewers).

The ASTRA co-regulation approach is a model in this regard; an industry-developed code of practice supported by a legislative framework, which allows the approach to be updated flexibly as community standards evolve.

This approach – self-classification under a co-regulation model – is the norm in Australia and much of the world for free and subscription TV. Self-classification is also common for streaming services in most countries: Netflix for example self-classifies in every market it operates in, with the sole exception of South Korea.⁶

We note that there are different forms of self-classification, including the ASTRA approach, Netflix’s Minister approved algorithmic tool, and the online tool the Classification Branch is working to promulgate. These are all welcome developments, providing industry with flexibility in a rapidly evolving environment.

3. “Classify once” is an efficient approach for industry and is beneficial for consumers

A related aspect of the evolution to self-classification for all delivery formats is the “classify once” principle.

When implemented, this will provide that content need only be classified once and that the classification may be used across all delivery formats and services. As with self-classification generally, the classify once principle will add to the efficiency and consistency of classification, benefiting both industry and consumers.

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⁴ Page 15 of the Consultation Paper

⁵ Page 15 of the Consultation Paper

⁶ See Netflix Submission to the New Zealand Government, Department of Internal Affairs, 26 May 2019
[https://www.dia.govt.nz/diawebsite.nsf/Files/Classification-for-CVoD-content-Submissions/\\$file/008-Netflix.pdf](https://www.dia.govt.nz/diawebsite.nsf/Files/Classification-for-CVoD-content-Submissions/$file/008-Netflix.pdf)

Disney's responses to the relevant specific questions contained in the Discussion Paper are provided in the Appendix to this submission.

Please do not hesitate to contact the undersigned should you have any questions regarding this submission.

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APPENDIX

1. Are the classification categories for films and computer games still appropriate and useful? If not, how should they change?

Disney supports the Film Industry Association's submission to the Department including the introduction of a PG13 category in between PG and M.

2 a – f. Do the provisions in the Code, the Films Guidelines or the Computer Games Guidelines relating to 'themes' ... 'violence' ... 'sex' ... 'language' ... 'drug use' ... 'nudity' ... reflect community standards and concerns? Do they need to change in any particular classification category or overall? Are [these areas] understood and is there sufficient guidance on what they mean?

We support the existing provisions, guidelines and categories.

3.a and b

a. What aspects of the current Code, Films Guidelines or Computer Games Guidelines are working well and should be maintained?

b. Are there other issues that the Code, the Films Guidelines and/or the Computer Games Guidelines need to take into account or are there any other aspects that need to change?

Disney supports the move to self-classification under a co-regulatory model for all delivery means and platforms as further described in the body of this submission.

4. Considering the scope of entertainment content available in a modern media environment, what content should be required to be classified?

We have no comment here.

5. Should the same classification guidelines for classifiable content apply across all delivery formats (e.g. television, cinema, DVD and Blu-ray, video on demand, computer games)?

Yes, there should be consistency in the classification of content across all TV and film related delivery formats and platforms

Disney also supports the "classify once" principle as outlined in the body of this submission.

6. Consistent with the current broadcasting model, could all classifiable content be classified by industry, either using Government-approved classification tools or trained staff classifiers, with oversight by a single Government regulator? Are there other opportunities to harmonise the regulatory framework for classification?

Disney is fully supportive of industry self-classification, by trained staff classifiers or other means, and for all delivery methods.

7. If a classification decision needs to be reviewed, who should review it in a new regulatory framework?

We have no comment here.