

Consultation Document

Standardising classification for Commercial Video On-Demand content

Department of Internal Affairs

This consultation closes on 26 May 2019.

Go to www.dia.govt.nz/CensorshipPolicy.



**Te Tari Taiwhenua
Internal Affairs**

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Introduction

Commercial Videos on-Demand (CVoD, see definitions on next page) are currently not subject to mandatory classification requirements under New Zealand's current film classification regime. This means CVoDs are not required to show any kind of age rating or consumer warning for new content they provide to New Zealanders.

The Government is looking at preliminary proposals to introduce a consistent classification regime for providers of CVoDs and is seeking your views as to how we can best address this.

How to have your say

This document contains three proposals and a series of questions to determine your views on the proposals. Your feedback is crucial in shaping the Government's approach to this issue.

You can find more information online about this consultation and the submission form at the link below: <https://www.dia.govt.nz/Resource-material-Our-Policy-Advice-Areas-Censorship-Policy>. You can email your submission form or submission to classificationconsultation@dia.govt.nz or post it to:

Classification review feedback
Policy Group
Department of Internal Affairs
PO Box 805
Wellington 6140

The consultation period will last until 10:00 PM on **26 May 2019**.

What happens next?

Submissions received will inform policy development and Government decisions. If Cabinet agrees, and legislation is required, a Bill will be introduced to Parliament. If it passes the first reading, a Select Committee will then invite public comments on specific proposals.

Publishing submissions

Once Cabinet has considered the results of consultation, we will publish all submissions on <http://www.dia.govt.nz>. This will include your name, or the name of your organisation, unless you ask for this to be withheld. Your contact details will not be published.

If there is information in your submission that you do not want released, please make this clear and explain why. For example, some information may be confidential because it is commercially sensitive or personal. The Department of Internal Affairs (the Department) will consider your request.

Under the Privacy Act 1993, submitters have the right to access and correct personal information. All documents (including submissions) will be kept by the Department.

Definitions

Visual Media Content:

A collective term to refer to both films and TV Shows.

While 'TV Shows' (whether shown on TV or not) and 'films' are referred to separately in everyday life, for classification purposes there is no substantive difference between the two. The Films, Videos, and Publications Act 1993 uses the term 'film' to cover all visual media content that falls within its definition. To avoid confusion in this paper we have used the term 'Visual Media Content', to encompass visual media content of all lengths and screening formats.

Commercial Video on-Demand (CVoD):

Visual media content that is accessed online on-demand by a user who has paid a fee. This includes Subscription Video on-Demand and Transactional Video on-Demand.

Subscription Video on-Demand (SVoD):

Visual media content that is accessed online on-demand by a user who is paying an on-going fee for access. Well-known examples of SVoD providers are Netflix and Lightbox.

Transactional Video on-Demand (TVoD):

Visual media content that is accessed online on-demand by a user who pays a one-off fee for access. Well-known examples of TVoD providers include iTunes and Google Play.

Free-to-air Television on-Demand (FVoD):

Visual media content that is usually broadcast on Free-to-air television which is then accessed online via TVNZ On-Demand and Three Now. This is out of scope for the purposes of this consultation.

Current Classification System

New Zealand's media content regulation regime, including the current classification system, is set out in the two pieces of legislation below:

- **The Films, Videos, and Publications Classification Act 1993** regulates how games, films, and other publications are classified. This Act seeks to prevent harm to the public by restricting the availability of harmful material based on the extent, manner and degree of sex, horror, crime, cruelty and violence. It would be familiar with the public with labels G, PG, M, R16 and R18 on DVDs, video games, theatre releases. These ratings and classifications are issued under this Act by the Film and Video Labelling Body and the Office of Film and Literature Classification.
- **The Broadcasting Act 1989** requires classification of free-to-air and pay television through 11 broadcasting standards such as children's interests,

balance, privacy and discrimination and denigration. This Act was designed to cover traditional broadcast content like radio and television. It is familiar to the public through the G, PG, and AO labels shown at the start of television programmes.

The New Zealand Media Council also plays a role in the current classification system but does not have a legislative basis. The Media Council has a voluntary video on-demand classification code which is currently applied by services such as Lightbox and Netflix.

More detailed information is available online at the following websites:

- Office of Film and Literature Classification:
<https://www.classificationoffice.govt.nz>
- Broadcasting Standards Authority: <https://bsa.govt.nz/>
- New Zealand Media Council:
<https://www.mediacouncil.org.nz/principles#membership>
- Department of Internal Affairs' classification guide:
<https://www.dia.govt.nz/Censorship-Film-and-Video-Classification>

Problem definition

Our classification regime has a gap that does not require CVoD content to be classified

CVoDs are not subject to mandatory legislative classification requirements under New Zealand's classification regime and so are not required to show any kind of age rating or consumer warning for content they provide to New Zealanders. CVoDs hold a large, and increasing,¹ share of the visual media content market. They are also producing increasing amounts of content that is solely distributed by CVoD, and has therefore never been classified.

Most CVoD providers self-classify their content and provide these classifications to consumers. However, these classifications are not made under the regime set out in the Films, Videos, and Publications Classification Act 1993 (the Classification Act) and therefore have no standing in law. The voluntary and unspecific nature of this scheme means:

- the classifications can be inconsistent. For example, the series "Slasher" is rated R18 with warning notes for 'graphic violence, horror, sex scenes and offensive language'. This title appears on various streaming services without content warnings; and
- the classifications are not always in accordance with the standards and values of New Zealand's classification regime. For example, "13 Reasons Why", a programme dealing with strong adult themes including rape and suicide, was originally unrestricted. It was eventually assessed by the Chief Censor and rated RP-18.

¹ Nearly 2 in 5 Kiwis now have Subscription Video on Demand in the home, (2017). Roy Morgan. Retrieved from: <http://www.roymorgan.com/findings/7164-netflix-and-lightbox-svod-new-zealand-december-2016-201703011134>

This gap means that children may be viewing harmful material because parents or caregivers are prevented from making informed decisions

Many parents or caregivers rely on the classification system to help them make decisions on what content their children should be watching. Other parents may rely on technology such as age-locks that restrict children's access to content based on classifications (e.g. restrict all content rated higher than R13). Inconsistent and inaccurate information means that parents are not easily able to accurately pre-judge the nature of visual media content and that age-locks do not restrict access to harmful material.

This inconsistency creates a risk of children viewing harmful material, without the supervision of a parent or caregiver. Seventy-six per cent of New Zealanders are concerned about children and teens' exposure to visual media content and fifty-nine per cent of New Zealanders are worried that the wide range of media platforms will make it easier for children to access harmful media.²

Viewing violent and sexual content causes lasting harm to children and young people

Viewing some types of media content can cause psychological, physical and emotional harm particularly to young people. Some research shows that children viewing violent media showed a long-term increase in aggressive thoughts and behaviour, and angry feelings.³ By addressing this gap in classification requirements, we can prevent harm.

Options for addressing the gap in content classification

The scope of the proposals is limited to addressing the gap in classification for CVoD

The proposals in this paper are designed solely to address CVoD content. CVoD content has been specifically identified as a high-risk area for children and young people. Free-to-air television on-demand (FVOD) like TVNZ On-Demand and Three Now have not been identified as an immediate risk and are not included within scope of this consultation.

Including these free services (that have a nominally commercial element) would significantly increase the complexity of these proposals. Among other things, there is no simple way to distinguish them from other free video on-demand on the internet (for example, travel vlogs). The additional complexity introduced by covering free content would jeopardise our ability to prevent the harm we do know about from inconsistent CVoD classification.

The sharing online of the video of the recent terrorist attacks at two Christchurch mosques has highlighted possible harms arising from user-generated video content. This is a complex area that warrants specific examination, and is one part of a separate, cross-government policy process.

² *Children and teen exposure to media content*, (2016). Office of Film & Literature Classification. Retrieved from: <https://www.classificationoffice.govt.nz/assets/PDFs/research-UMR-media-content-exposure-2017-2.pdf>

³ *Short-term and long-term effects of violent media on aggression in children and adults*, (2006). BJ Bushman & LR Huesman. Retrieved from: <https://research.vu.nl/en/publications/short-term-and-long-term-effects-of-violent-media-on-aggression-i>

We have explored both legislative and non-legislative options

We have identified three options to address the gap in content classification for CVoDs – two legislative amendments and one non-legislative option. The legislative amendments would formally include CVoDs within our current film classification regime, meaning that media content released via CVoD would be treated consistently with media content released via traditional distribution methods. The non-legislative option would look to address concerns around inconsistent classifications by using and adjusting existing powers, without requiring a change to the law.

The legislative options would be able to be enacted by mid-2020. The non-legislative option would likely be implemented sooner.

The preferred option should protect the public while minimising costs to providers

We have identified some initial criteria that we consider the preferred option should seek to achieve. These are:

- Timeliness at addressing risk of harm
- Ability to address risk of harm
- Minimising cost to providers
- Minimising cost to regulators

Legislative options

We have identified two distinct legislative models that we could use to address the gap in content classification for CVoDs. The legislative options consist of legislative amendments to include CVoD content within the film classification regime under the Classification Act. Including CVoD content as ‘films’ within the Classification Act would ensure that CVoD content is subject to mandatory classification. This would bring greater consistency across our classification regime, giving consumers a reliable source to inform viewing decisions regardless of media platform.

Option 1: Subject CVoDs to current New Zealand classification processes

Under this option, CVoD providers would have to begin to follow the current process and submit material to the Film and Video Labelling Body. Content that has already been rated in New Zealand or has an unrestricted rating in the United Kingdom or Australia would be subject to minimal costs. Content that is solely distributed by CVoD could incur significant costs from receiving a new label. This option could also put large (particularly upfront) pressures on the Film and Video Labelling Body and the Office of Film and Literature Classification that could see significant delays for content to receive a label.

Question 1: Do you support making CVoDs subject to current classification processes? Why, or why not?

Question 2: If you are a service provider:

(a) What cost impact would this option have on your business?

(b) What impact would this option have on your ability to continue to provide streaming services to the New Zealand market?

Option 2: Establish a mechanism for CVoDs to self-classify under the official regime

Under this option, CVoDs would be included in our classification regime. However, content that is solely distributed by CVoD providers could be self-classified by the CVoD provider. Content that has previously been classified in NZ would use that previous classification. Self-classification ratings would be consistent with general classification standards as the Office of Film and Literature Classification are prototyping and testing an online tool. This tool allows CVoD providers to self-classify in a simple, cost-effective way. This could achieve a similar outcome to the Film and Video Labelling Body and Office of Film and Literature Classification, who classify and label 'film' content currently in New Zealand.

This option could minimise compliance costs for CVoD providers who stream high volumes of content while ensuring consistency with the current system. Providers who do not wish to self-label would be able to use the current process of submitting to the Film and Video Labelling Body.

Question 3: Do you support a self-labelling regime for CVoD providers? Why, or why not?

Question 4: If you are a service provider:

- (a) What cost impact would this option have on your business?**
- (b) What impact would this option have on your ability to continue to provide streaming services to the New Zealand market?**

Non-legislative mechanisms

There are currently two non-legislative mechanisms that provide some form of classification for CVoDs. A voluntary self-classification scheme run by the New Zealand Media Council, and the Chief censor's power to call in a publication.

Discussion of current mechanisms

Voluntary self-classification scheme

The New Zealand Media Council operates a voluntary industry self-classification scheme for CVoDs. Members can use the rating framework recommended by the scheme, or any other set of classifications. This means that content is supplied with different classifications depending on the service consumers are using to access it. The information provided is also generally less comprehensive than consumers are accustomed to.

Consumers who are unhappy with ratings issued under this scheme can complain to the provider, or the Media Council. The Media Council can direct a provider to reclassify, but has no power to enforce this direction. Membership to the scheme is voluntary and some providers have chosen not to be members (e.g. Amazon Prime Video).

Power of Classification Office to call in content

Under the Classification Act, the Chief Censor has the power to 'call in' an unclassified publication for it to be classified. CVoDs 'classified' under the voluntary self-classification scheme are legally 'unclassified publications', therefore this power can be used to address incorrect ratings of CVoDs. An example of this is the film "Suicide Squad" which was initially rated M (Mature Audiences) but re-classified as R13 by OFLC with a warning for violence, horror and cruelty.

However, this power is only reactive and relies on the public viewing content and subsequently complaining to the Chief Censor. As the content has already been viewed, harm may already have occurred.

Non-legislative option

Option 3: Identifying enhancements to the voluntary self-classification scheme and call-in power and operating them in tandem

Under this option, we would look to operate these mechanisms in tandem to provide a system that resembles a statutory scheme, without requiring legislative change. The Office of Film and Literature Classification could work with the New Zealand Media Council to improve the voluntary scheme. This would aim to bring it closer in line with our classification standards, and may be able to function as a pro-active classification model.

We would also look to increase the use of the Chief Censor's call in powers, which could address the lack of enforcement available to the scheme.

This option would still have aspects of the negative characteristics discussed earlier. For example, as it would still be voluntary, some providers who are not currently participants in the voluntary scheme could continue to not participate. Additionally, if harmful material is classified incorrectly the Chief Censor would only hold a reactive power to correct this. These issues could only be addressed through legislative change.

Under this option, compliance would remain discretionary, subject to providers choosing to become members of the Council and depending upon the frequency of the Chief Censor exercising their call-in power.

Question 5: Do you support the Government looking to identify enhancements to existing mechanism and operate them in tandem as our system for classifying CVoD? Why, or why not?

Question 6: What enhancements could we make to the Chief Censor's call in powers that would pro-actively prevent harm?

Question 7: What could be done to ensure the voluntary scheme is adhered to and/or increase industry participation?

Question 8: What other suggestions could you make to improve the effectiveness of the non-legislative mechanisms?

Conclusion

The Department of Internal Affairs thanks you for your contribution in helping to shape our proposals. It is important we consider views of immediate stakeholders and the public in order to make changes that work for all New Zealanders.

This work will also likely be followed by a broader piece of work that looks at all aspects of our Media Regulatory system. Any comments about issues broader than the classification of CVoDs should be left for consultation in the broader piece of work.

Question 9: Are there any other comments, or suggestions you would like to make?