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Senate Legal and Constitutional Affairs Committee
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The Australian Home Entertainment Distributors Association Submission to the Legal and Constitutional Affairs Legislation Committee's inquiry into the Classifications (Publications, Films and Computer Games) Amendment (Classification Tools and Other Measures) Bill 2014.

About AHEDA:

The Australian Home Entertainment Distributors Association (AHEDA) represents the \$1 billion Australian film and TV home entertainment industry covering both packaged goods (DVD and Blu-ray Disc) and digital content.

In 2013, AHEDA members moved over 63 million units worth \$892 million in wholesale DVD and Blu-ray sales as well as over \$144 million in digital revenues. The Association speaks and acts on behalf of its members on issues that affect the industry as a whole such as: intellectual property theft and enforcement, classification, media access, technology challenges, copyright and media convergence.

The Association's members include:

- * Anchor Bay Entertainment
- * Entertainment One Films Australia
- * Madman Entertainment
- * Paramount Home Media Distribution Australia
- * Roadshow Entertainment
- * Twentieth Century Fox Home Entertainment
- * Universal Sony Pictures Home Entertainment
- * Walt Disney Company (Australia)
- * Warner Bros. Entertainment

Associate members:

Foxtel, Regency Media, Sony DADC, Technicolor

Background to classification reform:

AHEDA has been at the forefront of lobbying for classification reform in Australia over the past decade and has achieved a number of improvements to the National Classifications Scheme (the Scheme) and its implementation.

AHEDA is a strong supporter of the Scheme and its objectives to inform consumers – in particular parents – as to suitability of content they choose to purchase or view.

AHEDA has managed to gain updates to the Scheme in an ad hoc manner to improve its applicability for industry and consumers as technology and consumer viewing platforms has rapidly evolved through this period.

The changes include the adoption of the Authorised Television Assessor (ATA) and the Additional Content Assessment (ACA) Schemes. These changes leverage government trained industry assessors to self-assess certain content (namely TV series previously classified and broadcast on Australian networks and additional materials that can appear on DVDs that accompany a previously classified movie such as the director's commentary).

It should be noted by the Committee and Senators that the majority of the workload and fees charged by the Classifications Operations Branch (CoB) of the Attorney Generals' Department originates from AHEDA members - namely DVDs.

According to the 2011/12 Classification Board annual report there were 6,263 decisions made by the Board. This comprises 3,115 related to DVD filmed content, 857 for computer games and 866 for internet content. Overall, decisions made for films not for public exhibition decreased by 22 per cent from the year before. The parallel rise in internet content decisions from a zero base of a few years before is illustrative.

Eighty six percent of content classified under the film – other category (ie DVD) was rated in categories under the R-18+ (ie rated G, PG, M, MA). In other words, only 14 per cent of content rated in 2011/12 by the Board was R or X.

This data serves to show that home entertainment film category is the dominant category of classifications under the Act and that traditional formats are decreasing with a corresponding rise in internet based content. Therein lies the challenge for the Scheme and the need for reform, which this Bill is the “first tranche” and is welcomed.

The ALRC Review:

Industry successfully lobbied the Government for a review into the classifications system as it was becoming increasingly unworkable and irrelevant in a digital environment. The Government agreed and asked the Australian Law Reform Commission (ALRC) to conduct a review that was completed in 2012.

The current system – as recognised by the ALRC – is outdated and does not meet

industry nor consumer needs.

Piecemeal regulatory responses to changes in technologies, markets and consumer behavior have created uncertainty for both consumers and industry, and raise questions about where responsibilities lie for driving change. Current legislations is characterized by what the ACMA has described as 'broken concepts': laws built upon platform-based media regulations, that becomes less and less effective in a convergent media environment.¹

Further, film and games are increasingly available online and physical media which the CoB traditionally assessed for a rating, is decreasing each year.

PWC have predicted that by 2016, over fifty percent of revenue generated by video games will come from digital content²; content that currently bypasses the CoB and is available without Australian classification information.

The trend also applies to film and TV content with current 30 per cent year on year growth of digital movie and TV content sales in Australia; with revenue approaching \$200 million by the end of 2014 from a standing start only a few years ago.

All filmed content is to be classified and AHEDA supports this principal. However, major digital platforms such as the Australian iTunes store don't have ratings on all its filmed content so clearly there is an opportunity to ensure that digital content is easily classifiable by the digital platforms and distributors.

Moving to assessment tools as well as leveraging previously classified content on other platforms such a theatrical releases for film and TV content over the free to air and pay TV networks is an obvious solution which in part is used today under the ATSA Scheme.

AHEDA Chief Executive Simon Bush sat on the Advisory Committee of the Australian Law Reform Committee's (ALRC) review into the Classification Scheme of which the legislation before the Committee is the "first tranche" of reforms.

The legislation:

AHEDA strongly supports the amendments before the Senate.

They are modest and sensible first steps in what we hope is a wider reform process.

- **Expansion of Exempt Film Categories:** AHEDA supports this amendment. This amendment clarifies the existing exemptions from classification of

¹ Australian Law reform Commission, *Classification – Content Regulation and Convergent Media – Summary Report*, ALRC Report 118 Summary, February 2012, pg 12

² *Outlook: Australian Entertainment & Media 2012-2016*, PwC Australia, 2012

certain content and ensures clarity around nature, social science documentaries and live music performances and is welcomed;

- **Exemptions for Festivals and Cultural Institutions:** AHEDA supports this amendment;
- **Classification Tools Reform:** AHEDA supports this amendment. The tool – as used in other major markets for games in particular – is a common sense approach to ensuring greater compliance of classification markings for content available to Australian audiences. This is particularly relevant for the online environment where compliance is difficult to enforce and the sheer volume of material requires a tool such as is proposed to meet the objectives of the Scheme. As the Explanatory Memorandum to the legislation stated:
 - *“Further, this measure will contribute to an increase in compliance with classification requirements by providing industry with an additional mechanism for obtaining classification decisions cheaply and efficiently. Increasing the volume of content that is classified better protects consumers from exposure to unsolicited material that they find offensive and contributes to the protection of public morals (p10).*
- **Schedule 4 modifications:** AHEDA strongly supports this amendment. This amendment responds to industry concerns around duplication of classifying the same content when under current definitions the term “modification” is unclear, restrictive and sometimes ignored. These legislative changes are common sense, minor and welcomed.
- **Schedule 5 - Determined Markings:** AHEDA notes the proposed changes to Schedule 5 specifying that the Minister may determine high level principles relating to classification markings as well as the display of those markings and consumer advice. The AHEDA supports the notion that these markings be simpler and less prescriptive but reserves comment about the scheme without specific understanding of the high level principles that will inform Ministerial determinations.

AHEDA has always argued that clear and unambiguous classification markings, including consumer advice, need to be displayed at the time and/or place that the decision to purchase or view filmed content is being made and that the 'Check the Classification' marking can suffice prior to classification taking place and at other times.

- **Schedule 5 - Consumer Advice:** Of particular relevance is the new mandatory requirement for the Classification Board to provide consumer advice at the G classification. Mindful of the need to be cautious in regard to young audiences, the AHEDA will work closely with the Classification Board to ensure that consumer advice is contextual to the G Rating and provides parents with appropriate information in relation to filmed content aimed at children.