



**GAME DEVELOPERS'
ASSOCIATION OF
AUSTRALIA**



23 April 2014

Committee Secretary
Senate Legal and Constitutional Affairs Committee
PO Box 6100
Parliament House
Canberra ACT 2600

VIA EMAIL: legcon.sen@aph.gov.au

**Inquiry into the Classification (Publications, Films and Computer Games)
Amendment (Classification Tools and Other Measures) Bill 2014**

We refer to your email dated 1 April 2014 inviting the Interactive Games and Entertainment Association (the **IGEA**) to submit to the Legal and Constitutional Affairs' Legislation Committee (the **Committee**) parliamentary inquiry into the *Classification (Publications, Films and Computer Games) Amendment (Classification Tools and Other Measures) Bill 2014* (the **Bill**).

We understand that the Selection of Bills Committee referred the Bill to the Committee on 27 March 2014 after identifying the following reasons for referral/principal issues for consideration¹:

- “(a) the Bill is complex legislation in a policy area affected by rapid technological change; and*
- (b) the need to consider the view of stakeholders: content producers, importers, distributors, retailers and consumers.”*

IGEA is an industry association representing the business and public policy interests of Australian and New Zealand companies in the computer and video game industry. IGEA's members publish, market, develop, sell and/or distribute interactive games and entertainment content and related hardware.

The Game Developers' Association of Australia (**GDAA**) is a not-for-profit organisation that represents the interests of the national game development industry. The GDAA is tasked with promoting the game development industry (locally and internationally), retaining and attracting development talent, attracting investment and global game

¹ Selection of Bills Committee, Report No.4 of 2014, Appendix 2

publisher interest, engaging with educational institutions, advising government of industry trend and opportunity, and fostering the Australian game development community.

This submission has been prepared jointly by IGEA and GDAA. Accordingly, this submission reflects the view of the National Classification Scheme's key stakeholders, including content producers, importers, distributors and retailers (being those stakeholders identified by the Selection of Bills Committee²).

IGEA and GDAA support the amendments set out in the Bill, particularly those relating to the use of classification tools (Schedule 1), exemptions for cultural institutions and registered events (Schedule 3) and modifications (Schedule 4).

Schedule 1 – Classification Tools

IGEA and GDAA support the amendments set out in Schedule 1 of the Bill.

The existing classification process set out in the *Classification (Publications, Films and Computer Games) Act 1995* (the **Act**) has been described as an analogue piece of legislation in a digital world. The popularity and success of independently developed computer games continues to grow with the global increase in Internet connectivity and speeds. While digital distribution has provided Australian game developers with direct and low cost access to a global market, the global market also has direct access to Australian consumers. Consequently, there are now more computer games being released in Australia than ever before and the current process for classifying computer games under the National Classification Scheme is failing to adapt.

The process for classifying computer games under the Act is costly and time consuming with the prescribed fee for classifying a computer game being as high as \$2,460³. A local Australian developer made the comparison between having games classified in Australia compared to other territories by rightly pointing out:

*"We can sell a game in the Americas (with a population of about 1 billion) for no ratings fees, in Europe (with a population of over 700 million) for 500 Euros per platform and in Australia (23 million) for AUS\$430 [via the authorised assessor scheme] and considering that only 2% of our revenue comes from Australian sales you can see how ridiculous this is."*⁴

In 2013 the Classification Board classified approximately 600 computer games and,

² Ibid

³ Prescribed fee for the classification of a computer game where demonstration is required or accepted, as per Division 2, Part 4, Schedule 1 of the *Classification (Publications, Films and Computer Games) Regulations 2005*

⁴ Bruce Thompson, Business & Marketing Director, Nnooo at <http://www.vooks.net/automated-classification-for-games-in-australia-coube-be-the-eshops-best-friend/>

since its inception in 1996, the Classification Board has classified an average of 745 computer games per year. By way of comparison, in 2013 more than 57,000 games were released for Apple's App Store, up from over 35,000 in 2012. This amount can be added to the thousands of games that have been released on other digital distribution platforms such as PlayStation Network, Xbox Live, Nintendo eShop, EA's Origin, Google's Play Store and Valve's Steam.

The new generation of home entertainment consoles, including the PlayStation 4, Xbox One and the Wii U have promoted a renewed focus on independent game development. Game developers from around the world, including in Australia, will soon be able to develop, self-publish and digitally distribute their games on popular home entertainment consoles with very little barriers to entry. The volume and frequency of computer games released in Australia will grow exponentially and is outside the realistic regulatory scope of the current National Classification Scheme.

In addition to the exponentially growing number of unclassified digitally delivered games available in Australia today, there are also thousands of digitally delivered games not being released in Australia as a consequence of Australia's costly classification requirements. It is particularly unfortunate that the current National Classification Scheme prohibits Australian school students from being able to develop and share their computer games with friends and family through online game distribution platforms such as Xbox Live's Indie Games Channel.

The global interactive entertainment industry⁵ has been engaged in extensive discussions over the last three years on the development of an international automated approach to classifying digitally distributed computer games, including games on game consoles, personal computers, handheld devices and smart phones. This international approach is now known as the International Age Rating Coalition (**IARC**)⁶. In its comprehensive review of Australia's classification scheme, the Australian Law Reform Commission (**ALRC**) considered the use of an automated decision-making instrument/system such as IARC and ultimately recommended allowing the use of such authorised classification instruments⁷.

The proposed amendments in Schedule 1 of the Bill will enable the Minister to approve the use of classification tools, such as the rating tool developed by IARC. These amendments will ensure the National Classification Scheme is able to classify the exponentially growing number of computer games now available on digital game

⁵ Including the Entertainment Software Ratings Board (the rating body that classifies games that are released in the United States of America and Canada), Pan European Game Information (rating body that classifies computer games that are released in the United Kingdom and over 30 European countries, Classificação Indicativa (rating body that classifies computer games released in Brazil) and Unterhaltungssoftware Selbstkontrolle (rating body that classified computer games released in Germany).

⁶ Further information about IARC can be found at <https://www.globalratings.com>

⁷ Recommendation 7-8, "Classification – Content Regulation and Convergent Media" (ALRC Report 118)

storefronts – therefore ensuring minors are protected from material likely to harm or disturb them by providing parents and guardians with appropriate Australian classification information. The reduced compliance costs for using an approved classification tool will also ensure Australians are able to access games that are readily available in other markets around the world – therefore ensuring that Australian adults are able to read, see, hear and play what they want.

IGEA and GDAA acknowledge and support the role of the Classification Board as set out in Schedule 1 of the Bill. Where necessary, the Classification Board will be able to intervene and effectively override the decision of an approved classification tool. IGEA and GDAA appreciate that this is a necessary approach to secure stakeholder confidence and to ensure consistency in Australia's National Classification Scheme decisions.

Schedule 1 of the Bill is a critical step in the National Classification Scheme's introduction to the digital age and accordingly the amendments have the full support of IGEA and GDAA.

Schedule 4 - Modifications

IGEA and GDAA support the amendments set out in Schedule 4 of the Bill.

Digital delivery has allowed computer games to continuously evolve through the use of digital game updates, patches and additional content. Consequently, business models have adapted to take advantage of digital distribution by continuously developing and selling modifications through micro transactions.

While the types of computer game modifications are continuously evolving, the current popular types of modifications include:

- Game updates or patches that fix game bugs;
- Character skins or costumes that change the way game characters look;
- Character packs that introduce new characters to the game;
- Game items, including new objects, tools, weapons and vehicles;
- Map packs that introduce new environments for users to explore;
- Mission packs that introduce new storylines and challenges; and
- Episodic content or sub-sequels that take place in the original game's world.

The following quote is from the lead architect of PlayStation 4, Mark Cerny, who makes reference to modifications while predicting how game experiences will change in the next generation of games:

"I think another thing we are going to see is living worlds. When we were touring with the developers a lot of them had the same vision for the future - that because there is a hard drive in PlayStation 4 they will be able to update the

game daily, weekly [or] monthly which means every time you go back to play it there will be something new to experience: new missions, new places to explore and the like.”⁸

Section 21(1) of the Act states, if a classified computer game is modified, it becomes unclassified when the modification is made. There are no definitions in the Act for ‘modification’ and there is no level or degree of modification necessary to trigger section 21(1) of the Act. Accordingly, any modification of a computer game, including a simple modification that does not significantly change the user’s experience of the computer game, could potentially cause a computer game to become unclassified and in breach of the various state and territory enforcement laws. Consequently, game publishers would potentially need to classify every modification and every combination of modification. This becomes particularly problematic as modifications are frequently provided (and in some cases done automatically and seamlessly in the background) for free or sold for nominal amounts over an extended period of time.

The ALRC recognised the above issues and recommended several reforms. The ALRC’s view on how computer game modifications should be addressed is set out in the following extracts from the ALRC’s final report:

“8.28 - The ALRC considers that the new Act should provide that classified content only becomes unclassified if it is modified in such a way that the modified content is likely to have a different classification from the original content. Neither the Act nor industry codes need to prescribe specific types of modifications that would, or would not, change the classification of content. Whether something has been modified should depend on the content itself, not on the type of modification.

8.52 - In Chapter 6, the ALRC suggests that only computer games that are ‘works’, that is, games that are ‘produced for playing as a discrete entity’, should be required to be classified. ‘Mods’ and expansion packs will rarely be produced for playing as a discrete entity, and therefore would not meet the definition of content that must be classified. If they are sold separately, therefore, they should not need to be marked and classified. In the ALRC’s view, this is an appropriate and effective means of dealing with the volume of separate ‘mods’ and expansion packs that can be released, many made and produced by users rather than the original developers.”

Ultimately, the ALRC did not expect modifications, mods and expansion packs to be subject to separate classification.

The amendments set out in Schedule 4 of the Bill (particularly the amendment relating to

⁸ <http://www.youtube.com/watch?v=HsbivGaJbNQ>

subsection 21(3)) will enable the Minister to specify, using a legislative instrument, additional kinds of modifications which will not cause a film or computer game to become unclassified. IGEA and GDAA agree with the following extract from the explanatory memorandum of the Bill:

“With technological advances and rapid changes to the kinds of modifications which are made to films and computer games, it is appropriate to include a power to make a legislative instrument for this purpose. In particular, computer games are becoming increasingly mutable and it is both unfeasible and unnecessary to require the vast amount of (low risk) modified content to be classified separately by the Board. For example, a computer game modified by including additional costumes should not require classification separately to the unmodified computer game—provided that the additional costumes would not cause the modified game to be given a different classification to the unmodified game. The power to make a legislative instrument will be necessary to ensure that the Classification Act is equipped to deal with rapidly-evolving technology and delivery mechanisms.”

Consistent with ALRC’s recommendations, the insertion of subsection 21(3) will address the many types of low risk modifications that would technically cause computer games to become unclassified. By allowing such modifications to display the classification markings and information for the original game, parents and guardians shall be better informed about whether the modified content is appropriate for their children. IGEA and GDAA look forward to working with the Minister on the development of a legislative instrument that will address the many types of modifications that will benefit from subsection 21(3).

Schedule 3 – Exemptions for Cultural Institutions and Registered Events

IGEA and GDAA support the amendments set out in Schedule 3 of the Bill, particularly those relating to exemptions for cultural institutions and registered events.

With ninety three percent (93%) of Australian households currently having at least one device that is used for playing video games and the average Australian gamer being 32 years of age⁹, the cultural appreciation of games in Australia is stronger than ever before. Evidently, a growing number of events have emerged to exhibit new and upcoming games and to celebrate games as a cultural medium, including:

- ‘Game Masters the Exhibition’ currently showing at the Powerhouse Museum¹⁰;
- ‘Game Masters’ held between June and October 2012 at the Australian Centre

⁹ Brand J.E., Lorentz P, Mathew T, (2013) Digital Australia ‘14, Sydney: Interactive Games & Entertainment Association.

¹⁰ <https://www.powerhousemuseum.com/gamemasters/>

of Moving Images¹¹

- Freeplay Independent Games Festival held in September 2012 in Melbourne¹²
- PAX Australia, held annually at the Melbourne Convention Centre¹³; and
- EB Expo, held annually at the Sydney Showground at Sydney Olympic Park¹⁴.

The amendments set out in Schedule 3 of the Bill will ultimately reduce the compliance costs of hosting such events in Australia. Besides being enjoyable events for the growing number of avid Australian gamers, these events also play an important part in promoting the continued growth of Australia's games industry, including the Australian game development industry. IGEA and GDAA look forward to working with the Minister on the development of a legislative instrument to set out the rules or conditions that registered events or approved cultural institutions must satisfy in order to benefit from the conditional cultural exemption.


Conclusion and Recommendations

IGEA and GDAA support the amendments set out in the Bill and recommend the Bill's passage through the Senate as soon as possible. It has been over two years since the ALRC made its recommendations that are now reflected in this Bill so any further delay should be avoided.

IGEA and GDAA also support the ongoing review of Australia's classification scheme and encourage the Government to consider the broader reforms recommended by the ALRC. In particular, further reform should address the need for a truly national, centralised, co-regulatory and industry-led classification scheme.

Yours sincerely,

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¹¹ <http://www.acmi.net.au/game-masters.aspx>

¹² <http://www.freeplay.net.au>

¹³ <http://www.paxaustralia.com.au>

¹⁴ <http://www.ebexpo.com.au>