Classification and censorship

Artists should be aware that they might be required to have their works classified. Whether an artist has an obligation to have a particular work classified depends on a number of factors, including the medium of the work, its content and how it is being used.

This Information sheet explains the different classification systems that apply to different types of creative works including films, computer games, publications and artworks as well as the available exemptions such as for festivals. This scheme is administered by the Classification Board. This information sheet also discusses the regulation of content for television, radio and internet by the Australian Communications and Media Authority as well as the voluntary labelling guidelines for audio tapes, records and CDs that have been developed by the Australian Record Industry Association (ARIA) and the Australian Music Retailers' Association (AMRA).

Introduction

Artists should be aware that they might be required to have their works classified. Whether an artist has an obligation to have a particular work classified depends on a number of factors, including the medium of the work, its content and how it is being used.

Different works are subject to different classification systems.

- Films, computer games and publications classifications are administered by the Classification Board.
- Television, radio and internet are all subject to content regulations by the Australian Communications and Media Authority (**ACMA**), which can refer online content for classification by the Classification Board.
- A system of voluntary labelling guidelines for audio tapes, records and CDs manufactured in Australia has been developed by the Australian Record Industry Association (**ARIA**) and the Australian Music Retailers' Association (**AMRA**).

There is no formal classification system applicable to the performing arts or visual arts (except where these involve multimedia content or are included in a publication). However, even if there is no obligation to have a work classified, if the work is arguably obscene, indecent or blasphemous, there may be limitations on how and where the work can be exhibited or displayed.

Films, computer games & publications

Classification of films, computer games and certain publications that are displayed, demonstrated, sold, hired, advertised or publicly exhibited is compulsory unless an exception applies.

Classification of films, computer games and publications is undertaken by the Classification Board, which makes decisions in accordance with the general principles and criteria outlined in the *Classification (Publications, Films and Computer Games) Act 1995* (Cth)*, the National Classification Code* and the relevant *Classification Guidelines*.

The establishment of the Classification Board and the criteria which it applies when making a decision are under Commonwealth laws. Enforcement legislation for classification is made at the state and territory level and this results in some differences between states, for example, publications that are classified Restricted cannot be sold in Queensland but can be sold in all other states and territories in Australia.

Classification decisions by the Classification Board must give effect to the following principles:

- adults should be able to read, hear and see what they want;

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- minors should be protected from material likely to harm or disturb them;
- everyone should be protected from exposure to unsolicited material that they find offensive; and
- community concerns about depictions that incite or condone violence, especially sexual violence, or that portray people in a demeaning manner, should be taken into account.

Broadly speaking, a film, computer game or publication may be refused classification if it:

- describes or depicts sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that it offends the standards of morality, decency and propriety generally accepted by reasonable adults;
- describes or depicts a minor who is, or appears to be under 18 in a way likely to offend a reasonable adult;
- promotes, incites or instructs in matters of crime or violence; or
- advocates terrorist acts.

Material will be considered to advocate a terrorist act if it:

- directly or indirectly counsels or urges the doing of a terrorist act; or
- directly or indirectly provides instruction on the doing of a terrorist act; or
- directly praises the doing of a terrorist act in circumstances where there is a risk that such praise might have the effect of leading a person to engage in a terrorist act.

Material will not be considered to advocate terrorist acts if the material could reasonably be considered to be done merely as part of public discussion or debate or as entertainment or satire.

For specific information about what will be refused classification for a publication, film or computer game, look at the National Classification Code, which can be downloaded from www.classification.gov.auor www.comlaw.gov.au.

Films & computer games

Films (which includes cinematograph films, slides, videos, DVDs and CDs with a visual image or any other form of recording from which a visual image can be produced) are classified into seven categories:

- G – general, all films that do not fit into one of the other six categories will be classified G;
- PG – parental guidance recommended;
- M – recommended for mature audiences;
- MA15+ – not suitable for people under 15. Under 15s must be accompanied by a parent or adult guardian;
- R18+ – restricted to 18 and over;
- X18+ – restricted to 18 and over: contains real depictions of actual sexual activity between consenting adults. In addition to being restricted to persons aged 18 years and over it can only be sold or hired legally in the ACT and the Northern Territory. The possession and supply of X 18+ films is prohibited in prescribed areas of the Northern Territory; and
- RC – refused classification. This means the material is prohibited and cannot be shown, sold, hired or distributed.

Computer games are classified into five categories:

- G – general;
- PG – parental guidance recommended;
- M – recommended for mature audiences;
- MA15+ –not suitable for people under 15. Under 15s must be accompanied by a parent or adult guardian;

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- R18+ – restricted to 18 and over; and
- RC – Refused Classification

The classification awarded to a film or computer game depends on the presence of classifiable elements: violence, sex, language, themes, drug use and nudity.

There are legally enforceable age restrictions for MA15+ (person under 15 must be accompanied by a parent or adult guardian), R18+ and X18+ (person must be 18) and RC material cannot be sold, hired or distributed. The other classification categories (G, PG and M) are recommendations only and are not subjected to legally enforceable restrictions.

Unless an exemption applies, it is an offence to display, demonstrate, sell, hire, publicly exhibit or advertise a film or computer game that is required to be classified without having it classified. It must also clearly display its classification in accordance with legal requirements.

Recent amendments to the *Classification (Publications, Films and Computer Games) Act 1995* (Cth) are aimed at making the process of obtaining classification substantially easier and more affordable. Commencing 11 September 2014, films, computer games and publications will be able to be classified using simple, accessible, and low cost classification tools that have been approved by the Minister. For example, the International Age Rating Coalition (IARC) has been developing a tool which simplifies the classification process by which developers of digitally distributed games can obtain ratings. Game developers answer a questionnaire concerning their product's content. The responses generate a classification rating for a range of jurisdictions including the US, Europe and Australia in accordance with the standards of those jurisdictions which the developer can then rely on.

Under certain circumstances, a film or computer game may be exempt from classification. Computer games and films created for business, accounting, professional, scientific or educational purposes may be exempt from classification unless they would, if classified, be classified M15+ or above. In addition, films created for current affairs, hobbyist, sporting, family, live performance, musical presentation, religious, community or cultural purposes may be exempt. For example, a film created for a live performance is a film comprising a documentary record of a live artistic performance or a film which is used within such a performance. Further, two new categories are to be added which will exempt films that wholly or mainly relate to the social sciences (economics, geography, anthropology and linguistics)or that wholly or mainly depict natural scenery. Applications for classification of exempt films are not necessary.

A film can also be granted an exemption for classification if it will be screened as part of a film festival. Under the new provisions, festivals and cultural institutions will be able to self-assess their eligibility for an exemption according to the uniform arrangements to be set out in the *Classification Act*. There will also be exemptions for festivals or cultural institutions that screen, demonstrate or exhibit unclassified publications and computer games.

As film is defined so broadly in the *Classification Act* it means that an artist exhibiting a moving image or video artwork, that is not exempt from classification, is legally required to have the artwork classified or seek an exemption before it can be displayed, demonstrated, sold, offered for hire, publicly exhibited or advertised. The new legislation will remove the need for reclassification when minor changes are made to computer games, such as software updates or bug fixes, or where 2D films are converted to 3D format (or vice versa).

Publications

Publications (which broadly refers to books and magazines, but may also include other printed matter such as calendars, cards, catalogues etc) are not required to be classified unless they contain depictions or descriptions of sexual matters, drugs, nudity or violence that are unsuitable for a minor to see or read or likely to cause offence to a reasonable adult if sold as an unrestricted publication. It is an offence to sell, display or advertise a publication that is required to be classified without having it classified, or to display it other than in accordance with the classification requirements.

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Submittable publications are publications that are likely to warrant restriction to adults. These must be submitted to the Classification Board for classification before they can legally be sold, distributed or advertised.

There are 4 classification categories for publications:

- **Unrestricted:** Unrestricted publications may be freely delivered, displayed, sold and advertised. Where they contain material that is not recommended for readers under 15 they may be required to carry a consumer advice labels, stating: 'Unrestricted – M – not recommended for readers under 15 years.' The application of this consumer advice label to publications within the Unrestricted classification will be determined by the Classification Board in relation to the impact level of the publication;
- **Category 1 – Restricted**: Not to be sold in Queensland. Not available to persons under 18 years of age. Must only be sold/distributed in a sealed wrapper. Where the cover is suitable for public display then the wrapper may be clear, where it is not suitable then it must be in plain, opaque wrapping.
- **Category 2 – Restricted**: Not to be sold in Queensland. Not available to persons under 18 years of age. Must only be sold/distributed from premises that are restricted to adults.
- **RC (Refused Classification)**: Not to be sold or distributed anywhere in Australia.

Television, radio and internet

The Australian Communications and Media Authority (**ACMA**) is responsible for the regulation of broadcasting, the internet, radio communications and telecommunications. It was established on 1 July 2005 by the merger of the Australian Broadcasting Authority (**ABA**) and the Australian Communications Authority (**ACA**). Many of the codes of practice for radio and television still refer to the ABA. Where there is a reference to the ABA it should now be read as a reference to ACMA.

Television (including free to air, subscription and narrowcasting services) and radio broadcasters are required to adhere to their codes of conduct. The codes cover a variety of matters and include information relevant to classification. They frequently contain restrictions upon the type of material that may be broadcast and the hours and methods in which certain material may be broadcast. The codes are drafted by industry groups and, except for ABC and SBS, ACMA must approve the codes of practice. ABC and SBS are self-administering and are not required to obtain ACMA's approval of their codes of practice.

Television

Under the code of practice established by the commercial television networks, each broadcast day is broken up into specific classification zones with only material considered suitable for that time period to be shown. SBS and ABC have a similar approach in their codes of practice.

The classification of a program is judged according to the frequency and intensity of key elements, which include violence, sexual behaviour, nudity and coarse languageas well as the time of day it is broadcast. Contextual factors such as merit, purpose, tone, camera work, relevance and treatment of the material to the program are also taken into account.

A copy of the Commercial Television Industry Code of Practice can be downloaded from the Free TV Australia website (www.freetv.com.au). Free TV is an industry body representing all of Australia's commercial free to air television stations.

The ABC Code of Practice applies to all ABC broadcasting services (including its online and emerging media services). A copy of the code is available from the ABC website (www.abc.net.au) and includes details regarding classification of its programs.

The SBS Codes of Practice apply to its television, radio and online services. A copy of the code is available from the SBS website (www.sbs.com.au). It includes details regarding classification of its programs and time restrictions relevant to each classification category.

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Copies of the Codes of Practice for Subscription Broadcast Television, Subscription Narrowcast Television, Open Narrowcast Television and Subscription Narrowcast Radio services can be downloaded from the ASTRA website (www.astra.org.au). ASTRA is the Australian Subscription Television and Radio Association, the peak industry body for subscription television.

Radio

Commercial Radio Australia is the national industry body representing Australia's commercial radio broadcasters.

All commercial radio broadcasters must follow the Commercial Radio Codes of Practice. It provides that programs that:

1) are likely to incite, encourage or present for its own sake violence or brutality;

2) simulate news or events in such a way as to mislead or alarm listeners;

3) present as desirable the misuse of alcohol;

4) present as desirable the use of narcotics, tobacco or any illegal drug;

5) depict suicide favourably or presents suicide as a means of achieving a desired result; or

6) are likely to incite or perpetuate hatred against or vilify any person or group on the basis of age, ethnicity, nationality, race, gender, sexual preference, religion or physical or mental disability;

will not be broadcast unless they are presented reasonably and in good faith for academic, artistic (including comedy or satire), religious instruction, scientific or research purposes or for other purposes in the public interest, including discussion or debate about any act or matter.

A copy of the Codes of Practice is available from the Commercial Radio Australia website (www.commercialradio.com.au)

Community broadcasting

The Community Broadcasting Association of Australia represents community radio and television stations. It has separate codes of practice for television and radio, both of which can be downloaded from its website (www.cbaa.org.au)

The Code of Practice governing community television broadcasting specifies that material which may:

1) incite, encourage or present for their own sake violence or brutality;

2) simulate news or events in such a way as to mislead or alarm listeners;

3) present as desirable the misuse of drugs including alcohol, narcotics and tobacco; and

4) induce a hypnotic state or use subliminal techniques;

will not be broadcast.

Material that stereotypes, incites, vilifies, perpetuates hatred against, or demeans any person or group on the basis of ethnicity, nationality, race, chosen language, gender, sexual preference, religion, age, physical or mental ability, occupation, cultural belief or political affiliation is not to be broadcast, however this is not to prevent the broadcast of material which is factual, expressive of genuinely held opinions in a news or current affairs program, or in the legitimate context of a humorous, satirical or dramatic work

The Code of Practice for community radio has similar guidelines to the television guidelines.

Narrowcasting television and radio services

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Open narrowcasting television services follow the same classification system as the Classification Board. Material classified X18+ by the Classification Board will not be broadcast while those rated R18+ are shown only after being modified to fit the MA criteria and only between 9.30pm and 5am. Narrowcasters in general (that includes open and subscription television and radio narrowcasters) will not show material that:

- incites, or gratuitously vilifies racial and social groups;
- depicts putting a person in a hypnotic state;
- is designed to induce an hypnotic state in the audience; or
- uses a method like subliminal perception to convey information or messages below or near the threshold of normal awareness.

Subscription (pay) television

Subscription television broadcasters follow the Classification Board *Guidelines for the Classification of Film and Videotapes* (see Publications, Films, Computer Games section above). X18+ rated programs are not to be shown on subscription television and R18+ can only be broadcast if parliament has first approved the broadcast of such programs.

Internet and mobile phone content

Material available online and hosted in Australia is subject to the same classification categories as are applied to publications, films and computer games by the Classification Board. The regulatory scheme for the internet operates on industry codes of practice and a complaints basis, so that when a person finds material offensive they can contact ACMA about whether the material potentially falls within a prohibited category. ACMA has the power to initiate its own investigation into suspect websites. It may refer online content to the Classification Board for classification.

Australian-hosted material that is classified RC or X is removed by an ACMA order notifying the internet contact host or server to shut down the site. Additionally they can be asked to apply a restricted access system to R rated material to prevent viewing of the site by children. Internet service providers must comply with any orders issued by ACMA to take down a site.

Hosting service providers, live content service providers, links service providers or commercial service providers with an Australian connection must have any online or mobile phone content service they are providing assessed by a trained content assessor if it is likely that the content would be rated MA15+. This is required under the Content Services Code, which was developed by the Internet Industry Association and which ACMA registered on 16 July 2008. It is the service or content provider who is responsible for compliance with the Content Services Code, not the artist creating the material.

Music

ARIA and AMRA have developed an industry code of practice, which requires the labelling and handling of audio recordings containing potentially offensive lyrics or themes. All members of ARIA and AMRA must abide by the code.

Recordings containing strong lyrics are classified into 4 categories:

- Level 1 – Warning: moderate impact coarse language and/or themes;
- Level 2 – Warning: strong impact coarse language and/or themes;
- Level 3 – Restricted: high impact themes. Not to be sold to persons under 18 years; and
- Exceeding level 3 – not to be released or sold.

Recordings which include visual images, for example an audiovisual recording of a concert, are considered a film and may need to be classified by the Classification Board.

Performing arts

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Performances are not generally subject to classification, however where a performance forms part of a classifiable work (for example, a multimedia work) then the performance may impact on how the multimedia work is classified.

Performances anywhere in Australia that are arguably obscene, indecent or blasphemous risk infringing common laws (court made laws) and/or the relevant state's or territory's criminal legislation.

Works will be considered to be obscene, and therefore unlawful, where they are offensive to contemporary community standards. It can be extremely difficult to predict with any degree of certainty whether a particular work will be considered obscene. Determination of what is offensive and what are contemporary community standards involves highly subjective assessments. Issues to consider in determining whether a performance or other work is likely to breach such laws include:

- the content of the performance or work;
- the context of any potentially offensive material;
- the location of the performance or work;
- the target audience;
- the manner in which the performance or work is promoted; and
- the extent to which prospective audience members or prospective visitors are warned of possibly offensive elements.

South Australia has specific legislation dealing with the classification of theatrical performances. Under the *Classification of Theatrical Performances Act 1978 (SA)* a theatrical performance that causes offence to adults or is unsuitable for children may have conditions imposed on the advertisement and performance of the production.

Visual arts

Visual artworks are not generally subject to classification, however where the work is a classifiable work (for example, a film, moving image or video art, computer game or publication) it will need to be classified before it can be exhibited, sold, hired or distributed. Printed reproductions of artworks such as exhibition catalogues may be subject to classification as publications by the Classification Board.

Visual artworks that are publicly displayed, and which are arguably obscene, indecent or blasphemous, risk infringing common laws and/or the relevant State's or Territory's criminal legislation. For more information see the comments made about obscenity under the heading Performing Arts, above).

Further information

Attorney-General's Department (Commonwealth) (www.ag.gov.au)(go to Classification policy section), ph (02) 6250 6666

Australian Communications and Media Authority (www.acma.gov.au)ph: (02) 6219 5555

Australian Record Industry Association (www.aria.com.au)ph: (02) 9267 7996

Australian Music Retailers' Association(www.amra.org.au)ph: (03) 9507 2547

Classification Board(www.classification.gov.au)ph: (02) 92897100

Communications Law Centre (http://www.comlaw.gov.au/)ph: (02) 9385 7385/ (03) 9248 1278

Electronic Frontiers Australia (www.efa.org.au)ph: (07) 3424 0201

Legislation can be searched for and viewed at www.austlii.edu.au

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