



Submission to

Ministry for Culture and Heritage

Subject

**Exploring Digital Convergence:
Issues for Policy and Legislation**

Date

16 October, 2015

Overview

IGEA welcomes the government's discussion paper on *Exploring Digital Convergence: Issues for Policy & Legislation (Discussion Paper)*. It is self evident that the Internet has changed how consumers acquire content. The rapid change in technology, delivery methods, ease of access and the ubiquity of content has far outrun the government's ability to ensure legislation and policy remain 'fit for purpose'.

With this high velocity of change comes the challenge to ensure business is not unfairly encumbered with outdated or poorly constructed legislation, while guaranteeing that the principles around ensuring the protection of New Zealand citizens are met.

In this submission IGEA will be focussing primarily on issues around regulation and policy in an era of convergence. Specifically, we will address the need to have a classification system that is, to the degree possible, able to be flexible and nimble enough to address the rapidly changing digital environment and structured in a manner that allows for easy application to reflect the sensitivities of the wider populous as they change.

This submission is presented in two parts. This document constitutes the first part, while the attached, *Current and Emerging Issues for the Classification of Video Games in New Zealand*, is a more substantive interrogation of New Zealand's wider classification scheme as it applies to video games and video game content. The two parts should be read in context of each other.

About IGEA

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

The following list represents IGEA's current members:

- Activision Blizzard
- All Interactive Distribution
- Bandai Namco Entertainment
- Disney Interactive Studios
- Electronic Arts
- Five Star Games
- Fiveight Distribution
- GDE Distribution
- Google
- Microsoft
- Mindscape Asia Pacific
- Nintendo
- Sony Computer Entertainment
- Take 2 Interactive
- Total Interactive
- Ubisoft
- VR Distribution
- Warner Bros. Interactive Entertainment
- Well Placed Cactus
- ZeniMax Australia

Submission

Ninety four percent (94%) of New Zealand households currently have at least one device being used for playing video games¹, with many of these houses (69%) having two or more game playing devices.² Video games are being played on more platforms and devices than ever before, with game experiences often converging across multiple types of devices and being enjoyed by multiple generations of New Zealanders, often simultaneously. PC and game consoles continue to be the dominant type of game device used in New Zealand homes and this trend is expected to continue with the market's renewed demand for PC games and the recent release of the next generation of game consoles.

The Internet has changed how consumers acquire video games and game content. While boxed products remain the primary distribution method for AAA games, other distribution methods are quickly gaining momentum. Digital distribution models (for computers, game consoles and smart phones), subscription models, episodic games, free-to-play and in-game purchases are several examples of the new distribution models that have emerged and that are expected to dominate the gaming landscape³. In 2014, 77% of video game content in New Zealand was digitally delivered⁴.

With the average age of the New Zealand gamer being 34 and 48% of New Zealand gamers being female⁵, the games industry is constantly being driven to develop new technologies and experiences to support a broadening demographic. The most popular titles still rely on the traditional game controller or keyboard and mouse, however motion sensing technologies, augmented reality, virtual reality, multi-screens, cross-device and online multiplayer are quickly gaining popularity.

The current classification system in New Zealand is primarily based on the structure and approach prescribed by the now repealed *Video Recordings Act 1987* which came into force at the end of October 1987 - when games were only sold in boxes and commercial digital distribution was not envisaged. It is not surprising therefore that the application of New Zealand's classification system on the rapidly growing video game market and digitally distributed games has caused a wealth of issues for the interactive entertainment industry, including:

- 1. Inability to manage the high frequency and volume of digitally distributed games** – While the Office of Film and Literature Classification currently classifies less than 80 video games per year, in twelve months ended June 30, 2015 over 150,000 games were released in Apple's App Store and thousands more on other digital platforms such as Android and Steam. The current classification system is simply unable to keep up with the high frequency and volume of digitally distributed games.
- 2. Uncertainty with the classification system's application for digitally distributed games** – With the commercial availability of thousands of unclassified digitally distributed games, the unrealistic enforcement of the classification system and the jurisdictional limitations, there is a growing level of uncertainty about the classification system's application to digitally distributed video games. This uncertainty is particularly problematic for New Zealand businesses that are within the enforcement reach of the scheme.

¹ The terms 'video games', 'games', 'interactive games', 'interactive entertainment' and 'computer games' are all references to 'video games' as that term is defined in the *Films, Videos, and Publications Classification Act 1993*

² Brand, J. E. & Todhunter, S. (2015). *Digital New Zealand 2016*. Eveleigh, NSW: IGEA.

³ These models are more comprehensively explained in the attached *Current and Emerging Issues for the Classification of Video Games in New Zealand*

⁴ <http://www.igea.net/2015/03/video-games-continue-to-show-strong-growth-in-nz/>

⁵ Brand, J. E. & Todhunter, S. (2015). *Digital New Zealand 2016*. Eveleigh, NSW: IGEA.

3. **Unfair application of the scheme on local distributors** – The classification system places significant and unfair costs on local New Zealand businesses. Overseas competing businesses are able to unfairly capitalise and receive the benefit of the classification costs incurred by local New Zealand businesses.
4. **The classification system is not evolving with international classification practices** – Major classification authorities around the world have reviewed and adapted their approach to classifying video games in the digital economy. New Zealand’s current approach to classification is lagging behind such international developments.
5. **Classification fees are unreasonable for independent game developers** – Other major territories, including USA, Canada, Europe, Germany, Brazil and Australia, have recognised that, in the rapidly growing digital market, classification and rating fees deter publishers and developers from actively participating with local classification systems. These other major territories have either removed, or are working to remove, the classification fees for digitally distributed games.

Meanwhile, New Zealand’s classification system demands developers and publishers to pay between \$1,430 and \$2,150 to classify a game for release in New Zealand. Compared to other major markets where the classification of digitally distributed games is free, the current classification fees charged in New Zealand are excessive, unreasonable, disproportional and acts as a disincentive to publishers and developers from actively using local New Zealand classifications.

6. **The classification system’s failure with free-to-play games** – The classification system does not appropriately capture video games that are provided to users for free, including games that receive revenue from in-game advertising. This inconsistency demonstrates the legislation’s failure to adapt to emerging business models in the digital economy.
7. **The classification system’s failure with episodic games** – Similar to television shows, video games are now being released as episodes of a larger series or season, with each episode being sold for a fraction of the price of a full game. The classification system would require each of these episodes to be classified separately, a requirement that has prevented the commercial feasibility of releasing such episodic games in New Zealand.
8. **The Film and Video Labelling Body has not adapted to the emerging games market and the online environment** – The Film and Video Labelling Body’s operation struggles to prioritise the primary objectives of the classification system – to appropriately inform New Zealander’s about the appropriateness of content. Instead of streamlining the classification process to reduce the costs of compliance, the body has attempted to charge unreasonable and unnecessary licence fees for the display of classification information on online digital distribution platforms. With a statutory monopoly on the handling of video game classifications and the issuing of classification labels, there appears to be little incentive or willingness to accommodate emerging markets.

In March 2011 the Australian Government referred Australia's classification scheme to the Australian Law Reform Commission (**ALRC**) for a comprehensive review. In March 2012, after significant consultation with the public, industry and Government agencies, the ALRC tabled a final report recommending an overhaul of Australia's classification scheme. The Australian Government has since begun implementing the ALRC's recommendations, including the approved use of automated classification tools for the classification of digitally distributed video games.

With digital distribution now the primary method of video game acquisition in New Zealand, there is an urgent need for review and reform of New Zealand's classification system.

Recommendations

IGEA has two immediate suggestions for the improvement in content classification and standards. As outlined above, these suggestions should be interpreted in context with the second part of our submission, *Current and Emerging Issues for the Classification of Video Games in New Zealand*.

1. Introduction of a Classification Tool for classifying digitally delivered video games & video game content

The existing classification process set out in the *Films, Videos, and Publications Classification Act 1993* (the **Act**) could be 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 New Zealand game developers with direct and low cost access to a global market, the global market also has direct access to New Zealand consumers. Consequently, there are now more computer games being released in New Zealand than ever before and the current process for classifying computer games is failing to adapt.

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 New Zealand, are developing, self-publishing and digitally distributing their games on popular home entertainment consoles with very little barriers to entry. The volume and frequency of computer games released in New Zealand will grow exponentially and is outside the realistic regulatory scope of the current scheme.

The global interactive entertainment industry⁶ 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**)⁷.

⁶ 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).

⁷ Further information about IARC can be found at <https://www.globalratings.com>

In short, IARC is a computer algorithm that, based on input from a game developer or publisher, will generate a rating or classification that is consistent with a specific jurisdiction's classification regime/criteria. The IARC tool operates without any cost to the developer/publisher and provides a centralised and controllable process that will accommodate the massive volume of digitally distributed on the international market. Annexure1 shows a guide to how IARC operates.

In its comprehensive review of Australia's classification scheme, the ALRC considered the use of an automated decision-making instrument/system such as IARC and ultimately recommended allowing the use of such authorised classification instruments⁸. The Australian government commenced a pilot using IARC to classify digital computer game content on July 1, 2015⁹.

In its first seven months of operation, it is estimated that IARC accounted for more than 280,000 additional games being classified in Australia¹⁰. Of these, at least 8,000 would have fallen into New Zealand's restricted category, therefore requiring classification by the OFLC. By comparison, over the twelve months ended June 30 2015, the OFLC have classified only 67 games.

Further information on IARC is included in the attached *Current and Emerging Issues for the Classification of Video Games in New Zealand* or available at www.globalratings.com

Adopting IARC will allow New Zealand to classify the exponentially growing number of computer games now available on digital game storefronts, therefore ensuring minors are protected from material likely to harm or disturb them by providing parents and guardians with appropriate New Zealand specific classification information.

It should be noted that IARC is reflective of a specific jurisdiction's classification guidelines. By suggesting that IARC be adopted in New Zealand, IGEA does not necessarily agree with the structure of New Zealand's specific criteria for determining the restriction or banning of content.

2. An exhaustive evaluation of New Zealand's wider classification and censorship regime to ensure the application of a 'treat likes alike' approach that incorporates a thorough examination of current classification criteria, including its current guidelines defining restricted and objectionable material

While exploring and identifying the plethora of policy and legislation issues in a converged world, it is naive to think that each of these issues, whether individually or collectively, can be examined and carefully considered as part of a wider consultation, such as the one outlined in the Discussion Paper.

In 2011 the Australian Government asked the ALRC to undertake a review into censorship and classification. This review, which produced 57 recommendations¹¹, was conducted over 18 or so months, ensuring extensive consultation with the full gamut of stakeholders.

In agreeing with the Discussion Paper's assertion that the regulatory system should 'treat likes alike' and be 'flexible and durable enough to cope with future change', IGEA strongly recommends that a

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

⁹ <http://www.classification.gov.au/News/Pages/10-March-2015-New-trial-for-classification-of-online-games.aspx>

¹⁰ <http://www.abc.net.au/news/2015-06-30/australia-bans-220-video-games-in-four-months/6582100>

¹¹ <http://www.alrc.gov.au/publications/classification-content-regulation-and-convergent-media-alrc-report-118>

separate and more exhaustive review be undertaken into the content classification and standards more broadly, similar to that conducted by ALRC.

Any review of New Zealand's classification and censorship system must involve careful consideration of the complicated and often conflicting matters with input from the New Zealand public, the FVLB, OFLC, industry groups and other interested stakeholders.

It is imperative that any such review be conducted independently and be able to responsibly address inevitable resistance to reasonable change from vested stakeholders while navigating the challenges of the converged digital environment.

Specifically, IGEA recommends that any review takes consideration of the following:

- Existing New Zealand classification legislation for all content, including film, television, streaming, video games and literature
- The principles that should underpin a classification scheme in a digital world
- Technological change and how classification laws should apply to digitally distributed content
- How content should be classified, including the role and operation of the OFLC, the Film and Literature Review Board, the FVLB, industry and the public
- What content should be classified, including consideration of how New Zealand's classification system should deal with the high frequency and volume of digitally distributed content
- How New Zealand's classification scheme could integrate with similar overseas classification schemes, particularly with close trading partners such as Australia
- How New Zealanders should be informed about classification information
- How New Zealand's classification system can remain fit for purpose in a converging sector.

HOW IARC WORKS

