



Submission to

Ministry for Culture and Heritage

Subject

**Content Regulation in a Converged World
Discussion Document**

Date

16 October, 2015

Overview

IGEA welcomes the New Zealand government's discussion paper on 'Content Regulation in a Converged World' (**Discussion Paper**). IGEA believes this is a great opportunity for the New Zealand Government to review the current classification system, audio visual content and the corresponding legislation in New Zealand to determine whether it is still relevant and how it could be improved to better address the changing market in light of technological advancements since its implementation.

IGEA's submission will be focusing primarily on Part 4 - Options for audio visual content of the discussion paper with some commentary on Part 6 – Advertising Restrictions. IGEA's submission will address these options in Part 4 in order of preference, that is, its most preferred option to the least preferred option outlining its views on any benefits and drawbacks of each option.

Part 3 of the discussion paper, the Classification of content will be addressed in IGEA's addendum paper 'Exploring Digital Convergence: Issues for Policy and Legislation' in more detail.

IGEA believes that if New Zealand's classification scheme is expected to withstand the rapidly changing digital landscape and avoid obsolescence, reform to the *Films, Videos, and Publications Classification Act 1993* (the Act) and New Zealand's classification system is critical. Accordingly, it is necessary to review any changes to the Act and options for improving the New Zealand classification system in the context of the current technological environment as well as any anticipated developments within it. Specifically, this response will address this with respect to the interactive entertainment industry.

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

Background

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 devices². 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 a dominant type of game device used in New Zealand homes. 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 of 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 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 described 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 yet 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 number of issues for the interactive entertainment industry.

How games and game content is acquired in New Zealand

The *Film, Videos and Publications Classification Act's* definition of 'video game' includes a range of interactive games and content. This definition is very broad and encompasses content as simple as a game of chess to a game that explores personal stories in virtual worlds.

New Zealanders can acquire games and game content in a number of ways. More traditionally, they can purchase 'boxed games' which refers to games and game content that is delivered on physical media and sold generally in retail stores such as EB Games, JB Hi-Fi and mass retailers such as The Warehouse as well as via online stores. In 2014, there were approximately 720 boxed game titles released in New Zealand.

Consumers may also access an abundance of games and game content over the internet. All game platforms, whether it be computers, game consoles, handheld devices or smart phones allow users to purchase, download, install and play games and game content. Digital downloads are being sold by a growing range of retailers, which are continually emerging.

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.

Some digital retailers include Apple's App store, Google Play, Electronic Arts' Origin, Ubisoft's UPLAY, Valve's Steam, Microsoft Xbox Marketplace, Sony's PlayStation Network and Nintendo's eShop. While many digitally distributed video games may include the downloadable versions of games that are released on box games, there is an exponentially growing range of games that are exclusively digitally distributed. The amount of digital releases is difficult to measure, Apple's App Store alone has more than 427,000 games currently available for download with almost 150,000 released for the 30 June 2015 financial year end.

Additionally, digital downloads can also be purchased at 'bricks and mortar' retailers through the use of activation cards. For example, retailers may display a range of cards, similar to iTunes gift cards, which contain activation codes that can be redeemed online to enable the user to download and play a particular game. These cards, also referred to as 'point of sale activation cards' or 'POSA' cards, are commonly used for exclusively digitally delivered titles that would benefit from a physical retailer presence. POSA cards are also an innovative way to ensure New Zealand retailers continue to benefit from the growing trend towards digital distribution. While the sale of physical media in New Zealand retailers is likely to continue throughout the next generation of games consoles, the use of POSA cards will no doubt increase as consumer's demand for their games to be delivered digitally.

Another popular option to acquire games is by subscription. This is not necessarily a new approach for the games industry, however high speed internet and digital distribution has allowed more subscription models to develop. The traditional subscription model for games would involve the user paying a periodic fee to access a certain game or games. This is not dissimilar to how subscription television, like Sky TV, works.

Another way to acquire games and game content is by purchasing episodic games. The low cost of digital distribution has paved the way for the development of episodic gameplay. Rather than selling a single game for, say, \$100, an episodic game could be distributed in five separate parts for \$20 each. This model reduces the entry cost for consumers, allowing them to initially spend less on a game to determine whether they want to spend more on subsequent episodes.

Finally, 'free-to-play' or 'freemium' games are prime examples of the new innovative business models that have been developed in the mobile game market. These games are provided to the consumer at no charge, with the developer or publisher's revenue derived from alternative sources such as in-game advertising or in-app purchases. Free-to-play and freemium models are now being used in a variety of devices and platforms, including smart phone, console and computer games. Free-to-play and freemium games are the cornerstone of New Zealand's thriving game development industry. This innovative and consumer friendly revenue model is used for the majority of New Zealand's \$80 million annual export of digital games.

The five categories listed above demonstrate why the New Zealand Government needs to be proactive with the review of its classification scheme and the methods by which content is delivered and consumed. As aforementioned, the current classification scheme is based on an outdated system that was developed when digital distribution was not envisaged as a commercial method of selling video games. The current Act ultimately came into effect in 1994 during an era of cartridge based console games, when computer games were supplied on floppy disks and the 'new' 3.5 disk, even prior to the advent of commercial use of CD's and DVD's.

As stated above, there is an extensive amount of digital content that requires classification and the Office of Film and Literature Classification (OFLC) do not have the resources to classify all this content. IGEA supports New Zealand adopting a classification model that

allows industry to also shoulder some of the classification burden. This revised model may well adopt the recognition of an industry developed decision making instrument. If so, IGEA strongly recommends that the International Age Rating Coalition (IARC) scheme which is detailed below in option 2.

Adopting IARC will allow New Zealand to quickly 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 on as many games as possible.

At present, Australia's Attorney General Department has undertaken a 12-month pilot of this decision making instrument. This arose from a recommendation of the Australian Law Reform Commission (ALRC) review which considered the use of an automated decision-making instrument IARC⁶. The pilot project has been operating since 1 July 2015⁷ with favourable results to date as recent data indicates 280,000 additional games have been classified in Australia⁸. Of these, at least 8,000 would have likely fallen into New Zealand's restricted categories, therefore requiring classification by the OFLC. By contrast, over the 12 months ended June 30 2015, the OFLC have only classified 67 games.

Part 4 - Options for audio-visual content

IGEA will provide its response to the Content Regulation in a Converged World discussion paper below. IGEA will outline its preferences out of the six (6) options listed in the discussion paper. IGEA's preference is option 2, 5 and 6. The reasoning for these preferences is also outlined below.

Preferred - Option 2 Voluntary Code – no regulatory intervention

IGEA is most in favour of Option 2 in the discussion paper, which outlines a voluntary code with no regulatory intervention.

IGEA believes that the implementation of this model would allow for more flexibility, efficiency and adaptability as industry players are best placed to understand and predict the changing nature of the interactive entertainment industry as the market continues to develop.

Although IGEA supports no regulatory intervention, we believe the Government will still play a part under this option by establishing principle based guidelines on voluntary industry codes of practice.

IGEA supports the notion of broadening the operating scope of the Online Media Standard Authority (OMSA) in New Zealand. IGEA foresees OMSA operating in a similar manner to ACMA by being an independent statutory authority with jurisdiction encompassing all deliver of content, including (but not limited to) broadcasting, the internet, radio-communications and tele-communications. As the regulator, OMSA would respond to complaints, undertake investigations and register any industry codes of practice in relation to the classification of broadcasting and internet content. It would provide consumers with a one-stop-shop to deal with, rather than a number of government agencies.

⁶ Further information about IARC and how it works can be found at <https://www.gobalratings.com>

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

⁸ <http://www.classification.gov.au/News/Pages/10-March-2015-New-trial-for-classification-of-online-games.aspx>

The New Zealand Office of Film and Literature Classification's international counterparts for classification of video games have undergone significant reviews and changes in an effort to adapt new digital distribution models. IGEA also supports a number of overseas models which are currently operating and these classification systems are covered below.

IGEA understands the value of ensuring that consumers are provided with classification information regardless of whether it is a legal requirement. For example, in the United States of America (USA) classification of computer games is not a legal requirement. However, the USA computer game industry supports and adheres to a voluntary industry approach to computer game classification through the Entertainment Software Rating Board (ESRB) with a rating system which encompasses guidance about age-appropriateness, content, and interactive elements. As part of its self-regulatory role for the video game industry the ESRB also enforces industry-adopted advertising guidelines and helps ensure responsible web and mobile privacy practices under its Privacy Certified program.

Similarly, the Pan European Game Information (PEGI), the ratings body responsible for classifying video games in over 30 European countries⁹. PEGI is an age ratings system used to ensure that entertainment content, such as computer games, are clearly labelled by age according to the content they contain. Age ratings provide guidance to consumers (particularly parents) to help them decide whether or not to buy a particular product.

Prominent classification and rating bodies around the world have changed or have started changing their approach to the classification of games in order to keep up with the new era of digital distribution and the rapid development and release of video games around the world. New Zealand's current approach to classification is lagging behind such international developments.

If the New Zealand Government is to adopt a voluntary code, then IGEA recommends implementing the IARC decision making tool as this would be at little cost to the Government and take advantage of a globally recognised and accepted decision making instrument. Additionally, the IARC system would be quicker to implement as it is currently being used in other jurisdictions. Overall, the IARC system will break down cross-jurisdictional classification issues, it will reduce cost of classification and promote a more level playing field for industry. This system will mitigate the risk of confusion for consumers when they purchase video games.

IGEA supports broadening the operating scope of the Online Media Standard Authority (OMSA) to act as a regulator in New Zealand in a similar fashion to ACMA in Australia.

Alternative Options – in order of preference

Option 5 – A broadcasting regime with increased self-regulation

IGEA would support a broadcasting content regime that would allow for a level of self regulation for the interactive entertainment industry which would be both time and cost efficient. The element of self regulation would allow for some flexibility for standards and processes to be established as necessary in line with the changes within the industry.

IGEA endorses OMSA, or a similar body, to act as the standards body which would be established by statute and operate as the single regulator assisting consumers and industry.

⁹ Countries including - Austria, Denmark, Hungary, Latvia, Norway, Slovenia, Belgium, Estonia, Iceland, Lithuania, Poland, Spain, Bulgaria, Finland, Ireland, Luxembourg, Portugal, Sweden, Cyprus, France, Israel, Malta, Romania, Switzerland, Czech Republic, Greece, Italy, the Netherlands, Slovak Republic and the United Kingdom).

IGEA agrees that with a standards body such as OMSA responding to complaints directly would lead to fewer decisions being appealed.

Option 6 – A New Media Content Standards

IGEA is supportive of the implementation of a new piece of legislation, which could be referred to as the Media Content Standards Act (MCSA) that would replace the two existing regimes and create a single media standards and classification regime.

IGEA believes the establishment of a single statutory authority such as OMSA and a new Act such as the MCSA would provide a favourable outcome for the public, Government and industry as this holistic approach would encompass various platforms under the one regime. Such as scheme would recognise that content classification should be platform agnostic and simplify the notion of ‘treat likes alike.’

Under this new legislation, IGEA believes OMSA could assist with measures to reduce the administrative complexity of current arrangements and holds the view that there would be a benefit to community, industry and the Government in having one regulator with which to collaborate. As a single entity, OMSA would better engage with the community with a single approach to the application of community standards and protections within the new scheme. There would also be a benefit to the consumer as a ‘one-stop-shop’ with less chance of the consumer getting the run around to various agencies. The benefit to industry would be a faster decision making process with increased expertise enabling a consistent approach. There would also be a cost saving element for the Government as well as a more logical approach to converging platforms which will then lead to a concentrated regulator.

The new MSCA legislation would need to mandate a mechanism that could efficiently manage the volumes of digitally distributed content that would need to be classified under the new Act. As mentioned above, the IARC system would be best placed to aid in managing this.

The application of this legislation could however become onerous if it is not implemented in conjunction with a scheme (or schemes) similar to IARC; that is, a scheme that recognises New Zealand’s classification obligations, but dovetails into a global solution. This has implications for competitors and consumers as they may provide different information to consumers about the appropriateness of content which may not be easily comparable and competitors outside of New Zealand would incur different compliance costs.

Option 3 – Extend the Broadcasting Act regime to cover on-demand content

IGEA is firm in its belief that video games should be outside the scope of this option as the nature of the Broadcasting Act predominantly addresses television and video related static content rather than the variable and changing content of video games. This Act could therefore not properly deal with the changing nature of the interactive entertainment industry.

This option would be very costly for the industry to implement and would only provide further complications for the sector. This option does not allow parity from cross border classification as the Classification Act does not apply outside New Zealand’s jurisdiction and as detailed in the paper, there is quite a lot of digital game content being accessed and acquired by New Zealanders from the internet. This would not resolve the issue of an individual accessing content that is inappropriate for him or her.

Option 4 – extend the Classification Act regime to include on-demand content

As more fully demonstrated in our attached document, *Current & Emerging Issues for the Classification of Video Games in New Zealand*, IGEA can not support this option. In short, we hold that the current Classification Act, and its application, are no longer fit for purpose. Simply extending its reach will not create a solution, rather it will just widen the lack of utility of the scheme.

IGEA suggests this option would be an inefficient system as the government agency is a regulator and not an industry expert and therefore less able, as the discussion paper highlights, “to be flexible and durable enough to cope with future change” to and continued growth in the video game industry.

This option would require legislative change and would take several months to implement and there is no confidence that FVLB and OFLC would be able to manage the volumes of digital content that would require classification.

Option 1 – status quo – no regulatory intervention

IGEA does not support Option 1. The status quo does not address the current growing problem with the classification regime in New Zealand. The interactive entertainment sector has found the current classification scheme to be frustrating and generally negatively impacting this industry. IGEA’s addendum submission ‘Exploring Digital Convergence: Issues for Policy and Legislation’ outlines the various issues relating to the use of the current classification scheme. In short, however, *The Films, Videos, and Publications Classification Act 1993* was introduced at a time when distribution of entertainment content was centralised and relatively easy to control within New Zealand. The internet has unlocked the global market and entertainment content from around the world and is now significantly more accessible. Consequently, the application of the Act and the requirements to classify and label video games is having an unfair impact on New Zealand publishers, distributors and developers, with local businesses carrying the regulatory and economic cost of regulation.

As stated through out this paper, the current scheme is not able to deal with the exponential growth of video games and video game content that may require classification under the current scheme.

IGEA believes it is time for the New Zealand Government to evolve, as other jurisdictions have, and adopt a new approach to classifying video games in the digital economy. New Zealand’s current scheme for classification is no longer serving consumers or industry and will continue to offer less utility as more content moves online and industries (and delivery methods) converge.

Part 6 – Advertising Restrictions

Option 5

IGEA is not in support of extending the current advertising restrictions to online content. The reason for this is that radio and television stations have mainly local competitors whereas online interactive game content providers have global competitors who would not be subject to the same advertising restrictions thus diminishing competition in New Zealand.

Additionally, online players have a higher level of control in terms of the advertising they are subjected to as there are options for skipping ads and closing down a pop up advertisement online. Banners and tiles on online media are also a more passive form of advertising than the ‘in your face’ advertisements provided via the radio and television mediums.

The one to one relationship provided to online content users also provides more control than the television and radio channels which has a one to many relationship with consumers.

Summary

The issuing of this discussion paper, along with its companion *Exploring Digital Convergence: Issues for Policy and Legislation* offers New Zealand the opportunity to conduct an exhaustive review of its wider classification and censorship regime to ensure the application of a 'treat likes alike' approach and that there is a chance to create a scheme that is flexible and durable enough to cope with future change.

Simply doing more of the same will deliver more of the same.

IGEA supports the ideas expressed in Options 2, 5 and 6 as they are the most likely options to allow for the needed examination and change to the current scheme.

We look forward to working with the government to ensure New Zealand has a world's "best practice" scheme which balances the needs of all stakeholders, while not unnecessarily limiting competition, innovation or New Zealanders' access to content.