igea interactive games & entertainment association

CURRENT & EMERGING ISSUES

for the Classification of Video Games in New Zealand

IGEA

Suite 145, National Innovation Centre
Australian Technology Park
4 Cornwallis St, Eveleigh NSW 2015

www.igea.net

info@igea.net

@igea_oz /igea.net

IGEA (Interactive Games & Entertainment Association) is an independent industry association representing the business and public policy interests of New Zealand and Australian companies in the computer and video game industry. Its members publish, market, develop and/or distribute interactive games, entertainment content and related hardware.

CONTENTS

Executive Summary 2

Introduction 5

The current gaming environment 6

Devices and Platforms 6
Game Consoles 6

Acquisition of games and game content 7

Boxed games 7
Digital download 7
Point of sale digital downloads 8
Subscription 8
Episodic games 9
Free-to-play, Freemium and In Game Purchases 9

How games are played 11

Traditional gaming 11
Motion sensing 11
Multi-screen gaming 11
Cross-device play 11
Companion applications 11
Online multiplayer 11
Augmented reality 12
Virtual reality 12

Overview of Game Classification in New Zealand 13

Classification and labelling of video games 13
Distribution of objectionable video games 13
The Classification Process for Video Games 14
Administration, operation and enforcement of the Act 14

Emerging Issues 15

The high frequency and volume of digitally distributed games 15
Uncertainty for Digitally Delivered Video Games 16
Unfair application on New Zealand distributors 18
The Act is not evolving with international classification practices 19
Classification Fees are Unreasonable 20
Free-to-play games 21
Episodic Games 21
The Film and Video Labelling Body and Online Content 22

Reform of Australia's Classification Scheme 24

Recommendations 25

Conclusion 25

EXECUTIVE SUMMARY

Ninety four percent (94%) of New Zealand households currently have at least one device being used for playing video games[1], 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 landscape. In 2014, 77% of video game content sold in New Zealand was digitally delivered[3].

With the average age of the New Zealand gamer being 34 and 48% of New Zealand gamers being female,[4] 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 2014 almost 140,000 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.

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. http://www.igea.net/2015/09/digital-new-zealand-2016-dnz16/

3 http://www.igea.net/2015/03/infographic-total-value-of-the-nz-industry-in-2014/

4 Brand, J. E. & Todhunter, S. (2015). Digital New Zealand 2016. Eveleigh, NSW: IGEA. http://www.igea.net/2015/09/digital-new-zealand-2016-dnz16/

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.

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

With digital distribution quickly becoming 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. IGEA recommends that a comprehensive review of New Zealand's classification system be conducted and that the review broadly considers New Zealand's classification system, including film, television, streaming, video games, broadcasting and literature in the digital market place.

1. INTRODUCTION

The aim of this paper is to provide the New Zealand Government and the public with a comprehensive understanding of how the Films, Videos, and Publications Classification Act 1993 (the Act) is frustrating the provision of classification and rating information to New Zealand consumers and generally impacting the interactive entertainment industry in New Zealand. As expected in an industry that is constantly innovating, there have been a number of significant changes since the Act was first introduced. Classification schemes around the world are now considering how to adapt and evolve to address changing distribution models and the high volume of digitally distributed games. If New Zealand's classification scheme is expected to survive and remain relevant throughout the rapidly approaching digital revolution, reform of the Act and New Zealand's classification system is inevitable. Accordingly, it is important to acknowledge and understand the new developments that are occurring in the interactive entertainment industry and how any reform to the Act and New Zealand's classification system may impact such developments.

This paper will address the following:

- *The current gaming environment – an exploration of the many platforms and devices that are used for playing video games.*
- *How games are currently being acquired – identification of the various ways that New Zealand consumers are purchasing or acquiring video games and other game content.*
- *How games are being played – an overview of how New Zealanders are enjoying video games, including through the use of new technologies.*
- *New Zealand's classification system – an overview of New Zealand's classification system and how video games are classified in New Zealand.*
- *Emerging issues – a comprehensive analysis of the classification system's failure to protect and inform New Zealand consumers and the growing challenges encountered by interactive entertainment industry in New Zealand.*
- *Australian Reform – a summary of the recent review and reform of Australia's classification scheme.*
- *Recommendation – IGEA's recommendation for a review of New Zealand's classification system.*

2. THE CURRENT GAMING ENVIRONMENT

2.1. Devices and Platforms

Consumers are engaging with video games on an ever-increasing variety of devices and platforms. The following table sets out a non-exhaustive list of the various categories of computer game devices and platforms along with relevant examples.

CATEGORY	*EXAMPLES*
Personal computers	Windows based computers and Apple's OSX computers
Portable computers	Laptops, netbooks
Game consoles	Sony PlayStation 3 & 4, Microsoft Xbox 360 & Xbox One, Nintendo Wii & Nintendo Wii U
Handheld game devices	Sony PlayStation Vita, Nintendo 3DS & 2DS, iPod
Smart phones	iPhone, Windows Phone, Android phones
Tablets	iPad and iPad Mini, Samsung tablets, Microsoft Surface
Smart TVs and set top boxes	Samsung and LG smart TVs, Sky set top boxes

94% of New Zealand households have a device for playing games

2.2. Game Consoles

The major game consoles currently available for sale in New Zealand include Sony PlayStation 4, Sony PlayStation 3, Microsoft Xbox One, Microsoft Xbox 360, Nintendo Wii and the Nintendo Wii U. 94% of New Zealand households have a device for playing games, with 69% of these households having one or more game consoles.[1]

Games for the currently available game consoles are delivered on both physical media (including DVD or Blu-Ray discs) or by digital download over the Internet.

Microsoft and Sony's new generation of home entertainment consoles, Microsoft's Xbox One and Sony's PlayStation 4, were released in New Zealand at the end of 2013. Both of these consoles are capable of playing games delivered both digitally and on physical media.

All of the currently available game consoles have parental controls and provide accessible instructions on the operation of such parental controls. 56% of New Zealand parents are familiar with the parental controls that are available in game systems[2], an amount that is likely to increase as gamers become parents and parental controls become more sophisticated and accessible.

1 Brand, J. E. & Todhunter, S. (2015). Digital New Zealand 2016. Eveleigh, NSW: IGEA. http://www.igea.net/2015/09/digital-new-zealand-2016-dnz16/

2 Ibid

There have been several new entrants to the game console market, which include game consoles that have been crowd funded on fundraising websites such as Kickstarter. For example, the Ouya console was successfully crowd funded on Kickstarter with over $8.5 million pledged by over 60,000 people towards the development of this new game console[3]. The Ouya console has now been commercially released and provides a range of new digitally delivered games[4]. The Ouya is one of the many examples of new entrants in the game console market, with new consoles expected to emerge with the growing demand for digitally delivered content.

3 http://www.kickstarter.com/projects/ouya/ouya-a-new-kind-of-video-game-console?ref=live

4 http://www.ouya.tv

3. ACQUISITION OF GAMES AND GAME CONTENT

The definition of 'video game'[1] in the Act captures a range of interactive games and game content. From a digital iteration of a game as simple as chess, to sophisticated and immersive games that explore personal stories in virtual worlds, the concept of 'video game' is very broad.

The introduction of new technologies and ultra fast broadband has changed the way consumers acquire video games and game content. The following sections set out how New Zealanders are currently acquiring video games and game content.

3.1. Boxed Games

The 'boxed games' category refers to games and game content that is delivered on physical media and sold generally in retail stores. Games for PCs, game consoles and handheld devices continue to be sold as boxed games through traditional 'bricks and mortar' distribution methods. These games are being sold by a number of retailers across New Zealand, including specialist retailers such as EB Games and JB Hi-Fi and mass merchant retailers such as The Warehouse.

In 2014, there were approximately 720 boxed game titles released in New Zealand.

3. 2. Digital Download

Consumers are now able to access a huge range of games and game content over the Internet. All game platforms, including computers, game consoles, handheld devices and smart phones allow users to purchase, download, install and play games and game content. A growing category of platforms, including smart phones, tablets, smart TVs and even newer laptops do not have hardware components such as CD or DVD drives and are therefore unable to read, install and process video games on physical media and can only receive and play digitally distributed video games.

Digital downloads are being sold by a growing range of digital retailers. While new digital storefronts are continuously emerging, the most popular digital game

1 or the definition of film or publication as those terms apply to video games in the Act.

retailers include Apple's App Store, Google's Google Play, Electronic Arts' Origin, Ubisoft's UPLAY, Valve's Steam, Microsoft's Xbox Marketplace, Sony's PlayStation Network and Nintendo's eShop.

The number of digitally exclusive games would exceed 150,000 per year

While digitally distributed video games may include the downloadable versions of games that are released as boxed games, there is an exponentially growing range of games that are exclusively digitally distributed.

The amount of digital releases is difficult to measure, though Apple's App Store alone has more than 427,00 games currently available for download, with almost 150,000 released in the twelve months ended June 30, 2015.[2]

3. 3. Point Of Sale Digital Downloads

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.

2 http://www.pocketgamer.biz/metrics/app-store/

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 consumers demand for their games to be delivered digitally.

3. 4. Subscription

Subscription 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. For example, users currently pay approximately US$15 per month (or US$78 per year) for gameplay time for the massive multiplayer online game World of Warcaft.

New subscription models have also emerged, with some providing consumers with a regular selection of games for a periodic subscription fee.For example, the PlayStation Plus subscription costs $11.95 per month (or $89.95 per year) and provides subscribers with a number of benefits including discounted and free digitally downloadable PlayStation 4, PlayStation 3 and PlayStation Vita games. EA Access, Electronic Arts' subscription service for a growing selection of Electronic Arts' games, is available for $6.99 per month or $39.99 per year.

Subscription models see games moving from a consumer/commodity item to being the delivery of a service, similar to subscription television.

77% of all games content in NZ is accessed digitally

3. 5. Episodic Games

The low cost of digital distribution has paved the way for the development of episodic gameplay. Rather than selling one game for $100, an episodic game could be distributed in five separate parts costing $20 each. Episodic games provide a number of advantages for businesses and consumers, including:

- *allowing games to be released earlier, with the initial episodes being released while the remaining episodes are still in development;*
- *decreasing the entry cost for consumers, allowing them to initially spend less on a game to determine whether they want to spend more for subsequent episodes; and*
- *increasing the publicity period for games businesses, with semi-regular releases prolonging the marketing opportunities for game developers and publishers.*

The most recent successful example of an episodic game is Telltale Games' critically acclaimed title *The Walking Dead*. This game was split into five separate episodes that were released over a period of approximately eight months. The game was subsequently released as a boxed game containing all the episodes from the collection.

3. 6. Free-to-play, Freemium and In Game Purchases

'Free-to-play' or 'freemium' games are prime examples of the new and innovative business models that have been developed in the mobile game market. These games are provided to the consumer for free, 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 for smart phone, console and computer games.

In-game purchases (also referred to as in-app purchases) are used for both free and paid games. For example, a customer may download a game for free or for a nominal price and then through subsequent in-game purchases they can unlock further levels or features of the game. Popular free-to-play or freemium games include Candy Crush Saga, Words with friends, Clash of Clans and Sim City Buildit.

Several key benefits have emerged through the use of free-to-play and freemium games, including:

- *consumers are able to enjoy games for free or by spending amounts relative to their own financial circumstances and interest in a particular game;*
- *users, or potential users, are now able to effectively 'sample' a game with little or no financial risk to determine whether they would like to spend any money on the game;*
- *developers are able to continually enhance games after their initial launch by building and delivering more game content through in-game purchases;*
- *developers are able to serve a broader market of users, from those users that would prefer not to spend any amount on games and are happy with a basic game experience, to those users that want an in-depth game experience and are willing to pay for it; and*
- *free-to-play and freemium games have also been used to prevent or reduce copyright infringement. As these games are initially provided for free or at a low cost the appeal of downloading such games from unauthorised sources is reduced.*

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 $100 million annual export of digital games. The following examples highlight the success of New Zealand game developers in the global video games market through the use of the free-to-play and freemium revenue models:[3]

- *'Path of Exile', developed by New Zealand's Grinding Gear Games, has attracted over 10 million players and won PC Gamer's 2013 Game of the Year.*
- *'Into the Dead', developed by New Zealand's PikPok, has had over 30 million downloads and its Dreamworks licenced title, 'Turbo FAST', has had over 50 million downloads. Over 100 million users are registered on PikPok's game platform.*
- *'Ice Age Village', developed by Gameloft's Auckland studio, has been downloaded over 10 million times in one month.*
- *'Bloons TD Battles' by New Zealand's NinjaKiwi's has had over 10 millions users.*
- *'Smallworlds' by New Zealand's Outsmart Games grew by 6 million registered users in 2013.*
- *'Flutter: Butterfly Sanctuary' by New Zealand's Runaway was the #1 top grossing iPhone educational game in 38 countries.*
- *'The Blockheads' by New Zealand's Majic Jungle's has had over 10 million iPhone downloads.*

This represents a small sample of the potential of free-to-play and freemium games in New Zealand's game development industry.

3 This information was provided by the New Zealand Game Developers' Association and is based on data provided in the second quarter of 2014.

4. HOW GAMES ARE PLAYED

4.1. Traditional Gaming

Consumers are still enjoying their video games in the traditional way, with a game controller or keyboard and mouse used to navigate and control the game experience, generally on a television screen or panel. Some of the most popular titles, including FIFA 15, Minecraft and the Sims 4 all involve the use of a keyboard, mouse or game controller.

4. 2. Motion Sensing

With the introduction of motion sensing technology, including with the Nintendo Wii U, PlayStation Move and Xbox Kinect, gamers are now able to use their bodies and gestures to interact with games. A number of game genres have emerged or re-emerged with the use of motion sensing technology, including sports, dancing, racing, singing and fitness games.

4. 3. Multi-Screen Gaming

Games are now being enjoyed on more than one screen. The Nintendo Wii U's controller acts as a second screen to the television, providing an alternative perspective to gameplay. Computer tablets are also being used as a second screen in a number of games, for example in racing games where the computer tablet is used to display a racing map.

4. 4. Cross-Device Play

While video games are often developed for a number of different devices, consumers are now able to extend their game experience across multiple devices. For example, the popular Candy Crush Saga app can be played on computers, smart phones or tablets with a user's progress on one device shared across the user's other devices. Cross-device games also allow a consumer to play and interact with other consumers that are playing the same game on a different type of device.

4. 5. Companion Applications

The consumer interaction with a computer game is no longer limited to one device alone, with many games now releasing 'companion apps' to be used in connection with the main game on separate devices. For example, while a user can enjoy a game on a game console in their living room, they can also continue their game experience through a separate smart phone or tablet application while commuting to work. The use of companion applications is expected to increase following the release of the new generation of game consoles. Ubisoft Entertainment's highly anticipated release Tom Clancy's: The Division for Xbox One and PlayStation 4 features a sophisticated companion application that allows tablet users to interact with game console players in real-time by allowing them to control a drone that oversees the console player's game and provide support[1].

4. 6. Online Multiplayer

Online multiplayer games enable users from around the world to play together or against each other over the Internet. Online multiplayer games can be as simple as Scrabble or Chess, where children are playing with their grandparents on their smart phones or tablets, to war simulation games like Call of Duty or Battlefield, where users work with teammates that are scattered across

1 The companion application experience is described in the following videos: http://www.youtube.com/watch?v=rcNB1_bGG5w and http://www.youtube.com/watch?v=dWpAeQm5hrY

the globe to achieve a common objective. Playing online games is common practice in New Zealand, with more than 73% of New Zealand gamers now playing games online[2]. Online multiplayer games usually contain gameplay and communication features that enhance the users' experience, including customisable avatars and game items, text chat, audio chat and friends lists. It is common for online multiplayer games to contain mechanisms for users to report any negative online behaviour of other users.

4. 7. Augmented Reality

Game devices are often connected to video cameras that can be used for augmented reality games. These games will generally use a video camera to record the user's surroundings for display on the user's television or smart phone screen and then will superimpose virtual objects and characters on the displayed image for the user to interact with. For example, the popular PlayStation 4 title 'Playroom' allows users to interact with virtual robots that appear to be flying around the user's living room. Augmented reality games are popular with smart phones as these devices usually come equipped with high-resolution video cameras. In January 2015 Microsoft announced its hologram device, the HoloLens. The HoloLens is expected to have a number of uses, including for education, productivity and entertainment. The following quote provides one example of how augmented reality and the HoloLens has been used for video games.[3]

"A more whimsical demonstration involved the Microsoft-owned 'Minecraft' game. In a small living room, the HoloLens projected three-dimensional structures and animated creatures on an actual coffee table. I summoned imaginary tools and blasted a simulated hole in the room's actual wall and was surprised to see cartoon bats fly out."

4. 8. Virtual Reality

The concept of virtual reality games has existed for some time now, however recent technological developments have allowed this concept to step beyond science fiction and into reality. Most recently, a virtual reality headset called the 'Oculus Rift' has been successfully crowd funded and a development version of the headset has already been released for game developers. In March 2014, Facebook acquired the developer of the Oculus Rift for a reported US$2 billion. The Oculus Rift features head and motion tracking, allowing the user to simply move their head to look around the virtual environment that is being displayed through the headset. Games for the Oculus Rift are currently being developed, including a rollercoaster game that puts the user in the seat of a high speed, gravity-defying roller coaster and a game that allows the user to explore the detailed environment of a mansion in Tuscany. As technology improves, more virtual reality games and hardware are being developed and the cost of such products is expected to be well within reach of the mainstream games market. For example, Sony has announced the development of their virtual reality headset for the PlayStation 4, Project Morpheus, and Samsung has now launched their virtual reality headset in the United States, the Gear VR, for less than US$250.

2 Brand, J. E. & Todhunter, S. (2015). Digital New Zealand 2016. Eveleigh, NSW: IGEA. http://www.igea.net/2015/09/digital-new-zealand-2016-dnz16/

3 http://www.nzherald.co.nz/business/news/article.cfm?c_id=3&objectid=11391204

5. OVERVIEW OF GAME CLASSIFICATION IN NEW ZEALAND

The Act and related regulations set out how video games are to be classified and the requirements for the classification of video games in New Zealand.

The OFLC's policy advice suggests that 'video games' fall within the definition of 'film' in the Act[1] and are therefore also broadly considered as 'publications'. The relevant offence provisions in the Act concern three key activities:

- *the requirement to classify certain video games;*
- *the requirement to display classification labels for certain video games; and*
- *the general prohibition against the supply of objectionable publications, including objectionable video games.*

5.1. Classification and labelling of video games

Part 2 of the Act generally requires films to be issued with a label and that the label be displayed in accordance with regulations. Section 8 of the Act goes on to state that, unless the video game is a 'restricted publication', video games do not have to comply with labelling requirements. Accordingly, video games that are to be classified as 'restricted' (for example, Restricted 13, Restricted 15, Restricted 16, Restricted 18 etc.) require classification while unrestricted video games (including G, PG and M) do not require classification or labelling.

The regulations set out how video games should display classification labels. In particular, regulation 19 of the Films, Videos, and Publications Classification Regulation 1994 (the 'Regulations') states that classification labels should be displayed on film slicks, display cases, casettes and spools. The Regulations go on to specify the minimum dimensions of classification labels. There is no specific requirement in the Regulations for the display of classification labels for video games that are digitally distributed over the Internet.

Non-compliance with the labelling requirements in the Regulations attract a fine of $3,000 for individuals and $10,000 for corporations.[2]

5.2. Distribution of objectionable video games

Section 123 of the Act generally prohibits the distribution of 'objectionable publications', including any objectionable video games. Any offence of this prohibition attracts a fine of up to $10,000 for individuals and $30,000 for corporations. In circumstances where the individual or corporation had knowledge that the video game was objectionable, the penalties severely increase to up to 10 years imprisonment for an individual and $200,000 for corporations. Similar offence provisions and penalties exist for the possession of objectionable publications.

Video games that are not classified and would likely attract a 'restricted' classification would potentially be considered 'objectionable publications' until they are appropriately classified by the Office of Film and Literature Classification (OFLC).. Accordingly, the general prohibition against the supply or distribution of 'objectionable publications' operates as an incentive for video game distributors and retailers to classify potentially restricted video games in order to avoid beaching the Act.

1 Section 120(5) of the Act

2 Section 120(5) of the Act

5.3. The Classification Process for Video Games

The classification process for video games involves cooperation between the video game distributor, the Film and Video Labelling Body (FVLB) and the OFLC.

The Regulations acknowledge that video games and films are likely to have been classified by an overseas classification authority, such as Australia's Classification Board. The Regulations state that if a video game is identical with a video game that has been classified by an overseas classification authority as:

- *approved for supply to persons of all ages, the FVLB shall assign a rating of G, 'suitable for general audiences'.*
- *suitable for supply to persons of or over an age that is not more than 13 years, the FVLB shall assign a rating of PG, 'parental guidance recommended for younger viewers'.*
- *suitable for supply to persons of or over an age that is not more than 14 or 15 years, the FVLB shall assign a rating of M, 'suitable for mature audiences 16 years of age or over'.*
- *approved for supply to persons of or over 15 years or more – the FVLB shall forward the video game to the OFLC for classification.*

Accordingly, if the Australian Classification Board has previously classified a video game as unrestricted (i.e. in Australia's G, PG or M classification categories), the FVLB will cross-classify the video game with New Zealand's equivalent unrestricted rating. If the Australian Classification Board has previously classified a video game as restricted (i.e. in Australia's MA15+ or R18+ classification categories), the FVLB will forward the video game to the OFLC for classification.

Since only restricted video games require classification and labelling in New Zealand, only video games that are likely to be restricted are submitted to the FVLB. In practice and in an effort to ensure absolute compliance, video game distributors will usually submit video games that have been classified M, MA15+ or R18+ by the Australian Classification Board. While this practice goes beyond the requirements of the Regulations (since video games classified M in Australia don't technically require classification or labelling in New Zealand) this approach has been adopted to ensure more mature content is appropriately reviewed using New Zealand's local standards and criteria.

Once the classification or rating decision is made by the OFLC or FVLB, the FVLB will issue labels to the video game distributor for display in accordance with the Regulations.

5.4. Administration, operation and enforcement of the Act

The Act is overseen and administered by a number of Government and non-Government entities. The Act is administered by the Ministry of Justice while the operational and enforcement responsibility falls with the Department of Internal Affairs. The OFLC is responsible for classifying restricted video games in New Zealand and the FVLB is responsible for rating unrestricted video games, cross-classifying video games that have already been classified in Australia and issuing classification labels to be displayed on video games.

6. EMERGING ISSUES

The current requirements that apply to video games in the Act largely stem from the requirements that were previously applied to video recordings in the Video Recordings Act 1987. The current classification scheme is based on a system that was designed almost 30 years ago when digital distribution was not envisaged as a commercial method of selling video games. The current Act ultimately came into effect in 1994 during the era of cartridge based console games and when computer games were supplied on floppy disks and the 'new' 3.5" disk.

The application of an analogue devised system in a digital environment has caused a number of significant issues that undermine the intention and purpose of the Act, frustrate the provision of rating and classification information to New Zealanders, and place a substantial and unfair burden on local industry. These issues will become increasingly more troublesome unless there are substantial and immediate reforms to New Zealand's classification laws.

The following issues continue to challenge the New Zealand video games industry and market:

- *Inability to manage the high frequency and volume of digitally distributed games;*
- *Uncertainty in the classification system's application for digitally distributed games;*
- *Unfair application of the scheme on local distributors;*
- *The Act is not evolving with international classification practices;*
- *Classification fees are unreasonable for independent game developers;*
- *The classification system's failure with free-to-play games;*
- *The classification system's failure with episodic games; and*
- *The FVLB has not adapted to the emerging games market and the online environment.*

6.1. The high frequency and volume of digitally distributed games

The popularity and success of independently developed video 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 video games being released in New Zealand than ever before and the current process for classifying video games under the Act is failing to adapt.

Over 150,00 games were released in Apple's App Store in the past 12 months

The Act essentially requires all video game suppliers to submit for video game classifications through the FVLB. This process requires the supplier to complete certain forms, pay prescribed fees and provide the FVLB with a copy of the relevant video game. The process is time consuming, manual and costly.

The classification and labelling requirements in New Zealand only apply to unrestricted games, therefore the volume of games currently being assessed by the FVLB and the OFLC is relatively small. The OFLC classified an average of 78 video games per year – a small amount compared to the average of almost 2,330 publications classified in general every year by the OFLC.[1]

While the OFLC is currently classifying less than 80 video games per year, in 2014 almost 140,000 games were released in Apple's App Store, up from almost 80,000 in 2013[2]. There are approximately 427,000 games currently available on Apple's App Store – all of which are being made available to New Zealand consumers. This amount can be added to the tens of thousands of games that have been released on other digital distribution platforms such as Google Play, PlayStation Network, Xbox Live, Nintendo eShop, EA's Origin and Valve's Steam.

It is difficult to determine how many of the hundreds of thousands of games that are released each year on Apple's App Store would be 'restricted' and therefore require classification in New Zealand by the OFLC. The best estimate is based on the percentage of video games that are classified MA15+ and R18+ in Australia each year. In 2014, 13% of games were classified MA15+ in Australia and 4% of games were classified R18+. Just under 10% of all games classified by the Australian Classification Board since 1996 were classified MA15+ or higher. 13% of the 140,000 games released on the Apple App Store equals 18,200 and 4% of the 140,000 games released on the Apple App Store equals 5,600 – totalling 23,800 video games that are released each year on the Apple App Store that could potentially be in the restricted category.

Even if the OFLC decided to focus on 10% of the 140,000 Apple App Store games released each year, they would move from considering 80 games per year to considering 14,000 games per year. This is an impossible undertaking considering the OFLC currently classifies an average of 2,330 publications in general each year.

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, 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 video games released in New Zealand will continue to grow exponentially and is outside the realistic regulatory scope of the current Act.

6.2. Uncertainty for Digitally Delivered Video Games

There are ongoing uncertainties in the New Zealand scheme's application on digitally delivered video games. Such uncertainty has been caused by a number of factors, including the unrealistic application of the classification system for the high volume of digital content (addressed above) and the difficulty of enforcing the requirements that may exist in the Act for content delivered online through offshore servers/ businesses.

1 Since 2000 as indicated in each OFLC Annual Report since 2000/2001

2 http://www.pocketgamer.biz/metrics/app-store/

The OFLC website states the following:

"Distributors must ensure that classification information is displayed online and must take steps to ensure that restricted content is not made available to underage people. If a distributor chooses not to comply with New Zealand's classification requirements they may be liable for offences under the Classification Act. Furthermore, if an unclassified film or game was downloaded onto a computer, console, or other device in New Zealand and was found to be objectionable (banned), the consumer who downloaded the film or game would be liable to some serious offences themselves."

The OFLC website goes on to state that:

"While distributors may be supplying games and films from servers not based in New Zealand to New Zealand-based customers, the supply activity falls under the jurisdiction of the Films, Videos, and Publications Classification Act 1993. Restricted games and all films that are not exempt from the labelling requirements must be classified for supply to the New Zealand public and display classification information, regardless of the source of supply or the platform used to download the material."

Accordingly, the OFLC's website suggests that online content is well within the scope of the Act and therefore the supply of a restricted unclassified and unlabelled video game to a user in New Zealand would constitute an offence by the supplier.

While it is important to ensure that parts of the Act address the supply of certain online content, such as those offence provision concerning the supply of highly objectionable material such as child exploitation material, it is impractical to expect the OFLC or the FVLB to classify and label all film and video game content before such content is made available online. Such an approach would have a devastating impact on emerging online distribution methods and undermine New Zealand's participation in the growing global digital economy.

While the OFLC's position on the Act's application to online content is clear, there has been no enforcement activity undertaken to mandate the classification and labelling of digitally distributed video games such as those on Apple's App Store, Google Play, Facebook and the many other emerging digital distribution platforms. The reasons for the lack of enforcement may include:

a) **Scope of the Act** - The suppliers of these online distribution services are likely overseas businesses, operating either outside the scope of the Act or outside the realistic enforceable reach of the Act.

b) **Priority of enforcement activity** - Compared to more damaging online material, the potentially infringing activity does not create a significant risk to the public, particularly because such content usually displays alternate consumer advice and is subject to parental controls.

c) **Consequences of enforcement** – If classification and labelling was mandated for digitally distributed games, it is possible that digital distribution services will decide to withhold content from the New Zealand market (an outcome that will not necessarily prevent users from accessing such unclassified material through unauthorised channels).

Consequently, the ambiguous approach to the classification of online content has created some significant uncertainties for the New Zealand industry, including:

1. **Mixed messages for classification information** – Online computer game retailers have started to establish their own classification systems, often resulting in the same computer game being classified separately by different retailers. For example, first person zombie shooter DEAD TRIGGER is available on a number of platforms and storefronts, including Apple's App Store, the Appstore for Amazon's Kindle and Google Play for Android. While DEAD TRIGGER is classified '17+' on Apple's App Store, it is labeled 'Mature' on the Appstore for Amazon and 'High Maturity' on Google Play. This decentralised approach requires users, including parents, to leave behind the familiarity and trust of the New Zealand classification labels and struggle with a variety of new classification systems and labels.

2. **Some games are being withheld from the New Zealand market** - While some businesses continue to sell unclassified games over the Internet, other businesses simply are not willing to run the risk of potential non-compliance with New Zealand's classification laws. As a result, many digital exclusive titles are not being released in New Zealand. Between PlayStation 3 and Vita's online stores, there are at least 63 games that have not been released in Australia due to classification requirements. Xbox Live's Indi Channel, comprised of almost 3,000 independently developed games, is not available in Australia due to the prohibitive cost of compliance with Australia's classification laws.

   Unfortunately, even though a decision may be made to prevent the 'official' sale of these products in New Zealand, the nature of the Internet and the demand of consumers who have access to this content through other avenues in the digital environment means that the product may end up back in New Zealand, unclassified still and revenues being collected offshore. This fails to serve the consumer, local industry and the intent of the Act.

3. **The risks and costs to the local interactive entertainment industry** – New Zealand game developers and distributors have been placed in a difficult position - should they wear the cost and friction of compliance, withhold product or completely ignore New Zealand's classification scheme? This decision is made against the understanding that those same costs and friction points are not applied to their offshore competitors.

The massive scale of digitally delivered content, the relatively high cost of classification and New Zealand's small percentage of the global market makes this position even more difficult. Compared to offshore distribution businesses, New Zealand businesses are particularly disadvantaged as they are more likely to be within the jurisdictional scope of enforcement.

6.3. Unfair application on New Zealand distributors

The Act was introduced at a time when the 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 is now significantly more accessible to New Zealanders. Consequently, the application of the Act and the requirements to classify and label video games are having an unfair impact on New Zealand publishers, distributors and developers, with local businesses carrying the regulatory and economic cost of regulation.

Besides the unbalanced application of the Act on New Zealand industry compared to overseas competitors (as discussed above), the Act and relevant fee regulations place an unfair cost on the New Zealand distributors that initially import, classify and label a video game.

New Zealand distributors incur significant costs to obtain and exercise the right to distribute video games locally in New Zealand. In addition to any costs associated with the distribution rights for New Zealand, local distributors will also be responsible for classifying and labelling a video game before distributing to retailers. This classification and labelling process costs the New Zealand distributor approximately $2,150 per game[3]. Once a video game has been classified, any third party, such as a parallel importer or online distributor, is able to pay a nominal fee ($19.55) to the FVLB to receive the benefit of the New Zealand distributors original application for classification. This point is expressed best by Chief Censor Andrew Jack in his 2014 briefing to incoming Minister of Internal Affairs, the Hon. Peter Dunne[4] where he describes the OFLC's funding model as follows:

"The Office's current funding model is unfair, unprincipled, sanctions anti-competitive commercial behaviour, encourages non compliance, and imposes an unnecessary impost on businesses."

Chief Censor Andrew Jack goes on to highlight the issue about unfair costs to New Zealand distributors:

"…the first importer of a film pays the classification fee and all subsequent importers of the same film do not have to pay anything; they effectively 'freeload' off the first importer."

3 This cost comprises the prescribed classification fee by the OFLC, relevant fees by the Film and Video Labelling Body and the urgency fee which is commonly required so distributors can meet international release dates.

4 OFLC briefing to incoming Minister of Internal Affairs, 2014.

IGEA shares the concerns expressed by the OFLC and support a review of the OFLC's funding model to ensure that the classification scheme is able to survive the shift towards digital distribution in a reasonable manner that does not place significant and unfair costs on local New Zealand businesses.

6.4. The Act is not evolving with international classification practices

The OFLC's international counterparts for the classification of video games have undergone significant reviews and changes in an effort to adapt to new digital distribution models.

Pan European Game Information (PEGI), the ratings body responsible for classifying video games in over 30 European 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), introduced a streamlined method for classifying digitally distributed games in 2011. The streamlined system, first referred to as PEGI Express and later called PEGI for APPS, provides PEGI ratings to certain digitally distributed games via a streamlined questionnaire process without any charge to publishers.

The Entertainment Software Ratings Body, the ratings body responsible for classifying video games in the United States and Canada, also introduced a streamlined method for classifying digitally distributed games in 2011[5]. Through this process, publishers of digitally delivered games and apps complete a series of multiple-choice questions that address content across relevant categories. The responses

5 ESRB press release titled, 'ESRB INTRODUCES NEW RATING PROCESS FOR CONSOLE DOWNLOADABLE VIDEO GAMES' published 18 April 2011

to these questions automatically determine the game's ESRB rating category, content descriptors and interactive elements, which are issued immediately upon completion of the questionnaire. This process is used for digitally distributed games on a number of platforms, including the PlayStation Network, Nintendo eShop, Xbox LIVE Arcade, PlayStation Mobile, Windows Phone, Windows 8 and PC digital download. There are no costs or rating fees to the developers for ratings assigned using the ESRB digital rating service.

Since 2010, relevant ratings bodies (including rating bodies from Europe, United States, Canada, Brazil, Germany, South Korea, South Africa and Australia) and the international video games industry have been working together to develop an international approach to the classification of digitally distributed computer games.

Collectively, the group has formed an entity known as the International Age Rating Coalition (IARC), successfully developing a computer program that will, following input from the user (such as the game developer or publisher), generate a rating or classification that is consistent with each participating jurisdiction's standards. The IARC classification tool operates without any cost to the developer/publisher and provides a centralised and controllable process that still accommodates the massive volume of digitally distributed games on the international market. A number of significant ratings bodies from around the world (including Germany's USK, Brazil's ClassInd, PEGI and ESRB) have already incorporated their local standards and logic into the IARC classification tool and have embraced this new approach to the digital marketplace.

In 2014, the Australian Classification (Publications, Films and Computer Games) Act 1995 was amended to allow certain video games, such as digitally distributed video games, to be classified using an approved automated classification tool. On July 1, 2015, the Australian Government commenced a pilot of the IARC classification tool to generate Australian classification markings for digitally distributed games.[6] Since March 2015, Australia has recorded over 282,000 classification decisions which have been made utilising the IARC tool. In the same period prior to IARC's introduction, only 305 games were classified.[7]

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.

6.5. Classification Fees are Unreasonable

For video games that are likely to be restricted, the average cost for classification in New Zealand is approximately $1,430 (or $2,150 if the application is urgent). In comparison, the classification for digitally distributed games in USA and Canada (with a collective population that is almost 80 times the size of New Zealand) is provided for free and in PEGI territories (with a collective population that is almost 100 times the size of New Zealand) for free for 'PEGI for APPS' games or for €260 for small online games that aren't using the 'PEGI for APPS' service. Australia's current classification fee of $430 with the use of an authorised industry assessor is a fraction of New Zealand's current classification fee. Rating bodies from around the world, including ESRB, PEGI, Germany's USK

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

7 http://www.classification.gov.au/Pages/Search.aspx

and Brazil's ClassInd, have recognised the need to remove classification fees in order to ensure the widespread participation with local rating systems. IARC's classification tool does not charge any fees to game publishers/developers and therefore provides a friction free and no cost process for responsibly rating digitally distributed games.

The current fees charged for the classification of video games in New Zealand are excessive, disproportionate and are particularly unreasonable in the digital market. New Zealand's classification system must adapt to the realities of an open and uncapturable Internet and, consistent with global standards, review the classification system funding model and remove the current excessive costs and friction points of classification.

6.6. Free-to-play games

The Act generally requires any video game that is 'supplied to the public' to display relevant classification labels. The definition of 'supply to the public' in the Act is limited to supplied by way of sale, hire, exchange or loan and potentially does not include the distribution of video for free (such as via the free-to-play business model). This analysis is confirmed by the OFLC, which states:[8]

"Please note that the Classification Act's definition of 'supply' does not extend to content made available online free of charge."

While the requirements to display classification labels do not apply to free-to-play games, the general prohibition against the distribution of objectionable video games still continues to operate. This is confirmed by the OFLC in the following statement:[9]

"However it is important to note that the Classification Act's offence provisions relating to restricted and objectionable material apply, even if the online content is being provided free of charge. This means it is an offence to make banned content available, or restricted content available to young people."

Accordingly, while there remains a requirement to classify games that are likely to be restricted, there are no requirements to communicate the classification to the New Zealand public. This inconsistent approach to such a rapidly growing category of video games in the digital market highlights the need for reform of New Zealand's classification system.

6.7. Episodic Games

As previously explained, episodic games involve video games being sold in smaller separate instalments over a period of time. The Act would require each instalment to be classified separately, therefore multiplying the classification costs for episodic games. Such games are often withheld from New Zealand storefronts and subsequently classified and sold as collections once all episodes have been developed and released. This prevents New Zealand consumers from accessing such content within the same period as overseas markets – a situation that leads to a number of undesirable consequences such as the distribution of unclassified versions of such games through unauthorised distribution channels.

It is important that any reforms to the Act provide for such episodic games and remove the requirement to classify such content multiple times.

8 http://www.classificationoffice.govt.nz/industry/films-and-games-supplied-via-download.html

9 http://www.classificationoffice.govt.nz/industry/films-and-games-supplied-via-download.html

6.8. The Film and Video Labelling Body and Online Content

On 10 November 1994 the FVLB was appointed as the approved labelling body pursuant to section 72 of the Act. The FVLB's responsibilities include rating unrestricted content, issuing labels, cross-classifying content that has been classified by an overseas ratings authority, assigning content descriptors and examining film posters. The Act specifically requires the FVLB to be representative of persons engaged in the distribution, production and exhibition of films and video games. The FVLB was appointed at a time when the distribution of home entertainment content was relatively centralised and easy to control – with only a handful of video game distributors operating in New Zealand. More importantly, the FVLB was appointed before the prevalence of online digital distribution models.

Unfortunately, the FVLB's operation and the laws that underpin the FVLB's functions have not adapted to the growing video game market and developments in the digital economy. The following examples demonstrate some of the FVLB's challenges in the digital market.

1) **Unnecessary fees for digital storefronts** – Notwithstanding that a film or video game has already been rated or classified, and a label has already been issued, the FVLB has insisted that distributors pay an additional licence fee for the use of labels on online retail platforms – a fee the is payable for each online retail platform. For example, the FVLB has charged licence fees for the display of classification and rating labels on films sold through Apple's iTunes store and an additional licence fee is payable for the same content that is sold on any other online retail platform. This is equivalent to the FVLB charging retailers such as The Warehouse, JB Hi-Fi or Dick Smith each a licencing fee to stock video games that display New Zealand's classification or rating information – an absurd proposition that is equally ridiculous in the digital world. The FVLB's objective should be to ensure consumers are properly informed about the content they're about to consume rather than creating commercial barriers to the widespread adoption of New Zealand's classification labels in the digital market.

2) **No incentive for voluntary rating** – The cost and operational barriers to rating unrestricted video game content prevents the widespread voluntary classification of unrestricted video games in New Zealand. Since unrestricted video games do not require classification in New Zealand, the FVLB should go to greater lengths to ensure the voluntary classification process is streamlined, simple and cost effective. The vast majority of unrestricted video games are already classified in Australia and therefore could easily be cross-classified in New Zealand using an automated online process that is consistent with the logic for cross-classification set out in the Regulations. This approach is particularly essential in the digital and mobile game market where a majority of video games fall within the unrestricted category.

3) **Label issuing is redundant** – The Act states that the FVLB is responsible for issuing labels and that it is an offence for any person other than the FVLB to issue classification or rating labels.[10] Accordingly, the FVLB holds a statutory monopoly on the provision of classification and rating labels – a concerning proposition as there are no safeguards in the Act or the Regulations to ensure the FVLB's operation and fees are transparent or reasonable. Consequently, instead of giving distributors and retailers the tools necessary to print and display classification and rating information (by, for example, providing templates, guidelines and artwork online), the FVLB is legally embedded in the process of displaying classification and rating labels. This redundant statutory monopoly provides an unnecessary layer of cost and friction point to the distribution of entertainment content in New Zealand.

4) **Unnecessary intermediary** – Restricted video games are the only type of video games that are required to be classified in New Zealand and they can only be classified by the OFLC. Notwithstanding this, the Act still requires video game distributors to apply for classification via the FVLB. If the distributor knows that a video game will require classification by the OFLC (if, for example, the video game was previously classified MA15+ or R18+ by the Australian Classification Board), why should they be prevented from applying directly to the OFLC? This is yet another example of a statutory requirement that adds unnecessary costs and time to the process of classifying video games in New Zealand.

These examples demonstrate how the FVLB and the laws that underpin the FVLB's operation are struggling to adapt to the digital market. The challenges often create barriers for the wider industry's engagement with the FVLB and New Zealand classification system generally.

10 Section 121 of the Act

7. REFORM OF AUSTRALIA'S CLASSIFICATION SCHEME

Similar to New Zealand's classification system, Australia's classification scheme was designed more than 20 years ago in a market that was relatively easy to regulate. With the Internet and digital distribution challenging the effective operation of Australia's classification scheme, on 24 March 2011 the Australian Government referred the classification scheme to the Australian Law Reform Commission (ALRC) for a comprehensive review.

The ALRC's review attracted considerable constructive public attention and a significant number of submissions. Over 2,300 submissions were reviewed in response to the May 2011 issues paper and 77 submissions were received in response to the ALRC's discussion paper. The ALRC also undertook 63 consultations with relevant companies and industry associations, government agencies, community stakeholders, academic experts and other interested individuals. In March 2012, after a year of consultation and review, the ALRC tabled its final report for its inquiry into Australia's classification scheme.

The ALRC's final report recommended the development of a new scheme for classifying content. Some of the key features of the ALRC's recommended new scheme include:

- ***Platform-neutral regulation*** *with one set of laws establishing obligations to classify or restrict access to content across media platforms.*
- ***Co-regulation and industry classification****, with more industry classification of content and industry development of classification codes, but subject to regulatory oversight.*
- ***A single regulator*** *with primary responsibility for regulating the new scheme.*
- ***Authorisation of classification decision-making instruments****, such as online questionnaires.*
- ***Power to deem content with an equivalent Australian classification*** *– for content that has already been classified by an approved overseas classification system.*

Following the ALRC's recommendations, in April 2013 the Australian Government announced that an initial stage of reforms would be introduced to implement seven of the ALRC's recommendations. In September 2014 Australia's legislation was amended to give effect to the initial stage of the ALRC's recommendations. This reform allows the Australian Government to authorise the use of automated classification tools for the classification of content, including video games. The pilot for utilising IARC as the approved tool commenced on July 1, 215.

With the September 2014 amendments becoming effective in 2015, the Australian Government's next step is to consider the more comprehensive recommendations put forward by the ALRC and potentially introduce a new classification scheme in Australia.

8. RECOMMENDATIONS

New Zealand's classification system is in desperate need of substantial reform to ensure that it is able to achieve its full objectives in a digital and converging environment. Content standards and censorship in the digital age is a complicated issue that deserves significant consideration, consultation, planning and review. The lengthy reform process in Australia began in 2010 when the issues were first brought to the Australian Government's attention. With digital distribution quickly becoming the primary method of video game acquisition in New Zealand, there is now an urgent need for review and reform of New Zealand's classification system.

Any review of New Zealand's classification and censorship system will involve careful consideration of complicated and often conflicting matters with input from the New Zealand public, the FVLB, the OFLC, industry groups and other interested stakeholders. Such a review must be conducted independently and be able to responsibly address inevitable resistance to reasonable change from vested stakeholders while navigating the challenges of the digital market.

IGEA recommends that an exhaustive review of New Zealand's classification system be conducted. The review should consider New Zealand's classification system in the digital market and include consideration of the following matters:

- *Existing New Zealand classification laws for all content, including film, television, streaming, video games and literature.*
- *The principles that should underpin New Zealand's classification system 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 Board of Review, 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 system could integrate with similar overseas classification systems.*
- *How New Zealanders should be informed about classification information.*
- *How New Zealand's classification system can remain fit for purpose in a convergent sector.*

9. CONCLUSION

The interactive entertainment industry and market in New Zealand has experienced significant change, primarily in how consumers are able to play and acquire game content over the Internet. With the hundreds of thousands of unclassified games being made available, it is clear that New Zealand's classification system is in desperate need of reform. The need for reform is beyond doubt and a formal, independent review of New Zealand's classification system is required to ensure New Zealand's approach to classification and censorship remains practical and reasonable in the digital age.

www.igea.net

@igea_oz /igea.net