

KEY POINTS

- In principle, ASTRA supports the idea of a consistency across platforms regarding the classification of content.
- The regulation of content on particular platforms needs, however, to take into account how that content is accessed and used, and the community expectations regarding access and use of content on a given platform.

BACKGROUND

The primary policy objectives of content regulation are ensuring that Australians can view and participate in the media of their choice, while children and vulnerable people are protected from harm.

In principle, ASTRA supports consistency across platforms regarding the classification of content. However, consistent regulation across different media and communications sectors does not necessarily mean that all services and platform should be regulated in the same way. Consumer access and use content in different ways depending on the service or platform, and have different expectations about how that access and use of content from different platforms should be regulated.

The regulatory requirements that apply to content provided by different platforms and services should continue to reflect the degree of influence that a particular type of service has and the community expectations in relation to that service. For example, the 2011 Australian Communications and Media Authority (ACMA) report *Digital Australians—Expectations about media content in a converging media environment* noted differing community expectations for regulating content depending on how that content is delivered. In particular, the ACMA Report showed that most participants saw an ongoing role for current policy mechanisms (time zone classification, consumer advice and content warnings) for protecting children from unsuitable content broadcast on free-to-air television.

Classification of content on subscription television

Under the *Broadcasting Services Act 1992* (Cth), the primary responsibility for ensuring that programs broadcast on subscription television (STV) reflect community standards rests with STV licensees and their channel provider partners under codes of practice developed by ASTRA in consultation with the ACMA.

Under the Subscription Broadcast Television and Subscription Narrowcast Television Codes of Practice, STV licensees are required to classify films, drama programs, documentaries and reality television programs applying the program classification system contained in the Guidelines for the Classification of Films 2012 ('the Guidelines'). Classifications, together with appropriate consumer advice, must be provided to ensure adequate warning regarding program content.

STV licensees must use their best endeavours to ensure that, where other programs are classified, this classification will have particular regard to the protection of children and will take into account relevant aspects of the Guidelines.

National Classification Scheme

The Guidelines have been developed under the National Classification Scheme, whose operation is set out in the *Classification (Publications, Films and Computer Games) Act 1995* (Cth) (the Classification Act). STV licensees are not subject to the National Classification Scheme or the Classification Act, with obligations for content classification for broadcasters coming under the BSA. However, the Australian STV industry has adopted the Guidelines as the basis for classifying the content it broadcasts.

Senate Legal and Constitutional Committee Review of the National Classification Scheme

In 2011, the Senate Legal and Constitutional Committee undertook a review of the National Classification Scheme, releasing its final report in June 2011. The Committee recommendations included that:

- the principles in the National Classification Code should be expanded to take into account community concerns about the sexualisation of society and the objectification of women;
- states and territories should refer relevant powers to the Australian Government to enable it to legislate for a truly national classification scheme;
- the scope of the National Classification Scheme should be expanded so that it covers all mediums of delivery, with harmonised standards across all media;
- the Classification Review Board should become the final arbiter of classification decisions for all media in Australia.

Australian Law Reform Commission Review of the National Classification Scheme

In February 2012, the Australian Law Reform Commission (ALRC) released its Final Report into its review of the National Classification Scheme. Some of the key findings of the Review included:

- inadequate regulatory response to changes in technology and community expectations;
- “double handling” of media content (e.g. films being classified separately for DVD and broadcast);
- a need to clarify the responsibilities of the Classification Board, the ACMA and other Government agencies and departments involved in classification;
- piecemeal regulatory responses to changes in technology, markets and consumer behaviour from convergence have created uncertainty for consumers and industry.

The ALRC made a range of recommendations, including:

- a new National Classification Scheme with a new Classification of Media Content Act incorporating all classifications applying to all media content that is both “made and distributed on a commercial basis” and has “a significant Australian audience” (though the ALRC does not attempt to define what a significant audience would be or how it should be measured);
- the new Scheme would be solely under Commonwealth jurisdiction and replace the existing Federal-State cooperative arrangement;

- a single regulator would administer the new Scheme, including the handling of complaints (where the complainant is not satisfied with the response of the content provider), authorising industry classifiers and providing classification training;
- platform-neutral regulation;
- most content subject to the new Scheme (including STV content) may be classified by industry classifiers, authorised/certified by the regulator;
- all content classified as PG or above should carry consumer advice;
- a gradual phase-out of commercial free-to-air television timezone restrictions – in the longer term, time zone restrictions should not be mandated but can be provided for in industry codes, where considered necessary.