



Submission on standardising classification for CVoD content

Submitted to the Department of Internal Affairs

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1. Introduction

- 1.1 Thank you for this opportunity to submit on standardising classification for Commercial Video On Demand (CVoD) content.

About InternetNZ

- 1.2 InternetNZ is the home and guardian of .nz – providing the infrastructure, security and support to keep it humming. We use the funding from the sale of .nz domain names to support the development of New Zealand's Internet through policy, community grants, research and events. Our mission is an Internet that is open, secure, and for all New Zealanders.

We welcome standardisation of content classification

- 1.3 InternetNZ supports the move to update the classification scheme so it is fit for purpose for current and future technologies.
- 1.4 The Internet has enabled innovative new tools for users to interact with, create and consume content. The lines between film, television, and home video are blurring for New Zealanders, who see content from many different sources on the same phone or TV screen. Current classification schemes do not reflect this trend of convergence.
- 1.5 The key outcomes we want to see for this process:
- a) **Consistency** - Visual media content does not change as the delivery mode changes. Classification should be the same across all modes.
 - b) **Transparency** - All classification decisions for visual media content should be publicly available in an up-to-date searchable database.
 - c) **Efficiency** - Once visual media content is labelled, it should not have to be relabelled. The same label should be usable if a second distributor wants to distribute in New Zealand, or if the same content is delivered through a different mode (broadcast to VoD).
 - d) **Public good** - The Office of Film and Literature Classification (OFLC) should be, at a minimum, partially publicly funded to label content in order to reduce incentives for inefficient or duplicate classification. This would help shift its incentives to better support the above principles.
- 1.6 The options presented in this discussion paper are incremental and will not future-proof the classification scheme. We support further work to reconsider the Broadcasting and Film Video and Classification Acts, with new laws built in a technology neutral, activity focused way.
- 1.7 In this submission we focus on the subject of a standardised classification scheme, and respond to the options in this paper. We encourage work looking beyond standardisation, and attach our 2015 submission on *Content Regulation in a Converged World* which addressed related and broader issues.

2. Summary of recommendations

- 2.1 We support *option two: Establish a mechanism for CVoDs to self-classify under the official regime*. This option best meets the criteria set out in the discussion paper, as it enables timeliness of addressing harm, ability to address harm, and minimises costs to both providers and regulators.
- 2.2 While we support this option, we recommend a wider review of the Broadcasting and Film Video and Classification Acts, to create fit-for-purpose legislation that is future-proofed and technology neutral.

- 2.3 We recommend that:
- a) legislative changes should include a purpose statement, which recognises the purpose of classification as reducing harm by enabling informed choices about content
 - b) all visual media content requiring classification should be classified under the same scheme, whether delivered via broadcast media or online, and whether through subscription, commercial, or free video on-demand services
 - c) the threshold for commercial activity requiring content to be classified should be determined by provider activity, not user activity
 - d) changes to the classification scheme should be done in a way that does not create friction or delay in getting new content to users
 - e) the OFLC should be, at a minimum, partially publicly funded to label visual media content in order to reduce incentives for inefficient or duplicate classification.

3. A fit-for-purpose classification scheme

Defining the purpose of classification

- 3.1 Classification of content serves a purpose, but that purpose is not clearly defined in the Films, Videos, and Publications Classification Act 1993 ('the Act'). A clear purpose statement is part of best-practice design for legislation in New Zealand.
- 3.2 Defining a purpose for classification can help with designing an up-to-date and standardised framework, in a world where new distribution modes are available.
- 3.3 We think the purpose of classification is to reduce harm by enabling New Zealanders to make informed choices about content, including whether content is age-appropriate for a particular person or audience.

We recommend that any legislation change should include a purpose statement for the Act, which recognises the purpose of classification as reducing harm by enabling informed choices about content.

Defining the scope of classification in the Internet era

- 3.4 The consultation document addresses online modes through which New Zealanders access video content, defining the following terms:

Commercial Video on-Demand (CVoD): Visual media content that is accessed online on-demand by a user who has paid a fee. This includes Subscription Video on-Demand and Transactional Video on-Demand.

Subscription Video on-Demand (SVoD): Visual media content that is accessed online on-demand by a user who is paying an ongoing fee for access. Well-known examples of SVoD providers are Netflix and Lightbox.

Transactional Video on-Demand (TVoD): Visual media content that is accessed online on-demand by a user who pays a one-off fee for access. Well-known examples of TVoD providers include iTunes and Google Play.

Free-to-air Television on-Demand (FVoD): Visual media content that is usually broadcast on Free-to-air television which is then accessed online via TVNZ On-Demand and Three Now.

- 3.5 We think that as far as possible, classification should be consistent regardless of how content is delivered to New Zealanders. As content is released or moves across modes, its classification label should move with it.

- 3.6 We support standardised classification as a step in the right direction for the Internet era. Standardised classification should include broadcast television and FVoD content. If a television show delivered as VOD content is going to be classified as ‘film’ under the Act, it is inconsistent and inefficient to classify it under a different scheme when it is broadcast.

We recommend that all visual media content should be classified under the same scheme, whether delivered via broadcast, SVoD, TVoD, or FVoD.

- 3.7 Having proposed the above definitions, the discussion paper argues that FVoD is out of scope for the current changes due to complexity, and the paper does not mention broadcasters. Broadcasters are currently subject to the self-classification regime overseen by the NZ Media Council. Over time, as broadcasters provide more content online as VoD, a standard approach across broadcast and VoD is becoming more important.
- 3.8 We think the proposed definition for CVoD providers sets the wrong threshold for requiring content to be classified.
- 3.9 A different approach to definitions, based on whether users need to log in, could support a standardised classification, which includes broadcast and FVoD content, without being so broad as to require classification for user-posted “travel vlogs”.
- 3.10 The consultation paper sets a threshold based on users paying a fee. However, many platforms delivering VoD to users are deriving commercial value from user data and advertising, rather than a subscription or transaction. These differences in business models should not preclude the visual media content they distribute from being in scope for classification.
- 3.11 The threshold for requiring classification is important. The scheme will achieve the goal of standardisation if threshold is defined by provider activity, not user activity.

We recommend that the threshold for CVoD classification requirements is determined by provider activity, not user activity.

- 3.12 We think that a better definition could focus on elements beyond whether a user pays a fee, to applying to FVoD services with a nominal commercial element, without being so broad as to cover “travel vlogs”. For example:
- a) TVNZOnDemand and ThreeNow require sign in for the user to access content
 - b) Providers like YouTube make user generated content available free without sign in, but its premium CVoD service is behind a paid login-gate.
 - c) The requirement for a user login is a promising basis for setting the threshold for classification of CVoD content:
- 3.13 The NZ Media Council’s VoD Classifications code includes FVoD within its scope, while leaving user generated content exempt.
- 3.14 The adoption of the same scope for VOD as the NZ Media Council would make the transition to a new classification scheme simpler.

We recommend a threshold for classification of CVoD content based on the following elements:

- a) It is visual media content as defined in the discussion paper**
- b) It can only be accessed after user authentication (a login gate for example)**
- c) It is provided by a publisher which curates film content for a commercial purpose, whether or not the user pays for access to the content.**

4. Enabling VoD providers to comply quickly and easily

Classification should be easy and quick to do, for the benefit of all New Zealanders

- 4.1 Classification should be a complement, not a barrier, to New Zealanders enjoying online and other content.
- 4.2 Access to local and international CVoD providers benefits New Zealanders through the increased range of content, flexibility of delivery, and competition they provide. Any changes to the classification scheme should support New Zealanders' access to content with minimal disruption.
- 4.3 We support a self-classification mechanism under the official regime as set out in the discussion paper. This approach allows for overseas content and global providers to meet New Zealanders' expectations on labelling, without creating substantial burdens or delays in content reaching New Zealanders. New Zealanders have high expectations for seamless delivery. For example, there was local dissatisfaction with a one hour delay to access the first episode of *Game of Thrones season 8* on CVoD service Neon.
- 4.4 There is a risk that a less quick or convenient model for providers, would drive users to find content in ways that are not classified or monitored at all. It makes sense to make compliance easy.
- 4.5 By avoiding cost and delay, a convenient online self-classification tool can help providers to label content in a way that meets New Zealanders' expectations. The prototype tool for self classification, with the potential for single input - multiple output classification would benefit everyone, and demonstrate that New Zealand can be a leader in providing Internet-first policy solutions.

We recommend further work to support an online tool for easy self-classification of content by providers.

The OFLC should be incentivised to enable efficient self-classification

- 4.6 Making it easier to comply with labelling requirements will help to ensure that more content is labelled in ways that meet New Zealanders' expectations.
- 4.7 With convergence in delivery modes, cost burdens and delays can also affect access to content that has already been classified. An ideal, efficient scheme would be one where:
 - a) visual media content is classified once, and the label applies across all delivery modes and providers
 - b) the classification label is standardised, and can inform New Zealanders about content in a consistent way.
- 4.8 the OFLC can supervise and review outcomes of classification efficiently based on content, without having to reconsider or reclassify for new providers or delivery modes.
- 4.9 The OFLC should not be reliant on revenue from classifying more titles, as this creates incentives for re-classification.

We recommend working with providers to ensure the classification scheme is efficient and does not create friction or delay in getting new or already-classified content to users.

We recommend that the OFLC should be at least partially publicly funded to label visual media content in order to reduce incentives for classifying inefficiently.

5. This is an opportunity to future-proof classification in a technology neutral way

- 5.1 The options presented in this discussion paper will succeed in bringing CVOD classification in line with film classification, but they will not future proof the law from the next leap in emerging technology, and will not create consistency across all visual media content.
- 5.2 As a short term policy solution, InternetNZ favours the option to establish a mechanism for CVoDs to self-classify under the official regime.
- 5.3 We support further work to reconsider the Broadcasting and Film Video and Classification Acts, with new laws built in a technology neutral, activity focused way. As set out above, we think that a legislative purpose statement is an important part of this work.
- 5.4 InternetNZ looks forward to being involved in the discussions to reimagine the New Zealand classification scheme for the future.

6. Want more detail? Get in touch!

- 6.1 InternetNZ looks forward to being involved in the discussions to reimagine the New Zealand classification scheme for the future.
- 6.2 For more information contact Ben Creet at ben@internetnz.net.nz.

Yours sincerely



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