



**Australian Government**  

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**Attorney-General's Department**

**REVIEW OF ADVERTISING OF UNCLASSIFIED  
MATERIAL UNDER THE  
NATIONAL CLASSIFICATION SCHEME**

**AUGUST 2006**

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**The Attorney-General's Department invites comment on the issues raised in this discussion paper.**

**Written submissions must reach the Department by 18 September 2006.**

**This paper is a discussion paper only; it does not reflect any concluded views about the issues canvassed.**

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# 1 EXECUTIVE SUMMARY

The advertising provisions in Australia's classification system are over a decade old. The current arrangements mean that only classified products can be advertised, with limited exceptions for films in cinemas but not for films released on DVD or for Computer Games.

The way film and computer games are distributed and promoted has changed to respond to emerging technologies as well as the increasing threat of piracy. Digital technology and the Internet make it easier than ever before to illegally copy and distribute films and games. The film and games industries can no longer afford to stagger release dates across the globe. This has an impact on the way that products are advertised and marketed.

In response, the Australian Government is seeking to update, simplify and clarify the advertising provisions for unclassified material within the National Classification Scheme. The proposal balances the need to inform and protect consumers and the need to reduce the regulatory burden on industry and improve compliance. The proposal also updates the scheme to account for rapid technological advances, changes in user preferences, and changes in advertising and marketing practices.

This paper proposes the removal of the prohibition on advertising unclassified material so all films (both cinema and DVD/video releases) and computer games can be advertised before classification. The advertising exemption scheme will be removed.

A broad range of safeguards will be applied to ensure consumers are not exposed to inappropriate material and can make informed entertainment choices. No changes will be made to the prohibitions on advertising publications and sexually explicit products.

Over time new technologies and storage devices for entertainment media will continue to evolve, and the classification scheme will need to remain flexible. This paper refers to DVDs and computer games, the current technology. Issues relating to the advertising of classified products are not within the scope of this review and will be considered at a later stage.

Comments are sought on the proposal and the issues in this paper by **18 September 2006**.

## **2 CURRENT SCHEME FOR ADVERTISING**

The Commonwealth, States and Territories share responsibility for the regulation of films, computer games and some publications in Australia under the cooperative National Classification Scheme.

### **2.1 *Classification Act***

The Commonwealth *Classification (Publications, Films and Computer Games) Act 1995* provides for the classification of films, computer games and some publications in accordance with the National Classification Code and guidelines agreed by Censorship Ministers.

The Act defines advertising broadly. The definition extends to still and moving visual images and audio material advertising films, computer games and publications. It encompasses trailers, print advertising such as posters or advertising in magazines, and advertising on items such clothing and wrapping material.

In Australia, films and computer games cannot legally be advertised until classified. ‘Submittable publications’, defined as those publications containing depictions or descriptions likely to be ‘refused classification’, cannot legally be advertised in Australia.

Advertisements are not required to be classified by the Classification Board, although advertisements for classified films, computer games and publications may be submitted to the Board for approval or considered by the Board on its own initiative. The Board can approve or refuse approval to advertisements, although advertisements do not receive a classification. The fee for approval of advertisements by the Board is set at \$450. This approval process is rarely used.

### **2.2 *State and Territory legislation***

State and Territory legislation is complementary to the Commonwealth Act and prohibits advertising of films and computer games before they are advertised. Similar provisions apply across all jurisdictions.

Under State and Territory legislation, it is an offence to publish certain advertisements including for:

- a film, computer game or publication that is not classified (unless in relation to an unclassified film where an exemption has been granted)

- a film classified X18+
- a film, computer game or publication that is classified 'refused classification', or
- an unclassified submittable publication.

Under State and Territory legislation, classified films and computer games can only be advertised (for example by trailers in cinemas) with feature films or computer games of the same, or higher, classification. Markings and consumer advice must be displayed on advertising for films, computer games or publications.

In some States and Territories, it is an offence to screen advertising in a public place (for example in a video shop) for a film classified X18+, R18+ or MA15+.

### **2.3     *Advertising exemption scheme***

A limited number of exemptions can be granted by the Board to allow for advertising prior to classification. Exemptions are only available for public exhibition films. In practice, these are used for major cinema releases where, in many instances, the film has not been completed when advertising begins. Exemptions are not available for other films (DVD/video), computer games or publications.

The *Classification (Advertising for Unclassified Films) Instrument 2005* relates to these exemptions. It prescribes a limit of 110 exemptions per calendar year. The Board considers all applications for exemptions. The fee for the Board granting a certificate of exemption is set at \$510.

If an exemption is granted, an advertising message must be displayed reading 'This film has advertising approval - check the classification closer to the release date' or a short exemption message 'TBC' (to be classified). The Instrument prescribes the design and manner in which this message must be displayed. The exemption message must be displayed on all advertising with some limited exceptions including some print and Internet advertising.

If the Board decides that a film will be classified R18+, X18+ or is likely to be 'refused classification', it cannot grant an exemption.

#### **2.4 Other regulation for advertising**

In addition to the classification scheme, the following regulation applies to advertising of classified products in Australia.

- Trade practices and fair trading legislation in all jurisdictions contain consumer protection provisions that prohibit false, misleading and deceptive advertisements.
- The Children's Television Standards issued by the Australian Communications and Media Authority (ACMA) and Codes of Practice developed by industry relate to advertising on television. Their purpose is to evaluate whether television commercials and community service announcements are broadcast appropriately. This includes taking into account current community attitudes and the need to limit the exposure of minors to material intended for adult viewing.
- A self-regulatory scheme administered by the Advertising Standards Bureau applies a community standards framework to advertising content issues including the use of language, the discriminatory portrayal of people, concern for children, portrayals of violence, sex, nudity, health and safety for most forms of advertising.

### **3 OUTLINE OF THE PROPOSAL**

The key policy objectives of this reform are:

- ensuring consumers are appropriately informed to make choices
- promoting consistency in the advertising provisions
- reducing the regulatory burden for industry, and
- ensuring appropriate safeguards exist.

The proposal is to remove the prohibition on advertising unclassified material so all films (both cinema and DVD/video) and computer games can be advertised before classification. Industry will be required to assess the likely classification and products will only be permitted to be advertised with products of the same or higher classification.

The Australian Government is focused on ensuring consumers' choices are adequately informed. The proposal is that when products are advertised prior to being classified, consumers would be advised to check the classification.

The Australian Government is focused on protecting consumers from exposure to inappropriate material. The proposal is that qualified industry assessors would determine the likely classification of films and computer games. Once assessed, these products would only be permitted to be advertised with products of a corresponding or higher classification (which is not necessarily the case currently).

The Australian Government is also focused on improving consistency within the advertising provisions and, where possible and appropriate, reducing the regulatory burden for industry. The same rules would be applied to films for cinema release, DVD/video and computer games.

Safeguards will be integral to the changes, to ensure consumers are not exposed to inappropriate advertising. Industry would be required to display the classification message for a set period prior to release of cinema films, and sexually explicit films and publications would be excluded from the scheme due to their unique nature. Improving consistency and simplifying the regulatory scheme would enhance industry compliance, by clarifying requirements.

The following are the key elements of this proposal.

### ***3.1 Updating the definition of advertising***

The definition of advertisement under the Act is very broad. This proposal recognises the key areas where consumers get their classification message from and requires only these products to carry the appropriate message. Hence, the definition of advertising will be streamlined to clarify what it encompasses.

The Internet is not specifically mentioned as a forum for advertising in the Classification Act. However, in many instances industry may use the Internet as the primary source of advertising their products. Consumers may also use the Internet to seek information about products. Advertisements on the Internet should therefore be clearly covered by the advertising provisions in the scheme.

Merchandise relating to films and computer games is not specifically included or excluded in the Classification Act. Such material can include CD recordings of the soundtrack, caps depicting characters, toys, mugs or other goods. Clothing is currently specifically included in the definition. However, it is unlikely that the primary classification message for films and computer games would be obtained from merchandise including clothing.

The current definition of advertising does not distinguish between consumer and industry-targeted 'wholesale' advertising. However, industry often wants to advertise products that have been purchased overseas within their wholesale networks and wholesale catalogues prior to importing and releasing in Australia. These issues will be alleviated by removing the prohibition on advertising.

**The proposal is to update the current definition of advertising to specifically include the Internet and exclude product merchandising, including clothing, in recognition of where consumers get their classification information.**

## 3.2 *Displaying trailers for unclassified products*

### 3.2.1 *Overview*

A fundamental principle of the advertising scheme is to ensure that trailers for products are shown to commensurate audiences. The aim is to avoid higher content trailers being displayed before lower content features.

#### 3.2.1.1 Clarifying current requirements

State and Territory legislation deals with advertising classified films with feature films. The requirements are that a film must not be advertised during the exhibition of a feature film unless it has a corresponding classification. Hence, an advertising trailer for a film classified PG can only be screened with a feature film classified PG or above.

There are inconsistencies with the current requirements for advertising unclassified products. Under the Advertising Instrument, a trailer for an unclassified film that has been granted advertising approval with 'no conditions' can be screened with a film classified G or PG. Hence, cinemas are allowed to show exempt trailers for film likely to be classified 'PG' before a 'G' feature. Similarly, unclassified films likely to be classified R18+ cannot be advertised until classified, even to the adult audience of an 'R18+' feature.

The proposal is to streamline the current requirements so unclassified products can only be advertised with or prior to the exhibition of a feature film, or on a DVD, with a corresponding or higher classification.

**The proposal is to remove the anomaly that currently allows for films likely to be classified PG to be advertised during exhibition of a G rated film and remove the prohibition on advertising unclassified films likely to be classified R18+. This will apply to both public exhibition films and other films (DVD/video).**

### 3.2.1.2 Assessment of the ‘likely classification’ by industry

Currently the Board assesses applications for exemption for advertising unclassified products. The Board is required to consider the likely classification of the film so unclassified products can be shown with products of corresponding classification.

As part of this proposal, a scheme would be introduced where appropriately trained and authorised industry assessors determine the likely classification of their products for advertising purposes. This form of self assessment is modelled on the current computer game assessment scheme that has been operating successfully for games for over a decade, and represents a significant reduction in red tape for industry for advertising.

The proposal is that industry would assess the likely classification of unclassified products so that advertisements in public exhibition trailers, on videos and DVDs and on computer game discs can only be advertised with products of corresponding classification. Once industry determines the likely classification, the rules about displaying advertising with corresponding or higher classified products would apply.

**Industry would assess the likely classification of products, to ensure advertising is shown to commensurate audiences.**

### 3.2.2 *Safeguards*

#### 3.2.2.1 Consistency and quality of industry assessments

Appropriate safeguards would be included to ensure the consistency and quality of decisions by industry on the likely classification of unclassified products as follows.

- Mandatory initial and annual training for individual assessors, approved by the Classification Board.
- Possible revocation of assessor status for individuals for serious or repeated misrepresentations of the likely classification including misleading, incorrect or grossly inadequate assessments. Up to a three-year prohibition on individuals reapplying for assessor status if it is revoked.
- Possible prohibition on distributors being permitted to advertise their unclassified products if there are repeated instances of them assessing products at a lower level than it is ultimately classified.

- Both random and complaints-based auditing procedures of advertising material for unclassified products.

Powers under State and Territory legislation which allow the Director of the Classification Board to 'call in' advertisements to the Board for approval will be retained. Following a 'call in', the Board must refuse to approve the advertisement if it meets criteria outlined in subsection 29(4) through to subsection 29(7) of the Commonwealth Act.

**The proposal includes safeguards to protect consumers and ensure consistency and quality of decisions by industry assessors on the likely classification of unclassified advertising material.**

### 3.3 *A new advertising message and clarified requirements for display*

#### 3.3.1 *Overview*

A fundamental principle is to ensure there is meaningful advice to consumers about how to obtain information on the actual classification. This is important for consumer awareness.

##### 3.3.1.1 The current advertising exemption message

The two exemption messages are currently ‘TBC’ (to be classified) and ‘This film has advertising approval. Check the classification closer to the release date’.

Currently, when an exempt film is advertised prior to classification, its advertising material must be changed when the product is classified, as advertising for classified materials must carry the classification marking. The exemption message must be removed within 7 days of the product being classified. Exemption messages on printed advertising material must be removed within 48 hours from the classification decision.

There is a concern about the practicality and cost implications of requiring a change to advertising material part way through a campaign. Compliance is mixed and changes are made more slowly than required.

While these provisions are important, there may be some potential to clarify the scope of what could be changed. For example, Internet advertising, TV ads and trailers could be changed relatively quickly and within the required timeframes. Alternatively, products such as posters may not be easily changed. Similarly, if DVDs and computer game discs are permitted to be advertised prior to classification – trailers on these products cannot be changed on discs once they are in the market place.

##### 3.3.1.2 The proposed advertising message

The proposal is to introduce a new advertising message to advise consumers to check the classification (‘CTC’) or the long message of ‘Check the classification. This [product] has been advertised before being classified’. The value in these new messages is indicating a product is not classified and advising users to check the classification before making their decision.

Concurrently to introducing this new message, the proposal is to remove the requirement to change all advertising material. It is clearly not possible to change

the advertising message on DVDs, videotapes or computer game discs already in the market place. It is also not practicable to require all posters and similar material to be changed once a product is classified. As the focus of the new message will remain valid after classification, it is proposed that these products would not be required to be changed.

**The proposal is to widen the use and knowledge of the consumer message for advertising of unclassified products. A new short and long advertising message will be introduced advising users to check the classification.**

### 3.3.2 *Safeguards*

#### 3.3.2.1 Displaying the advertising message

The proposal requires that either the long or short advertising message be displayed, where practicable, on all the products. This would enhance consumer awareness to check the classification. An appropriate education campaign will be integral to raising awareness and understanding of the new short advertising message ‘CTC’ and what it represents.

Further, removing the requirement to change all advertising material once a product is classified is aimed at enhancing industry compliance by clarifying the scope of what advertising material needs to be changed.

**The proposal requires that either the short or long advertising message be included on all advertising material for unclassified products including all films and computer games. Advertising within the control of industry would require updating once a product is classified.**

#### 3.3.2.2 Displaying the actual classification message

There is currently no minimum period between classification and release during which the classification must be shown. The requirements all relate to removing the existing advertising exemption message.

The proposal is for a two step process. Firstly, the same safeguards that currently apply to the advertising exemption scheme would be applied to the proposed arrangements. Hence, the public exhibition films industry would be required to replace the advertising message with the actual classification within 7 days of the product being classified, and within 48 hours of the classification decision for printed material. Under this proposal, however, any required changes would be limited to material within the control of industry. This is to ensure the advertising messages are actually replaced with the classification message, where possible, promptly after classification.

The second safeguard would be the introduction of a minimum period (ie 2 days) in which the classification must be displayed, in advertisements in public exhibition trailers, the Internet and print media, before the product can be released. This would ensure consumers are informed of the classification of a product in advance of its release.

**Industry will still be required to replace the advertising message with the actual classification within 7 days of the product being classified, and within 48 hours of the classification for printed material. Industry would also be required to display the classification message, in advertisements in public exhibition trailers, the Internet and print media, for a minimum period (such as 2 days) prior to release of cinema films.**

### **3.4 *Removing the advertising exemption scheme***

#### **3.4.1 *Overview***

Currently there is a prohibition on advertising unclassified material and a limited exemption scheme.

##### **3.4.1.1 Removing the quota system**

Exemptions can currently be sought to advertise an eligible public exhibition film (cinema) prior to classification. Exemptions are limited to 110 per calendar year. Industry seeks exemptions from the Board to advertise. The Board currently considers all applications for exemptions.

A greater proportion of exemptions have been allocated to the major film industry, as they hold a greater portion of the market. The independent cinema film industry has concerns that the allocations discriminate against it.

Industry has also indicated concern about the impact of timing and availability of exemptions on advertising in peak periods (ie summer holidays). The exemption scheme may restrict industry from freely advertising, or delay advertisements due to the need to seek approval.

Further, there are generally far less exemptions available each year than are sought. The cinema industry has repeatedly asked for more exemptions.

Exemptions are also only available to public exhibition films and not to any other products.

**The proposal is to remove the current quota scheme that applies to cinema release films.**

##### **3.4.1.2 Media neutrality for advertising unclassified products**

The current advertising exemption scheme only applies to public exhibition films.

Since the advertising provisions were introduced, DVDs have rapidly increased in popularity. Some films go directly to DVD/video without being screened in cinemas. Further, there are increasing trends to re-release films or television sitcoms onto DVD/video. Many Australians have installed home cinemas, complete with surround sound systems and large screens, to take advantage of the extra sound and picture quality of the format. Industry often includes trailers for

their forthcoming releases on their already released DVD titles as additional material.

Similarly, computer game technology has rapidly advanced and increased in popularity. A wide range of home console devices are now readily available and affordable. Many Australians now have either personal computers or home console gaming devices in their homes. The graphics and speed of game play have dramatically increased. Computer games are released straight onto disc with greater capabilities, including the ability to embed the classification into the gaming disc.

Currently DVDs/video and computer games cannot be advertised until classified. These provisions can disadvantage both industries, particularly as they often do not have control over when they receive copies of their products from international organisations. Computer games and DVD/videos are increasingly released on the same date in Australia as overseas, in part as a response to piracy concerns. Further, advertising is often in magazines which require copies to be submitted 3 or 4 months prior to publication.

**The proposal is to remove the prohibition on advertising unclassified films (such as DVDs/video) and unclassified computer games so the regulatory scheme is consistent across products to the extent possible. Industry would be able to advertise these products prior to classification.**

### 3.4.2 *Safeguards*

#### 3.4.2.1 Comprehensive review after three years

A comprehensive review of the new arrangements will be conducted after three years of operation. The review would consider the effectiveness of the new arrangements, particularly in removing the advertising exemption scheme. It would also consider the effectiveness of the changes in promoting compliance and ensuring consumers are not exposed to inappropriate material.

**A comprehensive review of the changes would be carried out after 3 years.**

#### 3.4.2.2 Exclusion of publications

Publications are unique and only a limited number are required to be classified under Australia's system. Under the proposal, the advertising system for publications will remain unchanged. Hence, 'submittable publications' will still be unable to be legally advertised in advance of classification.

The introduction of serial publications, where the classification of an original issue applies to all or some of the future issues of the periodical, has alleviated most advertising issues for the publication industry. This allows advertising of a forthcoming edition of a periodical publication to occur showing the known classification for prior issues of the serial publication.

**Publications are specifically excluded from the proposal.**

#### 3.4.2.3 Exclusion of sexually explicit products

The current advertising exemption scheme does not apply to films likely to be classified as sexually explicit (X18+). The X18+ classification only applies to films for sale/hire which are currently excluded from exemptions.

The prohibition on advertising sexually explicit products would be specifically retained. Hence, products which contain sexually explicit material would be unable to be advertised until classified. This is to safeguard against advertising sexually explicit products to minors. It is generally understood that X18+ products are unique and should be kept separate from the other classification categories.

**The prohibition on advertising sexually explicit products will be retained.**

#### 3.4.2.4 Exclusion of 'refused classification' products

The current advertising exemption scheme does not apply to films that are, or are likely to be 'refused classification'. These are products that are not legally available in Australia. The proposal will not change this.

**The prohibition on advertising products that are, or are likely to be, refused classification will be retained.**