

# Submission in response to Online Safety Stage 2 Industry Code Consultation

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## ABOUT ANZSA

This submission is made on behalf of the Australia New Zealand Screen Association (ANZSA). The ANZSA represents the film and television content and distribution industry in Australia and New Zealand.<sup>1</sup> Its core mission is to advance the business and art of filmmaking, increasing its enjoyment around the world and to support, protect and promote the safe and legal consumption of movie and TV content across all services.

## INTRODUCTION

Our member companies produce and distribute a wide range of film and television content in Australia and either have, or are making plans to have, video-on-demand (“**VOD**”) services operating in Australia.

ANZSA’s members have been involved in the drafting process for “phase 2” of the Online Safety Codes (“**draft Codes**”), which has been productive and collaborative. We commend the Australian Mobile Telecommunications Association, the Communications Alliance, the Consumers Electronic Suppliers’ Association, the Digital Industry Group Inc., and the Interactive Games and Entertainment Association (“**the industry associations**”) for their work drafting effective, risk-based Codes.

## DESIGNATED INTERNET SERVICES ONLINE SAFETY CODE

ANZSA’s members are considered a “designated internet service” (“**DIS**”) under the Online Safety Act (“**OSA**”), and more specifically fall under the definition of a “classified DIS”. Our comments therefore are focused on *Schedule 3 – Designated Internet Services Online Safety Code (Class 1C and Class 2 Material)* of the draft Codes (“**DIS Code**”).

ANZSA supports the draft DIS Code’s graduated, risk-based approach. We believe this approach is appropriate and proportionate, and our reasons for this are outlined below.

This approach aligns the draft DIS Code with the eSafety Commissioner’s expectations for classified services outlined in its Position Paper, including (1) that “*the codes will adopt an outcomes and risk-based regulatory approach, supported by clear compliance measures which*

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<sup>1</sup> The ANZSA-represented companies are: Motion Picture Association; Walt Disney Studios Motion Pictures; Netflix Inc.; Paramount Pictures; Sony Pictures Releasing International Corporation; Universal International Films, Inc.; Warner Bros. Pictures International, a division of Warner Bros. Entertainment Inc., Village Roadshow Limited, Fetch TV, and Amazon Studios LLC.

apply to industry participants whose services or devices present the greatest risk in respect of class 1 and class 2 material”;<sup>2</sup> and (2) that classified services may take the same approach to ‘classified DIS’ in the Phase 1 DIS Standards.<sup>3</sup>

## **VOD SERVICES ARE INHERENTLY LOW-RISK**

VOD services are subject to the *Classification (Publications, Films and Computer Games) Act 1995* (“**the Classification Act**”). Given their inherently low-risk nature, ANZSA supports the approach towards “classified DIS” in the draft DIS Code, and the associated compliance measures, which are proportionate and appropriate. This is also in line with approaches in other jurisdictions, such as with the United Kingdom’s Online Safety Bill, which assesses potential for risk and subjects relevant services to proportionate regulatory requirements.

VOD services are inherently distinct from user-generated content (UGC) services, as the content is professionally curated on the service. VOD services already taking reasonable steps to implement the necessary systems, processes and service features to mitigate the potential risk of harm.

VOD services currently:

- **Offer entertainment to subscribers on-demand in an editorially controlled environment.** To provide this service, subscribers to VOD services opt in to access films and series in exchange for payment. Subscribers to VOD services choose what they wish to view, at a time they wish to view it, on a device of their choice. VOD services are therefore distinct from UGC services, as they provide curated libraries of professionally-produced content. .
- **Are already regulated under the Classification Act and are prohibited from providing access to content rated X18+ and above.** VOD services are required to adhere to classification requirements under the Classification Act because they provide access to content which is professionally produced and distributed on a commercial basis. This means that all titles on a VOD service will include a rating and consumer advisories in

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<sup>2</sup> eSafety Commissioner, *Development of Phase 2 Industry Codes under the Online Safety Act - Position Paper*, p. 9, Position 4.

<sup>3</sup> eSafety Commissioner, *Development of Phase 2 Industry Codes under the Online Safety Act - Position Paper*, p. 52 - “if Notice Recipients choose to define a subset of services subject to minimum compliance measures in relation to simulated gambling or other material which may already have been subject to classification review processes, they could consider the Phase 1 DIS Standards approach to “classified DIS”, which refers to classification by the Classification Board or according to an approved self-classification tool”.

accordance with the Classification Act, the National Classification Code and the Guidelines for the Classification of Films. This rating and consumer advice may be obtained by applying directly to the Board, or through self-classification using an approved classification tool or an accredited classifier.<sup>4</sup>

Further, VOD services are prohibited from providing access to X18+ content. This is a requirement under the Classification Act, and VOD services' self-classification tools. VOD services therefore do not provide access to the most "high risk" Class 1C and Class 2 content, and their regulatory requirements should reflect this.

- **Offer a range of tools and controls to provide a safe, age-appropriate environment, and limit access to Class 2 material for those under 18.** Over the years, VOD services (including those owned by ANZSA members) have implemented a range of tools and controls so subscribers can manage their and their family's viewing experience, and make informed decisions about what they choose to watch. These include requiring a credit card for sign-ups and offering parental controls. For example, every Netflix account has a kids profile built-in, and parents can set these to specific age levels, or restrict specific titles using passwords or pin codes. Parents can also monitor viewing history to see what their kids have watched on their profiles.

VOD services are therefore inherently different to a user generated service - in their business model, the type of content they provide access to, and the existing classification framework they are regulated under. As such, they pose a far lower level of risk than other DIS, and we support this recognition as currently set out in their obligations under the draft DIS Code.

ANZSA supports the current approach to 'classified DIS' in the draft DIS Code and the associated compliance measures. We believe this is proportionate and appropriate and should be maintained.

## **DRAFT CODES RECOGNISE DIFFERENT RISK PROFILES OF CLASSIFIED SERVICES**

The draft DIS Code also delineates between those classified services that have the "sole or predominant purpose of providing general entertainment, news or educational content" (Classified DIS), and those that offer content that has been classified, or would be classified as X18+ ("high-impact classified material"). This is appropriate. As mentioned above, VOD services are prohibited from providing access to content rated X18+ and above. This means that VOD

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<sup>4</sup> Australian Classified Board, Industry Self-Classifications, available [here](#).

services are prohibited from displaying pornography (identified through the draft DIS Code as Class 2A content) on their service. The delineation between classified services that do and don't provide access to X18+ content ensures that the regulatory obligations are proportionate to the type of content offered and associated risk.

## **CLASSIFIED R18+ CONTENT SHOULD NOT BE SUBJECT TO ADDITIONAL COMPLIANCE MEASURES**

eSafety's Position Paper calls for "high-impact material", such as high-impact sex, nudity, violence, drug use, language and themes, to be subject to certain protections to prevent exposure by those under the age of 18.<sup>5</sup> ANZSA's view is that, in line with the approach in the draft Codes, these additional protections would not be appropriate for content which may include these "high-impact" themes, but which have already been classified as R18+.

The Classification Scheme is designed to regulate content which is legal but may be unsuitable for minors to view, while preserving the right of adults to listen or view legal content of their choosing. Classified services are required to rate content so that viewers can make informed decisions about (1) the appropriate age for the audience (identified through the rating), and (2) the content of the film or series (identified through the consumer advisories). Matters to be taken into account when making a classification decision include (1) standards of morality, decency and propriety generally accepted by reasonable adults, (2) the literary, artistic or educational merit (if any) of the publication, film or computer game, (3) the general character of the publication, film or computer game, including whether it is of a medical, legal or scientific character, and (4) the persons or class of persons to or amongst whom it is published or is intended or likely to be published.<sup>6</sup>

Content that has been rated as R18+ is unsuitable for minors to see, regardless of whether the classification is generated due to high-impact violence, nudity or drug use, or a combination of high-impact themes. For all classified content, it is appropriate that the DIS code treat all R18+ content as subject to the same type of minimum compliance measures.

Should additional protections be introduced for "high-impact" themes, we recommend these are only directed at unclassified content. This approach would require services that provide access to unclassified content with "high-impact" themes (and would be subject to an R18+ rating if they were classified under the Classification Act) to implement precautions to notify

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<sup>5</sup> eSafety Commissioner, *Development of Phase 2 Industry Codes under the Online Safety Act - Position Paper*, p. 81-89.

<sup>6</sup> [Section 11](#), Classification (Publications, Films and Computer Games) Act 1995.

the end user about the “high-impact” content, and reduce its exposure. This is proportionate, and focusses regulatory obligations on “gaps” in the current regulatory framework, bringing unclassified services in line with the regulatory requirements already placed on classified services under the Classification Act.

## **AVENUES FOR COMPLAINTS**

Measure 4.1 of the DIS Code contains an obligation for classified DIS services to offer a mechanism to report content which they believe has been incorrectly classified. ANZSA supports this approach as it has been specifically drafted to recognise that it is not practical or appropriate for classified services to offer measures for end-users to report or flag content contrary to the service’s terms and conditions or unsuitable for children, given classified services offer a curated service that provides professionally-produced, classified content. Instead, (as is currently drafted) classified services should provide a complaints process for a customer to raise concerns in relation to a title's classification. This is also a requirement of several self-classified tools already approved by the Australian Government.

ANZSA is committed to working constructively with the government and industry to further develop the Codes. We remain ready to provide further information and discuss should this be of assistance.



Chief Executive Officer