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HAVE YOUR SAY BEFORE 28 FEBRUARY 2010

**SHOULD COMPUTER GAMES HAVE AN R 18+
ADULT CLASSIFICATION CATEGORY LIKE
FILMS DO IN AUSTRALIA?**

Overview

The Federal Government's December 2009 discussion paper calls for submissions from the community on the subject of whether an R 18+ classification category should exist for computer games in the same way it does for films. Submissions are due by close of business on 28 February 2010. Circumstances surrounding the debate, and the key arguments likely to be submitted by the public, are set out and explored in this FocusPaper.

Introduction: The National Classification Scheme (“the Scheme”)

Nationally, the classification of films, computer games and certain publications (such as websites referred by the Australian Communications and Media Authority (“ACMA”) and video content for mobile phone networks), is regulated under the National Classification Scheme (“**Scheme**”) in accordance with the requirements of the *Classification (Publications, Films and Computer Games) Act* (1995) Cth (“**Act**”), the National Classification Code (“**Code**”) and the National Classification Guidelines (“**Guidelines**”).

The Scheme, a co-operative arrangement between the Commonwealth, States and Territories, began on 1 January 1996 after the adoption of Law Reform Commission recommendations on censorship procedures (published in 1991). Under the Scheme, each State and Territory is responsible for enforcing classification decisions for films, computer games and certain publications by enacting their own laws and making their own determinations as to which categories of classified products will be made available to the public in their own State or Territory.

The Classification Board is responsible for administering the Scheme by making classification decisions under the Act (“**Board**”). The Board is comprised of nine members (elected for a three year term after meeting certain criteria) who collectively represent the Australian community. Before any film or computer game can be made available legally to the Australian public, it must be classified by the Board. The Board members analyse a wide range of material - some which is especially confronting or offensive – and apply one of the

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following classifications to the material, based on considerations of themes, violence, sex, nudity and drug use and their cumulative effect:

	Classifications (least offensive → most offensive)
Publications	Unrestricted → Category 1 Restricted → Category 2 Restricted → RC (Refused Classification)
Films	G → PG → M → MA 15+ → R 18+ → X 18+ → RC
Computer Games	G → PG → M → MA 15+ → RC

The markings and notices required to identify the classification category of each film, game or publication to the public are also established by State and Territory legislation (see the *Classification (Markings for Films and Computer Games) Determination 2007*).

Classifications made under the Act, Code and Guidelines, as regulated by the Scheme, empower consumers to make appropriate, informed decisions with respect to whether a particular product is suitable for them, or for other viewers in their household, subject to the restrictions imposed by their own State or Territory legislation (note that South Australia is the only state which maintains a separate Classification Council supplementary to the national Classification Board, and invests in it the power to override national classification decisions in South Australia).

Computer Game Classification – The Current Debate

Noticeably absent from the table above is an R 18+ classification for computer games. This omission is a hot topic - one which has been considered on occasion by the Federal Government and its State and Territory counterparts - with no real commitment to the progression of the issue until now.

After years of lobbying by the computer gaming industry, the Federal Government has released its long anticipated discussion paper ‘Should the Australian National Classification Scheme Include an R18+ Classification Category for Computer Games?’ (“**Paper**”)¹.

The Paper calls for the wider community to make submissions on whether the categories of the Scheme applicable to films should also apply to computer games. The glaring issue for game creators and consumers alike is that the Scheme freely permits the sale of R 18+ films, but not the sale of R 18+ computer games - anywhere in Australia.

Under the current Scheme, computer games unsuitable for minors (i.e. not falling within the MA 15+ classification) *must* be classified RC (Refused Classification). RC games cannot be legally sold, hired, exhibited, displayed, demonstrated or advertised in Australia. At present, a game that contains material likely to be rated R 18+ in a film cannot be legally sold in Australia. In short, under State and Territory legislation, the sale or demonstration of computer games considered unsuitable for minors is *prohibited*, even to adults.

¹ <http://www.ag.gov.au/gamesclassification>

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The ‘for and against’ arguments are clear-cut. Proponents of the current policy believe the illegality of the sale of R 18+ computer games is necessary to prevent the lawful sale of what they consider to be offensive material. The counter-argument is that the policy prevents adults enjoying the ability to purchase games readily available in overseas markets and acts as a barrier to trade. In addition, many gamers maintain that the current policy is unintelligent, as games which should have been classified R 18+ at the outset were squeezed into an M rating or edited in order to be legally sold in Australia under the MA 15+ classification.

The Paper notes that if an R 18+ classification were introduced, the RC category will *still* be applied to games with gratuitous or exploitative depictions of sexual violence, and games falling within this category will be prohibited for sale in Australia. The Paper uses the sexual assault simulation game *Rapelay* as an example of a game which would remain categorised as RC.

Research referred to in the Paper commissioned by the Interactive Games and Entertainment Association concludes that adults are increasingly consumers of computer games.

The paper states it does not seek to either promote or oppose the introduction of an R 18+ category for computer games in Australia, but that its intention is, rather, to summarise the key arguments and obtain the community’s views. The key arguments are:

FOR	AGAINST
<ul style="list-style-type: none">• A clear message will be sent to parents that the game material is unsuitable for minors by the introduction of the R 18+ classification category• Consistent classification categories for films and computer games would be easier to understand• An R 18+ category will supplement technological controls on minors’ access to age inappropriate computer game;• Adults should not be prevented from playing R 18+ level computer games merely because they are unsuitable for minors• Comparable international classification systems have an adult rating for computer games – international parity is desirable• Consumers access games which would be R 18+ games illegally – it would be better if they were made legally available with appropriate restrictions.	<ul style="list-style-type: none">• Computer games should be treated differently from films given the specific effects of interactivity on players, particularly their participation in violent and aggressive content• It is difficult for parents to enforce age restrictions for computer games• Minors would be more likely to be exposed to computer games that are unsuitable to them• An R 18+ rating would exacerbate problems with access to high level material in Indigenous communities and by other non-English speaking people• There is no demonstrated need to change existing restrictions.

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Conclusion/Timeframes

After considering submissions, if the Federal Government were to introduce an R +18 computer game classification category, *all* of the State and Territory Attorneys-General will have to agree on the decision, and the Act, the Code and the Guidelines will have to be amended. Presently, South Australian Attorney-General and Minister for Justice and Multicultural Affairs, Michael Atkinson, opposes the introduction of an R 18+ category, although other State and Territory leaders, including Victorian Deputy Premier and Attorney-General Rob Hulls, openly welcome the public consultation sought by the Paper.

Submissions on whether the Scheme should include an R 18+ classification for computer games are due by close of business on **28 February 2010** (see submission template available²).

Whether the public's submissions on this issue will impact upon the Federal, State and Territory Government's adoption of the adult computer games classification will be of great interest both in Australia and abroad. Addisons will monitor this issue and publish updates to this site as further information becomes available.

In other areas of interest in the online sector, see Addisons FocusPaper 'Mandatory Internet Censorship in Australia?' published 28 January 2010³.

The assistance of Mandy Chapman, Solicitor, of Addisons in the preparation of this article is noted and greatly appreciated

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² <http://www.ag.gov.au/gamesclassification>

³ <http://www.addisonslawyers.com.au/focuspaper/131>