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5 September 2011

Professor Terry Flew
Chair
Classification Review
Australian Law Reform Commission
GPO Box 3708
Sydney NSW 2001

Dear Professor Flew

Re: ALRC Classification Review – Draft principles for reform

Free TV Australia is generally supportive of the draft principles for reform recently released by the Classification Review. This submission formally communicates Free TV's response to those principles, and supplements the comments posted to the Classification Review discussion forum by Free TV on 2 September 2011.

1. Australians should be able to read, hear, see and participate in media of their choice

Free TV supports this Principle. Access to consistent, accurate and clear classification advice is an important factor in making media choices, and the first part of proposed Principle 4 further reflects this. Free TV members provide classification information and consumer guidance to help Australians make these choices.

2. Communications and media service available to Australians should broadly reflect community standards, while recognising a diversity of views, cultures and ideas in the community

Free TV supports this Principle as a key public interest objective for any new framework. Free TV members take very seriously their responsibility to ensure that programming and the way that it is promoted and delivered accords with community standards. Viewers are unlikely to be aware of the vast difference in regulation, including classification, that applies based on the content's origin and how it is delivered, and have a right to expect the same acceptable community standards with respect to any material they access.

However, Free TV notes that limiting the availability of certain material based on community standards is inconsistent with Principle 1, which supports freedom of choice in accessing media.

Commercial free-to-air television broadcasters are committed to providing viewers with innovative, appropriate and popular material. This ensures a commitment to community standards. Viewer behaviour and established complaints systems enable commercial free-to-air television broadcasters to ensure that material on their screens is in line with community standards of the day. The market will naturally limit material that is unacceptable to the broader community.

Because community standards develop and change, a dynamic approach is required to encourage innovation and development in content. Gauging "community standards" in an

objective, inclusive and responsive way is difficult. It is important to recognise that different communities within Australia have different standards, and that standards change over time.

3. Children should be protected from material likely to harm or disturb them

Free TV agrees that certain content and material is not appropriate for children. The appropriateness of material will differ depending on content, context, and the background and age of the child.

Parents and carers are best able to determine what sort of media is appropriate for their children, taking into account all the relevant circumstances. Making these determinations requires access to clear, consistent and informative classification information. As media consumption patterns and technology have changed, the old methods of content control (such as time zones) are no longer effective for parents and carers. New tools such as parental locks provide greater control and flexibility in limiting children's access to inappropriate material.

The introduction of mandatory parental lock systems on all TVs sold in Australia after February 2011 means that households will have access to a mechanism where content can be blocked according to classification. This, together with the consumer advice provided by broadcasters, empowers parents to limit their child's viewing according to classification. Free TV members support this initiative by ensuring that the broadcast stream is embedded with a classification that interacts with the parental lock system, and raising awareness of the parental lock function on-air and online.

4. The national classification scheme needs to provide consumer information in a timely and clear manner, and to provide a responsive and effective means of addressing community concerns, including complaints

Due to the significance of these concepts, Free TV recommends splitting this principle into two separate principles.

Timely, clear classification advice to consumers should be the cornerstone of any classification scheme. Such advice empowers all people in Australia (including parents and carers) to make informed choices about media consumption. Free TV suggests making this statement a single Principle, and adding the word "consistent". One of the main benefits of the existing classification scheme is the widespread understanding of the classification levels and symbols. Introducing or maintaining different classifications for different platforms is likely to result in confusion for consumers. For example, the AV classification is only used for commercial free-to-air television. Pay TV, the national broadcasters, film and online content do not use this classification.

Suggested new Principle 4a: *The national classification scheme needs to provide consumer information in a timely, clear and consistent manner.*

A responsive, proportionate and effective means of addressing community concerns and complaints is also important, and is an area where the existing regime may benefit from increased consistency. At present, there are a range of different bodies that oversee issues of concern relating to classification, depending on where the content is viewed and the nature of the content. This can lead to an inconsistent application of the Guidelines and an uneven approach to resolving complaints.

Suggested new Principle 4b: *The national classification scheme needs to encompass a responsive, effective and consistent means of addressing community concerns, including complaints.*

5. The regulatory and classification framework needs to be responsive to technological change and adaptive to new technologies, platforms and services

Free TV agrees that any new classification framework must be technology-neutral, and able to deal with new and emerging platforms and services. In particular, the advent of devices such as Connected TVs will enable viewers to transition seamlessly between broadcast and streamed content. Ensuring that the classification regime is consistently applied will help viewers make informed decisions, avoid confusion, and ensure the efficacy of classification measures.

6. The classification framework should not impede competition and innovation, and not disadvantage Australian media content and service providers in international markets

Free TV agrees with this Principle, though suggests amendment to reflect that particular platforms within the Australian market should not be disadvantaged by the classification framework. At present additional costs are borne by Australian service providers as a result of duplication of some classification functions.

Suggested new Principle 6: *The classification framework should not impede competition and innovation, and not disadvantage Australian media content and service providers in international or Australian domestic markets.*

7. Classification regulation should be kept to the minimum needed to achieve a clear public purpose, should be clear in its scope and application

Free TV strongly supports this Principle, though suggests a minor amendment. The clarity and consistency of the classification framework is covered in proposed Principle 4a. The commitment to a minimalist regulatory regime is significant and should be a stand-alone Principle. Free TV is in favour of an information based classification framework which enables content consumers to make informed choices, as opposed to a prescriptive framework limiting access to material overall.

Suggested new Principle 7: *Classification regulation should be kept to the minimum needed to achieve a clear public purpose.*

8. Classification regulation should be focused upon content rather than platform or means of delivery

Free TV supports a platform- and technology-neutral approach to classification regulation. A classification system that is based on the provision of consistent information to consumers (as opposed to a system that limits content in a prescriptive way) is more likely to succeed as a platform- or technology- neutral solution. Self- or co-regulatory schemes which apply high level principles to particular industry circumstances are also more likely to facilitate a platform- or technology-neutral classification framework.

9. Other comments/principles

Free TV would like to make some observations regarding the current processes for training and accreditation of classifiers.

We note that the Classification Board conducts an intensive three-month program which includes mentorship and practical experience. In comparison, the training programs for certified industry assessors are very brief (half-day or one-day). Anecdotal evidence suggests that this contributes to inconsistencies in classification decision-making, undermining the effectiveness and integrity of the National Classification Scheme.

The ALRC should consider recommending changes to the accreditation process to include consistent and rigorous training requirements, with classifiers required to undergo minimum

periods of supervision following training. Commercial free-to-air television broadcasters employ a number of full-time dedicated classifiers, many of whom have years of experience working in the industry and organisations such as the Classification Board.

Suggested new Principle 9: *The classification framework should require a consistent standard in relation to training and accreditation of classifiers.*

Further meeting and contact details

Thank you for providing Free TV with the opportunity to provide feedback on these Principles for reform. I understand that you wish to have a further discussion with Free TV as part of the Inquiry process.

The majority of classified content consumed by Australians is on commercial free-to-air television. The classification framework has a significant impact on Free TV members, and Free TV is keen to engage and participate in each stage of this review, including meeting with you and your team.

Please contact me on (02) 8968 7100 to arrange a convenient time for a meeting, or if you wish to discuss any of these issues in more detail.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Julie Flynn', with a long horizontal flourish extending to the right.

Julie Flynn
CEO