

Regulatory Impact Statement: Overview of required information

Regulatory Impact Statement

Title of Proposal/Name of Issue

Amendment of the Films, Videos, and Publications, Classification Act 1993 through the Regulatory Reform Bill 2010.

Agency Disclosure Statement

This Regulatory Impact Statement has been prepared by the Ministry of Justice.


The Regulatory Impact Statement provides an analysis of options designed to increase the effectiveness and efficiency of the Act to reduce industry compliance costs.

The analysis is based on evidence provided by industry members, industry representative bodies, the Office of Film and Literature Classification and the Film and Video Labelling Body. The proposals are tightly targeted on improvements to administrative processes set out in the Act. No changes are proposed to the current rating or classification categories or that would in any way undermine the integrity of the current well-respected classification regime.

The policy options identified will not:

- impair private property rights, market competition, or the incentives on businesses to innovate and invest, or
- override fundamental common law principles (as referenced in Chapter 3 of the Legislation Advisory Committee Guidelines).

The preferred options will significantly reduce industry compliance costs.



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Status quo and problem definition

Labelling

Status quo

The Act currently requires New Zealand rating and classification labels be affixed to DVDs and restricted computer games supplied to the public. This has been interpreted by the Chief Censor and the industry to mean that a label must be physically attached to a DVD or computer game. Most DVDs and computer games distributed in New Zealand are imported from Australia or the UK. These imported products have the rating or classification of the country of origin printed on the slicks (the leaflet containing information about a film which is attached to, or inserted inside the sleeve of, a display case). Regulations require that a New Zealand rating or classification label must be affixed so as to obscure the country of origin's rating or classification label.

Problem definition

Requiring labels to be physically affixed is unique internationally. All other comparative jurisdictions allow rating or classification labels to be printed directly onto slicks. In order to meet the requirements of the Act and regulations, distributors must arrange for the Australian or UK product to be unwrapped, the printed slick removed from the case, a label placed over the printed Australian or UK classification label on the front, and the slick put back in the packaging. This is a time consuming and costly process for industry. Industry has provided estimates that the cost of affixing physical labels to DVDs and computer games ranges between 21 to 50 cents per unit (including the cost of the 8 cent label) depending on business model and size. Evidence has been provided by the industry which estimates that the compliance cost is approximately \$10,000 per day, which equates to \$3.650m per annum in a retail market with a value of \$150m.

The requirement to affix physical labels also results in product being sold with a New Zealand label on the front and a label from another jurisdiction printed and visible on the back and spine. Consumers are therefore presented with product which has labels from two jurisdictions.

Review of OFLC decisions

Status Quo

The Act provides a process for applications to be made for the review of the classification given to a publication. An application for a review must be lodged within 30 working days after the day on which the decision of the Office of Film and Literature Classification (OFLC) is made open for inspection on a published list. This list is made available for inspection at the OFLC offices in Wellington within 10 working days of the beginning of each month.

The Film and Literature Board of Review (FLBR), which is constituted under the Act to reconsider the classification of publications, has tended to wait for the 30 day time limit to expire before meeting so that all applications for the review of a particular publication can be dealt with at the same time. This means that the actual review application process may not conclude until two months after the OFLC makes its decision.

The Act provides that the FLBR must give written notice of a decision and give the reasons for that decision. Currently, this means that interested parties may have to wait several

weeks after a review has been conducted for the full written decision to be issued by the FLBR.

Problem definition

The industry has noted that international release dates and the need for security mean that there is often a short time period between the classification of a major title and its exhibition. If a distributor wishes to challenge a classification decision by the OFLC, there is little time in which to do so, given these commitments. The industry has expressed the view that the current timeframes for the lodging of a review application, its consideration and the production of the final written decision of the FLBR mean that the industry is denied an effective right to seek a review.

This results in an opportunity cost for the industry where content is classified higher than other comparable jurisdictions such as Australia or the UK. When this happens the available market for the product is reduced by the amount of people in that demographic, for example where content is classified R16 in New Zealand but classified as suitable for younger ages in other jurisdictions.

Objectives

The objective of the proposed reforms is to reduce industry compliance costs and enhance consumer information.

Regulatory impact analysis

Issue One: Labelling

Option 1 – non-legislative work with OFLC and FVLB

There is a possibility that the Act, as currently drafted, may contain sufficient flexibility to allow the printing of digital labels on slicks. However, the Chief Censor has publically expressed the opinion that the Act does not allow this and the FVLB has been unprepared to issue label to be printed directly onto slicks because of this uncertainty.

It would be possible to work with the OFLC and the FVLB to seek a consensus view about the current scope of the Act, however, it is thought that the present uncertainty could not be resolved without explicit legislative direction from Parliament.

Option 2 – require all labels to be printed onto slicks

Requiring all labels to be printed directly onto slicks would provide consumers with a uniform and consistent label and would address the current position where product is presented to consumers with labels from different jurisdictions.

However, it is estimated that initially it would not be financially viable to print New Zealand labels on a third of all product as the print runs are not sufficiently large to make it cost effective to do so. Making printed labels mandatory would therefore significantly reduce consumer choice as distributors would not be able to make titles with smaller print runs available to consumers.

Option 3 (preferred option) - allow labels to be printed onto slicks as well as affixed

Amending the Act to allow labels to be printed as well as physically affixed will provide industry with the necessary clarity, while at the same time protecting distributors and retailers who carry products with smaller print runs.

It is estimated that approximately two-thirds of product will have labels directly printed onto slicks in the first year. This is estimated to rise to 85% of all product over the years 2-5. This would produce an industry compliance cost saving of \$2.400m in the first year rising to \$3.100m by year 5.

This option improves consumer information by ensuring that a uniform label appears on the majority of product on sale in New Zealand. It also preserves consumer choice, by retaining physically affixed labels for niche products. The current requirements regarding the content and appearance of a label will not change, so consumers are not expected to be presented with a label that differs significantly from current labels.

Issue Two: Review of OFLC decisions

Option 1 – non-legislative work with the Film and Literature Board of Review

There is a possibility that the Act, as currently drafted, may contain sufficient flexibility to allow the FLBR to adopt a more expeditious process. The FLBR could adopt a best practice guide setting out the approach and time frame that the FLBR would apply to the review process. However, there are administrative requirements in the Act, such as requirements about the publication and inspection of OFLC decisions, which have in practice inhibited the FLBR from commencing the review process as soon as possible. This option would not amend these statutory requirements and would therefore be of limited value in speeding up the process.

Option 2 - prescribe time periods for review

Prescribing time periods for the review process would provide certainty for the industry and would make the review process more efficient. However, it would lock the FLBR into a time frame which may not be suitable for more contentious matters such as reviewing publications containing objectionable content. It also could restrict the ability of individuals and interest groups to seek a review.

Option 3 (preferred option) – amend Act to provide clarification

The preferred option is to amend the Act so that the period for applications for review commences immediately after OFLC has published the classification decision. The length of time during which applications for review may be made will not change and the ability of individuals and interest groups to seek a review will not be restricted or affected in any way.

In addition, it is proposed that the Act be amended to clarify that the FLBR may notify interested parties of its determination in regard to a publication prior to issuing a written decision. This allows the industry and the OFLC to be informed of the decision prior to the issue of the written decision, which may take another couple of weeks to produce.

It is considered that these amendments will allow the FLBR to expedite the review process. This will address industry's concerns about access to an effective review process, while retaining the flexibility to allow a longer consideration of more contentious or controversial content. Neither change will reduce the right or ability of any individual or interest group to make an application for a review.

Consultation

Face-to-face meetings have been held with a broad range of stakeholders, including:

Chief Censor and Deputy Chief Censor, OFLC	Vixen Direct
Manager, Information Unit, OFLC	Universal Pictures
FVLB	Roadshow Film Distributors
President, FLBR	JB Hi-Fi
Sky Network Television	Twentieth Century Fox Film
Microsoft New Zealand	Sony Pictures
AroVideo	Stebbing Recordings Centre
Gamewizz	The New Zealand Film Festival Trust
New Zealand Broadcasters' Council	Label and Litho
The Warehouse	The Film Commission
Interactive Software Association of New Zealand (ISANZ)	Customs New Zealand
Calvista New Zealand	Ministry of Economic Development
Magna Home Entertainment	Ministry of Culture and Heritage
Recording Industry Association of New Zealand (RIANZ)	Department of Internal Affairs
	New Zealand Police

Ongoing engagement is continuing with the OFLC, the FVLB and the FLBR. The wider industry is being kept informed.

Feedback on the preferred options has indicated wide support, with the benefits for industry and consumers welcomed. One industry member did raise concerns about the impact of the proposed labelling change on people currently employed to physically affix labels to product.

Conclusions and recommendations

The preferred option identified for labelling will significantly reduce industry compliance costs. It brings New Zealand into line with other jurisdictions while allowing the flexibility to reflect this country's relatively small market and protect consumer choice.

The preferred option for improving the review of OFLC processes provides the industry with an effective review process, which in turn may provide access to a larger market for their product than would otherwise be available. It also maintains the current rights of any person or interest group to seek a review.

Implementation issues

Implementation

The preferred options for reform are proposed to be included in the Regulatory Reform Bill 2010.

The ability to print labels directly onto slicks will be given effect by the issuing of digital labels by the FVLB. Work is already underway in the FVLB to prepare for the issue of digital labels. In addition the FVLB and the OFLC are considering a range of non-legislative labelling process improvements aimed at reducing industry compliance costs.

The FLBR is already considering making process improvements within the current provisions of the Act, and the Acting President of the FLBR has expressed his support for the preferred option relating to the review process.

Risks

The Act provides limited Crown control over the activities of the FVLB. In order to manage this officials are conducting an ongoing process of engagement with the FVLB. This engagement has already led to agreement on issues to be addressed in the implementation stage of the proposed reforms, and has identified the need for closer working between the FVLB and the OFLC.

There is a risk that the cost of physical labels would increase as fewer would be produced. This is being managed through the ongoing engagement with the FVLB, and the FVLB has agreed that the cost of physical labels will not increase in the short to medium term.

There is a risk that the introduction of printed labels may require some change in the working practices of businesses that currently offer the service of physically affixing labels to products. These businesses often offer other services relating to the design and printing of packaging, and the opportunity exists for them to reallocate staff. The proposed change will be well signalled, allowing businesses time to make appropriate amendments to their working practices. The benefits of improved flexibility and efficiency for the industry as a whole, and the presentation of a uniform New Zealand label outweigh any cost associated with the proposed change.

There is a risk that the introduction of printed labels on product would cause consumer confusion. The preferred option would not change any of the current requirements regarding the content and appearance of a label, so consumers are not expected to be presented with a label that differs significantly from current labels. The OFLC and the FVLB plan to run a co-ordinated consumer information campaign to inform the public about the introduction of printed labels.

Any amendment which substantively amends the censorship regime would be controversial and would require greater participation and consultation with the wider community. The preferred options are restricted tightly to non-controversial process improvements. These process improvements are supported by OFLC, the FVLB, and the Acting President of the FLBR. The OFLC and the FVLB have signalled their agreement to jointly develop an information campaign to inform consumers of the change to allow labels to be printed onto slicks.

The preferred options are designed to reduce compliance costs.

The proposed amendments fit within the current enforcement regime and enforcement strategy administered by the Department of Internal Affairs.

Monitoring, evaluation and review

The following performance indicators will be monitored by the Ministry of Justice and where appropriate the Department of Internal Affairs:

- price of physical and printed labels
- uptake of printed labels
- provision of consumer information
- number of reviews requested
- average time taken for reviews

These indicators will be analysed jointly by the Ministry of Justice and the Department of Internal Affairs and will be used to evaluate and review the proposed reforms.