

26 November 2019

Hon David Parker, Attorney-General

Consistency with the New Zealand Bill of Rights Act 1990: Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Bill

Purpose

1. We have considered whether the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Bill ('the Bill') is consistent with the rights and freedoms affirmed in the New Zealand Bill of Rights Act 1990 ('the Bill of Rights Act').
2. We have not yet received a final version of the Bill. This advice has been prepared in relation to the latest version of the Bill (PCO 21873/7.0). We will provide you with further advice if the final version includes amendments that affect the conclusions in this advice.
3. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act. In reaching that conclusion, we have considered the consistency of the Bill with s 14 (freedom of expression). Our analysis is set out below.

The Bill

4. The Bill amends the Films, Videos, and Publications Classification Act 1993 (the principal Act) to require commercial video on demand (CVoD) providers to rate and label content consistently with New Zealand standards before providing the content to New Zealand audiences.
5. The Bill also contains minor ancillary amendments to update the role and functions of the Classification Office and to further specify the content covered under the principal Act, to ensure that CVoD content can be regulated under the current regime.

Consistency of the Bill with the Bill of Rights Act

Section 14 - Freedom of Expression

6. Section 14 of the Bill of Rights Act affirms that everyone has the right to freedom of expression including the freedom to seek, receive, and impart information and opinions of any kind in any form. The right has been interpreted as including the right not to be compelled to say certain things or to provide certain information.¹
7. Clause 7 of the Bill inserts new Part 3A into the principal Act. This part creates requirements for specified CVoD providers to rate and label content before it may be made available to persons in New Zealand. CVoD providers are required to rate and label their content through the use of an online tool provided by the Classification Office or through the use of a self-rating system approved by the Chief Censor.

¹ See, for example, *Slaight Communications v Davidson* 59 DLR (4th) 416; *Wooley v Maynard* 430 US 705 (1977).

8. Clause 6 of the Bill amends Section 8 of the principal Act to give the Chief Censor the power to require any person to make an application for the rating and labelling of a film that they are distributing or exhibiting in New Zealand.
9. These requirements *prima facie* limit the right to freedom of expression of CVoD providers and other persons distributing or exhibiting films, as they compel the provision of information as a condition of allowing these providers to distribute their content.
10. However, under s 5 of the Bill of Rights Act, a limit on a right may be justifiable where the limit serves an important objective, and where the limits on the right are rationally connected to achieving that objective, limit the right no more than necessary, and are proportional to its importance.
11. The objective of enforcing rating and labelling regulations for commercial video and digital content is to protect consumers, particularly children, from unintentionally viewing content that may prove harmful for their mental and physical wellbeing. Rating and labelling of content helps consumers make informed choices about what they consider appropriate for them and their children to be viewing. We consider this to be a sufficiently important objective to justify some limits on the right to freedom of expression.
12. Requiring CVoD providers to rate and label their content before making it available in New Zealand is directly and rationally connected to the objective identified above. The requirements in the Bill are targeted at the CVoD market and proportionate to the importance of the objective. Most providers of film and video content are already required to rate and label their content under the principal Act, and these changes largely reflect an updating of the Act's classification processes to keep up with the rise of video on demand services.
13. For these reasons we consider any restrictions on the right to freedom of expression within the Bill to be justifiable in terms of s 5 of the Bill of Rights Act

Conclusion

14. We have concluded that the Bill appears to be consistent with the rights and freedoms affirmed in the Bill of Rights Act.

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