



online media standards authority

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## SUBMISSION ON MCH DISCUSSION DOCUMENT: CONTENT REGULATION IN A CONVERGED WORLD

### Introduction

1. This submission is presented by the Online Media Standards Authority Incorporated (OMSA) in relation to chapter 4 of the discussion document "*Content Regulation in a Converged World*" (**discussion document**), which details potential options for the classification of subscription video on demand (SVOD) content.
2. OMSA's submission has the unanimous support of its member organisations, which comprises all of New Zealand's major broadcasters:<sup>1</sup>

**Television New Zealand Limited**  
**MediaWorks TV Limited**  
**MediaWorks Radio Limited**  
**Maori Television Services**  
**Sky Network Television Limited**  
**NZME Radio Limited**  
**Radio New Zealand Limited.**

3. Although OMSA members compete at an operational level, they are broadly united on issues of media regulation. They have each made separate submissions supporting the discussion document's "option 2" for classification of audio-visual content - a voluntary code with no regulatory intervention, to be provided by OMSA.
4. Currently only one of OMSA's members (Sky through Neon) provides SVOD content, but other members provide free video on demand content. The matters raised in the

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<sup>1</sup> Since July 2014 OMSA has accepted membership of any media proprietor who publishes news and current affairs content online. Currently David Farrar (kiwiblog.co.nz) and Whale Oil Beef Hooked (whaleoil.co.nz) have joined OMSA as affiliate members. As such they have submitted to the complaints processes of OMSA, but they are not represented on OMSA's management board and are not entitled to vote.

discussion document should encompass all ways in which video can be seen on line. Therefore, rather than SVOD, this submission addresses Video on Demand (VOD) (whether provided on subscription or for free).

5. OMSA confirms it is ready, willing and able to extend its operation to a classifications and complaints regime for VOD.
6. It is already well advanced in the development and implementation of such a Classifications Code. The key mechanics of the system have already been agreed.
7. OMSA is confident it can provide a satisfactory solution quickly and cheaply, without the need for any legislative intervention.

#### **OMSA: origins, current work and track record**

8. OMSA is a voluntary, industry funded, self-regulatory body. It has proved itself to be a cost-effective and consumer-friendly response to online content regulation.
9. OMSA was launched in July 2013 by the broadcasting industry in response to the Law Commission's paper, *"The News Media Meets 'New Media'"*, which identified a "gap" in the regulatory framework in respect of online news and current affairs content. It has developed a Code of Standards for Online News and Current Affairs Content, and an independent complaints and appeals regime to determine complaints by consumers under that Code.
10. OMSA's Complaints Committee consists of a seven person board comprising four members of the public, including the Chair, and three broadcasting industry representatives. The Complaints Committee is chaired by former Court of Appeal judge, the Honourable Sir Bruce Robertson.
11. OMSA's Complaints Appeals Committee consists of a three person board comprising of two members of the public, including the Chair, and one broadcasting industry representative. The Appeals Committee is chaired by former High Court judge, the Honourable Dame Judith Potter.
12. A rigorous process was undertaken in appointing the OMSA Complaints Committees. All positions were publicly advertised, and an appointments panel was established to recommend the appointees. The Panel consisted of the Chair and Deputy Chair of OMSA, along with the independent Chair of the Complaints Committee and the Chief Ombudsman.
13. OMSA's complaints process is fast and free for consumers. Complaints are made online by submitting the online complaints form. Substantive complaints are generally

determined within fourteen days. The Chair of the Committee has the power to triage complaints that do not show an arguable breach. He also has the power to direct interim take down of content pending determination, where there is a real risk of significant harm.

14. In the two years since it has been open for business, nearly thirty rulings or decisions have been issued.
15. OMSA uses a similar format to that used by the Advertising Standards Authority and the NZ Press Council, and outsources the secretariat to the ASA to ensure complaints are dealt with quickly and efficiently.

#### **OMSA's current powers extend to VOD**

16. It will be quick to implement the OMSA-Option 2 solution. OMSA was established to be agile and adaptable to meet the needs of consumers in relation to online content, and can broaden its scope of work to VOD content within its existing framework.
17. Under its Constitution OMSA's objectives are wider than just online news. Its objects include:
  - (a) to "maintain proper and generally acceptable standards in online media", and
  - (b) to "establish and promote an effective system of voluntary self-regulation in respect to online media standards", and
  - (c) to promulgate Codes on any aspect of online media standards.
18. In addition to its current broadcast members who are VOD providers, it will also be open for other local and international providers to join, including:
  - (a) Other providers of SVOD (eg Lightbox, Netflix and Quickflix); and
  - (b) Providers of Transactional VOD, eg Easyflix, Googleplay, iTunes, NZ on Screen, Quickflix, and Xbox Video; and
  - (c) Foreign providers of VOD content.
19. The only criteria for membership of OMSA is that the applicant:

- (a) is a media proprietor, individual or organisation that carries on activities aimed at a public audience,<sup>2</sup>
  - (b) agrees to pay a membership subscription,<sup>3</sup>
  - (c) submits to the jurisdiction of the OMSA complaints process and complies with all orders made under that process.<sup>4</sup>
20. If necessary, OMSA can easily amend its membership criteria to ensure that any VOD providers that fall outside its current membership can join.

### **Self-regulation is the best option for VOD content**

21. OMSA's members are united by a common view that it is in the interests of the New Zealand public, media companies and the government that the regulation of all content, irrespective of platform, should be the responsibility of a self-regulatory body.
22. Well managed self-regulatory systems have been shown to be more responsive to the public's needs, better able to respond to the changing technologic landscape and cheaper to operate. Moreover, media freedom from a state-appointed regulator, however benign that regulator may be, is considered 'best practice' for a modern democratic society.
23. It is the view of OMSA members that the role of any government with regards to audio-visual content should focus on the control of 'objectionable' material. The state's resources are better utilised enforcing restrictions on material that encourages the sexual exploitation of children, for example, rather than on classifying light entertainment.
24. A voluntary self-regulatory model has the significant advantage of being flexible and adaptable as the market continues to develop. It has the agility to be able to quickly respond to changing consumer needs in a way that legislation cannot. As the discussion document recognises, this option *"would be the least disruptive option to implement, as no legislative change would be required; the Classification Act would continue to apply with respect of objectionable publications. There would be little cost to Government. [...] This option may also be one of the quicker to implement."*<sup>5</sup>
25. The only perceived disadvantage identified in the discussion document is that introducing a further regime would add to public confusion. There is no evidence of

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<sup>2</sup> Clause 5 of its Constitution

<sup>3</sup> Clause 5 of its Constitution

<sup>4</sup> OMSA membership application form declaration

<sup>5</sup> Page 16 discussion document

public confusion at present. At a pragmatic level, if a consumer sends a complaint to the wrong regulator, they will be directed to where their complaint should be sent.

### **Next steps**

26. The key objective is that consumers are able to make informed choices and to prevent harm.
27. OMSA will develop and publish a set of classifications and disclosure requirements for online VOD content. We understand that all of the New Zealand-based VOD providers are willing to work together on an industry-led Code.
28. It will be developed with careful consideration of the existing BSA and FVLB codes to ensure consistency as much as possible, while also taking into account the nature and extent of unregulated content online.<sup>6</sup>
29. OMSA will develop a documented classifications and complaints process, which it will publish it on its website. The process will reflect the following:
  - (a) It is envisaged there will be a single Classifications Code, treating like content alike, for online consumption.
  - (b) It is intended that OMSA members will classify material themselves in accordance with the Classifications Code.
  - (c) OMSA will develop a training and certification process to ensure (as far as is possible) the consistent application of the classifications.
  - (d) We will also look to develop a centralised database for content classifications to be recorded, so that, at least in the case of non-exclusive content, like cases are treated alike.
  - (e) In the first instance, viewers' complaints will be dealt with in-house by each member to ensure the expeditious resolution of complaints and, if necessary, the reclassification of material.
  - (f) We envisage that a delegated subcommittee of OMSA independent complaints committees will adjudicate on complaints that cannot be resolved.<sup>7</sup>

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<sup>6</sup> As the discussion document notes at page 12, the popularity of unregulated content sources should be considered in determining the appropriate level of regulation of professionally distributed content.

<sup>7</sup> It may be smaller in size, but will continue to have a majority of public members, and it may be helpful for the industry representative/s to have particular experience in labelling/classifications.

(g) Where content is deemed to have been incorrectly classified, members will be required to promptly remove the content, and ensure it is correctly reclassified before making it available again.

(h) All decisions will be published on the OMSA website.

30. OMSA would be able to submit regular (6 or 12 monthly) reports to the Ministry of Culture and Heritage to enable it to monitor its performance.

### **Conclusion**

31. OMSA has a track record of providing responsible and effective self-regulation of media content. It has a mandate from members to extend its role to VOD classification and complaints. It is hoped that this can be launched by the beginning of 2016.

32. We would be happy to meet with MCH representatives, and will keep you informed of progress in our implementation of this service.

Yours sincerely



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