



# **Classification (Advertising of Unclassified Films and Computer Games Scheme) Determination 2009<sup>1</sup>**

*Classification (Publications, Films and Computer Games) Act 1995*

I, BRENDAN O'CONNOR, Minister for Home Affairs, make this Determination under subsection 31 (1) of the *Classification (Publications, Films and Computer Games) Act 1995*.

Dated 17 June 2009

BRENDAN O'CONNOR  
Minister for Home Affairs

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## 1 Name of Determination

This Determination is the *Classification (Advertising of Unclassified Films and Computer Games Scheme) Determination 2009*.

## 2 Commencement

This Determination commences on 1 July 2009.

## 3 Revocation

The *Classification (Advertising for Unclassified Films) Instrument 2005* is revoked.

#### **4 Application of scheme**

- (1) The scheme in this Determination applies to:
  - (a) advertising for an unclassified film or an unclassified computer game likely to be classified G, PG, M, or MA 15+; and
  - (b) advertising for an unclassified film likely to be classified R 18+.
- (2) The scheme does not apply to:
  - (a) advertising for an unclassified film or an unclassified computer game likely to be classified RC (Refused Classification); and
  - (b) advertising for an unclassified film likely to be classified X 18+.

#### **5 Definition**

In this Determination:

*Act* means the *Classification (Publications, Films and Computer Games) Act 1995*.

*Note 1* For the definitions of *advertisement*, *classified* and *film*, see section 5 of the Act.

*Note 2* For the definition of *computer game*, see section 5A of the Act.

#### **6 Conditions for advertising unclassified films and unclassified computer games**

For paragraph 31 (1) (a) of the Act, an unclassified film or an unclassified computer game may be advertised in accordance with the conditions set out in Schedule 1.

#### **7 Industry self-assessment of likely classification for unclassified films and unclassified computer games**

For paragraph 31 (1) (b) of the Act, the requirements relating to self-assessment by industry of the likely classification of an unclassified film or an unclassified computer game are set out in Schedule 2.

# Schedule 1      Conditions for advertising unclassified films and unclassified computer games

(section 6)

## Part 1      Preliminary

### 1.1      Definitions

In this Schedule:

*long message* means ‘Check the Classification’.

*long message box* means the box in the form and proportions shown in item 1 of the table in clause 2.10.

*message* means the long message or the short message.

*printed advertisement* includes an advertisement in a newspaper, magazine, flyer or poster.

*short message* means ‘CTC’.

*ticker*, for a screened image, means the area in the advertisement for an unclassified film or an unclassified computer game used to give information about the lack of classification of the film or the computer game.

*unclassified computer game* means a computer game likely to be classified G, PG, M or MA 15+.

*unclassified film* means a film likely to be classified G, PG, M, MA 15+ or R 18+.

*Note* For the definition of *Board*, see section 5 of the Act.

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## **Part 2 Message displays**

### **2.1 Requirement to display message**

- (1) An advertisement for an unclassified film or an unclassified computer game must display a message in accordance with this Part.
- (2) The following need not display a message:
  - (a) an advertisement in the form of a window cling, display bin, standee or banner;
  - (b) a printed advertisement that has an area of at least 300 cm<sup>2</sup>;
  - (c) an advertisement on the Internet that is smaller in area than 176 pixels x 128 pixels.

### **2.2 Message displays — film guides and directories**

- (1) Advertising of future session times for an unclassified film that is printed or displayed in a film guide or directory must include the short message, in letters the same size as those of the title of the film, after the title of the film.
- (2) A printed film guide or directory which contains one or more advertisements for an unclassified film must include a key or legend explaining the short message in text at least 2 mm high.
- (3) An electronic film guide or directory which contains one or more advertisements for an unclassified film must, if practicable, include a key or legend explaining the short message.
- (4) For the key or legend mentioned in subclauses (2) and (3), the long message is sufficient.

### **2.3 Message displays — printed advertisements**

#### *Area less than 75 cm<sup>2</sup>*

- (1) A printed advertisement for an unclassified film or an unclassified computer game with an area of less than 75 cm<sup>2</sup> must display the short message in text with a point size of at least 5 mm.

#### *Area at least 75 cm<sup>2</sup> but less than 300 cm<sup>2</sup>*

- (2) A printed advertisement for an unclassified film or an unclassified computer game with an area of at least 75 cm<sup>2</sup> but less than 300 cm<sup>2</sup> must display the long message box:
  - (a) at least 10 mm high; and
  - (b) at least 31 mm wide; and

(c) in text with a point size of at least 5.5 mm.

*Area at least 300 cm<sup>2</sup>*

- (3) A printed advertisement for an unclassified film or an unclassified computer game with an area of at least 300 cm<sup>2</sup> may display either the short or the long message.
- (4) A message that is required to be displayed, or that is displayed, under subclause (2) or (3):
  - (a) must appear in the lower left corner of the advertisement; and
  - (b) must not be obscured by other material displayed on the advertisement, by another advertisement, or by any other object or thing.
- (5) If it is not practicable to comply with the requirement in paragraph (4) (a), the requirement is satisfied if the message is displayed as close as practicable to the lower left corner.

## **2.4 Message displays — Internet advertisements**

- (1) An Internet advertisement for an unclassified film or an unclassified computer game, other than a moving image advertisement, must display:
  - (a) the long message box; or
  - (b) the short message and, if practicable, a key or legend explaining the short message.
- (2) The message must be displayed in the lower left corner of the advertisement or, if this is not practicable, in another prominent location in or near the advertisement.
- (3) For the key or legend mentioned in paragraph (1) (b), the long message is sufficient.

## **2.5 Message displays — moving image advertisements**

- (1) A moving image advertisement for an unclassified film or an unclassified computer game must include:
  - (a) at the beginning of the advertisement:
    - (i) for an advertisement of less than 60 seconds — a still or a moving image, shown for at least 3 seconds, that includes the long message in a height of at least 15% of the height of the active screen area of the presentation format; or
    - (ii) for an advertisement of at least 60 seconds — a still or a moving image, shown for at least 10 seconds, that includes the long message in a height of at least 15% of the height of the active screen area of the presentation format; or

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- (b) during the advertisement:
    - (i) for an advertisement of at least 10 seconds — a ticker, shown for at least 10 seconds, that includes the long message in a height of at least 5% of the height of the active screen area of the presentation format; or
    - (ii) for an advertisement of less than 10 seconds — a ticker, shown for the length of the advertisement, that includes the long message in a height of at least 5% of the height of the active screen area of the presentation format.

*Note* The advertising time for an advertisement for an unclassified film or an unclassified computer game contained in a larger advertisement does not include the advertising time for other material also included in the larger advertisement.

- (2) A ticker:
  - (a) must be at least the greater of:
    - (i) 32 pixel lines; and
    - (ii) 5% of the height of the active screen area of the presentation format; and
  - (b) must be displayed in the area of the screen commonly known as the title-safe area.

## **2.6 Message displays — small screen advertisements**

If a moving image advertising an unclassified film or an unclassified computer game is shown on a screen with a presentation format of less than 300 pixels in height, the advertisement must:

- (a) comply with subclause 2.5 (1); or
- (b) include:
  - (i) the short message and, if practicable, a key or legend explaining the short message; or
  - (ii) as soon as practicable after the beginning of the advertisement, a still or moving image that includes the long message in a height of at least 5% of the height of the active screen area of the presentation format.

## **2.7 Ceasing to display message after classification**

- (1) If an unclassified film or an unclassified computer game is classified, advertising matter for the film or the computer game must cease to display the message:
  - (a) for advertising matter in the form of a trailer advertisement for a cinema-release film — within 7 days after the person to whom the certificate of classification was granted is notified of the classification and no less than 48 hours before the release of the film for public viewing; or

- (b) in any other case — within 7 days, and preferably within 48 hours, after the person to whom the certificate of classification was granted is notified of the classification.
- (2) However, the following kinds of advertising material need not be updated:
- (a) if the print deadline has passed — a printed advertisement;
  - (b) a poster or a billboard;
  - (c) advertising material displayed in an in-store kiosk, a trailer loop reel, a demonstration disk, or an in-store retail loop;
  - (d) advertising material on a video tape, video disc or computer game that is already on the market;
  - (e) advertising in another format that would be unduly onerous and not feasible to update after classification.

## 2.8 Messages to be legible

A message that is required to be displayed, or that is displayed under subclause 2.3 (2) or (3), must be displayed:

- (a) so that the message is clearly legible and the typeface and colours are prominent and easily distinguishable from any other information, diagram or moving image with which the message is displayed; and
- (b) if the advertisement is displayed on the Internet or on a screen — for a period that is sufficient to allow the message to be read in full.

## 2.9 Advertising with classified materials

A distributor may make advertising material for an unclassified film or an unclassified computer game available for advertising with classified material only if the film or the computer game has been assessed by the Board or by an authorised advertising assessor as having a likely classification level no greater than that of the classified material, in accordance with the following table.

<b>Classified film or computer game</b>	<b>Assessed likely classification of advertised film or computer game</b>
G	G
PG	PG or G
M	M, PG or G
MA 15+	MA 15+, M, PG or G
R 18+ (for films only)	R 18+, MA 15+, M, PG or G



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## 2.10 Long message box

- (1) In this clause, a box superimposed on a black background does not include the black background.
- (2) The long message box is shown in the following table.

Item	Long Message Box	CMYK values	RGB values
1		C 0 M 50 Y 100 K 0	R 255 G 127 B 0

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## **Schedule 2      Assessment by industry of likely classification of films and computer games**

(section 7)

### **Part 1      Preliminary**

#### **1.1      Definition**

In this Schedule:

***barring notice*** has the same meaning as in paragraphs 31 (3) (d) and (e) of the Act.

*Note 1* For the definitions of ***Board***, ***classifiable elements***, ***classified***, ***Code*** and ***Director***, see section 5 of the Act.

*Note 2* ***Classification guidelines*** means the guidelines referred to in section 12 of the Act.

## **Part 2      Authorised advertising assessors**

### **2.1      Authorised advertising assessors**

- (1) For paragraph 31 (3) (a) of the Act, the Director may, in writing, authorise a person as an authorised advertising assessor for assessing the likely classification of films, computer games, or both films and computer games.
- (2) The Director must not authorise a person as an authorised advertising assessor if:
  - (a) the person has not completed training, approved by the Director, in the making of assessments; or
  - (b) a notice under clause 4.2 is in force for the person.

## **Part 3      Assessment by authorised advertising assessor**

### **3.1      Assessment by authorised advertising assessor**

- (1) The authorised advertising assessor must assess the classification that, in the opinion of the assessor, the film or the computer game would be likely to have if the film or the computer game were classified, having regard to the material and information available to the assessor when making the assessment.
- (2) In reaching an opinion under subclause (1), the assessor must make an assessment on the basis of the best information reasonably available at the time, or on the basis of reasonable assumptions, or both.
- (3) The assessor must not assess the likely classification of the film or computer game if the assessor considers that the material and information available to the assessor is insufficient (whether or not the assessor has made a request under subclause (4)).
- (4) The assessor may request, from the distributor, further information for the purpose of enabling the assessor to deal with the application, within the period specified in the request.
- (5) The assessor may decline to make an assessment, or decline to further deal with an assessment, until the information is given to the assessor in accordance with the request under subclause (4).
- (6) This clause does not require the assessor to obtain further information under subclause (4) for the purpose of an assessment.

### **3.2      Considerations to be taken into account when making assessment**

For subclause 3.1 (1), in assessing the likely classification of an unclassified film or an unclassified computer game, the authorised advertising assessor must identify the likely classifiable elements of the film or the computer game, and their likely impact.

### **3.3      Revocation and amendment of assessment**

- (1) This clause applies if, after making an assessment under clause 3.1, the authorised advertising assessor thinks that:
  - (a) the film or computer game contains, or will contain, material of which the assessor was unaware when the assessment was made; or
  - (b) the assessment is otherwise inaccurate.

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- (2) If, because of the opinion formed under subclause (1), the assessor would have assessed the film or computer game as likely to have:
- (a) a higher classification, the assessor must:
    - (i) amend the assessment in a manner consistent with clause 3.1; or
    - (ii) if the requirements of clause 3.1 cannot be met — revoke the assessment;
  - (b) a lower classification, the assessor may:
    - (i) amend the assessment in a manner consistent with clause 3.1; or
    - (ii) if the requirements of clause 3.1 cannot be met — revoke the assessment.

### **3.4 Retention of assessment**

- (1) An authorised advertising assessor must keep a copy of each assessment of an unclassified film or unclassified computer game, and of the information on which he or she based the assessment, for at least 12 months after the date of the assessment.
- (2) A distributor must keep a copy of the assessment of an unclassified film or an unclassified computer game for at least 12 months after the date when he or she received notice of the classification of the film or the computer game.

### **3.5 Reliance by distributors on advertising assessment**

The distributor of an unclassified film or an unclassified computer game must not rely on an assessment of the likely classification of the film or computer game if the distributor:

- (a) has information or material that was not available to the assessor at the time of the making of the assessment; and
- (b) where the distributor reasonably believes that the information or material would be likely to lead to a different assessment of the likely classification.

## **Part 4      Sanctions**

### **4.1      Requests to authorised advertising assessors for copies of assessments**

If the Director reasonably thinks that an authorised advertising assessor has made an assessment that did not reasonably apply the Act, the Code and the classification guidelines, the Director may at any time require the assessor to give to the Director:

- (a) copies of any assessments made by the assessor within the preceding 12 months; and
- (b) the information and materials on which those assessments were based.

### **4.2      Barring notice to authorised advertising assessor**

The Director may, by written notice, revoke, or suspend for the period specified in the notice, the authorisation of a person as an authorised advertising assessor if the Director is satisfied that 1 or more of the following conditions apply:

- (a) if the Director has requested that the assessor complete further training, approved by the Director, in the making of assessments — the assessor has not completed the training;
- (b) the assessor has prepared 2 or more assessments of unclassified films or unclassified computer games that:
  - (i) could not reasonably have been made on the information and materials available to the assessor; or
  - (ii) did not reasonably apply the Act, the Code and the Classification Guidelines to the information available to the assessor when making the assessment;
- (c) the assessor has failed to comply with the record-keeping requirements under subclause 3.4 (1).

### **4.3      Barring notice to distributor**

- (1) The Director may give a written notice to a distributor if the Director is satisfied that both of the following apply:
  - (a) the distributor has, at least twice, used an assessment of a likely classification of an unclassified film or an unclassified computer game that is less than the ultimate classification of the film or computer game; and
  - (b) the assessments were not based on the best information reasonably available at the time, or on the basis of reasonable assumptions, or both.

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- (2) If the Director gives a notice to a distributor under subclause (1), the Director may, in writing, prohibit the distributor for up to three years from either, or both:
- (a) advertising an unclassified film or an unclassified computer game in reliance on an assessment of its likely classification by an authorised advertising assessor;
  - (b) applying to the Board for the assessment of an unclassified film or of an unclassified computer game.
- (3) The notice takes effect from the date specified in the notice and continues in force for a period, not exceeding 3 years, specified in the notice.

#### **4.4 Review by AAT**

An application may be made to the Administrative Appeals Tribunal for review of a decision of the Director under:

- (a) clause 2.1;
- (b) clause 4.2;
- (c) clause 4.3.

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#### **Note**

1. All legislative instruments and compilations are registered on the Federal Register of Legislative Instruments kept under the *Legislative Instruments Act 2003*. See <http://www.frli.gov.au>.