

Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Bill

Government Bill

As reported from the Governance and Administration Committee

Commentary

Recommendation

The Governance and Administration Committee has examined the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Bill and recommends that it be passed with the amendments shown.

Introduction

This bill aims to reduce the potential for harm to consumers from viewing inappropriate content while using commercial video on-demand platforms. Currently providers of commercial video on-demand content are displaying inconsistent labels and consumer information, or none at all, for content available on their platforms. This is because of a gap in current legislation where on-demand online content in New Zealand is not subject to the mandatory labelling requirements that films for cinematic or DVD release are.

The bill would amend the Films, Videos, and Publications Classification Act 1993. It would require commercial video on-demand (CVoD) content that is made available in New Zealand to display appropriate and consistent labels. These labels would provide information about the content's rating or classification, and a description so that consumers can make informed decisions about what to watch.

Proposed amendments

This commentary covers the main amendments we recommend to the bill as introduced. We do not discuss minor or technical amendments.

Commencement

Clause 2 of the bill as introduced would bring the operational provisions in this legislation into force on 1 January 2021 while supporting provisions would commence on 1 July 2020. The intention is that, from six months after enactment, specified CVoD providers would be required to label all new content that was added to their platform. From twelve months after enactment, specified CVoD providers would be required to label both new and existing content on their platforms.

We propose amending clause 2 so that the commencement date for clause 14 would be 1 July 2020. This would enable the Office of Film and Literature Classification (the Classification Office) to approve specified providers' self-rating systems in advance of 1 January 2021, ensuring that providers were ready to comply on this date.

Insertion of new definitions

Clause 4(1) would amend section 2 of the Act to insert a number of new definitions including "commercial video on-demand content", "CVoD online rating tool" and "specified CVoD provider".

The definition of CVoD content is meant to cover any video on-demand content that is made available to New Zealanders for a fee or other arrangement. Other arrangements would include instances where the subscription fee for a service is waived because a customer receives it for free as part of a promotional deal associated with that service or another service, such as bundled with an internet or mobile phone plan. However, the definition should not cover video on-demand services that are provided by broadcasters as a part of a pay-TV package. In these cases, the video on-demand service is an extension of, or alternate mechanism to access, the pay-TV package, rather than a standalone CVoD service.

To ensure such broadcasters are not covered by the definition, we recommend amending the definition of "commercial video on-demand content" to remove the words "whether or not it is packaged with another service" and adding a new paragraph to provide that video on-demand content made available as part of a pay-TV package is not covered, if that content has been classified in accordance with a code of broadcasting practice approved by the Broadcasting Standards Authority.

The definition of "specified CVoD provider" aims to give clarity and certainty about which CVoD providers are regulated by the bill, by listing those providers in new Schedule 4. We recommend amending the definition to remove references to a division or affiliate of companies, as these words complicate the definition unnecessarily and do not substantively add to its legal effect.

We do not think it is necessary for the bill to distinguish the "CVoD online rating tool" from other forms of approved self-rating systems. We therefore recommend removing the definitions of "CVoD online rating tool" and "self-rating tool" from clause 4. References to "self-rating tool" throughout the bill should be replaced with "approved self-rating system". References to the CVoD online rating tool should also be removed from the bill.

Clause 4 as introduced would amend the definition of “film” in the Act so it included video on-demand content. This means that the Act’s existing requirements that apply to classifying and rating films would also apply to video on-demand content.

The inclusion of video on-demand in the definition of “film” would mean that advertisements for video on-demand content would be captured by the definition of “film poster” and would become subject to labelling obligations under the Films, Videos, and Publications Classification Regulations 1994. These obligations are designed for print advertisements and are not useful for online digital advertisements, which are the likely medium for advertisements for commercial video on-demand. For this reason, we recommend amending the definition of “film poster” to exclude video on-demand content.

Films exempt from labelling requirements

Clause 6 as introduced would amend section 8(1) of the Act, which lists the types of films that are exempt from labelling requirements. The amendment would insert section 8(1)(r) to add to the exempt list any video on-demand content made available by a person who is not a specified CVoD provider. This would mean that the requirement to rate and label video on-demand content before making it available to the public would only apply to the specified CVoD providers listed in new Schedule 4.

We recommend amending clause 6 to add a further exemption to section 8(1). It would cover video on-demand content that was uploaded by a user of a specified CVoD provider’s online platform but was not commissioned by the provider.

We also recommend amending clause 6 to simplify the wording of the legislation. As introduced, in order to apply the existing exemptions in section 8(1) to CVoD content, the bill relies on a reference to section 6 in new section 46B(1)(a). We think this approach is unclear. Instead, we recommend amending clause 6 so that section 8(1) refers directly to section 46B.

Labelling CVoD content

Clause 7 would insert new Part 3A, stipulating the new requirements for labelling CVoD content made available by specified providers. The purpose of this Part is to reduce the risk of psychological and physical harm to people who view CVoD content, particularly vulnerable people and children. It would do this by requiring specified CVoD providers to provide better information about the content, to enable consumers to make informed viewing decisions. We recommend inserting new section 46AAA to state this purpose.

New section 46B would require specified CVoD providers to rate and label the CVoD content that they make available in New Zealand. We note that some submitters do not see a need for the requirements in new section 46B, maintaining that providers are already self-regulating content, and double regulation is not necessary. (The New Zealand Media Council (NZMC) has established a voluntary CVoD classifications code of compliance for commercial video on-demand. This code is modelled on the Pay TV Code under the Broadcasting Act.) There is a lack of consistency between

how different CVoD providers label their content currently, and we do not believe that the existing voluntary NZMC regime for CVoD content is sufficient to ensure clear and consistent consumer information across all CVoD providers.

We recommend making a number of changes to sections 46B to 46F to improve the clarity and workability of the legislation. We propose deleting the reference to rating, since this is a component of the labelling processing in most cases, and does not occur when content has been previously classified. Instead, the focus would be on the key requirement that content be labelled.

We recommend that the requirements in relation to labelling should be set out in the following order: if an existing label or classification exists, the content must use that label; if no label or classification exists, a specified CVoD provider has the option to use an approved self-rating system or to submit the content to the labelling body.

New section 46C would apply if CVoD content had previously been labelled or classified in accordance with the Act. It would require specified CVoD providers to apply the existing label or classification and description to the content.

New section 46D would require a specified CVoD provider to use an approved self-rating system to label content, or refer it to the labelling body, if it has not previously been classified or labelled.

If use of a self-rating tool identified the content as potentially objectionable, the provider would need to refer the content to the Classification Office for classification.

We think this Part should describe, at a high level, what the self-rating system is to achieve, and recommend inserting new section 46DA to set out the factors that an approved self-rating system must take into account when determining a rating and description. It would indicate what the content descriptions are intended to communicate. It would serve as a reference point for specified CVoD providers about the expectations they must meet under the new regime, and for the Classification Office in monitoring compliance.

As introduced, new section 46E would allow specified CVoD providers to apply to the Chief Censor for approval of a system to rate and label CVoD content. The Chief Censor could enter into an agreement with a specified CVoD provider that set out the terms and conditions under which the provider was approved to use their own system to rate and label the content they make available in New Zealand.

We recommend that section 46E be amended so that the approval of self-rating systems, and the terms and conditions of that approval, are directed to meeting the requirements set out in section 46DA.

We recommend amending sections 46E and 46F, and inserting section 46FA, to clarify the Classification Office's powers in relation to cancelling self-rating system agreements and suspending approvals.

New section 46F(1) would require the Classification Office to annually review specified CVoD providers' use of self-rating systems. We recommend inserting new subsection 46F(2) to provide that the Chief Censor may require a prescribed fee for exer-

cise of powers under section 46F. The power to prescribe fees already exists in section 149 and we recommend removing new section 46F(4) to avoid duplication.

New section 46FA would enable the Chief Censor to suspend approval to use a self-rating system if the provider is not operating the system in accordance with the terms and conditions of approval. The Chief Censor would be required to give reasons for the suspension. Subsection (3) would enable the Chief Censor to cancel approval after giving the provider a reasonable opportunity to address the concerns, if the concerns were not addressed.

Films to be labelled

Clause 11 would amend section 6 to clarify that the section applies to video on-demand content that is made available to people in New Zealand. As we are recommending amending clause 6 of the bill so that section 8(1) refers directly to the self-labelling requirement in section 46B, we also recommend amending clause 11 to insert a new section 6(3) that cross-references section 46B.

Application for issue of a label

Clause 12 would amend section 9, which deals with applications to the labelling body for the issue of a label. The amendment clarifies how the section applies to CVoD content that a specified CVoD provider has already rated using an approved self-rating system.

The current wording in section 9(1) does not clearly include a specified provider who intends to make CVoD content available in New Zealand. We recommend amending section 9(1) to explicitly refer to a specified CVoD provider who intends to make the film available as commercial video on-demand content in New Zealand.

The details of how the labelling body assesses film content are currently specified in regulations. These will need to be amended to accommodate CVoD content. The proposed amendment to section 9(2) is necessary to retain options for assessment where content has already been self-labelled. We recommend that the wording proposed in section 9(2)(a) be amended so that it does not exclude content that is identical to self-labelled CVoD content from being considered by the labelling body.

Issue of labels in respect of films

Clause 13 would replace section 36(2), which deals with the issue of labels in cases where the Classification Office has examined a film. The amendment would make it possible for the Classification Office to direct a specified CVoD provider to issue a label.

We recommend amending clause 13 to insert new section 36(1A) that covers CVoD content that is referred to the Classification Office as part of the self-rating process.

Section 36(4) means that the Classification Office cannot direct the labelling body to issue a label in respect of a film that it has classified as objectionable. We recommend

amending clause 13 so that section 36(4) covers specified CVoD providers as well as the labelling body.

Section 36(5) provides that where the Classification Office has directed the labelling body to issue a label for a film, any label that was previously issued for that film by the labelling body will be cancelled. We recommend amending section 36(5) to include additional labels previously assigned to CVoD content among those deemed to be cancelled where the Classification Office has directed that a new label be issued in respect of any film.

Functions of the Classification Office

Clause 14 as introduced would amend section 77 to give the Classification Office some new functions. They are to develop, provide, and maintain the CVoD online rating tool for use by specified CVoD providers; to approve self-rating systems developed by specified CVoD providers; and to review the use of the self-rating tools.

The CVoD online rating tool has been designed by the Classification Office and will become a component of some approved self-rating systems used by CVoD providers. To reflect this, we recommend that subsection (aa) is amended to clarify that the Classification Office's function will be to support and facilitate the development of approved self-rating systems by specified CVoD providers. We also recommend inserting cross-references to relevant provisions in Part 3A in the paragraphs setting out functions of the Classification Office.

We recommend that subsection (aab) is inserted so that another function of the Classification Office will be to provide and maintain a database of labels. We believe that the Classification Office should be responsible for the provision and maintenance of a database of all films that have been labelled under the Act, including the prescribed information for each film. We recommend amending clause 14 to include the new function in section 77 of the Act. We also recommend inserting new clause 12A, which would insert new section 11A into the Act, to set out this new function.

We also recommend that a new regulation-making power be inserted to prescribe the information to be held in the database. This is contained in proposed new clause 18 to amend section 149.

Decisions of the Classification Office

We recommend inserting clause 13A to amend section 38, which sets out requirements for the Classification Office to provide written notice of decisions that it makes on publications referred to it. This clause would amend section 38(2)(d) so that it accounts for the self-rating process in addition to the existing labelling body process. We think this clause is necessary to ensure that CVoD content is subject to the same processes and transparency requirements as other publications for which the Classification Office makes classification decisions.

Non-compliance with labelling requirements

We recommend inserting clause 14A to amend section 120, which outlines offences related to labelling. This amendment is necessary to clarify that offences in section 120 of the Classification Act cover CVoD content.

Conditions relating to the display of restricted publications

Section 27(5) of the Act sets out the conditions that may be imposed by the Classification Office if a film that has been classified as restricted is publicly displayed. This also includes conditions on the display of film posters for that film.

We recommend inserting Clause 12B to clarify that section 27(5) does not apply to video on-demand content. We think this is necessary as the conditions outlined in section 27(5) are not appropriate for CVoD content, which will be made available online.

Instead, we recommend inserting subsection (6), to provide for conditions that may be imposed with regard to the display of advertising material for video on-demand content that has a restricted classification. These conditions would apply to both the physical and online display of advertising material for CVoD content.

Offence to possess objectionable publications

Under section 131 of the Act, it is an offence to possess objectionable publications, while section 131(5) sets out defences to the offence. A specified CVoD provider should not be liable for an offence under sections 131 or 131A where they have identified CVoD content as potentially being objectionable, and then referred the content to the Classification Office for classification under Part 3A, section 46D. We recommend inserting new clause 17 to amend section 131 of the Act and provide a defence for specified CVoD providers who have CVoD content that is referred to the Classification Office for classification in accordance with this Part.

Regulations

Section 149(i) of the Act currently allows regulations to recommend the form and content of labels to be used for the purposes of the Classification Act and to regulate their display and advertising. We recommend amending section 149 to explicitly provide for regulations to prescribe the requirements for the display of labels on CVoD content, and advertisements for CVoD content, provided by specified CVoD providers.

We also recommend amending section 149 to enable prescription of procedures relating to the self-rating process. This would help make the requirements of the self-rating process clearer for specified CVoD providers.

We also recommend a new regulation-making power that enables factors to be prescribed that must be taken into account when ratings are determined by an approved self-rating system.

Finally, we recommend including a new regulation-making power to prescribe the information that must be included in the film database that the Classification Office is required to provide and maintain.

New Schedule 1AA

Clause 1 of Schedule 1AA refers to classifications of content made in accordance with a code of broadcasting practice before commencement of the legislation. It means that, if CVoD content uploaded before 1 July 2020 has been labelled in accordance with the Broadcasting Act 1989, that classification must be treated as if it were a rating made by the provider using the CVoD online rating tool.

We recommend that this be amended to make it clearer by providing that if content has been uploaded by a specified CVoD provider before 1 July 2020 that has been so labelled, the provider is not required to issue a label for the content under new section 46B.

Clause 2 of Schedule 1AA refers to unrated CVoD content made available before 1 January 2021. The rating and labelling requirements in the bill would not apply to this content until 1 July 2021. However, the Chief Censor may require a specified CVoD provider to issue a label in respect of this content before 1 July 2021.

The reason the bill proposes a delayed commencement date for some provisions is to allow time for specified CVoD providers to establish systems and processes to comply with the bill. As previously noted, however, we think it would be useful for the Classification Office to be able to approve specified providers' self-rating systems in advance of 1 January 2021, to ensure providers are ready to comply on that date.

For this reason, we recommend inserting Clause 3 of Schedule 1AA to enable the Classification Office to approve specified CVoD providers' self-rating systems in advance of 1 January 2021.

New Schedule 4

Schedule 4 sets out the list of CVoD providers who are captured in the definition of "specified CVoD provider" in clause 4 and are regulated by the provisions of the bill. This Schedule could be amended by an Order in Council, made on the recommendation of the Minister of Internal Affairs.

We note that the Schedule aims to name the legal entity that a customer enters a relationship for CVoD services with. This can be a company registered in New Zealand or elsewhere. We understand that Lightbox has been acquired by Sky Network Television Limited, so Lightbox is now regulated because Sky, its parent company, is named in the Schedule. We recommend amending Schedule 2 to remove "Lightbox New Zealand Limited, a company registered and based in New Zealand" from the new Schedule 4.

Sony Corporation is the ultimate parent company of PlayStation Video Store. It is also parent of "Sony Interactive Entertainment Europe Limited", the company currently in the Schedule. We recommend amending Schedule 2 to replace "Sony Inter-

active Entertainment Europe Limited, a company registered and based in the United Kingdom” with “Sony Corporation, a company registered and based in Japan”. This would ensure that the PlayStation Video Store is covered no matter which subsidiary of Sony Corporation provides the service at any point in time.

National Party view

National members of the committee thank the committee secretariat and officials from the Department of Internal Affairs, the Classifications Office and others who provided advice and engagement on this bill. A number of concerns of National Party members have been discussed and addressed through the consideration of this bill which will ensure a number of industry stakeholders will be less impacted by the proposed regulatory regime.

However, National Party members are still deeply concerned this legislation will lead to the geo-blocking or inaccessibility of content for New Zealand consumers of media on digital platforms which could lead to a material deficit in international content or a reluctance for some global content providers to operate within New Zealand’s regulatory regime. We are also concerned the mechanisms of this bill allow for the increased possibility of unauthorised or illegal content access and the decision by more consumers to use virtual private networks to avoid overbearing censorship or regulatory regimes in New Zealand.

National members of the committee believe that the legislation should be tabled for further discussion once the Government’s long delayed media sector review takes place as we feel the Government’s failure to consider this issue within the scope of that review will mean this House will have to re-ligate the topics of discussion outlined in the Bill.

In noting this, we also believe that the commencement date provisions in the bill are too immediate and the National Party will seek to introduce appropriate supplementary order papers regarding the commencement date and other timings of the implementation of the effects of the bill with the committee’s proposed changes and will vote for the bill at second reading to allow for this.

Appendix

Committee process

The Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Bill was referred to the committee on 17 December 2019. The closing date for submissions was 5 February 2020. We received and considered 19 submissions from interested groups and individuals. We heard oral evidence from 9 submitters at hearings in Wellington.

We received advice from the Department of Internal Affairs and the Office of Film and Literature Classification.

Committee membership

Dr Jian Yang (Chairperson)

Ginny Andersen

Kanwaljit Singh Bakshi

Sarah Dowie (until 27 May 2020)

Paul Eagle

Hon Peeni Henare

Denise Lee (from 27 May 2020)

Willow-Jean Prime

Lawrence Yule

Melissa Lee participated in this item of business.

**Films, Videos, and Publications Classification
(Commercial Video on-Demand) Amendment Bill**

Key to symbols used in reprinted bill

As reported from a select committee

text inserted unanimously

~~text deleted unanimously~~

Hon Tracey Martin

Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Bill

Government Bill

Contents

		Page
1	Title	2
2	Commencement	3
3	Principal Act	3

Part 1

New rating and labelling requirements for specified CVoD providers' commercial video on-demand content

4	Section 2 amended (Interpretation)	3
5	New section 4A inserted (Transitional, savings, and related provisions)	4
	4A Transitional, savings, and related provisions	5
6	Section 8 amended (Films exempt from labelling requirements)	5
7	New Part 3A inserted	5

Part 3A

Rating and labelling requirements for specified CVoD providers' commercial video on- demand content

<u>46AAA</u>	<u>Purpose of Part</u>	<u>5</u>
46A	Extraterritorial application to specified CVoD providers	5
46B	Duty to rate and label commercial video on-demand content	6
46C	Content previously rated <u>labelled</u> or classified	6
<u>46D</u>	<u>Content not previously labelled or classified</u>	<u>7</u>
<u>46DA</u>	<u>How ratings and descriptions must be determined</u>	<u>7</u>
<u>46D</u>	<u>Self-rating by specified CVoD provider</u>	<u>8</u>

	46E	Approval of providers' self-rating systems	8
	46F	Classification Office must annually review use of approved self-rating systems	9
	<u>46FA</u>	<u>Suspension and cancellation of approvals</u>	<u>9</u>
	46G	Complaints process	10
8		New section 150A inserted (Amendment of Schedule 4 by Order in Council)	10
	150A	Amendment of Schedule 4 by Order in Council	10
9		New Schedule 1AA inserted	11
10		New Schedule 4 inserted	11

Part 2

Related amendments

11		Section 6 amended (Films to be labelled)	11
12		Section 9 amended (Applications for issue of label)	11
<u>12A</u>		<u>New section 11A inserted (Classification Office must provide film database)</u>	<u>12</u>
	<u>11A</u>	<u>Classification Office must provide film database</u>	<u>12</u>
<u>12B</u>		<u>Section 27 amended (Conditions relating to display of restricted publications)</u>	<u>12</u>
13		Section 36 amended (Issue of labels in respect of films)	12
<u>13A</u>		<u>Section 38 amended (Decisions of Classification Office)</u>	<u>13</u>
14		Section 77 amended (Functions of Classification Office)	13
<u>14A</u>		<u>Section 120 amended (Non-compliance with labelling requirements)</u>	<u>14</u>
15		Section 121 amended (Unlawful issue of labels)	14
16		Section 122 amended (Meaning of distribute in sections 123 to 132)	14
<u>17</u>		<u>Section 131 amended (Offence to possess objectionable publication)</u>	<u>14</u>
<u>18</u>		<u>Section 149 amended (Regulations)</u>	<u>14</u>

Schedule 1

New Schedule 1AA inserted

Schedule 2

New Schedule 4 inserted

The Parliament of New Zealand enacts as follows:

1 Title

This Act is the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act **2020**.

2 Commencement

- (1) **Sections 4(2) and (3), 6, 7, and 11 to 16 11 to 13A, and 14A to 17** come into force on **1 January 2021**.
- (2) The rest of this Act comes into force on **1 July 2020**.

3 Principal Act

This Act amends the Films, Videos, and Publications Classification Act 1993 (the **principal Act**).

Part 1

New rating and labelling requirements for specified CVoD providers' commercial video on-demand content

4 Section 2 amended (Interpretation)

- (1) In section 2, insert in their appropriate alphabetical order:

approved self-rating system means a system approved by the Classification Office under **section 46E** that is to be used by a specified CVoD provider to rate and label the provider's commercial video on-demand content

commercial video on-demand content means video on-demand content that is made available to persons in New Zealand for a fee or other consideration, whether or not it is packaged with another service—

(a) means video on-demand content that is made available to persons in New Zealand for a fee or other consideration; but

(b) does not include video on-demand content that is made available on a platform provided by a broadcaster as part of a subscription-based television service if—

(i) the platform is only accessible by subscribers to the service; and

(ii) that content has been classified in accordance with a code of broadcasting practice issued or approved by the Broadcasting Standards Authority under section 21(1) of the Broadcasting Act 1989

Examples

A movie that can be downloaded from the Internet by a person who pays a one-off fee to access that movie.

A series made available to a person who paid a subscription fee for access to a catalogue of content to be accessed through a computer or other electronic device.

A short film made available to a person who has been given access to a catalogue of online content as part of a package of services supplied by a benefit of entering into a contract with an Internet provider.

- ~~**CVoD online rating tool** means the online rating tool provided by the Classification Office for use by specified CVoD providers to rate their commercial video on-demand content~~
- self-rating tool** means—
- (a) an approved self-rating system: 5
 - (b) the CVoD online rating tool
- specified CVoD provider** means—
- (a) a company listed in **Schedule 4**, to the extent that the company makes commercial video on-demand content available in New Zealand whether directly ~~(including through a division of the company)~~ or indirectly through a subsidiary or an affiliated company; and 10
 - (b) a subsidiary or affiliated company of a company listed in **Schedule 4**, if that subsidiary or affiliate makes commercial video on-demand content available in New Zealand
- video on-demand content** means content, in the form of visual images produced electronically and shown as a moving picture, that is made available to persons on-demand using a computer or other electronic device 15
- (2) In section 2, replace the definition of **film** with:
- film**—
- (a) means a cinematograph film, a video recording, and any other material record of visual moving images that is capable of being used for the subsequent display of those images, and includes any part of any film, and any copy or part of a copy of the whole or any part of a film; and 20
 - (b) includes video on-demand content
- (3) In section 2, replace the definition of **film poster** with: 25
- film poster**—
- (a) means any poster, placard, video slick, photograph, or other printed pictorial matter that is intended for use in the advertising or exhibition of any film to the public, and includes a miniature representation of the whole or part of any such poster, and also includes any enlarged representation of the whole or any part of any such poster; but 30
 - (b) does not include a poster, placard, video slick, photograph, or other printed pictorial matter that is intended for use to advertise commercial video on-demand content
- 5 New section 4A inserted (Transitional, savings, and related provisions)** 35
- After section 4, insert:

4A Transitional, savings, and related provisions

The transitional, savings, and related provisions set out in **Schedule 1AA** have effect according to their terms.

6 Section 8 amended (Films exempt from labelling requirements)

(1AAA) In section 8(1), replace “section 6 does” with “sections 6 and **46B** do”. 5

(1) After section 8(1)(q), insert:

(r) any video on-demand content made available by a person who is not a specified CVoD provider;:

(s) any video on-demand content made available by a specified CVoD provider that was uploaded by a user to the provider’s platform, and that was not commissioned by the provider. 10

(2) Replace section 8(2) with:

(2) The Chief Censor may, at any time, require any person to make an application under section 9 for the issue of a label in respect of a film of a class mentioned in subsection (1) if,— 15

(a) in the case of video on-demand content, the person has made the content available to persons in New Zealand, or proposes to do so; or

(b) in any other case, the person has exhibited or supplied the film to the public, or proposes to do so.

(3) In section 8(3), after “section 6”, insert “or **46B**”. 20

7 New Part 3A inserted

After section 46, insert:

Part 3A

Rating and labelling—Labelling requirements for specified CVoD providers’ commercial video on-demand content 25

46AAA Purpose of Part

The purpose of this Part is to reduce the risk of psychological and physical harm to people who view commercial video on-demand content, particularly vulnerable people and children, by enabling informed viewing decisions through requiring consistent and informative content labelling by specified CVoD providers. 30

46A Extraterritorial application to specified CVoD providers

This Act, and any regulations made under it, apply in respect of commercial video on-demand content that is made available in New Zealand by a specified CVoD provider, regardless of whether the provider is resident or incorporated in New Zealand or outside New Zealand. 35

46B Duty to ~~rate and~~ label commercial video on-demand content

- (1) Before making commercial video on-demand content available to persons in New Zealand, a specified CVoD provider must ensure that the content has been— labelled in accordance with this Act.
 - (a) ~~rated in accordance with this Act; and~~ 5
 - (b) ~~labelled in accordance with section 6 and **subsection (2).**~~
- (2) The label must be in the prescribed form and must contain—
 - (a) the rating assigned to the content; and
 - (b) any description assigned to the content under this Act.
- (2) The label must be displayed in the prescribed manner and must include any classification or rating assigned to the content and any description assigned to the content. 10
- (3) ~~A specified CVoD provider must comply with **subsection (1)** by one of the following methods:~~
 - (a) ~~rating and labelling the commercial video on-demand content using the provider's approved self-rating system in accordance with **section 46D:**~~ 15
 - (b) ~~rating and labelling the commercial video on-demand content using the CVoD online rating tool in accordance with **section 46D:**~~
 - (c) ~~rating and labelling the commercial video on-demand content by applying to the labelling body under section 9(1) for the issue of a label in respect of that content.~~ 20
- (4) **Subsection (3)** is subject to **section 46C.**
- (3) This section is subject to section 8.

46C Content previously ~~rated~~ labelled or classified

- (1) If a specified CVoD provider intends to make commercial video on-demand content available to persons in New Zealand and a label for that content has previously been ~~rated~~ issued under this Act, the provider (or the labelling body in the case of content referred to it under section 9(1)) must apply the same rating and the same description (if any) to the content must issue a label that contains the same classification or rating and the same description (if any) that was contained in the label that was previously issued. 25 30
- (2) If a specified CVoD provider intends to make commercial video on-demand content available to persons in New Zealand and that content has previously been classified under this Act, but no label has been issued for that content, the provider (or the labelling body in the case of content referred to it under section 9(1)) must apply the same classification and the same description (if any) to the content. must refer that content to the Classification Office for a direction under section 36. 35

- (3) **Subsections (1) and (2)** apply irrespective of whether the content is in the same technical ~~format~~ form or a different technical ~~format~~ form.

46D Content not previously labelled or classified

- (1) If a specified CVoD provider intends to make available to persons in New Zealand commercial video on-demand content to which a label has not been assigned under this Act, the provider must label the commercial video on-demand content by— 5
- (a) using an approved self-rating system; or
 - (b) applying to the labelling body under section 9(1) for the issue of a label in respect of that content. 10
- (2) Unless the approved self-rating system used by the provider identifies the commercial video on-demand content as potentially being objectionable, the provider must apply the label generated by the approved self-rating system.
- (3) If the approved self-rating system used by the provider identifies the commercial video on-demand content as potentially being objectionable, the provider must refer that content to the Classification Office for classification. 15

46DA How ratings and descriptions must be determined

- (1) The rating and description assigned to commercial video on-demand content by a specified CVoD provider using an approved self-rating system must be consistent with the purpose of this Part, taking into account all of the following factors: 20
- (a) the dominant effect of the content as a whole:
 - (b) the persons, classes of persons, or age groups of the persons to whom the content is intended or is likely to be made accessible:
 - (c) the extent to which, and the manner in which, the content deals with sex, horror, crime, terrorism, cruelty, violence, torture, sexual violence, sexualisation of children, self-harm, or offensive language or behaviour: 25
 - (d) whether and how the content—
 - (i) degrades or dehumanises or demeans any person:
 - (ii) represents (whether directly or by implication) that members of any particular class of the public are inherently inferior to other members of the public by reason of any characteristic of members of that class, being a characteristic that is a prohibited ground of discrimination specified in section 21(1) of the Human Rights Act 1993: 30
 - (e) any other aspect of the content which is likely to be of concern to parents and young people or to cause harm to persons who view that content: 35
 - (f) any literary, artistic, social, cultural, educational, or scientific importance, merit, or value of the content:

(g)	<u>any other factors prescribed in regulations.</u>	
(2)	<u>The rating must indicate whether the content is—</u>	
(a)	<u>suitable for all audiences; or</u>	
(b)	<u>suitable for all audiences with parental guidance for children; or</u>	
(c)	<u>suitable for mature audiences; or</u>	5
(d)	<u>unsuitable for audiences under a specified age.</u>	
(3)	<u>The description, if applicable, must—</u>	
(a)	<u>be in the prescribed form; and</u>	
(b)	<u>describe those aspects of the content that are likely to be of concern to parents and young people or to cause harm to persons who view it.</u>	10
46D	Self-rating by specified CVoD provider	
(1)	Subsections (2) and (3) apply to a specified CVoD provider who intends to make available in New Zealand commercial video on-demand content that has not previously been rated.	
(2)	Unless the self-rating tool used by the provider identifies the commercial video on-demand content as potentially being objectionable, the provider must apply the label generated by the self-rating tool.	15
(3)	If the self-rating tool used by the provider identifies the commercial video on-demand content as potentially being objectionable, the provider must refer that content to the Classification Office for classification.	20
46E	Approval of providers' self-rating systems	
(1)	A specified CVoD provider may apply to the Chief Censor for approval of a system to be used <u>by the provider</u> to rate and label the provider's commercial video on-demand content.	
(2)	Every application must contain the prescribed information and be accompanied by the prescribed fee (if any).	25
(3)	After considering the application, the Chief Censor may enter into an agreement with the specified CVoD provider that sets out the terms and conditions on which the provider is approved to use the system to rate and label the provider's commercial video on-demand content.	30
(3)	<u>The Chief Censor may approve the provider's use of the self-rating system, if the Chief Censor is satisfied that use of the system will enable the provider to meet the requirements of section 46DA.</u>	
(4)	<u>The Chief Censor may approve a provider's use of a self-rating system subject to any terms and conditions that the Chief Censor considers are necessary for the purposes of subsection (3).</u>	35

- (4) The Chief Censor may cancel an agreement under **subsection (3)** at any time if the specified CVoD provider fails to comply with the terms and conditions of the agreement.
- (5) If an agreement is cancelled under **subsection (4)**, the system to which the agreement relates is not an approved self-rating system from the date of the cancellation of the agreement. 5
- 46F Classification Office must annually review use of approved self-rating systems**
- (1) The Chief Censor must annually review each specified CVoD provider's use of the provider's approved self-rating system or the CVoD online rating tool (as applicable). 10
- (2) A specified CVoD provider must pay the prescribed fee (if any) for the annual review.
- (2) After a review, the Chief Censor may suspend approval of a provider's self-rating system until amendments are made to that system or to the agreement that sets out the terms and conditions of its use. 15
- (3) If an approval is suspended under **subsection (2)**, the system to which the approval relates is not an approved self-rating system for the duration of the suspension.
- (4) Regulations under section 149 may prescribe fees that must be paid by providers to meet the costs of the Chief Censor's annual review. 20
- 46FA Suspension and cancellation of approvals**
- (1) The Chief Censor may, at any time, give notice to a specified CVoD provider that the provider's approval to use a self-rating system is suspended, if the Chief Censor considers that the provider is not operating the self-rating system in accordance with any terms and conditions of the approval. 25
- (2) A notice under **subsection (1)** must specify the reasons for the suspension.
- (3) The Chief Censor may cancel a provider's approval to use a self-rating system if—
- (a) the Chief Censor has notified the specified CVoD provider of a suspension in accordance with **subsections (1) and (2)** and given the provider a reasonable opportunity to address the Chief Censor's concerns; and 30
- (b) the provider has failed to address those concerns.
- (4) If an approval is suspended or cancelled under this section, the system to which the approval relates is not an approved self-rating system from the date of the suspension or cancellation. 35

46G Complaints process

- (1) Any person may complain to the Chief Censor about the rating or description assigned by a specified CVoD provider to commercial video on-demand content.
- (2) After receiving a complaint, the Chief Censor may— 5
 - (a) refer the complaint to the provider and require the provider to consider the complaint and respond to the complainant; or
 - (b) classify the content under section 13(3); or
 - (c) decline to take further action, if the Chief Censor considers that the content has been correctly ~~rated~~labelled. 10
- (3) After making a decision in accordance with **subsection (2)**, the Chief Censor must advise the person who made the complaint of the decision and the reasons for the decision.

8 New section 150A inserted (Amendment of Schedule 4 by Order in Council) 15

After section 150, insert:

150A Amendment of Schedule 4 by Order in Council

- (1) The Governor-General, by Order in Council made on the recommendation of the Minister, may amend **Schedule 4** by— 20
 - (a) adding the name of any person; or
 - (b) deleting the name of any person.
- (2) The Minister must not recommend that an order be made under **subsection (1)(a)** unless— 25
 - (a) the Minister has consulted the Chief Censor on the proposal that the order be made; and
 - (b) the Minister is satisfied, on reasonable grounds, that adding the name of the person will reduce the risk of harm to viewers of commercial video on-demand content.
- (3) The Minister must not recommend that an order be made under **subsection (1)(b)** unless— 30
 - (a) the Minister has consulted the Chief Censor on the proposal that the order be made; and
 - (b) the Minister is satisfied, on reasonable grounds, that deleting the name of the person will not materially increase the risk of harm to viewers of commercial video on-demand content. 35
- (4) For the purposes of **subsections (2)(b) and (3)(b)**, the Minister—
 - (a) must consider—

- (i) available evidence of the current or likely extent of public subscriptions to, or use of, commercial video on-demand services and products provided by the person; and
- (ii) available evidence of the nature of the commercial video on-demand content made available, or intended to be made available, by the person and the potential of that content to cause harm; and 5
- (iii) available evidence of the person's commitment to a classification framework recognised in New Zealand as being effective in ensuring that persons in New Zealand who are likely to be harmed by viewing the commercial video on-demand content are warned of the nature of that content by means of clear and consistent labelling; and 10
- (b) may consider any other factors that the Minister thinks relevant.
- (5) An order under **subsection (1)(a)** must not come into force earlier than 3 months after the date on which it is published. 15
- (6) An order made under **subsection (1)** is a legislative instrument for the purposes of the Legislation Act 2012 and must be presented to the House of Representatives under section 41 of that Act.

9 New Schedule 1AA inserted

Insert the **Schedule 1AA** set out in **Schedule 1** of this Act as the first schedule to appear after the last section of the principal Act. 20

10 New Schedule 4 inserted

After Schedule 3, insert the **Schedule 4** set out in **Schedule 2** of this Act.

Part 2

Related amendments

25

11 Section 6 amended (Films to be labelled)

~~In section 6(1), after “offered for supply to the public”, insert “, or, in the case of video on-demand content, made available to persons in New Zealand,”.~~

After section 6(2), insert:

- (3) Subsections (1) and (2) do not apply to a film that is commercial video on-demand content offered by a specified CVoD provider, and **section 46B** applies instead. 30

12 Section 9 amended (Applications for issue of label)

- (1) After section 9(1)(b), insert:

(c) any specified CVoD provider. 35

- (2) Replace section 9(2) with:

- (2) Subsection (1) does not apply to—
- (a) any film in respect of which a label has already been issued under this Act ~~(including any commercial video on-demand content that a specified CVoD provider has rated and labelled using a self-rating tool)~~ (except any film for which a label has been issued by a specified CVoD provider using an approved self-rating system); or
 - (b) any film that has been classified under this Act as objectionable.

12A New section 11A inserted (Classification Office must provide film database)

After section 11, insert:

11A Classification Office must provide film database

- (1) The Classification Office must provide and maintain a database of films that have been labelled under this Act and that includes the prescribed information in respect of each film.
- (2) The Classification Office must make the database available for public inspection at all reasonable times, free of charge, by publishing it on an Internet site maintained by, or on behalf of, the Classification Office.

12B Section 27 amended (Conditions relating to display of restricted publications)

- (1) In section 27(5), replace “display of a film” with “display of a film (other than a film that is video on-demand content)”.
- (2) After section 27(5), insert:
- (6) The conditions that may be imposed pursuant to this section in respect of the display of advertising material for video on-demand content that has a restricted classification are as follows:
 - (a) that the advertisement must indicate the classification and any description assigned to the content by way of a label displayed in a manner specified by the Classification Office;
 - (b) that the advertisement may only be displayed, broadcast or otherwise published, or must not be displayed, broadcast or published—
 - (i) in places or media specified by the Classification Office;
 - (ii) at or between times specified by the Classification Office;
 - (iii) in association with other advertising or media content of a type specified by the Classification Office;
 - (iv) in circumstances specified by the Classification Office.

13 Section 36 amended (Issue of labels in respect of films)

- (1) After section 36(1), insert:

- (1A) If the Classification Office has examined and classified commercial video on-demand content referred to it by a specified CVoD provider pursuant to **section 46D(3)**, the Classification Office must, subject to subsection (4) and to section 34(b), direct the specified CVoD provider to issue a label in respect of the content. 5
- (2) Replace section 36(2) with:
- (2) If the Classification Office has examined and classified a film submitted to it under section 13 or 42, or referred to it under section 29(1) or 41(3), the Classification Office may,—
- (a) in the case of commercial video on-demand content made available, or intended to be made available, by a specified CVoD provider, direct the provider to issue a label in respect of that content; or 10
- (b) in any other case, if the Classification Office is satisfied that the film is available for public supply or public exhibition, or is intended to be made available for public supply or public exhibition, direct the labelling body to issue a label in respect of that film. 15
- (2A) **Subsection (2)** is subject to subsection (4) and section 34(b).
- (3) In section 36(3), replace “subsection (1) or subsection (2)” with “subsection (1), **(1A)**, or **(2)**”.
- (4) In section 36(4), after “labelling body”, insert “or a specified CVoD provider”. 20
- (5) Replace section 36(5) with:
- (5) If, under **subsection (2)**, the Classification Office directs the labelling body or a specified CVoD provider to issue a label in respect of any film, any label previously issued in respect of that film by the labelling body or specified CVoD provider, and any previous direction by the Classification Office to the labelling body or specified CVoD provider to issue a label in respect of that film, must, for the purposes of this Act, be deemed to be cancelled. 25
- 13A Section 38 amended (Decisions of Classification Office)**
- In section 38(2)(d), after “the labelling body”, insert “or a specified CVoD provider”. 30
- 14 Section 77 amended (Functions of Classification Office)**
- After section 77(1)(a), insert:
- (aa) ~~to develop, provide, and maintain the CVoD online rating tool for use by specified CVoD providers to self-rate and label commercial video on-demand content in accordance with **Part 3A**:~~ 35
- (aa) to support and facilitate the development by specified CVoD providers of approved self-rating systems:
- (aab) to provide and maintain a database of films (*see* **section 11A**):

(~~abaac~~) to approve self-rating systems developed by specified CVoD providers for their use to self-rate and label commercial video on-demand content (see section 46E):

(~~aeaad~~) to review the use of self-rating tools approved self-rating systems by specified CVoD providers (see section 46F):

5

14A Section 120 amended (Non-compliance with labelling requirements)

(1) In section 120(2)(a), after “public”, insert “or makes available”.

(2) In section 120(4), after “section 6”, insert “and **section 46B**”.

15 Section 121 amended (Unlawful issue of labels)

In section 121(1), replace “not being the labelling body,” with “not being the labelling body or a specified CVoD provider using an approved self-rating system”.

10

16 Section 122 amended (Meaning of distribute in sections 123 to 132)

In section 122(1)(b), replace “(for example, to provide access by means of a public data network to digital content that is or includes the publication)” with “(for example, to make available digital content that is or includes the publication by means of a public data network)”.

15

17 Section 131 amended (Offence to possess objectionable publication)

After section 131(5)(f), insert:

(g) for the purposes of rating and labelling the publication, if—

- (i) the publication is video on-demand content; and
- (ii) the defendant is a specified CVoD provider; and
- (iii) the defendant assesses the content as soon as is reasonably practicable after it comes into the defendant’s possession, using the defendant’s approved self-rating system, and refers the content to the Classification Office for classification in accordance with **section 46D(3)** as soon as is reasonably practicable after the approved self-rating system identifies the content as potentially being objectionable.

20

25

18 Section 149 amended (Regulations)

30

(1) After section 149(f)(ii), insert:

(iii) the self-rating process for commercial video on-demand content provided by specified CVoD providers:

(2) After section 149(i)(iii), insert:

(iv) the display of labels on commercial video on-demand content provided by specified CVoD providers (including labels to be dis-

35

-
- played on the content and on menus and catalogues that list the content):
- (v) the display of labels on advertisements for commercial video on-demand content provided by specified CVoD providers:
- (3) After section 149(k), insert: 5
- (ka) prescribing factors that must be taken into account when the rating to be applied to commercial video on-demand content is determined by use of an approved self-rating system (see **section 46DA(1)(f)**):
- (kb) prescribing information to be included in the film database maintained by the Classification Office under **section 11A**: 10

Schedule 1
New Schedule 1AA inserted

s 9

Schedule 1AA
Transitional, savings, and related provisions

5

s 4A

Part 1
Provisions relating to Films, Videos, and Publications Classification
(Commercial Video on-Demand) Amendment Act 2019

- 1** ~~Classifications made under code~~Content classified under broadcasting code before 1 July 2020 10
- (1) If, before **1 July 2020**, a specified CVoD provider ~~rated~~classified commercial video on-demand content in accordance with a code of broadcasting practice issued or approved by the Broadcasting Standards Authority under section 21(1) of the Broadcasting Act 1989, the specified CVoD provider is not required to issue a label for that content under **section 46B(1)** that rating must be treated as if it were a rating made by the provider using the CVoD online rating tool. 15
- (2) A reference to a rating using the CVoD online rating tool must be treated as if it also included a reference to a rating described in ~~subclause (1)~~. 20
- (2) If **subclause (1)** applies, **section 46B(2)** applies as if the classification referred to in **subclause (1)**, and any associated advisory or warning material, were a label issued under this Act.
- (3) ~~However, despite **subclause (1)**, content referred to in that subclause has not been rated under this Act for the purposes of **section 46C**.~~ 25
- (3) Nothing in this clause affects the obligations of any other specified CVoD provider in relation to labelling the same content.
- 2** ~~Unrated~~Other commercial video on-demand content made available before 1 January 2021
- (1) This clause applies to commercial video on-demand content made available in New Zealand by a specified CVoD provider before **1 January 2021** with— 30
- (a) a ~~rating~~label issued under this Act; or
- (b) a ~~rating~~classification determined in accordance with a code of broadcasting practice issued or approved by the Broadcasting Standards Authority under section 21(1) of the Broadcasting Act 1989. 35

(2) The requirements in **sections 6 and 46B** to rate and label commercial video on-demand content do not apply to commercial video on-demand content referred to in **subclause (1)** until **1 July 2021**.

(3) However, **despite subclause (2)**, the Chief Censor may require a specified CVoD provider to issue a label in respect of commercial video on-demand content referred to in **subclause (1)** before **1 July 2021**.

3 Approval of providers' self-rating systems before 1 January 2021

(1) Before 1 January 2021,—

(a) a specified CVoD provider may apply to the Chief Censor for approval of a system to be used to rate and label the provider's commercial video on-demand content; and

(b) the Chief Censor may approve the provider's use of the self-rating system if the Chief Censor is satisfied that use of the system will enable the provider to meet the requirements of **section 46DA** (as inserted by **section 7** of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act **2019**) when that section commences.

(2) The Chief Censor may approve a provider's use of a self-rating system subject to any terms and conditions that the Chief Censor considers are necessary for the purposes of **subclause (2)**.

(3) If regulations have been made that prescribe the information that must be contained in an application for approval of a self-rating system under **section 46E**, or the fee that is payable when making an application, the application under **subclause (1)(a)** must contain the information and be accompanied by the fee.

(4) An approval given in accordance with this clause must be treated as an approval under **section 46E** (as inserted by **section 7** of the Films, Videos, and Publications Classification (Commercial Video on-Demand) Amendment Act **2019**) from the date on which that section comes into force.

Schedule 2
New Schedule 4 inserted

s 10

Schedule 4
Specified CVoD providers

5

ss 2, 150A

Alphabet Inc., a company registered and based in the United States of America
Amazon.com, Inc., a company registered and based in the United States of America
Apple Inc., a company registered and based in the United States of America
~~Lightbox New Zealand Limited, a company registered and based in New Zealand~~
Microsoft Corp, a company registered and based in the United States of America
Netflix, Inc., a company registered and based in the United States of America
Sky Network Television Limited, a company registered and based in New Zealand
~~Sony Interactive Entertainment Europe Limited, Corporation, a company registered~~
~~and based in the United Kingdom Japan~~
The Walt Disney Company, a company registered and based in the United States of America

10

15

Legislative history

10 December 2019
17 December 2019

Introduction (Bill 201–1)
First reading and referral to Governance and Administration
Committee