



Australian Government

Office of Film and Literature Classification

**COMPLIANCE SNAPSHOT
DVDS AND COMPUTER GAMES
FOR SALE**

MELBOURNE

SEPTEMBER 2005

EXECUTIVE SUMMARY

BACKGROUND

Following the introduction of new markings for films and computer games on 26 May 2005, the OFLC initiated a series of “snapshots” which could be used to identify targets for compliance education and, where necessary, advising enforcement authorities.

The first of these snapshots comprised a study of compliance with the marking requirements by the cinema industry. The results of that study, conducted in relation to cinemas in the Sydney metropolitan region, were published in July 2005.

The current study is the third in the series. It relates to retail sales outlets in Melbourne and addresses the display for sale of classified DVDs and computer games along with the advertising of those products and the provision of information about classification markings.

This report on sales outlets is issued in conjunction with a second report which deals with compliance by hire outlets (video stores) in Brisbane in September 2005. The fourth report, conducted in November 2005, is a follow-up to the initial cinema report and addresses compliance by the cinema industry in Sydney.

METHODOLOGY

Objective

The objective of the study was to obtain a snapshot of compliance with the markings and other requirements by DVD and computer game retail outlets in Melbourne following the introduction of the new markings scheme in May 2005.

Scope

The study involved an assessment of compliance in respect of:

- the required markings on classified DVDs and computer games offered for sale;
- the required markings on printed advertisements in the form of in-store posters and flyers for DVDs and computer games;
- the required markings on internet advertising and links to classification legends on websites of sales outlets;
- the required display of an approved notice providing classification information to consumers.

The study was concerned only with classified products and did not include any unclassified material. Off-site advertising (such as television and magazine advertisements) was not assessed. While not comprehensively assessed, in-store catalogues and a selection of playable demonstrations of computer games were examined.

Timing

The study covered the Melbourne metropolitan area from Wednesday 21 September to Friday 23 September 2005, about four months after the commencement of the new marking requirements. The examination of the Australian-hosted websites for selected retail sales outlets was also conducted in the period Wednesday 21 September to Friday 23 September.

Sample

The study involved site visits to 50 retail outlets in 7 of the major metropolitan shopping centres in Melbourne.

In addition, the study included examination of 7 Australian-hosted websites for retail outlets operating in Melbourne.

This resulted in the examination of 1,092 items for compliance with marking and advertising requirements and complementary classification enforcement laws, as follows:

- 644 DVDs
- 231 computer games
- 120 posters in retail stores
- 7 advertisements on 7 flyers for computer games
- 42 advertisements on the websites of 7 retail chains
- 48 notices located in retail stores.

Industry liaison

A draft of this report was provided to distributors along with letters regarding titles potentially breaching requirements relevant to that distributor. Based on the feedback from distributors, the data was amended as required. Distributors were also requested to take action to address significant breaches such as titles being marked with the wrong classification.

FINDINGS

The study found that all stores had very good compliance rates for markings on DVDs, for computers games classified before 26 May 2005 and for posters advertising those films and games. Although the compliance levels dropped for DVDs and computer games classified on or after 26 May and posters advertising these products, the results were still good, with most stores recording a “High” compliance level. In all these categories, the results for DVDs were better than the results for computer games.

In contrast, the results for flyers and website advertisements were generally poor. There was also a poor result for compliance with the requirement to display an approved classification notice in a prominent place. Results for these three aspects were in the “Moderate” or “Low” categories.

Overall, the study found that while 977 (89%) items met the requirements, 115 breaches (11%) were also identified. These breaches included:

- 14 breaches relating to 14 DVD titles displayed with incorrect or out of date markings;
- 16 breaches relating to 16 computer game titles displayed with incorrect or out of date markings;
- 5 breaches relating to posters for 2 DVD titles with incorrect or out of date markings;
- 9 breaches relating to posters for 6 computer game titles with incorrect markings;
- 3 breaches relating to advertisements on flyers;
- 38 breaches relating to advertisements on websites;
- 29 breaches relating to the display of classification notices.

Compliance levels were reasonably consistent across all the retail chains. Specifically, the following results were found in regard to compliance with classification legislation requirements:¹

- 554 (99%) of the DVDs classified prior to 26 May 2005 correctly displayed the classification markings, meaning that 4 that were incorrectly marked (1%). These 4 breaches related to 4 different titles.
- 76 (88%) of the DVDs classified on or after 26 May 2005 correctly displayed the classification markings, meaning that 10 were incorrectly marked (12%). These 10 breaches related to 10 different titles. 8 breaches concerned the use of out of date markings.
- 193 (96%) of the computer games classified prior to 26 May 2005 correctly displayed the classification markings, meaning that 9 that were incorrectly marked (4%). These 9 breaches related to 9 different titles.
- 22 (76%) of the computer games classified on or after 26 May 2005 correctly displayed the classification markings, meaning that 7 that were incorrectly marked (24%). These 8 breaches related to 7 different titles. 3 breaches concerned the use of out of date markings.
- Of the 53 posters for DVDs displayed in the retail outlets, 48 (91%) correctly displayed the determined markings. The 5 breaches related to 2 different titles. For posters advertising films classified before 26 May 2005, compliance was 100%, compared to 87% for posters advertising films classified on or after 26 May. 4 breaches concerned the use of out of date markings.
- Of the 67 posters for computer games displayed in the retail outlets, 58 (87%) correctly displayed the determined markings. The 9 breaches related to 6 different titles. Of the 34 posters relating to computer games classified before 26 May, 33 (97%) correctly displayed the determined markings. Of the 33 posters relating to computer games classified on or after 26 May, 25 (75%) correctly displayed the classification markings. 2 breaches concerned the use of out of date markings.
- A total of 7 flyers were examined, each advertising a different title. The correct markings were shown for 4 of the 7 titles (57%), meaning that 3 of the flyers (43%) did not carry the correct classification markings.

¹ The study used a three-grade reporting system as follows: Low = 0-33%, Moderate = 34-66%, High = 67-100%.

- Of the 42 website advertisements for DVDs, compliance with the requirement to display the correct classification marking was achieved by 11 (26%). The 31 breaches related to 19 titles. Compliance with the requirement to provide a link to a classification key or legend was achieved by 5 (12%) of the 42 advertisements. Only 4 advertisements (10%) correctly displayed the classification markings *and* provided the required link to a classification key or legend.
- Of the 48 retail stores assessed for compliance with the requirement to display an approved notice, 21 (44%) displayed a current approved notice. Of the 48 stores, only 19 (40%) displayed the current approved notice in a prominent place.
- A review of catalogues showed variation across the retail chains with a number of problems evident in relation to the display of determined markings and provision of a classification key or legend.
- A review of playable demonstrations of computer games showed that of the 27 demos relating to 25 titles, 16 (59%) displayed the correct classification markings.

ANALYSIS AND CONCLUSIONS

The study indicates that a strong culture of compliance with most aspects of the markings requirements has developed in retail under the markings system that existed until May this year. The results for DVDs classified under the new markings scheme were also very good. Posters for DVDs and games classified under the former scheme were seen to have very good compliance levels.

Although in all these categories the study recorded a fall in compliance levels under the new markings scheme, the results are not so low as to cause serious concern and are expected to disappear as the new markings requirements are entrenched. Distributors are encouraged to review compliance practices to ensure that the small number of unmarked computer games receives attention. Similarly, there is a need for distributors to improve their systems for including the determined markings in playable demonstrations.

In relation to retail chains, there is a need for these chains to exercise more care in compiling flyers and catalogues. However, the most serious problem identified in this study relates to website advertisements. The very poor compliance rates demonstrated by all but one retail chain mean that significant improvement is needed.

Key themes

The key themes which emerge from this analysis of classification markings on DVDs and games are:

- Overall, there are high compliance levels in the retail sales sector.
- Good results for recent DVDs and computer games suggest that the new markings scheme has had a successful introduction into this sector.
- There are some residual areas of concern in relation to advertising (flyers, catalogues and playable demos).
- There appears to be a more serious problem in relation to website advertisements.
- The importance of the prominent display of the new classifications notice in retail stores requires emphasis.

BACKGROUND

STATUTORY CONTEXT

On 26 May 2005 the *Classification (Markings for Films and Computer Games) Determination 2005* (“the markings determination”) came into force. That determination, issued pursuant to section 8 of the *Classification (Publications, Films and Computer Games) Act 1995* of the Commonwealth, sets out the requirements for classification markings to appear on films and computer games and in advertising related to such products.

The complementary classification enforcement laws in Victoria are found in the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995*.

Among other requirements, the Victorian legislation:

- requires retailers to display in a prominent place a notice in an approved form about classifications for DVDs and computer games;
- imposes penalties if retailers offer for sale DVDs or computer games without the required markings or consumer advice;
- imposes penalties if retailers offer for sale DVDs or computer games with the wrong markings or consumer advice;
- imposes separate penalties for advertisements that contain the incorrect classification information.

The penalties for non-compliance with these requirements are summarised in [Attachment 1](#).

The Victorian legislation is available at:

http://www.austlii.edu.au/au/legis/vic/consol_act/cfacga1995596/

RETAIL SALE INDUSTRY IN MELBOURNE

The retail sales market for DVDs and computer games in Melbourne is extensive. Apart from small retail outlets that are individually owned, large numbers of retail chains are located in shopping centres, Melbourne city and suburban shopping districts.

As the second largest Australian city, Melbourne is a critical hub for the entertainment industry. Melbourne is also the home base for a number of the OFLC’s major clients such as Buena Vista International, Village Roadshow and Madman Entertainment.

METHODOLOGY

OBJECTIVE

The objective of the study was to obtain a snapshot of compliance with the markings and other requirements by sales outlets in Melbourne following the introduction of the new markings scheme in May 2005.

SCOPE

The study involved an assessment of compliance in respect of:

- the required markings on classified DVDs and computer games offered for sale;
- the required markings on printed advertisements in the form of in-store posters and flyers for DVDs and computer games;
- the required markings on Internet advertising and links to classification legends on websites of retailers outlets;
- the required display in retail stores of an approved notice providing classification information to consumers.

TIMING

The study covered the Melbourne metropolitan area from Wednesday 21 September to Friday 23 September 2005, about four months after the commencement of the new marking requirements.

The examination of the Australian-hosted websites for selected retail sales outlets was also conducted in the period Wednesday 21 September and Friday 23 September.

PRIORITIES FOR DATA COLLECTION

For both DVDs and computer games, it was decided that there would be an emphasis placed on new and recent releases. This was due to both the prominence and popularity of this category and also because the more recent products were more likely to be affected by the new markings scheme.

In addition to the priority category of new release DVDs and computer games, researchers were instructed to sample other categories in order to gather information on compliance in relation to speciality categories (for example, sporting, arthouse or other special interest DVDs).

The overall scheme in order of priority was as follows:

Priority	Category
1	New and recent release DVDs
3	New release computer games
2	Other DVDs
4	Other computer games

In addition to gathering data on DVDs and games, researchers were instructed to record information on the display of the approved notice and on advertising within the store, including posters and flyers.

In order to achieve a good overall selection of products offered for sale, researchers were each assigned a range of letters from the alphabet that they were to cover in each store; for example, if a researcher was assigned “A to D”, in each store they recorded the titles in that letter range that were displayed in new release DVDs, recent release DVDs, new release computer games etc. This approach ensured that the group of researchers did not individually gather data on the same set of products in different stores.

For the audit of advertisements on websites, the “top ten” or “bestsellers” list for each website was assessed, which in the majority of cases included 10 DVD items.

EXCLUDED FROM THE STUDY

As this study was designed to assess the implementation of the new markings scheme in relation to classified material available from major retailers in the Melbourne metropolitan region, several types of material and sources of DVDs and computer games for sale were excluded.

In terms of the material available, the following was excluded:

- VHS video tapes;
- DVDs not legally available for sale in Melbourne;
- DVDs and computer games sold as part of a newspaper or magazine package;
- posters advertising multiple titles.

In addition to these exclusions, the study did not include assessment for compliance with the requirements relating to consumer advice or the detailed aspects of size and placement of classification information on advertising materials.

ADDITIONAL REVIEW OF CATALOGUES AND PLAYABLE DEMOS

In-store catalogues which feature multiple titles and which are used across the various stores in a retail outlet were not included in the study. A small collection of these catalogues was obtained by researchers and an informal review was undertaken. Similarly, a selection of playable demonstrations of computer games was available in one store and viewed by the researcher. Under the Victorian legislation, playable demos are

treated as advertisements, and accordingly the results were added to the other research on advertising of computer games.

Comments on these advertisements in catalogues and on the playable demos are included in the “Analysis” section of this Report, although there is no formal assessment of these advertisements for compliance with the markings determination and they are not included in the compliance results for the various retail chains provided in Table 1.

AVAILABILITY OF CLASSIFIED MATERIAL

As mentioned above, the markings determination commenced on 26 May 2005. As at 19 September 2005, 2,136 DVDs and 230 computer games had been classified for sale and hire since commencement of the markings determination.²

Classification details for the products found in retail stores were obtained from OFLC databases. These details were used in determining which of the products reported by the researchers in Melbourne retail stores were required to comply with the new markings scheme.

DATA COLLECTION, ANALYSIS AND REPORTING

In order to achieve the level of coverage required for the various samples, three staff members from the OFLC were assigned to the selected retail outlets in designated shopping centres in suburban Melbourne. This allowed for 50 stores to be visited in three days.

The three staff members comprised two members of the OFLC Community Liaison Scheme and an additional staff member familiar with suburban Melbourne. This staff member was provided with training that included a briefing on the requirements under the markings determination and a site visit conducted by a Community Liaison Officer.

Data collected by the researchers was provided to an in-house data analysis team who prepared the tables used to compile this report. This team also accessed and examined the website advertisements, examined the printed flyers and the selection of catalogues which was obtained by the field researchers.

Members of the in-house data analysis team worked with Strategy and Communications officers in compiling this report from the data.

² In the case of DVDs, this list does not include applications for VHS videos, enhanced CDs, encrypted for download products, Juicebox or UMD. In addition to the 2,136 classified DVDs, 68 titles were the subject of dual applications for public exhibition and sale/hire. The list of 68 dual title applications was cross-checked against the titles recorded by the researchers in Brisbane and none of the titles had at that time been released for hire.

SAMPLE

Overview

The sample comprised 1,092 items comprising:

- 644 DVDs
- 231 computer games
- 120 posters in retail stores
- 7 advertisements on 7 flyers for computer games
- 42 advertisements on the websites of 7 retail chains
- 48 notices located in retail stores.

Sample of retail sales outlets

A list of 7 major shopping centres in suburban Melbourne was compiled from information in the online versions of the *Yellow Pages* and the *White Pages*.

The 7 shopping centres were in the following suburbs of Melbourne:

- Chadstone
- Doncaster
- Fountain Gate
- Highpoint
- Knox
- Preston
- Southland.

The shopping centres were selected as among the largest shopping centres across the Melbourne metropolitan area, excluding Melbourne city.

Information from the websites of these shopping centres and/or the websites of leading retailers was then used to compile a list of retailers selling DVDs and computer games in these locations.

The overall result was therefore 50 stores visited in 7 major shopping centres. These stores were members of the following retail chains:

- | | |
|------------------|----------|
| • ABC Centre | 2 stores |
| • Big W | 2 stores |
| • Borders | 1 store |
| • David Jones | 2 stores |
| • Dick Smith | 2 stores |
| • DSE Powerhouse | 2 stores |
| • EB Games | 6 stores |
| • Ezy DVD | 2 stores |
| • Game Traders | 1 store |
| • Harvey Norman | 1 store |

- HMV 3 stores
- JB Hi-Fi 3 stores
- Kmart 3 stores
- Leading Edge 1 store
- Myer 2 stores
- Sanity 5 stores
- Target 5 stores
- Toys R Us 3 stores
- Virgin 2 stores
- Virgin/Myer 2 stores.

The individual retail stores are identified in Attachment 2.

Sample of DVDs

A total of 644 DVD cases involving 640 titles were examined in the context of this study. A list of the DVD titles appears at Attachment 3.

The 640 DVD titles had the following classifications:

- 62 titles classified G
- 150 titles classified PG
- 290 titles classified M
- 107 titles classified MA 15+
- 31 titles classified R 18+.

As noted above, the priority for the study was new release DVDs and computer games. Of the 640 DVD titles, 85 (13%) (marked in **bold** in Attachment 3) were classified on or after 26 May 2005 and were therefore required to carry the new classification markings. The relatively low number of products classified under the new markings system was a result of films classified earlier in the year under dual applications (for cinema release and sale/hire) being prominent in retail sales outlets at the time of the research.

With one exception, the content of the DVDs in the context of this study was not, of itself, of interest. The exception relates to additional material that is included on a DVD and which would not be part of a public exhibition of a film. This material includes additional or deleted scenes (including alternative endings), outtakes and bloopers, director's commentary, interviews, featurettes and documentaries, still photographs and biographical notes, music video clips, and mini-games.

Information on additional material is not able to be presented in quantitative terms and was collected as part of a separate exercise that relates to applications for classification on the part of distributors. As a result, information on this issue is not included in this Report. This matter has been separately raised with distributors.

Sample of computer games

A total of 231 computer game cases involving 229 titles were examined in the context of this study. A list of the computer game titles appears at [Attachment 4](#).

The 229 computer game titles had the following classifications:

- 77 titles classified G
- 43 titles classified PG or G (8+)
- 61 titles classified M
- 48 titles classified MA 15+.

Of the 229 titles, a total of 26 (11%) (marked in **bold** in Attachment 4) were classified on or after 26 May 2005 and were therefore required to carry the new classification markings. The relatively low number of recent games is a result of industry practice in releasing games onto the market some months after classification.

The content of the games in the context of this study was not, of itself, of interest.

Sample of posters

A total of 120 posters (53 for DVDs and 67 for games) advertising 45 titles were examined in the context of this study. Of the 45 titles, 25 advertised DVDs and 20 advertised computer games. A list of the poster titles for both DVDs and computer games is found at [Attachment 5](#).

The 25 DVD poster titles had the following classifications:

- 5 titles classified G
- 6 titles classified PG
- 11 titles classified M
- 3 titles classified MA 15+
- 0 titles classified R 18+.

The 20 computer game poster titles had the following classifications:

- 6 titles classified G
- 4 titles classified G (8+) or PG
- 4 titles classified M
- 6 titles classified MA 15+.

Sample of flyers

A total of 7 single-page flyers advertising one title each were obtained from one retail chain.

Sample of website advertisements

The study included examination of the Australian-hosted websites of 7 retail sales chains. In total, 42 advertisements were examined. These 42 advertisements related to 19 DVD titles classified on or after 26 May 2005. Since there were no specific rules for Internet advertising prior to the commencement of the new markings determination, website advertisements for DVDs classified pre-26 May were disregarded.

Additional advertisements - catalogue advertisements and playable demonstrations of computer games

Although the study did not require researchers to obtain in-store catalogues, a collection of 18 catalogues was compiled from different stores for informal review. This included:

- 1 catalogue each from 8 of the retail chains
- 2 catalogues each from 3 of the retail chains
- 3 catalogues from 1 retail chain.

In addition to the review of catalogue advertisements, there was an opportunity in this research to review a number of playable demonstrations of computer games available to customers at one retail outlet. A total of 27 playable demonstrations were examined in this study, relating to 25 different titles.

RELIABILITY AND VALIDITY OF THE SAMPLES

This study is a “snapshot” of compliance in Melbourne over a 3 day period. While the findings cannot necessarily be generalised to other locations, the study of 1,089 items (not including catalogue advertisements and playable demos) across 6 different categories of products and advertising is reliable and valid for Melbourne at this point in time.

FINDINGS

OVERALL

Overall, this study involved consideration of 1,092 items, ranging from DVDs and computer games to approved notices to posters and flyers.

Overall, the study found that while 977 (89%) items met the requirements, 115 breaches (11%) were also identified. These breaches included:

- 14 breaches relating to 14 DVD titles displayed with incorrect or out of date markings;
- 16 breaches relating to 16 computer game titles displayed with incorrect or out of date markings;
- 5 breaches relating to posters for 2 DVD titles with incorrect or out of date markings;
- 9 breaches relating to posters for 6 computer game titles with incorrect or out of date markings;
- 3 breaches relating to advertisements on flyers;
- 38 breaches relating to advertisements on websites;
- 29 breaches relating to the display of classification notices.

Table 1 is a summary of compliance levels by retail chains. Table 1 shows that compliance levels were reasonably consistent across all the retail chains, with good results relating to DVDs, computer games and posters and poor results relating to classification notices and website advertisements.

The study found that all stores had very good compliance rates for markings on DVDs, for computers games classified before 26 May 2005 and for posters advertising those films and games. Although the compliance levels dropped for DVDs and computer games classified on or after 26 May and posters advertising these products, the results were still good, with most stores recording a “High” compliance level. In all these categories, the results for DVDs were better than the results for computer games.

In contrast to the high compliance levels for markings on DVDs, computer games and posters, the results for flyers and website advertisements were generally poor. There was also a poor result for compliance with the requirement to display an approved classification notice in a prominent place. Results for these three categories were in the “Moderate” or “Low” categories.

Detailed results are provided in the following section.

Table 1: Compliance with classification marking and advertising requirements by sale outlet chain. Low = 0-33%, Moderate = 34-66%, High = 67-100

	Display of approved notice	Correct markings on DVDs classified pre 26 May 2005	Correct markings on DVDs classified on or after 26 May 2005	Correct markings on computer games classified pre 26 May 2005	Correct markings on computer games classified on or after 26 May 2005	Correct markings on posters for DVDs classified pre 26 May 2005	Correct markings on posters for DVDs classified on or after 26 May 2005	Correct markings on posters for computer games classified pre 26 May 2005	Correct markings on posters for computer games classified on or after 26 May 2005	Correct markings on flyers for computer games	Correct markings on website advertisements for DVDs classified on or after 26 May 2005
Retail Store Chain 1	Low	High									Low
Retail Store Chain 2	Moderate	High	High	High	High	High	Moderate		High		
Retail Store Chain 3	Low	High	High								
Retail Store Chain 4	Low	High	High								
Retail Store Chain 5	Low			High				High			
Retail Store Chain 6	Moderate	High	High	High	High			High	Low		
Retail Store Chain 7	High	High		High	Moderate			High	Moderate	Moderate	
Retail Store Chain 8	Low	High	High				High				High
Retail Store Chain 9				High							
Retail Store Chain 10	Low			Moderate	Low						
Retail Store Chain 11	Moderate	High	High								Low
Retail Store Chain 12	Low	High	High	High		High	High	High	High		Low
Retail Store Chain 13	High	High	High	High	High	High	High		High		Low
Retail Store Chain 14	Low	High									
Retail Store Chain 15	High	High	High								
Retail Store Chain 16	Moderate	High	High			High	High		High		Low
Retail Store Chain 17	High	High	High	High	High	High	High		High		Low
Retail Store Chain 18	Low			High	High			High	High		
Retail Store Chain 19	Low	High	Moderate								
Retail Store Chain 20	Moderate	High	Moderate	High							

DISPLAY OF DETERMINED MARKINGS ON DVDS AND COMPUTER GAMES

DVDs

553 (99%) of the DVDs classified prior to 26 May 2005 correctly displayed the classification markings, meaning that 4 that were incorrectly marked (1%). These 4 breaches related to 4 different titles.

All 4 breaches were due to the display of the wrong classification. Table 2 provides a breakdown of these titles, showing the correct classification and the marking that appeared on the DVD.

Table 2 –DVDs Pre-26 May - Wrong Classification

Title	Marking	Classification
Enter the Blood Ring	M	PG
Saiyuki # 1 The Journey Begins	M	PG
Ricochet	M	R 18+
Mr Methane	MA 15+	M

76 (88%) of the DVDs classified on or after 26 May 2005 correctly displayed the classification markings, meaning that 10 were incorrectly marked (12%). These 10 breaches related to 10 different titles.

Of the 10 breaches, 2 were due to the display of the wrong classification and the remaining 8 were due to the failure to use the new classification marking on a film classified since 26 May. Table 3 provides a breakdown of the DVDs which displayed the wrong classification, showing the correct classification and the marking that appeared on the DVD.

Table 3 –DVDs On or after 26 May - Wrong Classification

Title	Marking	Classification
Evander Holyfield - The Real Deal	PG	G
Lady Death: the Motion Picture*	M	MA 15+

*This title also incorrectly displayed the old marking.

Computer games

193 (96%) of the computer games classified prior to 26 May 2005 correctly displayed the classification markings, meaning that 9 were incorrectly marked (4%). These related to 9 different titles.

Of the 9 breaches, 2 were due to the display of the wrong classification and 7 were due to the absence of any Australian marking. Table 4 provides a breakdown of the computer games which displayed the wrong classification, showing the correct classification and the marking that appeared on the game.

Table 4 – Computer Games pre-26 May - Wrong Classification

Title	Marking	Classification
Haunting Ground	MA 15+	M
Treasure Planet	G	G (8+)

22 (76%) of the computer games classified on or after 26 May 2005 correctly displayed the classification markings, meaning that 7 that were incorrectly marked (24%). The breaches related to 7 different titles.

Of the 7 breaches, 1 was due to the display of the wrong classification, 3 were due to the failure to use the new classification marking on a film classified since 26 May, and 3 were due to the absence of any Australian marking. Table 5 provides a breakdown of the computer game which displayed the wrong classification, showing the correct classification and the marking that appeared on the game.

Table 5– Computer Games 26 May and after - Wrong Classification

Title	Marking	Classification
Burnout Legends	G	M

ADVERTISING

Posters

Of the 53 posters for DVDs displayed in the retail outlets, 48 (91%) correctly displayed the determined markings. The 5 breaches related to 2 different titles.

For posters advertising films classified before 26 May 2005, compliance was 100%, compared to 87% for posters advertising films classified on or after 26 May.

Of the 5 breaches relating to posters for films classified on or after 26 May, 4 (1 title) were due to the failure to use the new classification marking on a film classified since 26 May. The other breach was due to the absence of any classification marking.

Of the 67 posters for computer games displayed in the retail outlets, 58 (86%) correctly displayed the determined markings.

Of the 67 posters, 34 related to computer games classified before 26 May 2005 and 33 related to computer games classified on or after 26 May. Of the 34 posters relating to computer games classified before 26 May, 33 (97%) correctly displayed the determined markings. The one breach was due to the absence of any classification marking.

Of the 33 posters relating to computer games classified on or after 26 May, 25 (75%) correctly displayed the classification markings. The 8 breaches related to 8 titles. Of the 8

breaches, 2 (1 title) were due to the failure to use the new classification marking on a film classified since 26 May; and 6 (4 titles) were due to the absence of any Australian marking.

Flyers

A total of 7 flyers were examined, each advertising a different title. The correct markings were shown for 4 of the 7 titles (57%), meaning that 3 of the flyers (43%) did not carry the correct classification markings. The 3 breaches were all due to the absence of any classification marking.

Websites

This study included 42 advertisements for DVDs for 19 titles classified on or after 26 May 2005 on the Australian-hosted websites of 7 retail chains.

Compliance with the requirement to display the correct classification marking was achieved by 11 (26%) of the 42 advertisements. Of the 31 breaches, 2 (2 titles) were due to the display of the wrong classification marking (the use of “PG” instead of “M” and the use of an exhibitor exemption notice in place of the “G” marking) and 29 (17 titles) were due to the absence of any classification marking.

Compliance with the requirement to provide a link to a classification key or legend was achieved by 5 (12%) of the 42 advertisements.

Of the 42 advertisements, 4 (10%) correctly displayed the classification markings *and* provided the required link to a classification key or legend. All 4 compliant advertisements were on the website of one retailer.

Display of the approved notice

50 retail stores were visited and 48 were assessed for compliance with the requirement to display an approved notice.

Of these 48 stores, 21 (44%) displayed a current approved notice. Of the 48 stores, 19 (40%) displayed the new notice in a prominent place, meaning that 29 stores (60%) were in breach of at least one of these requirements.

ANALYSIS

CLASSIFICATION MARKINGS ON DVDS AND COMPUTER GAMES

Overall, compliance with the classification marking requirements for hire outlets is very good in relation to DVDs and older computer games. Even for the least compliant category – computer games classified since 26 May 2005 – the level is still within the “High” category at 76%. This represents an excellent overall result for this section of the industry.

It is worth noting that for both DVDs and computer games, compliance levels fall in relation to new material, as follows:

Compliance for DVDs under the old markings scheme	99%
Compliance for DVDs under the new markings scheme	88%
Compliance for computer games under the old markings scheme	96%
Compliance for computer games under the new markings scheme	76%.

Although all stores had compliance rates above 90% for older DVDs, several stores had lower rates for newer DVDs. In 3 cases, the number of new DVDs was so small that these stores received low scores for having only 1 item that was in breach. In another case, a store that received a “Moderate” rating had 5 compliant DVDs out of a total of 8.

For older DVDs, the breaches were all cases of distributors providing stores with products marked with the wrong classification. For newer DVDs, more breaches were due to the product not displaying the new marking (8 titles, compared with 2 titles that displayed the wrong classification).

In relation to the breaches for computer games, of the total sample, 2 titles were marked with the wrong classification, 3 titles did not display the new marking, and 10 titles featured no Australian marking. Given that the sample of older computer games was much larger than the sample of newer games (202 compared to 29), the incidence of wrong classification markings (2 games for older games) and of no marking/no new marking (7 for older games and 6 for newer games) was much higher among these older games.

Of the total of 16 titles that were in breach, one retail chain was responsible for 10 of these breaches. Of the examples where there was no marking, that chain was responsible for 7 of the 10 cases and a second chain was responsible for the other 3 cases. Most of these cases of no marking were due to the actions of the store rather than the distributor – for example, the store had placed a sticker over the marking applied by the distributor.

Parallel importing of products is a possible explanation why classified product may not display the Australian classification markings. Industry advice is that parallel importing is more common within the rental sector than the retail sector.

ADVERTISING

Compliance results for posters advertising films were very good. Although there was again a fall in relation to newer products (87% compliance compared to 100% compliance for posters for older DVDs), only one retail chain recorded a “Moderate” result (for a single breach in relation to the 2 posters recorded) and no chain recorded a “Low” result.

The single case of no marking on a DVD poster was a result of the marking being covered by a poster frame used by the store. The other breaches for DVD posters all related to 1 title and were due to the distributor not using the new marking on a DVD classified since 26 May 2005.

In relation to posters for computer games, the one breach for a game classified before 26 May was due to the absence of any marking – in this case, a failure on the part of the distributor. Similarly, 6 (5 titles) of the 8 breaches relating to posters for games classified since 26 May were due to the distributor failing to provide a marking on the product. The other 3 breaches for more recent computer game posters were also due to distributor error for not using the new marking (on a single title).

These results for posters indicate that, as with the results for computer games and DVDs, there are more problems relating to computer game titles than to DVD titles. However, unlike the results for the games themselves, these breaches for posters advertising games are more often due to distributor error than to practices of the retail stores.

Parallel importing of products is a possible explanation why classified product and associated advertising may not display the Australian classification markings. Industry advise is that parallel importing is more common within the rental sector than the retail sector.

The very small number of flyers examined (and the fact that they were all from the same retail chain) means that caution must be exercised in interpreting the results. Nevertheless, for the one chain examined, the fact that 3 of the 7 flyers did not feature classification information suggests that improvement in compliance practice when creating flyers is needed.

The results for website advertising were very poor. Only one retailer achieved a high compliance rate (of 80%) and the remainder all scored 0% compliance. While the failure to provide a link to a key or legend contributed to these poor compliance results, the results for displaying the correct classification markings were also poor. The following low compliance levels for correct display of the combination box/classification symbol were recorded by 6 of the 7 chains: 1 out of 4 advertisements, 1 out of 8, 0 out of 3, 2 out of 6, 1 out of 9, and 2 out of 7. The remaining chain achieved compliance for 4 out of 5 of its website advertisements.

None of these website breaches was for failure to use the new markings. Instead, the majority of breaches (29 out of 31) were due to the failure to display any classification marking. These results suggest a problem with compliance in website advertising.

Although this study did not strictly assess compliance in relation to catalogues, the 18 catalogues collected at retail stores were reviewed to gain an understanding of the ways in which classification information is provided to consumers.

The results of this review were similar to the results of the review of catalogues in the Brisbane hire outlets (outlined in Report No. 2) in that some retail chains appear to have good practices, while others are in need of improvement. As with the Brisbane sample, the following practices were observed:

- there were no markings;
- incorrect classification markings were used (eg “M 15+”);
- markings were not in lower left corner;
- markings on packshots were not of the correct size or were obscured or not legible;
- markings in multiple-title advertisements (other than packshots) were not near the title;
- no legend was provided or incomplete legends were provided (ie insufficient information);
- incorrect classification markings were used in legends;
- descriptions of classifications in legends were incorrect;
- there was no reference to a legend for other pages.

The review of 27 playable demonstrations showed that at least some of the demos available to consumers in retail stores contain no classification information. Of the 27 demos viewed, 16 (59%) displayed the correct classification markings. The 11 breaches were all due to the failure to display any classification markings. Unlike the catalogues, these demos have been made by the distributor.

Overall, the study indicates that there is good observation of the rules relating to posters, especially in relation to DVDs and computer games classified under the system existing prior to 26 May 2005. As with the results for DVDs and computer games, there is a drop in compliance for posters advertising DVDs classified on or after 26 May. The results suggest that distributors need to exercise more care with posters for computer games classified under the new marking scheme and that retail stores need some improvement in their compliance processes when compiling catalogues and flyers. The most serious problem with compliance relates to website advertisements, which in most cases are the responsibility of the head office of the retail chains.

INFORMATION ABOUT THE MEANING OF CLASSIFICATIONS

The statutory requirements for display of the approved notice at retail sales outlets and the inclusion of a legend on websites are designed to ensure consumers receive information about the meaning of the classifications before they select a movie or computer game. The notice and the legend include the classification symbol and a description of the classification.

In a number of cases (21 of the 48 assessed), the A4 version of the notice was on display. However in only 19 of the 48 stores (40%) the new notice was displayed in a prominent place.

The low levels of compliance in respect of approved notices and legends may contribute to the low levels of understanding of the meanings of the classifications highlighted in recent OFLC research.

CONCLUSION

This study has provided a useful insight into the compliance by retail sales outlets in suburban Melbourne with requirements relating to advertising and display of markings on DVDs and computer games.

The study indicates that a strong culture of compliance with most aspects of the markings requirements had developed in retail stores under the markings system that existed until May this year. The results for DVDs classified under the new markings scheme were also very good. Posters for DVDs and games classified under the former scheme were seen to have very good compliance levels.

Although in all these categories the study recorded a fall in compliance levels under the new markings scheme, the results are not so low as to cause serious concern. Distributors are recommended to examine their compliance practices to ensure that the small number of unmarked computer games receives attention. Similarly, there is a need for distributors to improve their systems for including the determined markings in playable demos.

In relation to retail chains, there is a need for these retail chains to exercise more care in compiling flyers and catalogues. However, the most serious problem identified in this study relates to website advertisements. The very poor compliance rates demonstrated by all but one retail chain mean that significant improvement is needed.

The compliance issues identified in this report relate to the application of the new classification markings as well the previous classification markings. The Victorian authorities will be alerted to the contents of this report. It is important to note that this information will be of value to other states and territories.

The key themes which emerge from this analysis of classification markings on DVDs and games are:

- Overall, there are high compliance levels in the retail sales sector.
- Good results for recent DVDs and computer games suggest that the new markings scheme has had a successful introduction into this sector.
- There are some residual areas of concern in relation to advertising (flyers, catalogues and playable demos).
- There appears to be a more serious problem in relation to website advertisements.
- The importance of the prominent display of the new classifications notice in retail stores is emphasised.

ATTACHMENT 1

VICTORIAN CLASSIFICATION ENFORCEMENT LAWS AND PENALITIES FOR NON-COMPLIANCE

On 26 May 2005, the *Classification (Markings for Films and Computer Games) Determination 2005* came into force. The determination, issued under the Commonwealth *Classification (Publications, Films and Computer Games) Act 1995*, sets out classification marking and consumer advice requirements for films and computer games.

The purpose of the classification determination is to provide consumers with clear classification information about films and computer games. Complementary classification enforcement laws in each State and Territory ensure compliance with the classification determination.

Victorian classification enforcement laws

The complementary classification enforcement laws in Victoria are found in the *Classification (Publications, Films and Computer Games) (Enforcement) Act 1995*.

Among other requirements, the Victorian legislation:

- requires retailers to display in a prominent place a notice in an approved form about classifications for DVDs and computer games;
- imposes penalties if retailers offer for sale DVDs or computer games without the required markings or consumer advice;
- imposes penalties if retailers offer for sale DVDs or computer games with the wrong markings or consumer advice;
- imposes separate penalties for advertisements that contain the incorrect classification information.

A more comprehensive list of offences and penalties relating to advertising and the display of classification information relevant to retail outlets is set out in the following tables.

The Victorian legislation is available at:

http://www.austlii.edu.au/au/legis/vic/consol_act/cfacga1995596/

Relevant Victorian classification enforcement laws and penalties for non-compliance

Films		
Offence	Section	Penalty
Failure by a person who sells films on any premises to keep a notice in the approved form on display in a prominent place clearly visible to the public ³	Section 17	- 5 penalty units (\$524.05)
Sale of a film without the determined markings and any consumer advice displayed on the container, wrapping or casing ⁴	Section 18	- For a natural person, 20 penalty units (\$2,096.20) - For a body corporate, 50 penalty units (\$5,240.50)
Sale of a classified film if the container, wrapping or casing indicates that the film is unclassified or has a different classification	Section 18	- For a natural person, 20 penalty units (\$2,096.20) - For a body corporate, 50 penalty units (\$5,240.50)
Computer Games		
Offence	Section	Penalty
Failure by a person who sells or demonstrates a computer game in a public place to keep a notice in the approved form on display in a prominent place clearly visible to the public	Section 35	- 5 penalty units (\$524.05)
Sale of a computer game without the determined markings and any consumer advice displayed on the container, wrapping or casing	Section 40	- For a natural person, 20 penalty units (\$2,096.20) - For a body corporate, 50 penalty units (\$5,240.50)
Sale of a classified game if the container, wrapping or casing indicates that the game is unclassified or has a different classification	Section 40	- For a natural person, 20 penalty units (\$2,096.20) - For a body corporate, 50 penalty units (\$5,240.50)
Advertising and Other Provisions		
Offence	Section	Penalty
Publishing an advertisement for a classified film or computer game unless it contains the determined markings and the requisite consumer advice and is shown in the correct manner, clearly visible having regard to the size and nature of the advertisement	Section 52	- For a natural person, 20 penalty units (\$2,096.20) - For a body corporate, 50 penalty units (\$5,240.50)
Publishing an advertisement for a classified film or computer game with a marking suggesting that the film or game is unclassified or has a different classification	Section 53	- For a film or game classified RC, 240 penalty units (\$25,154.40) or imprisonment for 2 years - For a film classified X18+, 60 penalty units (\$6,288.60) or imprisonment for 6 months - In any other case, for a natural person 20 penalty units (\$2,096.20) and for a body corporate 50 penalty units (\$5,240.50)
Publishing a publication containing an advertisement for a film or computer game where the publication does not also contain a list of the classification symbols and determined markings for films and/or games	Section 55	- For a natural person, 20 penalty units (\$2,096.20) - For a body corporate, 50 penalty units (\$5,240.50)

³ The Act provides that 'sale' includes the hire of a film or computer game (section 3). In Victoria, at the time of this research, a penalty unit was valued at \$104.81 (*Monetary Units Act 2004*, section 5).

⁴ In the case of reclassification or revocation of a classification, display of the previous markings is sufficient compliance for the offences under section 18 (films), section 40 (computer games) and section 52 (advertisements) for a period of 14 days after the decision to reclassify or revoke takes effect.

CLASSIFICATION (PUBLICATIONS, FILMS AND COMPUTER GAMES) ENFORCEMENT ACT (VIC) 1995

17. Display of notice about classifications

A person who sells films on any premises must keep a notice in the approved form about classifications for films on display in a prominent place on the premises so that the notice is clearly visible to the public.

Penalty: 5 penalty units.

18. Films to bear determined markings and consumer advice

- (1) A person must not sell a film unless the determined markings relevant to the classification of the film and relevant consumer advice, if any, are displayed on the container, wrapping or casing of the film.

Penalty: in the case of a natural person, 20 penalty units;
in the case of a body corporate, 50 penalty units.

- (2) A person must not sell an unclassified film if the container, wrapping or casing in which the film is sold bears a marking that indicates or suggests that the film has been classified.

Penalty: in the case of a natural person, 20 penalty units;
in the case of a body corporate, 50 penalty units.

- (3) A person must not sell a classified film if the container, wrapping or casing in which the film is sold bears a marking that indicates or suggests that the film is unclassified or has a different classification.

Penalty: in the case of a natural person, 20 penalty units;
in the case of a body corporate, 50 penalty units.

- (4) If—

- (a) a film is reclassified under section 39 or 97A of the Commonwealth Act; or
(b) the Board revokes a classification or consumer advice for a film under section 22B(3) of that Act—

display of the determined markings and consumer advice applicable to the film before that reclassification or revocation is sufficient compliance with this section for a period of 14 days after the decision to reclassify or revoke takes effect.

35. Display of notice about classifications

A person who sells or demonstrates a computer game in a public place must keep a notice in the approved form about classifications for computer games on display in a prominent place in that public place so that the notice is clearly visible to the public.

Penalty: 5 penalty units.

40. Computer games to bear determined markings and consumer advice

- (1) A person must not sell a computer game unless the determined markings relevant to the classification of the computer game and relevant consumer advice, if any, are displayed on the container, wrapping or casing of the computer game.

Penalty: in the case of a natural person, 20 penalty units;
in the case of a body corporate, 50 penalty units.

- (2) A person must not sell an unclassified computer game if the container, wrapping or casing in which the computer game is sold bears a marking that indicates or suggests that the computer game has been classified.

Penalty: in the case of a natural person, 20 penalty units;
in the case of a body corporate, 50 penalty units.

- (3) A person must not sell a classified computer game if the container, wrapping or casing in which the computer game is sold bears a marking that indicates or suggests that the computer game is unclassified or has a different classification.

Penalty: in the case of a natural person, 20 penalty units;
in the case of a body corporate, 50 penalty units.

- (3A) A person must not make a computer game available for playing on a pay and play basis (for example, a coin operated arcade game) unless the determined markings relevant to the classification of the computer game and relevant consumer advice, if any, are displayed on the device used for playing the game.

Penalty: in the case of a natural person, 20 penalty units;
in the case of a body corporate, 50 penalty units.

- (3B) If two or more computer games are available for playing on a device referred to in sub-section (3A), the determined markings and consumer advice to be displayed on the device are those relevant to the computer game with the highest classification under the Commonwealth Act.

- (4) If—

- (a) a computer game is reclassified under section 39 of the Commonwealth Act; or
- (b) the Board revokes a classification or consumer advice for a computer game under section 22B(3) of that Act—

display of the determined markings and consumer advice applicable to the computer game before that reclassification or revocation is sufficient compliance with this section for a period of 14 days after the decision to reclassify or revoke takes effect.

52. Advertisement to contain determined markings and consumer advice

- (1) A person must not publish an advertisement for a classified film or a classified publication or a classified computer game unless—

- (a) the advertisement contains the determined markings relevant to the classification of the film, publication or computer game and relevant consumer advice, if any; and
- (b) the determined markings and consumer advice are displayed—
 - (i) in the manner determined by the Director under section 8 of the Commonwealth Act; and
 - (ii) so as to be clearly visible, having regard to the size and nature of the advertisement.

Penalty: in the case of a natural person, 20 penalty units;
in the case of a body corporate, 50 penalty units.

- (2) If—

- (a) a film, publication or computer game is reclassified under section 39 or 97A of the Commonwealth Act; or
- (b) the Board revokes a classification or consumer advice for a film, publication or computer game under section 22B(3) of that Act—

display of the determined markings and consumer advice applicable to the film, publication or computer game before that reclassification or revocation is sufficient compliance with sub-section (1) for a period of 14 days after the decision to reclassify or revoke takes effect.

53. Misleading or deceptive advertisements

- (1) A person must not publish an advertisement for an unclassified film or an unclassified publication or an unclassified computer game with a marking that indicates or suggests that the film or publication or computer game is classified.

Penalty:

- (a) if the film, publication or computer game is subsequently classified RC—240 penalty units or imprisonment for 2 years;
- (b) in the case of a film subsequently classified X 18+—60 penalty units or imprisonment for 6 months;
- (c) in any other case—
in the case of a natural person, 20 penalty units;
in the case of a body corporate, 50 penalty units.

- (2) A person must not publish an advertisement for a classified film or a classified publication or a classified computer game with a marking that indicates or suggests that the film or publication or computer game is unclassified or has a different classification.

Penalty:

- (a) if the film, publication or computer game is classified RC—240 penalty units or imprisonment for 2 years;
- (b) in the case of a film classified X 18+—60 penalty units or imprisonment for 6 months;
- (c) in any other case—
in the case of a natural person, 20 penalty units;
in the case of a body corporate, 50 penalty units.

- (3) If—

- (a) a film, publication or computer game is reclassified under section 39 or 97A of the Commonwealth Act; or
- (b) the Board revokes a classification for a film, publication or computer game under section 22B(3) of that Act—

publication of the determined markings applicable to the film, publication or computer game before that reclassification or revocation is sufficient compliance with subsection (2) for a period of 14 days after the decision to reclassify or revoke takes effect.

55. Classification symbols etc. to be published with advertisements

A person must not publish a publication containing an advertisement for—

- (a) a film; or
- (b) a publication classified Category 1 restricted or Category 2 restricted; or
- (c) a computer game—

unless the publication also contains a list of the classification symbols and determined markings for films or publications or computer games respectively.

Penalty: in the case of a natural person, 20 penalty units;
in the case of a body corporate, 50 penalty units.

ATTACHMENT 2

RETAIL SALE OUTLETS

The following retail sales outlets were visited as part of this study.

Sale Outlet	Store
ABC Centre	Highpoint
ABC Centre	Southland
Big W	Fountain Gate
Big W	Southland
Borders	Chadstone
David Jones	Chadstone
David Jones	Southland
Dick Smith	Knox
Dick Smith	Highpoint
DSE Powerhouse	Fountain Gate
DSE Powerhouse	Southland
EB Games	Chadstone
EB Games	Knox
EB Games	Highpoint
EB Games	Fountain Gate
EB Games	Doncaster
EB Games	Southland
Ezy DVD	Knox
Ezy DVD	Fountain Gate
Game Traders*	Fountain Gate
Harvey Norman	Knox
HMV	Chadstone
HMV	Preston
HMV	Southland
JB Hi-Fi	Chadstone
JB Hi-Fi	Knox
JB Hi-Fi	Highpoint
K Mart	Knox
K Mart	Doncaster
K Mart	Fountain Gate
Leading Edge	Fountain Gate
Myer	Preston
Myer	Southland
Sanity	Chadstone
Sanity	Highpoint
Sanity	Fountain Gate
Sanity	Doncaster
Sanity	Southland
Target	Chadstone
Target	Knox
Target	Highpoint
Target	Fountain Gate

Compliance Snapshot – Draft

Target	Southland
Toys R Us	Chadstone
Toys R Us	Knox
Toys R Us	Highpoint
Virgin	Fountain Gate
Virgin	Knox
Virgin / Myer	Chadstone
Virgin / Myer	Highpoint