Classification (Publications, Films and Computer Games) (Netflix Classification Tool) Approval 2016

I, Mitch Fifield, Minister for Communications, make the following instrument under subsection 22CA(1) of the *Classification (Publications, Films and Computer Games) Act 1995*.

1 Name of instrument

This instrument is the *Classification (Publications, Films and Computer Games) (Netflix Classification Tool) Approval 2016*.

2 Commencement

This instrument commences on the day it is signed.

3 Definitions

In this instrument:

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

Branch means the Classification Branch of the Commonwealth Department of Communications and the Arts.

classification tool means a tool that may be approved under section 22CA of the Act for the purposes of classifying one or more of the following:

  a) publications;

  b) films;

  c) computer games.

Department means the Commonwealth Department of Communications and the Arts.

Department's website means the website www.classification.gov.au administered by the Branch, or any replacement website.

Film is defined by section 5 of the Act and includes movies, series, episodes and programs.

Netflix Classification Tool means the classification tool known by that name on the day this instrument is signed.

Netflix means Netflix Inc., a stock corporation registered in the United States of America that makes films available over the internet.

Netflix Australia means the catalogue of films made available by Netflix via the internet to an Australian audience.

National Classification Database means the register, known as the National Classification Database, maintained by the Department, or any replacement register.

Note: For the definitions of *Board, classify, Director* and *publish*, see section 5 of the Act.

4 Approval

Acting under subsection 22CA(1) of the Act, and having regard to the matters specified in the guidelines made for the purposes of subsection 22CA(4) of the Act I APPROVE the Netflix Classification Tool for the purposes of classifying films available on Netflix Australia subject to the conditions set out in the Schedule to this instrument.

Note: The guidelines can be found on the Department's website.

Mitch Fifield
Minister for Communications

Dated 11 October 2016

Schedule   Conditions on the approval of the Netflix Classification Tool

Under subsection 22CA(3) of the Act, the following conditions are imposed on the approval of the Netflix Classification Tool:

1   Australian community standards

(i)   The Netflix Classification Tool must produce classification decisions that are broadly consistent with Australian community standards and with classification decisions made by the Classification Board.

(ii)   To avoid doubt, decisions of the Netflix Classification Tool that are inconsistent with (i) are not valid decisions under the meaning of subsection 22CF(1) of the Act.

2   Consumer advice

The Netflix Classification Tool must determine consumer advice giving information about the content of each film that it classifies.

3   Notification to the Director

The Netflix Classification Tool must notify the Department of the decisions that it makes.

4   Refused Classification (RC) material

The Netflix Classification Tool must have the capacity to refuse classification to relevant films.

5   Films that must not be classified by the Netflix Classification Tool

The Netflix Classification Tool must not produce a classification and consumer advice for a film if:

(a) the film has already been classified by the Classification Board, the Classification Review Board, or any approved classification tool; or

(b) Netflix is aware that the film will be exhibited in a public place; or

(c) before the classification is produced, the Branch or Board has formed the opinion that the film should not be classified using the Netflix Classification Tool and the Branch has made reasonable efforts to notify Netflix.

6   Reputation and programming of classification tool

The Netflix Classification Tool must:

(a) produce classification decisions and consumer advice that are accurate and reliable to the extent that there is a high level of confidence in the tool.

(b) be responsive to changes to the National Classification Scheme.

7   Survival of decisions of the Netflix Classification Tool

For the avoidance of doubt, decisions of the Netflix Classification Tool will survive the revocation of this approval if they:

(a) are produced while this approval is in effect; and

(b) comply with the Act and this approval, including the conditions set out in this Schedule.

Effect of breach of conditions

If one or more conditions of this approval are breached in relation to a decision of the Netflix Classification Tool, subsection 22CF(3) of the Act makes it clear that the decision is not taken to be a decision of the Board. That is, the decision will be invalid even if it is included on the National Classification Database.