

comments on GoRTT draft Policy on Cinema Exhibition and Video Entertainment

Introduction

The Government of Trinidad and Tobago (GoRTT) released a "[Consultative Document for the Policy on Cinema Exhibition and Video Entertainment in Trinidad and Tobago.](#)" (PDF ; 671K | [Mirror of PDF](#)). Read [TTCS blog post](#) for further background details. The deadline for comments is **JUNE 30th, 2009**. On June 30th, 2009, the TTCS submitted its comments : [TTCS Comments on Consultative Document on Draft Policy for Video and Cinema.pdf](#)

On November 2009, a second version of the [Consultative Document for the Policy on Cinema Exhibition and Video Entertainment in Trinidad and Tobago](#) (PDF ; 1.1MB) was released for comments. The deadline for comments for this 2nd version is **November 27, 2009**.

See [comments posted to the TTCS discussion list](#) on the first version

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Consultation Point 1

Do you think that a Sector Regulator is the appropriate mechanism to achieve the objectives, as outlined above? If not, please provide insight into why.

The Sector Regulator must be a transparent office to the national community, meaning that all decisions and reasoning should be documented and publicly accessible. It is vital that stakeholders and members of the public have the right to appeal to sector regulator decisions e.g. a classification decision.

Appeals must follow a formal process and final decisions and reasoning of the Board be documented and publicly posted.

We argue that in terms of policy position (4) the framework should explicitly state mechanism for maintaining public safety and public order. In any event the Sector Regulator should only have the right to act in these circumstances in conjunction with the relevant authorities e.g. Police service and/or by Court Order.

Also special provision under policy position (6) must be made for non-permanent exhibitors and non-permanent exhibition venues. Temporary approval for such exhibitions could be sought from the Sector regulator and provision should be made for 'moving' or 'roaming' exhibitions which do not have a fixed venue.

Finally we suggest a convergence of the interests to ensure fairness and transparency. Such that the members of the board are appointed or removed only for cause by the President, acting on the advice of the Minister in consultation with the stakeholders.

Other comments/gestions:

"In the interest of encouraging personal choice of the consumer, the Government proposes to introduce a rating classification system which will guide the content of the motion picture and video entertainment product." is poorly worded and should instead be "In the interest of encouraging informed choices by the consumer...."

Consultation Point 2

Do you think the functions outlined are appropriate for the proposed Authority? If not, please provide two to three recommendations.

We wish to raise several points for the functions of the proposed Authority-

- must explicitly state what is auxiliary paraphernalia in 9.2(a) (as this may cover a range of items including but not limited to physical accessories) and public decency in 9.2(d);
- it appears that the function to licence exhibition venues is missing, this was set out in 8 Introduction. Should also provide temporary licences and reassess the need to classify all motion picture and/or video entertainment products (points detailed under Consultation Point 1); and
- should also investigate other areas where public exhibitions are being made without recognition of intellectual property or copyrights e.g. on screens mounted in hired vehicles or in bars and restaurants etc.
- what is the practicality of enforcement and testing of games to find a rating, most games do not reveal all of their graphics other than level which would require them to record regular gameplay for the entire game and submit that for review. It remains unclear who would submit this record and questionable whether it is worthwhile for the game manufacturer to submit this to a film board. In this instance it may be better to adopt the ESRB rating already on the box unless challenged otherwise.

Other comments:

- How is software which includes video and gaming content classified and would such software CDs/DVDs be required to be approved by film board and until then, not allowed to be sold/distributed within Trinidad and Tobago?

For example

Win95 included two music videos, Ubuntu has a interview with Mandela, games like Tux Paint and TTCS OSSWIN CD which features open source games

Consultation Point 3

Do you agree with the cessation of Censorship of film and video entertainment product?(1)

(2)Do you agree with the establishment of the revised Classification Scheme identified? If not, Please provide three to five reasons for your position.

While a sector regulator may be needed for locally created exhibited, sold and/or rented in Trinidad and Tobago, the role is redundant for films and other multimedia (games etc.) already rated by overseas codes (MPAA, ESRB).

We argue the premise stated in 9.1.2 that "In Trinidad and Tobago, where the culture of industry codes has not taken root". In fact no analysis or information is provided to support this claim. Due to the prevalence and popularity of movies and television programming from the United States and initiatives by the providers of such entertainment, many citizens are aware of the industry codes from the MPAA (http://www.mpa.org/FilmRat_Ratings.asp) in use (G, PG, PG-13, R, NC-17). These codes are stamped on all cinema posters and movie trailers shown. Further, original DVDs that

are sold or rented also use these movie codes. Also Cable programming schedules always incorporate these codes when advertising eg. on the newspaper or on the channel programme information. A similar argument is echoed for video games released in the United States which are rated by the Entertainment Software Rating Board ESRB) http://www.esrb.org/ratings/ratings_guide.jsp

As is unlikely that a movie distributor will alter the packaging or edit the movie to conform with a rating given by a sector regulator in Trinidad and Tobago such restrictions and overseeing by a Sector Regulation may have the effect of not allowing the flow of such entertainment in Trinidad and Tobago (given the size of the Trinidad and Tobago market).

The Sector Regulator also has a non-existent role for Arcade games. These are different from consumer games, as they are designed for public display to people of all age groups. There is generally no sort of offensive content, unlike consumer games which may be inappropriate for certain age groups depending on content. For example, there is no "PG-13" language or "R" rated content in arcade games

Consultation Point 4

Do you agree with the Classification Scheme identified? If not, Please provide three to five recommendations for an appropriate classification scheme

- the proposed PG-14 is equivalent to MPAA's PG-13 rating and should be aligned with this

- the international rating of the country of origin of a work be respected unless otherwise publicly challenged or objected. This would free the Board to monitor the protection of minors, unclassified works of foreign origin, and works of local origin seeking rating for legal distribution. Film release dates are known well in advance, public media outlets can be utilised to disseminate the information on proposed rating acceptances beforehand. The onus now switches to the public to make objection based on private random screenings to an already evaluated foreign rating which may not be in keeping with local cultural and social norms, not leaving the Board individuals chosen by the Minister to determine what the local social values are. Again, the distributor/owner should also be allowed to file a brief to contest the complaint if they choose to do so and the board should document this and post its decisions with reasons publicly. (as stated under our response to Consultation Point 1)

So basically under this alternate proposal the board will have now two very manageable duties,

1. protect minors from unclassified foreign and local works,
2. determine the validity of public claims (by actual people, you, me, Pastor X, Rev Y, Pundit Z, Imam A etc) of objectionable content that is rated (in their minds) improperly in its country of original distribution. Here theirs would be the definitive ruling.

Other Comments:

There should be greater transparency to the Board and expenses should be paid through contributions/concessions of stakeholders including the distributors, local film producers association and government, as the situation with the Telecommunication Authority of Trinidad and Tobago.

Consultation Point 5

(a) Do you agree with the use of an equivalence framework for Classification Scheme. If not, please explain why?

Yes, the scheme is a good mirrors the existing schemes in other countries and is unnecessary duplication of effort for already rated films therefore we should adopt the equivalent MPAA and ESRB ratings of films and video games respectively and only rate local films and video games which do not have these comparable ratings.

(b) Do you have any concerns regarding the equivalences proposed above? If so, please provide no more than three recommendations for amendment

- Only film ratings were mentioned. Is there another rating for video games?

Video Games released in the United States are rated by the Entertainment Software Rating Board (ESRB). From the ESRB website at http://www.esrb.org/ratings/ratings_guide.jsp, "ESRB ratings have two equal parts: rating symbols suggest age appropriateness for the game and content descriptors indicate elements in a game that may have triggered a particular rating and/or may be of interest or concern."

ESRB Ratings :

- **EC** - Early Childhood - Titles rated EC (Early Childhood) have content that may be suitable for ages 3 and older. Contains no material that parents would find inappropriate.
- **E** - EVERYONE - Titles rated E (Everyone) have content that may be suitable for ages 6 and older. Titles in this category may contain minimal cartoon, fantasy or mild violence and/or infrequent use of mild language.
- **E10+** - EVERYONE 10+ - Titles rated E10+ (Everyone 10 and older) have content that may be suitable for ages 10 and older. Titles in this category may contain more cartoon, fantasy or mild violence, mild language and/or minimal suggestive themes.
- **T** - TEEN - Titles rated T (Teen) have content that may be suitable for ages 13 and older. Titles in this category may contain violence, suggestive themes, crude humor, minimal blood, simulated gambling, and/or infrequent use of strong language.
- **M** - MATURE - Titles rated M (Mature) have content that may be suitable for persons ages 17 and older. Titles in this category may contain intense violence, blood and gore, sexual content and/or strong language.
- **AO** - ADULTS ONLY - Titles rated AO (Adults Only) have content that should only be played by persons 18 years and older. Titles in this category may include prolonged scenes of intense violence and/or graphic sexual content and nudity.

Other comments:

- Item 9.3.3 (2) should read "may be amended by the Order of the Minister on the advice of the Film and Review Board in consultation with Stakeholders

- Item 9.3.3 "(3) *In line with any policies regarding public decency and order, the Board reserves the right to refuse the classification of film and/or video product the content of which is deemed illegal by any written law in Trinidad and Tobago*". If taken literally this would mean that only few movies, other than G rated films which do not have content deemed illegal (e.g stealing, fighting, shooting, etc) would be acceptable. This point must be defined more appropriately.

- Item 9.3.3 (4) An applicant should be able to appeal to decisions directly to the Board at first instance and only a final appeal mechanism be sent to the Minister.

Consultation Point 6

Do you agree with the Authority's forbearance on proposed segments of works? Please provide reasons for your response.

Disagree with Duplication of Effort in 9.3.4(3) if you utilise the international standards you would only have to regulate the works and video products locally produced or not defined.

Suggest that 9.3.5 (1) be redrafted as Carnival is not captured in the definition, it could read- "... diversity of cultures in Trinidad and Tobago and the nature of indigenous, social and cultural works in this regard, the Authority may forebear from the classification of sport, music, cultural, religious, and educational works....".

Also under this section must state the manner of forebearance, it may take the form of a separate rating or posters, advertisement or approved sticker stating that the film/exhibition/programme /video has this forebearance.

Consultation Point 7

Do you believe that Exhibitor venues should be licensed by the Film and Video Review Authority? If not, please provide reasons for your position.

Yes, but must be a Schedule which should be circulated and published in the newspapers giving strict definition of what video equipment and other paraphenalia will fall under this category. .

Other Comments:

9.3.6(2) any classification and equivalency schemes should be done in consultation with the stakeholders under the broadcast code including the Broadcast Service Providers themselves, not just with TATT.

Consultation Point 8

Do you agree that Exhibitors should be licensed by the Film and Video Review Authority? Please provide reasons for your response.

Yes Exhibitors should be licensed but we wish to raise the following points:

- There should be clear definition of what sale and rental practices are in 9.5(1), for instance it is not clear whether demoing a trailer to a film or giving potential customers limited play a video game prior to purchase falls into these categories.
- There should be a difference between one-off exhibitors eg for Charity or an event launch versus mainstream regular exhibitors. Perhaps a temporary exhibitors licence can be applied to this category.
- With regard to the responsibility for the adherence to these limitations in this section there needs to be a specific limit to such controls balanced with the right of privacy of individuals, perhaps an adult accompanying a child to such events may not want to have proof of guardianship. It appears that these rules may come down to a subjective test leading to inconsistency in the system and inherent unenforceability.
- Section 9.5(2)(ii) The licenced Exhibitor should not be limited to natural persons, but organisations and companies who apply will always be represented by a natural person who has the authority to act on its behalf.

Consultation Point 9

Do you agree that Projectionist should no longer be licensed or registered by the Film and Video Review Authority? Please provide reasons for your response.

Projectionists should not be licensed/registered but a clear definition of what the best practices for the operation of the equipment, handling and storage of film material should be defined. Perhaps the stakeholders, Ministry and the Authority should come up with this policy and this could be reviewed beinnially.

Other Comments:

- Section 9.5.2(1) The form of the record-keeping mechanism will be subject to direction by the Authority. The proposal implies that every single patron of cinemas, arcades, demos, exhibitions, movie previews etc. are required to present their ID for record by the Exhibitor. This is not only an enfringement of privacy rights but is wholly impractical, there is no way to require ID from minors (as they may not have any issued to them other than their birth papers or passport) and in this instance it is impossible to prove guardianship rights of an accompanying adult.
- In the event that exhibitors can record such information, special measures must be taken for the protection, use, transmittal, distribution, storage and destruction of such data at the exhibition venue or by the Authority. These measures are critical and must form part of this policy.
- Section 9.5.2(3) should read the prescriptions outlined in 9.4.4(1) not just 9.4.4
- Section 9.5.3.(1) The criteria set out are prejudicial and discriminatory specifically age, experience and status of income, and will undoubtedly lead to Judicial Review actions against the Authority. Further the Authority must have full understanding that pending criminal/civil matters or allegations of misconduct do not impute one's good character nor imply bad character.
- Section 9.5.3.(2) should be applauded as it does recognise the need for the process to be transparent and subject to scrutiny (please see our response to Consultation Point 1), however it is disappointing that there is no appeals procedure to the Authority's decisions for the interested party.

Consultation Point 10

*Do you agree that the same Classification Scheme should be used for both motion picture and non-motion picture video entertainment product?
Please provide reasons for your response*

See Consultation Point 5 ESRB ratings.

These are two distinct form of media and must be rated under separate standards.

Other Comments:

- Firstly the section is incorrectly titled, should read- Film and Video Entertainment for Private Use. The entire section must reflect this.
- In the strict guidelines of this policy (stated in the introduction) would require the Authority to control film and video proprietors.
- Section 9.7.1 (1) erroneously referred to the State eg. their interest in video entertainment etc. Though the Authority frequently consults with the Minister it is independent from the State and must maintain this at all times to avoid public outcry and allegations of State censorship. Also IP rights should be dealt with in conjunction/alliance with COTT.
- Section 9.7.1 (2) the authorisation framework/prescribed limitations must be created with consultation of stakeholders. Also it is not in the interests of commerce to immediately intervene/stop operations for a breach. The Authority instead should serve notice/warning of the breach and allow the proprietor a reasonable time to fix the breach. If it is not done then there can be no dispute against the Authority exercising its right to intervene/stop operations.
- Section 9.7.2 (1) while the proprietor can advise patrons of the recommended use of items as defined by the Authority, the proprietors cannot be held responsible for the ultimate use of such products.
- Section 9.7.2 (2) is oppressive, the proprietors must have a reasonable time to remedy any breaches as long as these are not persistent, as well as the right to appeal determinations of the Authority before any recommendation be made to the relevant Authorities for charge/arrest.
- This whole section must be amended to consider the right of such proprietors to demo/show film and video, it is impractical for them at any given time to control/monitor patrons in this instance.

Consultation Point 11

(1) Do you agree with the framework proposed for the establishment of Sector Codes of Conduct?

Under 9.7.3 the framework mirrors what is already in existence but the record-keeping mechanism must be specifically stated. This could include paper based record-keeping but recommend computer databases. Again the protection, use, storage, transmittal, distribution and destruction must be clearly defined not only for the proprietors but also the Authority.

(2) Do you agree that such Codes may be made mandatory through the establishment of Regulations? Please provide reasons for your responses

This is a blanket section in 9.8.3 and very few Government created bodies eg. Dental Council now have this power. Exhibition and Video is not a highly specialised field so it is unnecessary to give the Authority this sort of dissenting power. Any change in regulation should therefore occur with Parliament approval.

Other Comments:

- Under 9.7.4 it is more appropriate for COTT to investigate and enforce copyright rules and regulations.
- Under 9.8.2(ii) must ensure that a clear schedule of fines and any amendments to this schedule are circulated to the stakeholders

Additional comments

- Section 9.9 the Authority should work in conjunction with COTT in IP Protection.

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50. (2) should require revocation of license where the exhibitor has accurate knowledge of the minor's age, yet still allowed access. Therefore, it may be required to show an ID in order to

determine age.

- The Film and Video Review Authority should take the structure similar to the Telecommunication Authority set out in Part II of the Telecommunications Act 2001.

- Other relevant references:

Video Game ratings : ESRB (<http://www.esrb.org/ratings/index.jsp>)

European video game rating : <http://www.pegi.info/en/index/>

Australian Classification Board : <http://www.oflc.gov.au/>