



Review of Saskatchewan's Film and Video Classification Legislation

Consultation Paper

August 31, 2023

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1. INTRODUCTION

The Financial and Consumer Affairs Authority of Saskatchewan (FCAA) is responsible for the administration of *The Film and Video Classification Act, 2016* (the Act) and *The Film and Video Classification Regulations, 2018* (the Regulations). The Act and the Regulations set out the regulatory framework for the classification of films (including movies, videotapes and DVDs) and the regulation of exhibitors and distributors of film in Saskatchewan.

In recent years, the film industry has undergone dramatic and unprecedented changes. The rapid advances in digital technologies and the proliferation of streaming service platforms have fundamentally transformed the way media content is distributed and consumed.

In light of the significant changes in the film industry, consideration is being given as to whether the existing regulatory framework should be modernized and streamlined to better reflect today's film marketplace.

The purpose of this consultation paper is to seek feedback from all interested parties on the existing regulatory framework and whether changes should be made to the framework.

Questions are included throughout this consultation paper for consideration and comment. These questions have been summarized at the end of the consultation paper.

2. STRUCTURE OF CONSULTATION PAPER

The remainder of this consultation paper is structured as follows:

- Part 3 provides an overview of Saskatchewan's current film classification legislation.
- Part 4 considers changes to the landscape in which the film classification legislation operates.
- Part 5 identifies concerns with film classification regulatory frameworks.

- Part 6 suggests guiding principles to be used to inform the review of the regulatory framework.
- Part 7 explores possible new approaches to modernize Saskatchewan’s film classification legislation.
- Part 8 explains how interested parties may provide their comments on the regulation of film content in Saskatchewan.

3. SASKATCHEWAN’S CURRENT REGULATORY FRAMEWORK

Exhibition of Films

Under the current Act, unless exempted, all films must be classified, and the appropriate classification fee must be paid before a film is shown in a theatre to the public in Saskatchewan.

Under the existing legislation, films must be classified and assigned one of the following mandatory age-based ratings:

- General (G)
- Parental Guidance (PG)
- 14 years of age or older, or under 14 if accompanied by an adult 14(A)
- 18 years of age or older, or under 18 if accompanied by an adult (18A)
- Restricted (R)
- Adult (A).

In addition, all advertising associated with a film must be approved by the Director of Film Classification (the Director) and the Director may approve, restrict or prohibit the manner in which the advertising for a film is displayed or distributed.

The existing legislation provides that if a film is to be exhibited in a theatre, it is an offence for an exhibitor to permit any person apparently under the permitted age for that film to view the film.

Distribution of Films

Similarly, if a film is to be sold or rented to members of the public or to other distributors in Saskatchewan, it must first be classified or fall under an exemption contained in the Act or the Regulations.

It is an offence under the Act for a distributor to permit a film to be viewed, purchased or rented on the distributor's premises by a person apparently under the permitted age for that film.

Adult Films

Under the current legislation, if a film contains any of the following elements, the film must be both approved and classified before it is exhibited or distributed in Saskatchewan:

- the coercing, through the use of threat of physical force or by other means, of a person to engage in a sexual activity, if the sexual activity that was coerced is depicted in explicit sexual scenes; or
- a person who is or who appears to be under the age of 18 or who is intended to represent a person under the age of 18 who appears nude or partially nude in a sexually suggestive context or in a scene of explicit sexual activity.

The Act requires a film to be classified as Adult (A) if the film, in the opinion of the Director, is not suitable for viewing by persons under 18 years of age because the film consists of any of the following:

- predominantly explicit sexual scenes;
- scenes of brutality or torture, maiming or dismemberment of person or animals that are portrayed in a realistic and explicit manner.

Under the existing Regulations, if a distributor offers for sale or rent:

- only films classified as Adult, the distributor must display at all entrances to the business premises a sign that reads "No admittance to persons

under age 18” and shall not admit a person under 18 years of age to the business premises;

- films classified as Adult, in addition to films classified in other classifications, the distributor must offer the Adult films in such a manner that:
 - all advertising material on the business premises for the Adult films and the films themselves are physically segregated from person under 18 years of age;
 - a person under 18 years of age is not admitted into the segregated area; and
 - a sign reading “No admittance to persons under age 18” is displayed at every entrance to the segregated area.

Registration

Currently, the Act requires all exhibitors and distributors to be registered before distributing or exhibiting a film in Saskatchewan. While there is no fee for registration, every registrant must submit an application for registration and provide the required information. Once registered, registrants must submit an annual return to the Director to maintain the registrant’s registration.

The Act requires that the Director maintain a register showing the names and addresses for service of all exhibitors and distributors registered under the Act and the classification of all films approved for distribution or exhibition in Saskatchewan.

Agreements with other Film Classification Bodies

The Act provides authority for the Director to enter into an agreement with another film classification body for the purpose of approving or disapproving films intended for exhibition or distribution in Saskatchewan, adopting classifications of films for exhibition or distribution in Saskatchewan and registering persons who intend to distribute or are distributing films in Saskatchewan.



Since 1997, an agreement has been in place with the Consumer Protection BC (the CPBC) to classify mainstream “box office” releases to be exhibited in Saskatchewan. The CPBC does not classify films that are to be exhibited solely in Saskatchewan. The CPBC also does not require the classification of general release (non-adult) home videos but distributors may submit general release home videos for classification on a voluntary basis.

For films that the CPBC does not classify, the film must be viewed and classified by the Saskatchewan Director or classified by documentation without viewing if the film has been classified by another Canadian Film Classification Agency.

The agreement with the CPBC also provides for the CPBC to approve, refuse to approve or require the removal of any portion of an adult film and to classify adult films to be exhibited or distributed in Saskatchewan. The agreement provides that if an adult film is approved, the CPBC will provide the distributor with decals to attach to copies of the approved adult film. If a film has been approved or classified in accordance with the agreement, the film is deemed to be approved or classified pursuant to the Saskatchewan Act.

Canadian Home Video Rating System

Home videos distributed in Saskatchewan must be classified under the Act and Saskatchewan accepts the Canadian Home Video Rating System (CHVRS) classifications for this purpose. The CHVRS is administered by the Motion Picture Association - Canada and is based on a voluntary collaboration by industry members, the Canadian Motion Picture Distributors Association and the English-speaking provincial film classification boards. After receiving a CHVRS classification, the cover of a retail home video film must include one of the six classification symbols and the appropriate advisories.

If a home video is not classified pursuant to the CPBC or the CHVRS it must be viewed and classified by the Saskatchewan Director or classified by documentation without viewing if the film has been classified by another Canadian Film Classification Agency.



Exemptions

The Act provides an exemption for certain types of films. For example, the Act does not apply to a film owned or sponsored by an educational institution if the film is designed for educational purposes.

Video Games

Video games are not currently regulated in Saskatchewan. The Entertainment Software Rating Board (ESRB) is a self-regulatory body that has developed a rating system for video, computer and online video games. The ESRB ratings are voluntary, however, members of the Retail Council of Canada have agreed to voluntarily comply with the ESRB ratings.

Films streamlined online

The Act does not apply to films downloaded from the Internet, films viewed online or through online streaming services. The Act also does not apply to films broadcast on cable, pay and digital television channels or specialty programming services, which fall outside provincial jurisdiction.

In the case of Canadian television and radio broadcast, there is an industry code of programming standards and practices that is administered by the Canadian Broadcasting Standards Council to ensure that adult programming is not aired unless it has been previously classified and approved by a review board in Canada.

4. THE CHANGING LANDSCAPE OF THE FILM INDUSTRY

For the most part, the provisions regarding the classification of films have remained substantially unchanged since 1996. Although the current Act was enacted in 2016 to replace *The Film and Video Classification Act*, the primary change to the legislation at that time was to provide for the administration of the legislation to be performed by an official, the Director of Film Classification, instead of a board. The current Act continued the previous system of classification of films.

The film landscape has changed dramatically since the existing film classification system was implemented. The existing classification framework was developed at a time where the film landscape was characterized by technologically distinct products and services.

Much has changed since this time. The evolution of digital technology and the rapid pace of technological change has resulted in convergence in media technologies, delivery platforms and services and has blurred the distinction between the traditional media services and delivery platforms. There has been a significant shift in the entertainment market where film content has moved from being viewed at theatres and at home on video tapes and DVDs to being downloaded over the Internet or streamed on demand and delivered by a variety of different devices, including mobile cell phones, smartphones and tablets. The COVID-19 pandemic has also impacted viewing habits.

Some of the trends associated with convergence of media platforms and services include the increased access to high-speed broadband Internet, the digitization of media products and services, the globalization of media platforms and services and the extent to which digital media can be distributed and accessed from anywhere around the world, the rise of user-created content and the changing behavior of consumers.

A key consequence of convergence for consumers is the exponential growth in the volume of content available online. The Internet differs from other previous technologic advances insofar as it provides users access to worldwide content. The choice of devices for accessing the Internet and broadband networks is also giving consumers flexibility and convenience in how and where they access the content. Consumers have the potential to access a far wider and more diverse range of films in different media. Traditional distinctions between how content is accessed or delivered is less relevant.

5. CONCERNS IDENTIFIED WITH FILM CLASSIFICATION REGULATORY FRAMEWORKS

In the context of this evolving media environment, some stakeholders in the film industry have voiced their concern that the purpose of classification legislation has diminished over time because of:

- the evolution of new platforms where the Act does not apply (e.g., mobile applications and streaming services);
- the availability of other sources to provide consumers with classification information (e.g., Screen It, Common Sense Media and Rotten Tomatoes); and
- the decline of adult films distributed or sold for home video viewing and exhibition in theatres.

Industry stakeholders have suggested that the film classification requirements are obsolete, costly and unnecessary and have requested that the Government consider ways to modernize Saskatchewan's film classification legislation. In support of this position, industry stakeholders have noted that:

- submitting film for review and classification to multiple classification bodies across Canada and paying multiple sets of classification fees to obtain a classification for a film exhibited across Canada is a duplicative and burdensome process that should be eliminated; and
- it is unfair to require brick and mortar film industry businesses that provide jobs for the local economy to be subject to regulatory requirements when online content providers can self-classify and are not subject to regulatory requirements.

Concerns have also been noted by interested parties about mandatory age-based film classification systems in general. For example, critics of age-based classification regulatory frameworks question the diverse range of content that can fit within a single rating category and have voiced concern about the apparent lack of consistency within and among the provincial age-based classifications.

Concerns have also been identified regarding the lack of mandatory content-based information, ratings creep (the tendency to allow more extreme material in the same classification over time), lack of clarity of the classifications, lack of agreement with the classifications and the difficulty for theatres to enforce age-based classifications.

Some stakeholders have suggested that age-based indicators have limited utility for parents as cognitive and emotional development does not progress in a uniform fashion. Other stakeholders have argued that specific age indicators are less useful in a convergent media environment, as in practice, it is becoming increasingly more difficult to police the media consumption habits of minors.

In summary, the underlying theme of many of the concerns identified about film classification regulatory frameworks are that they have become less and less effective in the modern film environment and that they do not deal adequately with the changes in the marketplace and the different media and volume of film content now available.

QUESTION 1: How do you view the current regulatory framework for the regulation of film classification in Saskatchewan?

QUESTION 2: Are there additional issues with the current regulatory framework that are important for consideration that have not been identified? If so, please describe the nature and scope of those issues.

6. GUIDING PRINCIPLES

To be effective, legislation must be directed at achieving policy objectives. The primary objective of film classification is to assist viewers in making informed choices for themselves and for their children and to help parents reduce their children’s exposure to content that may be inappropriate.

It is proposed that the following guiding principles be used to inform the review of Saskatchewan’s regulatory framework:

- consumers should be provided with information about film content in a timely and clear manner so that they can make informed viewing choices;
- children should be protected from inappropriate film content;
- the regulatory framework should be flexible and responsive to changes in technology, consumer needs and the marketplace;
- the regulatory framework should be designed and implemented in the least costly manner to achieve the desired policy objectives having regard to the impact on competitive markets, the regulatory burden associated with the regulation and other unintended impacts of the regulations; and
- the regulatory framework should seek to avoid overlap, duplication, inconsistency and unintended consequences.

QUESTION 3: Do you agree with the proposed guiding principles?

QUESTION 4: Would you recommend any other guiding principles or the adjustment of any of the proposed guiding principles?

7. EXPLORING POSSIBLE NEW APPROACHES TO MODERNIZE SASKATCHEWAN'S FILM CLASSIFICATION LEGISLATION

Saskatchewan is not the only jurisdiction in Canada examining its regulatory framework for the classification of films. Ontario has also reviewed its film classification legislation and has recently implemented new legislation to reflect changes in the marketplace and increased use of digital platforms.

On June 8, 2021, Ontario's existing film classification legislation was repealed and Ontario's new *Film Content Information Act, 2020* came into effect. Under Ontario's new Act, movie ratings are no longer required to be provided for films shown in Ontario and instead, film exhibitors are required to provide consumers with information on a film's content in advance of exhibition. The legislation includes examples of the information that could be provided. The licensing requirements for film exhibitors, retailers and distributors have also been eliminated.

Under Ontario's new Act, adult sex films are still required to be reviewed and approved by any entity that is authorized to approve adult sex films under the laws of a province of Canada. The exhibition of an adult sex film or the sale or rental of a physical copy of an adult sex film to persons under 18 years of age is prohibited in Ontario. In addition, physical copies of video games that are sold or rented are required to be rated by the ERSB.

Ontario Approach

If Saskatchewan were to adopt an approach similar to the approach recently taken in Ontario, a new Act would need to be introduced. The new Act would:

- repeal and replace *The Film and Video Classification Act, 2016*;
- eliminate the mandatory age-based film classification requirements;
- require film exhibitors to display, in advance of exhibiting the film, information respecting a film and its content that the person exhibiting the film reasonably determines would be relevant to persons who may intend to view the film;

- provide examples of the information that may be relevant to persons who may intend to view the film, including the following:
 - the age of the intended audience of the film;
 - the graphic depiction of violence involving bloodletting, torture, mutilation or criminal activity; or
 - the depiction of the use of an illegal substance, or the illegal or harmful use of alcohol, a tobacco product, a vapour product or cannabis;
- require film exhibitors to provide contact information for any questions or complaints regarding information provided about a film's content;
- eliminate the registration and filing requirements for film exhibitors and distributors;
- eliminate the requirement for all advertising associated with films to be approved by the Director;
- eliminate the requirement for a register to be maintained by the Director showing:
 - the names and addresses for service of all exhibitors and distributors registered pursuant to the Act; and
 - the classification of all films approved for distribution or exhibition in Saskatchewan;
- require adult sex films (films that have, as their main object, the depiction of explicit sexual activity) to be reviewed and approved by an entity that is authorized to approve adult sex films pursuant to the laws of a province or territory of Canada;
- prohibit the exhibition of an adult sex film or the sale or rental of a physical copy of an adult sex film to persons under 18 years of age; and
- require physical copies of video games that are sold or rented to be rated by the ERSB.



The following sections expand on and provide further context for some of the above provisions if an approach similar to the approach taken in Ontario were to be taken in Saskatchewan.

Elimination of Mandatory Age-Based Film Classification Requirements

An age-based rating system has been in existence in Saskatchewan for over 35 years. Classification is essentially about providing information to the public about the material that has been classified in order to guide their entertainment choices. With films being increasingly downloaded over the Internet or streamed on demand rather than being viewed at movie theatres or at home on videos and DVD's, film exhibitors have asked the Government of Saskatchewan to consider ways to reduce the burden and costs on the industry and to level the playing field for film exhibitors by removing classification requirements that do not apply to their competitors.

The current fee for classification of a film for exhibition is \$440 per title, and the fee for classification of a film by documentation is \$50 per title. There are also indirect costs associated with preparing and submitting films for classification and interacting with the classification authority.

If Saskatchewan were to adopt an approach similar to the current approach taken in Ontario, the film classification requirements would be eliminated and replaced with the mandatory film content disclosure. This would mean that, like Ontario's legislation, Saskatchewan's legislation would no longer require movie rating to be provided for films shown in Saskatchewan.

Elimination of Registration Requirements for Exhibitors and Distributors

In general, registration and licensing are effective regulatory tools that can track businesses entering and leaving the industry, screen new entrants to ensure that businesses are suitable and qualified and monitor and enforce ongoing compliance with the legislation. However, registration and licensing are relatively intensive and costly forms of regulation. The costs of registration and licensing must be weighed against their effectiveness in terms of achieving policy objectives. The balance of advantages and disadvantages for any particular regulatory scheme depends on the types of risk that need to be addressed.

Under the existing film classification legislation in Saskatchewan, every registrant must be registered pursuant to the Act before exhibiting or distributing a film in Saskatchewan. The Act also requires that the Director maintain a register showing the names and addresses for service of all exhibitors and distributors registered under the Act and the classification of all films approved for distribution or exhibition in Saskatchewan.

While there is currently no cost for registration in Saskatchewan, exhibitors and distributors must apply for registration. In the case of applicants that intend to distribute or exhibit films classified as Adult, a criminal record check must be provided to the Director. Once registered, a registrant must submit an annual return to the Director to maintain the registrant's registration. The annual return must include updated information regarding any changes in the registrant's address for service or business location. The annual return must also include a declaration that the registrant has complied with the legislation and provide any other information required by the Director.

If Saskatchewan were to adopt an approach similar to the current approach taken in Ontario, the registration and filing requirements would be removed.

Adult Sex Films

If Saskatchewan adopted an approach similar to the current approach taken in Ontario for adult sex films, it would mean that:

- an “adult sex film” would be defined to mean a film that has, as its main object, the depiction of explicit sexual activity;
- adult sex films would be required to be reviewed and approved by an entity that is authorized to approve adult sex films pursuant to the laws of a province or territory of Canada;
- the sale or rental of a physical copy of an adult sex film without a notice affixed to the exterior container of the film or on the physical copy of the film indicating that the film has been approved by an entity authorized to approve adult sex films would be prohibited in Saskatchewan; and

- the exhibition of an adult sex film or the sale or rental of a physical copy of an adult sex film to persons under 18 years of age would be prohibited in Saskatchewan.

Currently, the rules in Saskatchewan include within the category of adult films, films that consist of scenes of brutality or torture, maiming or dismemberment of person or animals that are portrayed in a realistic and explicit manner.

If Saskatchewan adopted the approach taken in Ontario, films that consist of scenes of brutality or torture as mentioned above would not fall within the definition of an adult sex film unless the violence was combined with sex and the film had, as its main object, the depiction of explicit sexual activity.

Essentially, films with such violence would be subject to the same requirements as mainstream films, and exhibitors would be required to provide consumers with information about the film's content in advance of exhibiting the film.

Under this approach, it would no longer be an offence under the Act for an exhibitor or distributor to permit such films that consist of scenes of brutality or torture to be viewed, purchased or rented on the distributor's premises by a person under 18 years of age.

Video Games

Currently, in Saskatchewan, the existing Act does not apply to video games. If Saskatchewan adopted the approach taken in Ontario, the rules would be changed to require video games to be rated and compliance with the ESRB ratings would no longer be voluntary in Saskatchewan.

QUESTION 5: Do you believe that Saskatchewan should adopt a new framework that is similar to that in Ontario for the regulation of film content? If possible, please provide specific reasons for your position.

QUESTION 6: Should the classification requirements for films be eliminated and replaced with reliance on film content disclosure requirements?

QUESTION 7: Should the registration and filing requirements for exhibitors and distributors be removed?

QUESTION 8: Do you believe that Saskatchewan should adopt the same requirements as Ontario for adult sex films?

QUESTION 9: Should Saskatchewan's rules for video games be changed to be like Ontario's rules to require physical copies of video games that are sold or rented to be rated by the ERSB?

Modified Ontario Approach

Another approach would be to adopt Ontario's approach but modify certain of the requirements to identify the best option for Saskatchewan's regulatory framework.

QUESTION 10: Are there other examples of information respecting a film and its contents that should be provided to consumers in advance of the exhibition of a film?

QUESTION 11: If an exhibitor promotes a film on social media (e.g. Facebook, Instagram or Twitter), should the exhibitor be required to provide the film content information on that social media platform in advance of exhibiting the film?

QUESTION 12: Are there other ways in which a film exhibitor should be required to provide consumers with information regarding a film's content in advance of the exhibition of the film?

QUESTION 13: Do you believe that the existing provisions of the Act requiring distributors of adult sex films to display signs on their premises prohibiting persons under the age of 18 from entering the premises or entering a segregated area of their premises should continue to apply to adult sex films?

QUESTION 14: If Saskatchewan takes an approach similar to the approach taken in Ontario, in what other ways should the regulatory framework for film content in Saskatchewan be modified?

Different Approach

QUESTION 15: Would you prefer that Saskatchewan adopt a different approach to film content regulation? If so, please describe what approach you feel should be adopted and explain why?

Timing for the Implementation of Changes

QUESTION 16: If new rules were to be adopted in Saskatchewan, what do you feel is the appropriate time to allow for new rules to come into force?

8. COMMENT PROCESS

The issues addressed in this consultation paper are important ones which affect the broader community.

We are interested in hearing your responses to the questions in this paper. In addition to providing your comments on the questions posed throughout this paper, please feel free to provide any additional and relevant information. Your comments will help to determine whether enhancements could be made to make the framework for the regulation of film content more current and responsive to the needs and expectations of consumers and businesses.

For your ease in responding, the questions posed in this paper are also provided below.

QUESTION 1: How do you view the current regulatory framework for the regulation of film classification in Saskatchewan?

QUESTION 2: Are there additional issues with the current regulatory framework that are important for consideration that have not been identified? If so, please describe the nature and scope of those issues.

QUESTION 3: Do you agree with the proposed guiding principles?

QUESTION 4: Would you recommend any other guiding principles or the adjustment of any of the proposed guiding principles?

QUESTION 5: Do you believe that Saskatchewan should adopt a new framework that is similar to that in Ontario for the regulation of film content? If possible, please provide specific reasons for your position.

QUESTION 6: Should the classification requirements for films be eliminated and replaced with reliance on film content disclosure requirements?

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QUESTION 9: Should Saskatchewan's rules for video games be changed to be like Ontario's rules to require physical copies of video games that are sold or rented to be rated by the ERSB?

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QUESTION 12: Are there other ways in which a film exhibitor should be required to provide consumers with information regarding a film's content in advance of the exhibition of the film?



QUESTION 13: Do you believe that the existing provisions of the Act requiring distributors of adult sex films to display signs on their premises prohibiting persons under the age of 18 from entering the premises or entering a segregated area of their premises should continue to apply to adult sex films?

QUESTION 14: If Saskatchewan takes an approach similar to the approach taken in Ontario, in what other ways should the regulatory framework for film content in Saskatchewan be modified?

QUESTION 15: Would you prefer that Saskatchewan adopt a different approach to film content regulation? If so, please describe what approach you feel should be adopted and explain why?

QUESTION 16: If new rules were to be adopted in Saskatchewan, what do you feel is the appropriate time to allow for new rules to come into force?

Comments can be submitted to branch.consumerprotection@gov.sk.ca.

Alternatively, comments may be mailed to:

Consumer Protection Division – Film Content Consultation
Financial and Consumer Affairs Authority
400 - 2365 Albert Street
Regina SK S4P 4K1

Comments must be received by **September 29, 2023**.

The Freedom of Information and Protection of Privacy Act (the FOIP Act) applies to any submissions made to the Director of Film Classification (the Director) in response to this consultation (the Consultation). As such, the information, including personal information, you provide to the Consultation is being collected for purposes of determining potential future changes to legislation, and will be used or/and disclosed for that purpose and in accordance with the provisions of the FOIP Act and applicable provisions of the Act.



All submissions received from organizations in response to this Consultation will be considered public information and may be disclosed to any person or/and published on the website of the FCAA. The Director will consider an individual showing an affiliation with an organization to have given their response on behalf of that organization.

Responses from individuals who do not show an affiliation with an organization will not be considered public information. The Director may also publish responses received from individuals. However, your personal information (such as name, email address, mailing address) will not be disclosed unless there is an exemption under the FOIP Act that allows for its disclosure. The Director may use your provided contact information to follow up with you to clarify your responses.

If you have any questions about the above, please contact the Consumer Protection Division of the FCAA at branch.consumerprotection@gov.sk.ca or 306-787-5550.