

MEDIA DEVELOPMENT AUTHORITY OF SINGAPORE

**CLOSING NOTE TO PUBLIC CONSULTATION ON
PROPOSED AMENDMENTS TO THE
PUBLIC ENTERTAINMENTS AND MEETINGS ACT**

22 Aug 2014

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PART I: INTRODUCTION

- 1.1 The Public Entertainments and Meetings Act (“PEMA”) provides for the regulation of public entertainments and meetings, with the objective of exacting accountability from the organiser in ensuring (a) public order and safety when staging the event, and (b) the event is in line with community standards and does not contain content contrary to national interest, or public sense of decency.
- 1.2 MCI and MHA undertook a review of the PEMA, with the intent to facilitate the implementation of term licensing, update regulatory powers for MDA, and ensure the relevance of the legislation through administrative amendments. A public consultation on the proposed amendments to the PEMA was conducted from 12 May to 30 May 2014.
- 1.3 The public consultation covered the following key proposed amendments to the PEMA:
- a. Implementation of Term Licensing for Arts Entertainment.** Amendments were proposed to facilitate the implementation of a new Term Licensing Scheme with Arts Entertainment (“AE”) organisers. The Censorship Review Committee (“CRC”) in 2003 had recommended Term Licensing for arts groups, and this was reaffirmed and supported by the CRC in 2010. The intent was to move the arts groups from an event-based licensing scheme to one that would be period-based, thereby allowing the staging of multiple events within the validity period of the licence. As PEMA defines AE more broadly to cover events beyond those by the arts groups¹, the proposal for Term Licensing was likewise extended to the entire pool of AE organisers;
 - b. Provision for clearer delineation of Public Entertainment (“PE”) licensed by SPF, and AE licensed by MDA, and classification of AE independent of the licence issued.** Amendments were proposed to provide greater clarity to the public through clearer delineation of definitions and licensing regimes between PE and AE. Further, in view that it would be possible for an AE to be staged under a PE licence² rather than an AE licence, the proposed amendments would also provide for MDA to classify any performance or event that is defined as an AE, in a process that can take place independently from licensing;

¹ An AE can be a play, a variety act, a performance of music/singing/dancing, etc.

² AE is defined as a subset of Public Entertainment, which allows the staging of an AE under an overarching PE licence.

c. Update of definition of AE to include virtual forms transmitted in real time to a venue for public exhibition. Media convergence has meant that AE staged overseas can now be transmitted “live” or in real time to an audience in Singapore (i.e. “virtual” AE). Recognising this, amendments were proposed to cater for the public exhibition of a “virtual” AE, and to apply the same regulatory principle vis-a-vis AE physically staged in Singapore;

d. Administrative Enhancements. Given that the last amendment to the PEMA was 14 years ago in 2000, there was a need to update the PEMA to enable MDA to perform its regulatory functions more effectively today, such as in the areas of investigation powers, disposal powers, and composition of offences.

1.4 At the close of the public consultation, MDA received a total of 10 submissions. They include submissions from Arts Engage with 45 arts groups listed as signatories (“Arts Engage”), Ms Janice Koh, Touch Community Services, and seven individuals. MDA also took into consideration the feedback surfaced through other government agencies, as well as letters published in the press. All submissions and feedback pertained to the proposed PEMA amendments to implement Term Licensing. Please refer to **Annex A** for a tabulated summary of submissions and feedback, and **Annex B** for the full text of submissions.

1.5 In view of the strong reservations expressed by the arts groups towards the proposed Term Licensing scheme, MDA conducted additional rounds of engagement with representatives of the signatories to the Arts Engage Position Paper on 16 July and 21 July 2014. MDA also met with about 30 arts individuals/ listed signatories at a Townhall organised by Arts Engage on 26 July 2014 to further discuss Term Licensing and relevant PEMA amendments. To ensure that the proposal to classify AE independently of the PE licence issued could be implemented smoothly, MDA also separately engaged the Singapore Nightlife Business Association and the Singapore Hotels Association.

1.6 MDA would like to thank all respondents for their feedback and comments. Part II of this closing note gives an overview on the comments received and MDA’s responses to the comments. Part III of this closing note sets out the finalised amendments to PEMA being proposed.

PART II: OVERVIEW ON COMMENTS RECEIVED AND MDA'S RESPONSE TO COMMENTS RECEIVED

2.1 Overview

2.1.1 The submissions and feedback received all pertained to the proposed Term Licensing Scheme. They can be categorised into four areas:

- a. Disagreement over the intent of the Term Licensing Scheme;
- b. Concerns over the creation of the role of Content Assessors;
- c. Concerns over misclassification, the penalty system and appeal processes; and
- d. Concerns over content classification guidelines for the arts.

This paper will first address these comments individually, before providing MDA's final position on the Term Licensing Scheme.

2.2 Disagreement over the intent of the Term Licensing Scheme

2.2.1 Arts Engage viewed the mechanics of the proposed Term Licensing Scheme to be contrary to the spirit of co-regulation, self-classification and empowerment. Citing the CRC report in 2010 that classification boundaries must be set according to community standards determined via an engagement process involving the regulator, community and the industry, Arts Engage was of the view that the proposed Term Licensing Scheme would see artists functioning as extensions of MDA within the arts community, trained by MDA to police sanctioned guidelines, and made to suffer penalties in the event of misclassification, instead of enabling a direct engagement between the artists and the wider community. Arts Engage viewed this to be a model for self-censorship rather than co-regulation.

2.2.2 In MDA's engagement with representatives of Arts Engage, Arts Engage highlighted that as content regulation could not be calibrated to precision, arts groups may not be able to classify content in the same way as MDA. They interpreted the scheme as imposing penalties for situations where the Content Assessors had different interpretations of the guidelines, and did not agree with such an approach. They further explained that they had envisioned a scheme which recognised that the arts groups were by and large responsible players who were keen to build trust with their audiences. They pointed out that many of them had already built close relationships with their audiences over the years. They therefore envisioned a scheme which did not involve any need for MDA to enforce the classification guidelines, but rather enabled arts groups and the community to resolve differences in opinion through direct dialogues, and allowed flexibility in the

interpretation of classification guidelines. Arts Engage also suggested greater recognition that arts performances catered to a niche and discerning audience.

- 2.2.3 On the other hand, the submissions and feedback by Touch Community Services and individuals expressed concerns that allowing arts groups to self-classify content would lead to the liberalisation of content regulatory standards. They requested MDA to continue its role as an independent authority of content regulatory standards, and for the “arts industry to be moderated for the protection of the rest of the society at large”. Specific concerns highlighted included AE organisers being conflicted in their interest to widen the audience base, and liberal values being conveyed under the guise of art.
- 2.2.4 An individual also suggested for the Term Licensing Scheme to have only Tier 1, i.e. arts groups should only self-classify performances for the “General” rating, as “civil servants” should continue to be the “gatekeeper” for Tier 2 performances which include those rated as “Advisory”, “Advisory 16” and “Restricted 18”.

MDA’s Response

- 2.2.5 *The introduction of a Term Licensing Scheme for the arts groups was a Censorship Review Committee (“CRC”) recommendation first made in 2003, and reaffirmed by the CRC in 2010. The CRC had explained that “Term Licensing is essentially a co-regulatory scheme as it allows the arts groups to take over the responsibility of ensuring that they stay within clear guidelines set by the MDA³.” Examples of co-regulation in TV and Radio, Publications, Video and Video Games were mentioned, all of which required the industries to adhere to their respective content classification codes/guidelines⁴ issued by the MDA. Co-regulation with arts groups has therefore always been premised on the use of content classification guidelines set by the MDA in consideration of prevailing community norms. (Please see Section 2.5 for a more detailed response on content classification guidelines)*

³ Chapter 7 Engaging the Industry, page 56, para 26 of the 2010 CRC Report.

⁴ The arts classification guidelines were first formulated in 2008 and further detailed and reintroduced formally on 2 Jun 2014 as the “Arts Entertainment Classification Code”, available at this URL:

http://www.mda.gov.sg/RegulationsAndLicensing/Documents/Arts%20Entertainment%20Classification%20Code_wef%20%20June%202014.pdf

As Arts Engage has used the term classification guidelines in their response, for ease of understanding, MDA will continue to use the term classification guidelines in this document.

2.2.6 *This underlying principle to co-regulation was also consistently conveyed in previous announcements and industry engagements. The Government's response to the CRC's Report in 2010 stated that MDA would look into implementing a Term Licensing Scheme for "arts groups which have demonstrated an awareness of and sensitivity towards community standards and values, and are able to self-regulate by using the arts classification guidelines".⁵ Similarly, MDA had, during its engagements with industry in mid-2013 and May 2014, stated that Term Licensing would be premised on the use of the arts classification guidelines, and was not an exercise undertaken to loosen or tighten existing standards.*

2.2.7 *MDA is of the view that an important foundation underlying Term licensing is the consistent application of a set of content guidelines developed in consideration of community norms. As an example, audiences would expect the content of "General-rated" performances staged by different licensees to fall within the same standards, rather than be based on different sets of standards or different interpretations of the standards depending on which arts group was providing the classification. The arts groups' concerns on misclassification will be addressed under Section 2.4.*

2.3 Concerns over the creation of the role of Content Assessors

2.3.1 Concerns were raised that the creation of the role of a Content Assessor would place him at odds with others in the same arts group or even with the wider artistic community, and also with oneself if he is an artist. During MDA's meeting with Arts Engage on 16 July, it was further explained that the arts community saw the role of the Content Assessor as undesirable and that they had found no willing candidates whom they could appoint. More fundamentally, they viewed that the arts group should be accountable for creative decisions as a collective, rather than for the accountability to rest on a person identified as the Content Assessor. There were also other concerns with outsourcing the services of a Content Assessor such as fees charged.

2.3.2 Ms Janice Koh commented that having a Content Assessor seemed to create a triplicate of assessments, by the Licensing Officer from MDA, the Content Assessor, and the Term Licensee. This was because it was unclear from the draft PEMA amendments when the Licensing Officer from MDA or the Content Assessor would be classifying the content of the AE, and why the Term Licensees would be required to "confirm" classification ratings supplied by appointed Content Assessors

⁵ The Government's response to the CRC 2010 Report is available at this URL:

http://www.mci.gov.sg/content/mci_corp/web/mci/pressroom/categories/press_releases/2010/governments_response_to_the_report_of_the_censorship_review_committee_2010.html

especially when they themselves might not have received relevant training. Related to it, both the Content Assessor and Term Licensee could be prosecuted for misclassifications.

- 2.3.3 Separately, there were comments on the criteria for Content Assessors. Ms Janice Koh commented on the difficulty of establishing the objective standards for fitness and propriety for an unknown profession, while an individual respondent suggested that Content Assessors must be persons who have demonstrated that they uphold mainstream community values.

MDA's Response

- 2.3.4 *The role of a Content Assessor is not a new concept. It is inherent in the co-regulatory models that apply in TV and Radio, Publications, Video and Video Games. This was recognised by the 2003 and 2010 CRC, when they proposed a co-regulatory model for Term Licensing.*
- 2.3.5 *The purpose of the Content Assessor scheme was to enable an arts group to engage either an in-house or external Content Assessor. Hence, the option to engage an external assessor would be one possible solution to concerns about Content Assessors being at odds with others within the same arts group. Furthermore, in cases of doubt, the Content Assessor could provide his view, while seeking MDA's opinion on whether his rating was appropriate.*
- 2.3.6 *MDA would clarify that there was no intention for triplicate classification under the Term Licensing Scheme. Instead, the responsibilities of the Content Assessors, Term Licensees and the MDA Licensing Officers under Term Licensing were delineated as follows:*
- a. Content Assessor to be responsible for carrying out accurate classification of AE content when appointed by the Term Licensee under the Term Licensing Scheme*
 - b. Term Licensee under the Term Licensing Scheme to have overall accountability for the AE such as ensuring administrative compliance in terms of providing the full set of performance materials for an event to a Content Assessor for classification, the display of ratings at the venue, and to ensure that what is ultimately staged would be in line with the material provided to the Content Assessor*

c. *MDA's Licensing Officer to only classify AE performances of organisers not under the Term Licensing Scheme, or where the type of AE performances has been excluded from the Term Licensing Scheme.*⁶

2.3.7 *MDA would also clarify that the provision for the Term Licensee to 'confirm' the classification had been to ensure the Term Licensee's overall accountability for the AE, and to cater for flexibility in scenarios where MDA needed to apportion accountability to protect the interests of both parties. To illustrate, where a Content Assessor was not provided with the full set of performance materials with which to make an accurate assessment, MDA would have the flexibility to hold the Term Licensee responsible, rather than the Content Assessor who had rated correctly to the best of his knowledge. The provision also allowed MDA to hold both the Term Licensee and Content Assessor accountable should the Term Licensee abet gross misclassification by the Content Assessor e.g. content with nudity being rated and confirmed as "General". Nonetheless, a Term Licensee would not be held to the same standard of conduct as a Content Assessor who is formally trained to carry out classification.*

2.3.8 *MDA would clarify that the PEMA amendments provided that MDA would only be able to hold a Term Licensee responsible if he "knows or ought reasonably to know that; or with reckless disregard" i.e. he intentionally or recklessly confirmed a rating contrary to the classification guidelines⁷. PEMA amendments also provided that MDA would only be able to hold a Content Assessor responsible for intentional or reckless classification contrary to the classification guidelines⁸. This meant that a Term Licensee and/or a Content Assessor could not be held liable for a genuine misclassification which was unintentional, or was not the result of reckless behaviour. Further discussion on misclassification is covered under Section 2.4.*

2.3.9 *However, notwithstanding the above clarifications, should AE licensees feel strongly that they would not need the flexibility to appoint an external Content Assessor*

⁶ Tier 1 Term Licensees may only classify "General" rated content. Tier 1 excludes unscripted content, and content touching on race, religion and politics. Tier 2 Term Licensees may classify content for the full range of ratings, except outdoor performances that require a rating above "General" and unscripted content.

⁷ The proposed penalty provision under Section **15B** of PEMA provides that the Term Licensee can only be found guilty of wrongdoing if he confirms a classification rating provided by the Content Assessor when he "knows or ought reasonably to know that; or with reckless disregard as to whether" the registered Content Assessor's classification is contrary to the classification code.

⁸ The proposed penalty provision under section **15A** of PEMA states that any person shall be guilty of an offence if he classifies the content of an AE contrary to the classification code and "knows or ought reasonably to know that, or is reckless as to whether, the classification is contrary to the classification code".

(even in the future), and would prefer to be held solely accountable for compliance with classification requirements, MDA would be open to such an arrangement.

2.4 Concerns over misclassification and related assessment and appeal processes

- 2.4.1 Arts Engage expressed concerns over the fines and penalties which could result from wrongly implemented arts classification guidelines. Arts Engage highlighted the subjective and arbitrary nature of classifying arts content, citing instances when the same content had been rated differently by MDA. Hence, doubts were raised over any basis for holding individuals accountable for misclassifications. In addition, there were comments of double standards for holding Content Assessors liable for misclassification but not Licensing Officers in MDA. During the Townhall on 26 July, the arts groups further shared their view that all penalties should be removed except for the revocation of the status as a Term Licensee after a suitable number of breaches.
- 2.4.2 However, there were individual submissions that called for MDA to ensure steps would be taken to enforce the rules and regulations, including the imposition of fines and penalties if the guidelines were not adhered to.
- 2.4.3 Arts Engage also viewed that there was a lack of concrete information on the procedures or steps that would be taken should a work be misclassified, and the appeals process thereafter. There were concerns over whether a proper inquiry or appeal system would be put in place to accord the industry with the right to engage complainants, and a chance for redress in the event that the complaints are groundless or without merit.
- 2.4.4 Arising from MDA's further engagement with Arts Engage, the arts groups noted that PEMA already provides an avenue of appeal to the Minister for Communications and Information against regulatory decisions made by MDA. MDA also shared that under the current appeal procedure, the Minister would be advised by the Broadcast, Publications and Arts Appeal Committee ("BPAAC")⁹ on appeals against MDA's regulatory decisions on publications, AE and breaches of broadcasting codes. Notwithstanding, the arts groups expressed that they would

⁹ The BPAAC advises the Minister for Communications and Information on appeals against MDA's regulatory decisions on publications, AE and breaches of broadcasting codes. The 18 members appointed on a three-year term include experts from the arts and media fields, educationists and community representatives. The current list of members is available at this URL:

<http://www.mda.gov.sg/RegulationsAndLicensing/Consultation/Documents/Consultation%20with%20Committees/For%20updating%20-%20list%20of%20BPAAC%20Members.pdf>

like for an arts appeal committee to be established to hear appeals and for the appeal procedures involving an arts appeal committee to be captured within PEMA to provide greater assurance to the arts groups.

MDA's Response

- 2.4.5 *MDA would emphasise that any delegation of responsibility for classification, whether to the Content Assessors or the Term Licensees (in the absence of a Content Assessor scheme), would always be coupled with MDA's commitment to offer all the requisite guidance and support for them to build competencies. The primary objective would always be to minimise instances of misclassification.*
- 2.4.6 *As previously communicated during industry engagements in mid-2013 and May 2014, MDA had intended to provide annual training on the arts classification guidelines and on-going support for any clarifications needed in classification. Should there be doubts over a particular classification, Term Licensees or Content Assessors may approach MDA for consultation within a reasonable time frame¹⁰. In addition to training and access to advice, MDA was also prepared to work with interested arts groups on a pilot scheme for acquiring hands-on experience.*
- 2.4.7 *MDA had noted the arts groups' concerns with a penalty scheme during the industry engagement in mid-2013 and sought to address their concerns by clarifying within PEMA the circumstances in which penalties would apply. As explained during industry engagement in May 2014 and within MDA's public consultation document, the proposed amendments to PEMA provided that penalties could apply only to intentional (i.e. knowing) or reckless classification contrary to the classification guidelines¹¹, rather than genuine mistakes in classification. To this end, MDA's intention was to look into the circumstances of each case, including engaging the Content Assessors or Term Licensees to understand their perspectives. MDA also intended to provide for a range of penalties which could include warnings only to cater for less severe misclassifications. MDA would state that notwithstanding strong objections of arts groups, the penalty scheme was necessary under the Term Licensing Scheme, as it ensured the protection of public interest by providing a means for addressing misclassifications in bad faith.*

¹⁰ Term Licensees or Content Assessors can approach MDA for consultation no later than 20 working days before the scheduled date of the first performance.

¹¹ As stated in the public consultation document that was issued on 12 May, the penalty provision under section 15A of the amended PEMA will state that any person shall be guilty of an offence if he classifies the content of an AE contrary to the classification code and "knows or ought reasonably to know that, or is reckless as to whether, the classification is contrary to the classification code".

- 2.4.8 *MDA would also reiterate that a BPAAC already exists to advise the Minister for Communications and Information on appeals. The BPAAC had heard an appeal¹² on the classification of an AE and hence should be known to at least some of the arts groups. In terms of the appeal process, the appellant will submit his appeal to the Minister within a stipulated time upon notification of MDA's decision. Following this, if the Minister accepts that the appeal is valid and convenes the BPAAC, the appellant will be given the opportunity to make a representation. Upon hearing the cases put up both by the MDA and the appellant, the committee will put up its recommendation to the Minister for his final decision.*
- 2.4.9 *Where there is insufficient time for an appeal to be considered before the commencement of the performance, the appellant must comply with MDA's direction in the interim unless otherwise directed by Minister¹³. They should reflect the revised ratings at the venue and ticketing outlets as soon as possible. Best efforts should also be made to amend the rating on publicity materials.*
- 2.4.10 *On the point where MDA rated the same content differently, MDA would like to clarify that this is possible in two scenarios: (i) where the arts classification guidelines have been revised to adapt to community standards that have changed over time; and (ii) where there are performance elements that had not been explicitly expressed in submitted scripts. As an example of the former scenario, there could be an instance where prior to the review leading to the 2008 arts classification guidelines, a performance was given a Restricted 18 rating due to lower community tolerance for coarse language or violence; but as a result of evolving community sentiments reflected in the 2008 arts classification guidelines, the performance would be acceptable with an Advisory 16 rating now. As an example of the latter scenario, the musical titled "If There Are Seasons" was given a "General" rating when it was first staged, based on an assessment of the script. However, the actual staging revealed that there were homosexual references during*

¹² The appeal had been against the classification rating for a restaging of "If There Are Seasons" by The Theatre Practice. The Theatre Practice made a representation to the BPAAC during the course of the appeal.

¹³ The proposed section 15H of PEMA provides that any appeal to a Minister under section 10(5), 11(6), 13(3), 14(5), 15C(3), 15D(6), 15E(4) or 15F(3) against a decision or direction, as the case may be, of a Licensing Officer shall not affect the operation of the decision or direction or prevent the taking of any action to implement the decision or direction unless otherwise provided in this Act or directed by the Minister in any particular case.

*the course of the play*¹⁴. Hence, when it was restaged, MDA gave it an “Advisory” with the consumer advice “Some Mature Content”¹⁵.

2.4.11 MDA assures the public that even with the Term Licensing Scheme, MDA’s intent was to ensure that the classification decisions would be in line with the arts classification guidelines. In addition to providing necessary guidance and support to Content Assessors and Term Licensees, to further ensure consistency across rating decisions, MDA was prepared to selectively audit the accuracy of ratings. As part of this process, MDA may also engage our citizen advisory committee i.e. the Arts Consultative Panel (“ACP”)¹⁶ for its views on selected performances. The ACP comprises 40 volunteers from various professions, age and racial groups, who offer their perspectives as members of the community. Where MDA has a different view on the rating, MDA would have first engaged the Content Assessor or Term Licensee to understand why this may be the case. If a consensus could not be arrived at, MDA may require a re-classification based on MDA’s determination of what the appropriate rating should be.

2.5 Concerns over Content Classification Guidelines for the Arts

2.5.1 Arts Engage was of the view that there was inadequate consultation on the arts classification guidelines to be used by Content Assessors to classify works under Term Licensing. Arts Engage suggested that co-regulation could only be considered after consensus was reached on the classification guidelines.

2.5.2 Arts Engage highlighted their fundamental discomfort with the current guidelines, which they viewed to be not reflective of current realities. In particular, they felt that the views of consumers familiar with arts content might not have been sufficiently represented within the guidelines. Some were also of the view that art works should only be classified and never banned. This, however, was not the case as the arts classification guidelines continued to have a “Not Allowed For All Ratings” (NAR) category.

¹⁴ For a similar occurrence under Term Licensing, no wrongdoing would be found on the part of the Content Assessor, if he had classified to the best of his knowledge based on available information.

¹⁵ An appeal was made to the Ministry regarding MDA’s decision to revise the classification rating. The Ministry sought input from the BPAAC during the course of its deliberation. MDA’s decision was upheld.

¹⁶ The full list of the current ACP members is available at this URL:

<http://www.mda.gov.sg/RegulationsAndLicensing/Consultation/Documents/Consultation%20with%20Committees/List%20of%20ACP%20members%20%282012-2014%29.pdf>

MDA's Response

- 2.5.3 *MDA would clarify that the review of the arts classification guidelines is delinked from the process of amending PEMA to introduce Term Licensing. Nevertheless, MDA would address the arts groups concerns on the arts classification guidelines, and take this opportunity to explain the current review process for these guidelines.*
- 2.5.4 *MDA's content classification system is guided by community norms and values, and the underlying importance of maintaining racial and religious harmony. Such a classification framework would necessarily have an upper limit or NAR category, as there will be instances where a performance is deemed inappropriate for staging, for example where religious icons are desecrated in a performance because the performer deems the act to be artistic. This was also the perspective of the CRC 2010, which explicitly stated that it did not agree with the position that at the highest rating, any form of content should be allowed.*
- 2.5.5 *MDA understands that social norms change over time and periodic reviews of the content classification guidelines are necessary to ensure that they reflect prevailing community norms. MDA is committed to ensuring that content classification guidelines will remain relevant, and continuing the process of consultation in reviewing guidelines. During the meetings with Arts Engage in July, MDA further acknowledged Arts Engage's point that for policies to serve impacted stakeholders better, it would be useful to solicit the views of individuals who frequently consume arts content for e.g. through dedicated arts audience surveys or discussions.*
- 2.5.6 *The reviews of content classification guidelines are currently informed by public surveys commissioned by MDA or the Ministry of Communications and Information to obtain views and satisfaction levels on the content classification regime, as well as the views of our citizen advisory committee i.e. the ACP.*
- 2.5.7 *AE licensees' input was also sought in past reviews of the arts classification guidelines. However, MDA would emphasise that the classification guidelines need to reflect the social sentiments of the wider community, which may at times run counter to the views of some arts groups. MDA is cognisant of the reality that the middle-ground is increasingly difficult to find and recognises the importance of having ongoing conversations between the industry and the community. MDA already has regular discussions with the ACP which also includes members from the arts or arts-related fields. The intent is precisely to facilitate an exchange of perspectives between those more familiar with the industry and the community.*

- 2.5.8 *The current arts classification guidelines are adapted from guidelines that were first launched in 2008 with an aim to give the arts industry a greater stake in content regulation. The 2008 guidelines were the result of a detailed process started in 2005 to gather and incorporate the views of AE licensees and other stakeholders. The process involved a series of focus groups with 24 of the more active AE licensees and members of the citizen advisory committees. MDA’s current classification practices continue to keep closely to the classification categories agreed upon, namely “General”, “Advisory”, and “Restricted 18”. An “Advisory 16” rating was introduced in 2010 to provide more precise guidance for consumers¹⁷.*
- 2.5.9 *From the perspective of providing greater clarity to facilitate classification undertaken by Content Assessors, the 2008 arts classification guidelines were refined in 2013 following industry input gathered from group and one-on-one dialogues with 44 AE licensees¹⁸ held between Apr and Jun 2013. MDA also reiterates that these revisions were made in consideration of what would be acceptable with regard to community norms. One of these revisions pertained to the manner in which the NAR category was detailed. Arts groups felt that detailed breakdown on acceptable levels of depiction for each content element¹⁹ would concretise “Out of Bounds” markers and preferred to remove any reference to specific content elements from the classification guidelines. MDA was of the view that there was a need to reflect the types of content which would fall within NAR for transparency for Content Assessors and the public. However, taking into consideration the arts groups concerns, the MDA paraphrased the NAR category broadly and emphasised the need to review the content in context. In another example, to balance arts groups’ contrasting view that coarse language was becoming mainstream with parents’ concerns on the use of expletives even in “General”-rated works, MDA decided to maintain the status quo, which is to allow for infrequent mild expletives under a “General” rating, whilst relying on the full range of age-differentiated ratings to alert audiences to the intensity of expletives within a performance.*

¹⁷ With no accompanying age indication, different AE licensees had varying practice of imposing different age indicators for the content which fell within an “Advisory” rating. To offer a more precise guidance for consumers, MDA standardised the Advisory rating to “Advisory” or “Advisory 16” in 2010, with the latest revisions to the classification guidelines formalising this practice.

¹⁸ Following the dialogue session, the AE licensees were requested to provide any further feedback within a two week period.

¹⁹ Content elements refer to “race and religion”, “social norms”, “violence”, “nudity”, “sexual content”, and “language”.

- 2.5.10 *Feedback was also provided that the “Advisory” and “Advisory 16” ratings can be collapsed into a single rating. However MDA noted that the type of content classified “Advisory” or “Advisory 16” covered a wide range, with “Advisory 16” intended to signal more mature content. MDA noted that the key reason for an “Advisory 16” rating was to provide more precise guidance to viewers on the presence of mature content while remaining advisory in nature, and hence retained both the “Advisory” and “Advisory 16” ratings within the classification system.*
- 2.5.11 *Following the various feedback received from the AE licensees, MDA further sought views from the citizen advisory committee before finalising the guidelines.*
- 2.5.12 *MDA would reiterate that the classification guidelines are an outcome of extensive consultation and input from different stakeholders, and are intended to reflect prevailing community norms. In the last Media Consumer Experience Survey commissioned by MDA in 2013, 79% of respondents indicated that they were satisfied²⁰ with the content classification system for the arts. This supports MDA’s view that the existing arts classification guidelines are largely in line with the community’s sentiments.*

2.6 MDA’s Position On Term Licensing

- 2.6.1 MDA was tasked with implementing a CRC recommendation to introduce Term Licensing. In developing the scheme and engaging with the AE licensees, MDA had stayed true to the intent of CRC’s recommendation.
- 2.6.2 MDA notes the diversity of views expressed by the AE industry during the industry engagements which started in Apr 2013. This is not unexpected, given that different groups of AE providers have different needs. Hence, MDA had proposed a Term Licensing Scheme where participation would be on a voluntary basis, i.e. it was intended as an additional option offered on top of the current system. While some AE providers may prefer a Term Licensing Scheme to potentially ease their administrative burden and provide cost and time savings (see **Annex C**), others may prefer to use the current system. For those interested in Term Licensing, MDA was committed to providing all the necessary support and access to advice on classification.

²⁰ This percentage is constituted by 19% of the respondents who said they were “very satisfied”, 41% who said they were “satisfied”, and 19% who said they were “slightly satisfied”. The other categories ranged from “neutral” to “very dissatisfied”. 17% of the respondents indicated that they were “neutral” while 4% of the respondents highlighted that they were “slightly dissatisfied”, “dissatisfied” or “very dissatisfied” with the content classification system for the Arts.

2.6.3 MDA remains mindful that the arts groups were the intended key beneficiaries of the CRC recommendations and it would not be meaningful to roll out Term Licensing if the majority of arts groups do not find the scheme to be beneficial. Hence, during the further engagements with Arts Engage, MDA sought to understand the key sources of the arts groups' discomfort with the scheme, and whether modifications to certain aspects of the scheme would help alleviate concerns. In this context, further clarifications were provided by MDA to Arts Engage:

- a. While the proposed PEMA amendments provided a broad framework to implement term-based licensing for AE which was on top of the current system of event-based licensing, MDA would have implementation flexibility in the areas of Term Licence conditions, registration conditions for the Content Assessors, and enforcement. MDA offered to work with the arts groups on an extended pilot for Term Licensing, which would provide clarity on the mechanics of the Term Licensing Scheme;
- b. The review of the arts classification guidelines was an exercise that would be undertaken separately from the amendment of PEMA. As part of its periodic review of the guidelines, MDA would continue to work with the various stakeholders, including the arts groups, to ensure that guidelines reflect prevailing community norms; and
- c. Given the feedback from Arts Engage, MDA was also prepared to remove the concept of a Content Assessor from Term Licensing, with the Term Licensee having sole accountability.

2.6.4 Following these clarifications, Arts Engage updated MDA that they are still not keen to embark on the Term Licensing Scheme. At the same time, MDA notes that there are certain expectations of Arts Engage that MDA will not be able to meet. They include the expectation of autonomy in the application of arts classification guidelines, no NAR category, and no penalties imposed, except for a revocation of the Term Licence, regardless of the nature of the breach.

2.6.5 Overall, it is quite clear that after extensive rounds of consultations and engagements, the concept of co-regulation is not such a straightforward matter in the arts sector. MDA has therefore decided not to proceed with the Term Licensing Scheme. The other required amendments to PEMA will, however, proceed as planned.

PART III: FINALISED AREAS OF AMENDMENTS TO PEMA

3.1 Having given due consideration to all the feedback received during the public and industry consultation, there would not be provisions made in PEMA for a Term Licensing Scheme. MDA will nevertheless proceed with the other PEMA amendments to:

- a.** Provide for clearer delineation of PE licensed by SPF, and AE licensed by MDA, and classification of AE independent of the licence issued;
- b.** Update the definition of AE to include virtual forms transmitted in real time to a venue for public exhibition, in cognisance of media convergence; and
- c.** Enable MDA to perform its regulatory functions more effectively, such as in the areas of investigation powers, disposal powers, and composition of offences.