

## ADDENDUM: ADMINISTRATION OF THE MOTION PICTURE ACT

### The Administration Agreement

The BC Government transferred administration of the *Motion Picture Act* (MPA) to Consumer Protection BC through an administrative agreement in 2007. The administration of the MPA and its Regulations involves film classification, licensing, public relations, and compliance and enforcement services.

The Administrative Agreement is established for the term of July 1, 2007 to July 4, 2014. Each year, Consumer Protection BC provides government with a report detailing its administration of the MPA by evaluating the following performance objectives listed in Section 7.05 of the Agreement:

- Response time in undertaking the powers, duties and functions of the Director under the MPA;
- The percentage of licensees under the MPA that are in compliance with the MPA;
- Gaps in legislation leading to non-compliance of licensees under the MPA;
- Public satisfaction in public information provided by Consumer Protection BC;
- Frequency of fee increases;
- Fees charged to perform the powers, duties or functions of the Director required under the MPA compared with costs of delivering the same powers, duties or functions;
- Administration costs as they relate to program costs.

This addendum provides a reporting of Consumer Protection BC's administration of the MPA in 2012 (for the period of January 1, 2012 to December 31, 2012), as well as other important achievements and initiatives, under the following four headings:

1. Service to Our Stakeholders
2. Gaps in Legislation Leading to Non-compliance of Licensees under the MPA
3. Compliance Activity
4. Financials

### 1. Service to Our Stakeholders

In 2012, Consumer Protection BC completed several significant projects closely related to the administration of the *Motion Picture Act*. A series of service enhancements made in 2012 will benefit our stakeholders in a variety of ways, including:

#### **Technology enhancements to improve service and accommodate industry's media delivery evolution;**

- *Installation of a digital projection system to improve service and accommodate industry's media delivery evolution.* The digital projection system has allowed us to keep pace with technological change in the industry and remain focused on the needs of our stakeholders. The encrypted key delivery system included with digital projection has increased our security to industry level standards. This has given increased assurances to industry stakeholders that their copyright and IP needs are being protected.
- *Significant improvements to our server capability and speed to receive and process increasing numbers of digital submissions.* With the advent of online submissions of content, it became necessary to improve ISP speed in order to process the high volume of digital content in a turnaround time appropriate to our

stakeholders. Upgrading our server allowed us to increase security of digital content and submissions, which has become a high priority for our stakeholders.

- *Website database enhancements to assist the public and industry in accessing film classification information.* Our website is the primary tool for stakeholders to access classification information and decision summaries upon approval. Ensuring that the information on our website is easily searchable and accessible is a necessity for our stakeholders. Integrating the website with our existing databases has allowed classifiers to publish directly to the website, reducing response times and redundant data entry. This change, furthermore, has improved the security of our records. Increased website functionality, including the introduction of a live search, has enabled consumers to access and explore all available film information.

**Policy and procedural improvements to increase efficiencies and value to our stakeholders;**

As a result of media coverage in March regarding the legislative requirements for re-classification of orphaned films, ten consumers complained about what they felt was unnecessary regulation. In response to this and industry questions, Consumer Protection BC conducted a stakeholder consultation process and developed a [new policy](#) eliminating the requirement for re-classification of orphaned films. This change created efficiencies, delivered superior service to licensees and more information to the public.

**Response Times in Undertaking the Powers, Duties And Functions Of The Director under the MPA**

Consumer Protection BC measures several key indicators of performance in areas such as classification, licensing, inquiry, and inspections. The enforcement function can be a more challenging area to evaluate as cases can vary in their duration and complexity. The following key indicators and performance standards display the average turnaround time for MPA activities.

<b>Classification Functions</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
Processing Adult Video	6 days	3 days	3 days	3 days
Posting Classification Decisions	Same day	Same day	Same day	Same day
Processing Video Decal Orders	3 days	2 days	2 days	2 days
<b>Licensing Functions</b>				
Processing New Adult Related Applications	14 days	14 days	14 days	7 days
Processing New General Release Applications	4 days	3 days	3 days	2 days
Processing Renewal Applications	2 days	1 day	1 day	2 days
<b>Inquiry and Inspection Functions</b>				
Responding To Consumer Complaints	Live	Live	Live	Live
Processing Inspection Reports	14 days	14 days	14 days	14 days

**Public Satisfaction in Public Information Provided By Consumer Protection BC**

Consumer Protection BC received 30 complaints from consumers in 2012 related to motion pictures. The majority of these resulted from consumers disagreeing with a particular film’s classification. Other complaint issues included non-compliance and lack of regulation governing home video.

In addition to these complaints, 48 people contacted Consumer Protection BC in 2012 regarding a festival advertising exhibition of a film entitled *Donkey Love*. Consumers were concerned with the publicized depictions in the film. Consumer Protection BC initiated contact with the organizer in an effort to resolve the issue. Ultimately the festival did not proceed as planned due to its own arrangements with theatres.

In March of 2012, Consumer Protection BC's classification of the documentary film *Bully* garnered significant attention in North America. Following some controversy surrounding the film's American Restricted rating, both consumers and the industry lauded Consumer Protection BC's PG classification and an associated decision summary which is available [here](#). The Hollywood Reporter, the Globe and Mail, Yahoo, the CBC, the Vancouver Sun and the Victoria Times Colonist all presented favourable coverage of Consumer Protection BC's classification. The story also made the front page of [www.imdb.com](http://www.imdb.com).

Consumer Protection BC responds to consumer complaints within one day. Our complaint response process and overall film classification aims to reflect the province's collective community standards. Receiving feedback from the community helps us achieve this goal. Consumer Protection BC retains all correspondence, and staff references the information during classification decisions. In some cases, feedback from consumers contributes directly to classification policy.

## 2. Gaps in legislation leading to non-compliance of licensees under the MPA;

In the 2010 MPA Annual Report, Consumer Protection BC emphasized to the Ministry of Justice several challenges and associated opportunities with the MPA. Primarily, the legislation was outdated because of significant changes in motion picture technology—especially related to the delivery of content to consumers through media such as digital cinema, broadcasting and the Internet.

The report highlighted that existing requirements in the MPA created disparities between the theatrical *Motion Picture Act* sector and the video retail sector—specifically owing to the lack of classification of the home video market. The report also detailed how the MPA lacked a clear set of modern and progressive enforcement tools, thus creating challenges for Consumer Protection BC to administer the legislation effectively and fairly.

In the fall of 2011 the Ministry initiated a review of the MPA with the following goals:

- Complete the delegation of the MPA to Consumer Protection BC;
- Harmonize the MPA's enforcement provisions with the *Business Practices and Consumer Protection Act*;
- Update terminology to reflect technological advances in the industry;
- Align the approval provisions with the Criminal Code of Canada.

In 2012 Consumer Protection BC worked closely with the Ministry to help bring legislative amendments to the legislature. Bill 31 (*Motion Picture Amendment Act, 2012*) made it to second reading before the spring legislative session ended. Consumer Protection BC remains supportive of efforts to update the *Motion Picture Act* and is committed to assisting government with these efforts, as required.

## 3. Compliance Activity

### Percentage of Licensees under the MPA That Are In Compliance with The MPA

Working with business to achieve compliance reduces serious violations of consumer protection laws. By maintaining an effective link between statutory objectives and regulatory activities, Consumer Protection BC ensures effective compliance under its legislation. We routinely assess the level of risk to consumers and apply our resources towards higher risk activities.

#### *Compliance Outcomes and Measures*

In 2012, Consumer Protection BC carried out 142 inspections of businesses regulated under the MPA, including video retailers (adult and general release), theatres and motion picture distributors. Inspections made under the MPA accounted for 40% of all inspections performed by Consumer Protection BC in 2012.

#### **Number of Inspections:**

Sector	2009	2010	2011	2012
Video Retailers	62	123	256*	125
Theatres	69	26	25	16
Motion Picture Distributors	1	0	4	1
<b>TOTAL</b>	<b>132</b>	<b>149</b>	<b>285</b>	<b>142</b>

\*Note: in 2011 there was a heavy focus on unlicensed video retailers.

Inspection outcomes are measured across four categories of compliance by severity: 1) no further action required; 2) minor remedial action; 3) follow-up required; 4) report to the Director for administrative action.

Businesses with *no further action required* demonstrate complete compliance with legislation. If minor, unintentional issues were noted during the inspection that were either capable of being corrected on the spot, or within a short time-period, the inspection is categorized as *minor remedial action*. Both *no further action required* and *minor remedial action* are deemed acceptable, or approved, outcomes.

The *follow-up required* outcome includes situations where the inspector notes deliberate or serious violations that require resolution before the inspection file can be closed. The final category is *report to the Director for administrative action*. This category may include licensing action or seizure (the only two administrative sanctions in the MPA). This category is used where detected issues require more immediate attention and are most likely deliberate on the part of the business.

On a comparative basis, the inspection outcomes for licensees under the MPA from 2009-2012 were as follows:

Sector	Inspection Outcome	2009	2010	2011	2012
Video Retailers	No action required	28	71	196	40
	Remedial action required	14	16	40	9
	Follow up required	20	31	20	75
	Report to Director	0	5	0	1
Theatres	No action required	33	12	21	11
	Remedial action required	28	7	3	2
	Follow up required	8	6	1	2
	Report to Director	0	1	0	1
Motion Picture Distributors	No action required	1	0	3	0
	Remedial action required	0	0	0	0
	Follow up required	0	0	1	1
	Report to Director	0	0	0	0
	<b>TOTAL</b>	<b>132</b>	<b>149</b>	<b>285</b>	<b>142</b>
	TOTAL APPROVED	104 (79%)	106 (71%)	263 (92%)	62 (44%)
	TOTAL UNACCEPTABLE	28 (21%)	43 (29%)	22 (8%)	80 (56%)

Consumer Protection BC has limited resources and strives to orient these resources to the areas of highest risk such as businesses carrying adult product or exhibiting 18A classified films without proper authorization.

#### *Enforcement Outcomes and Measures*

Complaint files are opened based on tips from businesses, complaints from the public, and discoveries made through internal operations (such as the failure of a business to renew an expired licence). Similar to the foregoing compliance standards, investigation activity follows a risk based and progressive discipline approach dealing with significant and recurring infractions more aggressively than isolated unintentional errors. Consumer Protection BC closed 136 enforcement files related to businesses regulated under the MPA (video retailers, theatres and distributors) in 2012. Consumer Protection BC categorizes each enforcement outcome as favourable, unfavourable, or unfounded/withdrawn.

In general, case outcomes have remained positive and the majority of licensees voluntarily comply with violations detected during inspection or via consumer complaints.

<b>Sector</b>	<b>Case Outcome</b>	<b>2009</b>	<b>2010</b>	<b>2011</b>	<b>2012</b>
Retailers	Favorable	102	73	242*	97
	Unfavorable	0	0	11	3
	No Outcome	9	16	20	22
Theatres	Favorable	43	20	13	7
	Unfavorable	0	1	0	0
	No Outcome	1	5	6	1
Distributors	Favorable	31	56	18	1
	Unfavorable	0	0	0	0
	No Outcome	1	2	10	5
	<b>TOTAL</b>	<b>187</b>	<b>173</b>	<b>320</b>	<b>136</b>
	TOTAL FAVOURABLE	176 or 94%	149 or 86%	273 or 85%	105 or 77%
	TOTAL UNFAVOURABLE	0 or 0%	1 or .01%	11 or 3.4%	3 or 2%

\*Note: in 2011 there was a heavy focus on unlicensed video retailers.

## **4. Financial**

### **Fees Charged To Perform the Powers, Duties or Functions of the Director Compared With Costs of Delivering the Same Powers, Duties or Functions**

Consumer Protection BC is authorized to set fees subject to Ministerial approval. We operate on a cost-recovery model providing various services to motion picture distributors, retailers and theatres regulated under the MPA. Consumer Protection BC classifies theatrically exhibited films and approves adult videos distributed in the province.

In 2011, Consumer Protection BC held initial fee related consultations with industry associations and subsequently consulted with all licensees on proposed amendments to licensing and classification fees. This included notice to 116 distributors, 758 video retailers, and 71 theatres.

The Consumer Protection BC Board of Directors subsequently approved the changes that were recommended to the Minister for approval. The Minister approved the submission late in 2011 and Consumer Protection BC notified the industry 90 days before the new fees were scheduled to take effect. New fees became effective March 1, 2012.

Future fee increases are scheduled at approximately 2% to reflect increased operating costs due to inflation. Consumer Protection BC's fee schedule is publicly available online [here](#).

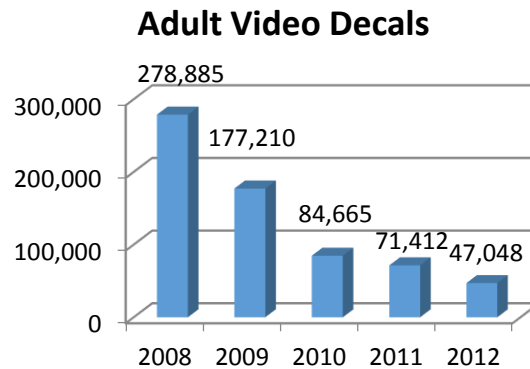
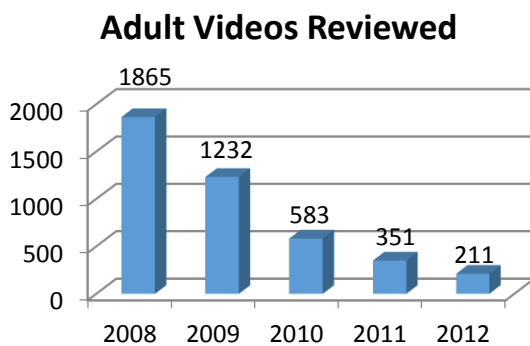
#### *Fee Waivers*

The MPA provides the Director with the discretion to facilitate exemptions, licensing orders and fee waivers. Under current policy, Consumer Protection BC waives the review fees for films submitted by many registered BC societies and registered federal charities. In 2012, Consumer Protection BC classified 525 theatrical films for these groups; this represents approximately 53% of the total number of films reviewed as well as thousands of hours of work for which there was no cost recovery.

Consumer Protection BC is aware of the challenges associated with this issue and is examining policy implications while considering carefully what changes may be appropriate.

#### *Adult Market*

In 2012, adult video submissions for approval and approved decal order volumes continued the downward trend of the past five years. It is believed that consumers prefer to access this content via broadcast, video-on-demand and pay-per-view services—none of which are regulated under the MPA. This shift in the retail market and distribution structure has impacted the number of adult video retail licensees. In 2011, Consumer Protection BC licensed 138 adult retailers. In 2012, this number dropped to 114.



#### *Frequency of Fee Increases*

Consumer Protection BC commenced administration of the MPA in 2007. Following this, we operated without any fee increases until 2010. In 2010 and 2011, Consumer Protection BC conducted a comprehensive review of our cost-recovery and industry fee model. The result was that increased overhead and administration costs, as well as inflation and a reduction in adult video submissions, began to challenge our ability to operate the program on cost-recovery basis.

In 2010, we initiated industry consultations and subsequently increased the licensing fees for some licensees including retailers, theatres and distributors. These increases took effect in March of 2011 with a built in 2% annual increase to offset inflation into the future. In 2011, we consulted with industry on increases to the classification fees for general release theatrical films -- fees that had not increased since 1997. Increases to these fees were approved by the Minister late in 2011 and came into effect in March of 2012. This also includes a built in annual increase of 2% moving forward.

Following these increases, it is anticipated that subsequent annual increases will be minimal in order to maintain pace with inflation. The review and decal fees associated with adult video product have not been increased due to

significantly decreasing volumes and commensurate workloads and costs. Consumer Protection BC is committed to minimizing fee increases through efficient and responsible operations.

#### **Administration Costs in Comparison to Program Costs**

Consumer Protection BC operates on a cost recovery basis. This means the classification and licensing fees assessed must cover all the direct (program) and indirect (administration) costs. Consumer Protection BC's costing model has been approved by the Board of Directors and our financial statements are reviewed by independent auditors on an annual basis. The costing model separates the MPA direct and indirect costs by service functions that include: licensing, compliance & enforcement services, helping consumers, classifying films, and public policy & industry relations.

Costs related to regulating the motion picture industry total approximately 24% of Consumer Protection BC's annual expenditure in 2012. Overall, costs for regulating the motion picture industry in BC totaled \$1.224 million in 2012.