



## Strategy & Corporate Services

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Dear Sir/Madam,

### **Telstra Submission to: Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Australian film and literature classification scheme**

Telstra welcomes the opportunity to contribute this submission to the Senate Standing Committee on Legal and Constitutional Affairs' Inquiry into the Australian Film and Literature Classification scheme.

Telstra is a leading Australian telecommunications and information services company. As a major provider of content on a variety of communications platforms, the *National Classification Scheme* touches on many aspects of Telstra's business. In this context, Telstra has participated extensively in the development of a number of industry schemes and codes that have formed a part of the *National Classification Scheme* over the past decade. During this period, Telstra has also provided strong industry leadership in the area of cyber-safety by offering a range of education programs for our customers and more recently, by committing to voluntarily blocking a list of known child pornography and abuse sites. Telstra believes that this practical experience allows Telstra to offer a valuable perspective on the operation of the *National Classification Scheme*.

As such, this submission begins with a brief general observation on the history of the development of the *National Classification Scheme* in Australia and then offers comment on the aspects of the Terms of Reference with which Telstra has the most direct experience, namely:

*l) the interaction between the National Classification Scheme and the role of the Australian Communications and Media Authority in supervising broadcast standards for television and Internet content;*

*and*

*m) the effectiveness of the National Classification Scheme in dealing with new technologies and new media, including mobile phone applications, which have the capacity to deliver content to children, young people and adults.*

## 1. General observations on the development of the national classification system

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Telstra has long supported the *National Classification Scheme's* underlying objectives of protecting children from material that may be harmful, while (within reason) enabling adults to watch what they choose. However, despite its worthy underlying intent, successive Governments have responded to the challenges to the classification system posed by rapid technological change with a series of issue specific regulatory responses. After more than a decade of incremental changes, the *National Classification Scheme* as it stands today is a complex arrangement of parallel and sometimes overlapping systems of classification. While many aspects of the *National Classification Scheme* are operating effectively, regulatory complexity has created areas of overlap, inconsistency and uncertainty that have the potential to be confusing for consumers and costly for industry participants implementing the scheme.

To this end, Telstra welcomes the Australian Government's announcement that it will ask the Australian Law Reform Commission ('ALRC') to undertake a holistic review of the *National Classification Scheme* in light of technology change. This review offers a timely opportunity to undertake a wholesale, evidence-based examination of the effectiveness of current regulatory arrangements in achieving the objectives of the *National Classification Scheme*. Given the potential for further ad hoc regulatory interventions to further complicate the *National Classification Scheme*, Telstra believes that a holistic review of the kind envisaged by the proposed ALRC Review is the most appropriate context within which to consider reform of the current arrangements.

## 2. Comments on Selected terms of reference

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**“(l) The interaction between the National Classification Scheme and the role of the Australian Communications and Media Authority in supervising broadcast standards for television and Internet content” and**

**“(m) The effectiveness of the National Classification Scheme in dealing with new technologies and new media, including mobile phone applications, which have the capacity to deliver content to children, young people and adults”**

The *Broadcasting Services Act 1992* ('**The BSA**') establishes a multilayered system of safeguards for online content with differing obligations depending on both the nature and provider of the content.

### **Online Content with an Australian Connection**

Schedule 7 of the BSA, which came into effect in early 2008 as a result of the passage of the *Communications Legislation Amendment (Content Services) Act 2007*, creates a framework governing the provision of online content via carriage services. Importantly, Schedule 7 governs all online content provided by a *designated content/hosting service* with an Australian connection regardless of whether the content is provided via the Internet or mobile networks. In this way, Schedule 7 provides comprehensive classification coverage of content provided over convergent services.

Amongst other things, Schedule 7:

- prohibits the provision of X18+ and Refused Classification online content by relevant providers;
- prohibits the provision of R18+ and MA15+ online content by relevant providers unless provided with appropriate access restrictions;
- creates a complaints based system of 'take down' and 'access removal' notices for prohibited content enforced by the Australian Communications and Media Authority ('**ACMA**'); and
- provides for the development of industry codes of practice by representative industry organisations providing further guidance on issues including the classification of content and complaint handling procedures.

After the initial introduction of Schedule 7, the Internet Industry Association led an industry effort to develop an industry code of practice providing further guidance for content classification and complaint handling procedures. The product of this initiative, *Content Services Code 2008* was approved by ACMA in 2008.

Section 8 of the *Content Services Code 2008* provides that *commercial content providers* must ensure that all content that is considered likely to be classified as MA15+ or above must be assessed and categorised against the *Guidelines for the Classification of Films and Computer Games 2005* by a trained content assessor. Content that is classified as, or is determined by trained assessors to be likely to be classified as MA15+ by the Classification Board must then be placed behind a Restricted Access System in accordance with the requirements set out in the *Restricted Access Systems Determination 2007*<sup>1</sup>. This content assessment process mirrors the 'in house' classification arrangements in place for both the free to air and subscription television sectors.

As provided above, in circumstances where it is a *commercial content service provider* under Schedule 7 of the BSA, Telstra engages trained content assessors to categorise the likely classification of relevant content that has not been classified by the Classification Board. Telstra then restricts access to this content as appropriate in different ways depending on the nature of the service being provided.

#### *Current Process for Accessing Online Content*

Telstra's current processes allow customers to access its BigPond website content (ie non-mobile content) by using a user name and password. Customers must provide their credit card details as part of their registration process to obtain a user name and password. As credit cards are only issued to individuals aged 18 and over, the validation of a customer's credit card constitutes verification that they are at least 18 years of age and allows them to access age-restricted content.

#### *Current Process for Accessing Content on the T-Box*

Telstra provides further safeguards for customers accessing content through our T-Box digital set top box. When signing up for a T-Box, customers are required to provide their

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<sup>1</sup> Where the conditions in subclauses 20(1)(c) and (d) of Schedule 7 to the BSA are satisfied

credit card details, again verifying that they are over 18 years of age. Credit card age verification is further required for registration for Telstra BigPond Movie rentals.

After set up, the T-Box requires customers to enter a PIN number set up by the account holder in order to access MA15+ and R18+ content from Telstra BigPond Movies. The T-Box allows customers to further customise the level of access granted for their service by allowing for the PIN number to be required before accessing M, PG or even G rated content.

The T-Box further includes a parental lock feature that allows customers to control which channels and programs are watched in the customer's home by requiring an additional PIN number before viewers are able to access specified content.

#### *Current Process for Accessing Mobile Content*

In order to obtain a post-paid service, a person must be 18 years or older. Proof of age is required at the time of activation and the document type and number is recorded in Telstra's account management systems. Only account owners may request access to age-restricted services. A customer who wishes to access age-restricted content can do so by calling Telstra customer service who will verify the caller as the account owner by asking for the account password and other information that only the account owner would know. Once verified as the account owner, the customer is by definition verified as being 18 years or older and a confirmation letter is sent to the account owner's address.

Prepaid customers who wish to access age restricted content are required to complete an application form and fax it, along with proof of age, for Telstra to process. Proof of age documents include typical documents such as an Australian passport with photo, drivers licence with photo and birth certificate. The customer will only be provided with access to age-restricted services if the account details stored on the Telstra system match those supplied in the application and the proof of age document verifies that the person is 18 years or older. If successful, the customer will be sent a confirmation letter advising of success. If the age verification is unsuccessful, the customer is sent a text message advising them of the failure of verification.

Following both processes outlined above, the customer's service is then identified in Telstra's systems (ie by a 'flag' or other indicator) as being permitted to access age-restricted content. Thereafter, whenever the customer wishes to access age-restricted content using their mobile service, their telephone number is identified by Telstra's system as being able to access this type of content.

#### Comments on the Operation of Schedule 7

Telstra believes that the current arrangements for Internet content with an Australian connection provide appropriate safeguards to ensure children are protected from exposure to material that may be offensive or harmful. In Telstra's view, these assessment arrangements are currently working well and Telstra is not aware of any complaints regarding the appropriateness of classification assessments made by Telstra's trained content assessors under this system.

Despite the Schedule 7 framework providing effective community safeguards in practice (particularly for content provided by *commercial content Service providers*), online content provided in accordance with Schedule 7 of the BSA also potentially remains subject to further classification obligations under the *National Classification Scheme* as established by the *Classification (Publications, Films and Computer Games) Act 1995*.

Whilst the self-assessment regimes currently in place for free to air and subscription television broadcasters enjoy an explicit exemption from the application of overarching obligations of the *National Classification Scheme* by virtue of the specialist safeguards these providers have in place, online content provided by *commercial content service providers* is provided with no corresponding exemption.

This superfluous 'double classification' obligation for online content creates unnecessary uncertainty for industry participants implementing these arrangements and raises the spectre of prohibitive compliance costs should online content provided by Australian content providers need to be formally classified by the Classification Board. As a nascent industry providing highly niche content, the economics of the provision of online content are very different to that of publishing, film or television. In fact, given the costs of preparing a formal classification application and the scale of the classification fees charged by the Classification Board (\$810-\$2040 per assessment plus), it is likely that requiring large scale formal classification by the Classification Board would make the provision of most online content by Australian providers uneconomic. If such a situation were to eventuate, Australian online content providers subject to this requirement would be put at a major competitive disadvantage to overseas based content providers who would not be subject to these obligations. This perverse outcome would result in overseas based content, provided without the classification safeguards of Schedule 7 of the BSA, dominating the Australian market.

Subsection 4(3AA) of the BSA provides that Designated Content/Hosting Services with an Australian connection be regulated in a way that, amongst other things "*enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on Designated Content/Hosting Service Providers*" and "*encourages.. the provision of services made practicable by those technologies to the Australian community*". Telstra submits that requiring the 'double classification' of online content would clearly contradict these policy objectives.

Further, Section 122 of the *Communications Legislation Amendment (Content Services) Act 2007* provides that it is not the intent of the Commonwealth Parliament to exclude concurrent State and Territory laws. As a result, State and Territory Parliaments are free to enact laws imposing different classification obligations on online content. As online content is not differentiated by State, if such State or Territory legislation were introduced, the effect of such an action would be nationwide. The risk of State or Territory intervention in this field creates further uncertainty for the classification treatment of online content that does not exist for free to air or subscription television providers.

## **Conclusion**

Telstra supports the objectives of the *National Classification Scheme* and initiatives to examine the effectiveness and efficiency of the current arrangements in achieving these objectives.

While parts of the *National Classification Scheme* are currently working well (for example the self-assessment arrangements established under the *Content Services Code*), a series of incremental reforms of the Scheme over an extended period of time have created some areas of overlap, inconsistency and uncertainty. Some of these areas of uncertainty create the risk of perverse outcomes that could undermine the achievement of the objectives of

the Scheme (for example, the potential 'double classification' obligation on online content with an Australian connection).

Given the manner in which this uncertainty has emerged, Telstra submits that the best way to address these issues is not through further incremental reform, but through a comprehensive review of the operation of the *National Classification Scheme* of the kind envisaged by the Government's proposed ALRC Review.

Telstra thanks the Committee for the opportunity to contribute to this inquiry.

Yours sincerely,

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