



**Telstra Submission - Australian Law Reform
Commission's National Classification Scheme Review**

15th July 2011

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Telstra is a leading Australian telecommunications and media 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 abuse sites (an indicative list of Telstra's cybersafety activities relevant to the scope of this review is included at Attachment 1).

Telstra believes that this commitment to online safety and practical experience with classification in Australia allows Telstra to offer a valuable perspective on the operation of the *National Classification Scheme*.

Telstra has limited its responses in this submission to the areas in which it has direct experience.

Question 1. In this Inquiry, should the ALRC focus on developing a new framework for classification, or improving key elements of the existing framework?

Telstra has long been a supporter of the objectives of the *National Classification Scheme*. However, despite its worthy underlying intent, successive Governments have responded to challenges to the 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. In this context, rather than seeking to address the issues with the classification scheme that have emerged as a result of rapid technological change with further *ad hoc* reforms, Telstra submits that the ALRC should undertake a holistic examination of the *National Classification Scheme* with the objective of developing a new classification framework for the modern media environment.

Since the introduction of the *National Classification Scheme* the Australian media environment has been transformed. The volume of content, the number of content producers and the number of platforms on which content is distributed have all increased beyond what could have even been imagined in 1991, when the Australian Law Reform Commission released the report that formed the foundation of the current *National Classification Scheme*¹. The transformational changes experienced by the Australian media sector over the past two decades demand a similarly wholesale review of the *National Classification Scheme*.

Question 2. What should be the primary objectives of a national classification scheme?

Clearly articulating the primary objectives of the *National Classification Scheme* is a fundamental pre-requisite to the development of a coherent classification system.

In Telstra's view, it is critical that the ARLC puts end users at the centre of the classification system. In the rapidly changing modern media environment described above, it is no longer practical to focus solely on 'controlling' content producers or distributors. In this regard, it is important to understand how the democratisation of content production and the internationalisation of content distribution that characterise modern media markets has radically changed the task of the *National Classification Scheme*. Not only have these trends increased the volume of content available to Australians by many orders of magnitude, they have also made many of the historic points of classification policy intervention less amenable to traditional forms of regulation.

The Democratisation of Content Production

The emergence of the Internet as a major source of modern media has resulted in new models of content production. As the Organisation for Economic Cooperation and Development ('OECD') has recognised:

*"The Internet has altered the nature and the economics of information production as entry barriers for content creation have significantly declined or vanished and led to the democratisation of media production (sometimes referred to as the "rise or return of amateurs"), distribution costs have declined dramatically, user costs are lower, and there is much greater diversity of works with shelf space in the digital media being almost limitless."*²

This collapse in the costs of content creation and distribution has facilitated the emergence of internet enabled social media as a platform for a new model of

¹ Australian Law Reform Commission, 1991, "Censorship Procedure", (ALRC Report 55).

² OECD, (2007), *Participative Web and User-Created Content: Web 2.0, Wikis and Social Networking*, at 64.

decentralised, often amateur content production outside of the organisational and market structures that have traditionally coordinated content production³.

As the OECD further describes this process:

*"Broadband access, the development of user-friendly web platforms, collaboration tools and other social networking software are enabling hundreds of millions of private and professional users to participate in the construction, development and use of Web 2.0, the participative web... (This) facilitates new forms of citizen participation in public life, the free flow of information and freedom of expression."*⁴

Incorporating tools and platforms ranging from social networking (eg Facebook, Myspace), video sharing (Youtube, Vimeo), picture sharing (Flickr, Panoramio) blogging (Blogger, Wordpress), micro-blogging (Twitter, Tumblr) and forums (eg Whirlpool, Essential Baby) internet enabled social media has dramatically increased the number of parties engaged in content production. As a result, the volume of content being made available to Australians has exploded. For example, data recently released by Google shows that not only is more than 48 hours of video content uploaded to Youtube every minute, but that the rate of growth in the volume of content being uploaded to the site is continuing to increase⁵.

The Internationalisation of Content Distribution

The internationalisation of content distribution is particularly visible in online markets. As Telstra has argued in the context of the Government's Convergence Review, in the online space, local content and intellectual property creators and distributors compete with internationally based providers in many markets. For example, as the Australian Communications and Media Authority (ACMA) recently identified:

*"The mobile applications market functions on both a national and global scale, and this has implications for regulation in Australia. The app stores analysed for this paper are all based overseas, which is representative of the market as a whole at this time. App developers are also based in multiple international jurisdictions."*⁶

³ See for example Benkler, Y., (2006), *The Wealth of Networks: How Social Production Transforms Markets and Freedom*, London: Yale University Press.

⁴ OECD, (2008), *Shaping Policies for the Future of the Internet Economy*, OECD Digital Economy Papers: No. 148, OECD Publishing at 22. Available online at <http://dx.doi.org/10.1787/230388107607>

⁵ Youtube, *Thanks, YouTube community, for two BIG gifts on our sixth birthday!*, May 25, 2011. Available online at: <http://youtube-global.blogspot.com/2011/05/thanks-youtube-community-for-two-big.html>

⁶ ACMA, (2011), *Emerging Business Models in the Digital Economy— The Mobile Applications Market Occasional Paper* at 15. Available online at http://www.acma.gov.au/WEB/STANDARD/pc=PC_312545 .

Telstra submits that a similar observation could be made about the providers of online audio-visual content, music, e-books and most other forms of cultural content.

To take the online distribution of audio-visual content as an example, it is clear from Figure 1 below that Australian use of Apple's iTunes store to download or stream syndicated audio-visual content dwarfs the traffic of local players in the industry.

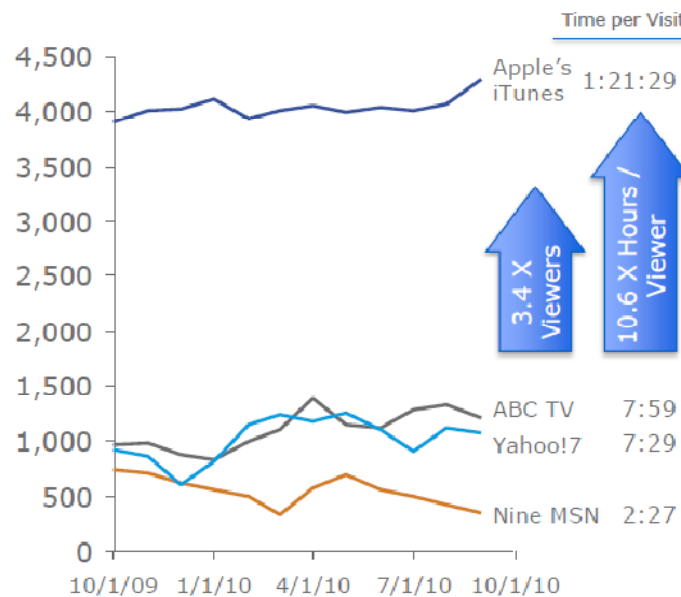


Figure 1 Syndicated "Video" sites only October 2009 – 2010⁷

SOURCE: Nielsen Netview Unique Audience in Australia

Implications for the Objectives of the *National Classification Scheme*

The democratisation of content production and the internationalisation of content distribution have significant implications for classification policy. As Crawford and Lumby have identified, while:

"...nation state governments clearly have a remit to enforce the laws of their country and to protect public policy priorities when it comes to cultural and social parameters. Their ability to enforce this remit is restricted due to the sheer volume of media content as well as the decentralisation and vast number of media producers."⁸

As such, while it was possible in the past to focus classification regulation on the small number of large, domestic content producers and distributors, content

⁷ Note: these figures do not relate to the traffic of the parent site, rather the sites from which customers stream or download audiovisual content

⁸ Crawford, K. and Lumby, C., (2011), *The Adaptive Moment: A Fresh Approach to Convergent Media in Australia* at 40. Available online at <http://www.unsw.edu.au/images/pad/2011/May/Convergentmedia.pdf> .

production and distribution has today fragmented into international markets populated by an extraordinary number of large and small, domestic and international producers and distributors. As a result, Telstra submits that in modern media markets, the focus of classification policy intervention needs to be shifted to domestically based users rather than the now multitudinous and internationally dispersed content creators and distributors.

Consistent with this, Telstra has long argued that in the context of a modern, democratic country, the Australian classification system should have two, end-user focused objectives:

1. Protecting children from material that may be harmful;
2. Empowering adults to, within reason, decide for themselves the media content that they wish to consume.

These objectives are consciously focused on the application of the classification scheme to end users of media; children who need to be protected and adults who need to be empowered.

Application of Classification Policy Objectives

While not explicitly raised by this question as framed by the ALRC, Telstra further notes that defining objectives is only the first step in any policy making process. As the Australian Government's *Office of Best Practice Regulation Handbook*⁹ outlines, good regulatory process requires policy makers to:

- Define the scope of the policy 'problem' on the basis of empirical evidence;
- Identify a range of possible mechanisms for responding to the problem (including taking no action) and considers the costs (including compliance costs) and benefits (including the extent to which a mechanism is expected to be successful in 'solving' the defined problem) of each mechanism; and then
- Select the mechanism that delivers the greatest net benefit taking into account the costs and the benefits.

To this end, Telstra submits that once the ALRC has determined the primary objectives of the *National Classification Scheme*, it should then take an evidence based approach to determining the extent to which these objectives are not being realised at present.

If it is then determined that these objectives are not being met, a range of policy mechanisms designed to achieve these objectives should then be considered and the costs and benefits of these mechanisms compared.

⁹ Department of Finance and Deregulation, 2010, "Office of Best Practice Regulation Handbook".

Question 3. Should the technology or platform used to access content affect whether content should be classified, and, if so, why?

As recognised by the ALRC in the Issues Paper, technological change, particularly the process of convergence, has made the task of distinguishing between content on the basis of technology or platform increasingly problematic.

Convergence, or the decoupling of services from legacy delivery mechanisms resulting from the digitalisation of service delivery, has blurred the boundaries between previously clearly distinct distribution platforms. As a result, this process of convergence has undermined both the practicality and rationale of treating content delivered over these platforms differently.

In fact, these increasingly blurred boundaries have already resulted in a number of instances in which the current classification treatment of content is uncertain or perverse. For instance, each of the following pairs of analogous content could arguably be subject to differing classification obligations under the current legislative arrangements with little underlying policy rationale other than the application of legacy classification schemes to changing technology platforms:

Table 1 – Current Inconsistencies in the National Classification Scheme

A physical copy of a book	A 'cloud' hosted electronic copy of a book served to (but not stored on) a tablet e-reader
A broadcast episode of a television show delivered to a television	the same episode delivered via 'over the top' internet streaming to an internet enabled television
A physical copy of a newspaper	An application serving news articles to a mobile phone
An online computer game hosted outside of Australia	A physical copy of computer game sold in Australia

As technological innovation continues, and the diversity of content producers and distribution platforms continues to grow, distinguishing classification treatment on the basis of distribution platform is likely to become increasingly difficult, resulting in further inconsistencies of this kind.

These inconsistencies resulting from differentiating classification treatment on the basis of platform or technology can have a number of undesirable consequences for both consumers and businesses.

Potential for End User Confusion

As outlined above, Telstra believes that end users should be placed at the centre of the classification scheme. As the boundaries between distribution platforms

blur, differences between the classification treatment of content on these platforms are likely to become confusing for end users. This end user confusion can have a number of adverse effects.

Firstly, to the extent that classification criteria or the enforcement of these criteria differ between platforms, end users may harbour false expectations of the type of content that could be made available on these platforms and as a result, exercise too little or too much individual responsibility for evaluating the content that they are consuming.

Secondly, to the extent that accountability and enforcement processes for the distribution of inappropriate material differ between platforms, consumers may be confused as to who to contact if they wish to make a complaint about content that was made available over a platform.

This potential for end user confusion is particularly acute when, as is becoming increasingly common in the modern media environment, multiple distribution platforms are connected to the same screen being used by a consumer. In practice, while end users can now view free to air television, subscription TV, IPTV and over the top internet video on a single television screen, if they wished to lodge a complaint about something they saw on that screen they would need to know which one of a number of different bodies with whom they should lodge their complaint on the basis of a delivery platform that is largely invisible to them.

Potential for Competitive Distortion and Inhibition of Innovation

Just as the process of convergence is causing the boundaries between distribution platforms to blur, so too is it causing previously distinct markets to merge. In this context, to the extent that classification obligations and their associated compliance burdens differ between participants in markets, the classification scheme could create competitive distortions between parties.

It is important at this point to recognise that differing compliance burdens are not simply a function of differing regulatory requirements. Identical regulatory requirements can have dramatically different compliance burdens when applied in differing contexts. For example, requiring formal ex ante classification of both high cost, professional film productions intended for mass market theatre distribution to low cost and amateur video productions intended for a niche online audience would have a dramatically different impact on each party.

Where the compliance burden of classification obligations are significant and the scope of their application across distribution platforms is unclear, these obligations can also inhibit innovation and discourage new entrants from developing new content.

Conclusion on the Differentiation of Classification Treatment on the Basis of Platform or Technology

As indicated above, given the pace of technological innovation in content distribution platforms and the inconsistencies and perverse regulatory outcomes that can result from this change, great care needs to be exercised when differentiating between classification treatment on this basis.

However, despite these practical difficulties in differentiating between technologies and distribution platforms at the margins, there do remain important practical differences between the nature of content production and distribution across the major platforms that need to be taken into account when developing classification policy.

In particular, as discussed above, the extent of the democratisation of content production and the internationalisation of content distribution on the Internet makes the classification task in respect of this platform different to that of traditional platforms. The sheer volume of content alone available via the Internet makes ex ante classification approaches of the kind that have historically been in place for the film and television platforms highly impractical.

Question 4. Should some content only be required to be classified if the content has been the subject of a complaint?

Where the circumstances of the distribution of content make ex ante classification review of content impractical or prohibitively expensive (as is the case for much online media), Telstra submits that end user complaints are a useful gating mechanism for targeting classification exercises.

In Telstra's view, such a complaint driven process empowers users to influence the content that they consume and target the compliance costs of the classification scheme to areas of genuine end user concern.

Complaint based mechanisms are particularly effective in online media in which content is continually made available to end users (compared to the scheduled, infrequent distribution structure traditionally employed in free to air or Pay television). In these circumstances, where end user complaints result in inappropriate content being removed, the practical outcome for subsequent end users accessing a platform would be identical to a situation in which ex ante review had prevented it from being published in the first place, but at a fraction of the implementation cost.

Question 5. Should the potential impact of content affect whether it should be classified? Should content designed for children be classified across all media?

Potential Impact of Content

As outlined above, Telstra believes that the classification system should be end user focused. In this context, Telstra submits that focusing the attention of the classification scheme on content that would be more likely to have a greater impact on end users is sensible. Current arrangements under the *National Classification Scheme* limiting the requirement for publications to obtain classification to 'submittable material' of a kind that is more likely to have an impact on adults is a useful example of the effectiveness of such an approach.

Content Designed for Children

With respect to content designed for children, Telstra submits that parents would benefit from having access to a consistent classification scheme across media.

However, Telstra notes that while 'content designed for children' is easily delineated in the context of the broadcasting sector by virtue of the operation of the *Children's Television Standards*, difficulties arise when trying to define this content on other distribution platforms that are not subject to quotas for children's content. In this context, Telstra submits that *mandating* the ex ante classification of content designed for children is not practical in new media.

However, given the recognised interest that parents have in being able to identify content appropriate for children, there are strong arguments for establishing a regime in which content producers and distributors could voluntarily submit their material for classification as child friendly. Parents would benefit from such a system by being able to direct their children to content with an appropriate classification rather than content that has not been classified at all, and content providers and distributors would benefit by being able to market their content as child friendly on the basis of an independent benchmark.

Question 6. Should the size or market position of particular content producers and distributors, or the potential mass market reach of the material, affect whether content should be classified?

Telstra does not support differentiation of classification obligations based on the size of producers or distributors or the potential market reach of the material.

In a modern media environment, the size of a producer or distributor is both problematic to determine and of questionable relevance. In the first instance, it is unclear what benchmark that the 'size' of producers or distributors could be usefully measured against. Should it be judged on a national basis or an international basis? Within one content market or across all markets in which the party operates? It is easy to imagine a party being considered 'large' within a particular media market on a domestic basis, while competing with a number of much larger parties in a broader international market. In this context, the

potential for competitive distortion, particularly the potential to disadvantage domestic producers and distributors relative to their international competitors is a significant issue arising from distinctions of this kind.

Differentiating classification treatment on the basis of potential market reach is particularly problematic and would be likely to result in perverse outcomes. For example, the 'potential' market reach of content provided over the internet is theoretically very large, extending to all Australian internet users. Despite this, the deaggregated distribution model of online media means that much of the content provided on this platform is of niche appeal and will only reach a tiny fragment of the potential audience in practice (the so called 'long tail').

Question 9. Should the potential size and composition of the audience affect whether content should be classified?

Telstra submits that the potential size and composition of the audience for content might be a useful gating mechanism for classification treatment.

However, Telstra notes that in practice, drawing distinctions of this kind in a rapidly changing media market would be difficult. Recent experience shows that the size and audience composition of differing types of content has changed dramatically in relatively short periods of time. In the modern media market, new forms of content have frequently emerged and rapidly attracted substantial audiences (eg the rapid take up of social networking and the significant recent growth in the consumption of mobile content). This rapid pace of change creates the risk that classification distinctions based on the potential size and composition of audience could quickly become outdated leading to inconsistencies and perverse outcomes.

Question 11. In addition to the factors considered above, what other factors should influence whether content should be classified?

A further factor that Telstra believes should be considered when deciding whether content should be classified is the expected extent and consistency of compliance with classification requirements.

Ineffective or inconsistently enforced classification obligations aid nobody. End users are disadvantaged as ineffective classification obligations risk giving a false sense of security reducing self vigilance or creating confusion about remedies.

Content producers and distributors are also disadvantaged to the extent that inefficient enforcement creates competitive distortion in media markets, particularly ineffective enforcement against internationally based content producers or distributors. The reduced capacity of Nation States to enforce regulation against international actors (even where the black letter law is

consistent in its application) creates a serious risk that local providers, who are more easily caught by the regulatory reach of Government, could be indirectly competitively disadvantaged by regulatory intervention. The importance of 'competitive neutrality' as an objective for policy making in online markets has long been identified as an important consideration for policy makers and was identified as early as 2000, in the then National Office of the Information Economy's Convergence Review Report¹⁰.

Question 12. What are the most effective methods of controlling access to online content, access to which would be restricted under the National Classification Scheme?

Given the nature of our business, playing a leadership role in making end users' engagement with online content as safe as possible is a key priority for Telstra. During our engagement with customers, community groups and Government on cyber-safety, we have consistently stated that there is no silver bullet which will make engagement with internet content completely safe. Telstra has often stated that an holistic response to online content that would be restricted under the *National Classification Scheme* must include user-based PC filtering, the creation of safer learning and social networking environments, appropriate supervision and involvement by parents and teachers, education, law enforcement and international cooperation.

Telstra has also previously indicated that ISP level blocking of a blacklist of RC sites could also usefully form one element of such a multi-faceted approach to this issue. Telstra formed this view based on the results of its own technical evaluation of a hybrid DNS/Proxy Server based blacklist blocking technology undertaken in a closed network environment¹¹. This technique uses a "poisoned" DNS server, loaded with a blacklist, to redirect users to a proxy server if the user requests access to a domain listed on the Black List.

Based on the results of this technical evaluation, Telstra believes that blocking of URLs on a blacklist is feasible and practical to implement at 100% accuracy (no under or over blocking), without noticeably impacting on network performance or customer experience provided it is limited to a defined number of URLs (Telstra's evaluation tested a blacklist of up to 10,000 URLs). A copy of this technical report is included as Attachment 2 to this submission.

On this basis, in December 2009, Telstra announced that it would voluntarily implement the blocking of a blacklist of child abuse websites compiled by the ACMA¹². In the interim period while this blacklist is compiled, Telstra has

¹⁰ National Office for the Information Economy, (1999), *Convergence Review* at 48-49. Available online at: http://www.archive.dbcde.gov.au/2008/01/convergence_review .

¹¹ <http://exchange.telstra.com.au/wp-content/uploads/2009/12/TBT-final-report1.pdf>

¹² <http://telstra.com.au/abouttelstra/media-centre/announcements/telstra-welcomes-australian-governments-online-safety-measures.xml>

recently voluntarily commenced the blocking of a black list of child abuse websites compiled by INTERPOL (discussed in further detail below).

Despite Telstra's willingness to voluntarily implement ISP level blocking of this kind, Telstra supports the fact that the Government intends to legislate its approach to ensure that it applies across the industry, is clearly spelt out and is enforceable by law.

Question 13. How can children's access to potentially inappropriate content be better controlled online?

Telstra recognises that children and young people are particularly vulnerable to inappropriate online content as they know how to use computers and mobile phones, but may lack the maturity to understand and deal with inappropriate contact or content.

However, Telstra submits that framing the risk of exposure to inappropriate content as an issue of 'controlling' children's access to online content overly simplifies this policy issue. Again, Telstra submits that the policy focus of classification must be on the end user and the way that they engage with content, rather than the content itself or distribution platforms that deliver it. The Internet is accessed by children in a variety of locations; including at home, school, libraries, cafés and via mobile platforms. The effectiveness of mechanisms designed to 'control' the content that children are able to access will vary across these differing environments. In this context, Telstra has consistently stated that a holistic approach including education, parental supervision, appropriate technical products, law enforcement activity and international cooperation is necessary to protect children from inappropriate content online.

The need for a holistic approach of this kind rather than simply trying to 'control' the content available to children is supported by a number of leading studies on the issue of Cyber-Safety¹³. Telstra also notes that such an approach was implicitly endorsed by the findings of the recent Joint Select Committee on Cyber-Safety that emphasised:

- *"the need for children and young people to be in control of their own experiences in the online environment through better education, knowledge and skills;*
- *the short-term need for more detailed and longitudinal Australian research on how young people are interacting with the online environment, and emerging technologies in particular. Then based on that research, there is a requirement for a cooperative national response, based on a range of*

¹³ See for example, "Enhancing Child Safety & Online Technologies" – Final Report of the Internet Safety Technical Task Force, The Berkman Center for Internet & Society, Harvard University, 31 December 2008 and "Click Clever Click Safe", UK Council for Child Internet Safety, December 2009

educational programs. To be effective, a combination of carefully designed and targeted programs is needed for the use of parents/carers and teachers, and the varied needs of the different developmental stages of Australian young people; and

- *the need for parents/carers, teachers and all those who engage with young people to become more informed, and gain an understanding of online technology and its many uses.*¹⁴

In Telstra's view, the most effective methods for protecting children from inappropriate content online involve teaching them to seek help from those around them. Children and young people need to feel confident about alerting the adults in their lives when they are feeling unsafe, threatened, bullied or exposed to inappropriate events. Parents need to be aware of the risks their children may face and the steps they can take to help ensure a better and trusted online experience for their children. Parents can assist by seeking to understand online technologies and actively use them, reducing the knowledge gap between themselves and their children.

Protection of children online is an issue that has attracted substantial policy attention over the past decade. Australian governments currently implement an extensive range of programs to educate children, parents and teachers about how to deal with inappropriate online content¹⁵. Education initiatives such as the ACMA's Cybersmart program, the Australian Government's Cyber Safety Help Button and the Australian Federal Police ThinkUKnow program and the Internet Industry Association's 'IIA Family Friendly ISP' scheme have all made valuable contributions in this regard. Telstra itself offers an extensive range of initiatives including a dedicated Cyber-Safety portal¹⁶ and particularly Telstra's Tips for Kids website¹⁷ (A full list of Telstra's Cyber-Safety initiatives is included at Appendix X).

Despite this level of activity, more can be done in this area. In particular, additional resources could be provided to ensure the Cyber Safety programs described above are co-ordinated and reach as many members of the community as possible.

¹⁴ Australian Parliament Joint Select Committee on Cyber-Safety's report on the Inquiry into Cyber-Safety, 2011, "High-Wire Act: Cyber-Safety and the Young", at paragraph 1:98. Available online at: <http://www.aph.gov.au/house/committee/jsc/report/chapter1.pdf>

¹⁵ These programs are outlined at length in *ibid* at pp 377-413. Available online at: <http://www.aph.gov.au/house/committee/jsc/report/chapter14.pdf>

¹⁶ <http://telstra.com.au/abouttelstra/advice/internet/index.htm>

¹⁷ <http://www.telstra.com.au/abouttelstra/advice/internet/toddlers-children/index.htm#tab-advice>

Question 15. When should content be required to display classification markings, warnings or consumer advice?

As discussed above, end users and particularly parents, benefit from the confidence and certainty that is promoted by a consistent classification scheme and accompanying markings.

However, there are practical constraints to the extent to which classification markings could be required. In the first instance, a pre-requisite for the use of classification markings is a classification decision from the Classification Board or a self-assessment by Trained Content Assessors. Obtaining such a classification assessment may be prohibitively expensive for the ever growing number of amateur or small scale content producers that have emerged in the online space. Further, it may be impractical for those who provide these producers with a platform for the distribution of their content, but who are uninvolved in the development of the content to impose similar markings.

Question 16. What should be the respective roles of government agencies, industry bodies and users in the regulation of content?

As already indicated, Telstra submits that empowering end users to exercise control over the content that they consume should be the focus of the *National Classification Scheme*. In this context, the role of industry and government should be primarily focused on supporting this user empowerment.

As outlined in Telstra's submission to the Convergence Review Framing Paper, technological change accompanying the process of convergence has resulted in consumers having both more control over the content that they consume and access to a far greater range of content than ever before.

Across platforms and devices, content providers in convergent environments are increasingly moving from "push" to "pull" delivery mechanisms. Telstra is well aware that our customers now demand to access services where they want to, how they want to and when they want to. Technological innovation is now frequently making this individually customisable media experience possible.

Telstra's T-Box is a useful practical example of this trend. Telstra's T-Box is a digital set top box that plugs into a user's television. In addition to giving users the ability to play, pause and rewind Free-to-Air TV, timeshift TV viewing via an electronic program guide and watch on-demand or streaming internet video (including BigPond TV, BigPond Videos, Youtube and shortly, Foxtel on T-Box), the T-box also includes a Parental Control function that is designed to help users control the types of channels, programs and applications that are watched in their home.

As Crawford and Lumby have recognised:

"Contemporary media users exercise an unprecedented level of choice and control over the content they consume and, indeed, are frequently sources of content themselves. This digital literacy is shaping media users into active media citizens who expect industry and government to consult with and inform them about risks and opportunities of media platforms and content."¹⁸

Telstra submits that the primary role of government and industry should not be to attempt to 'control' the content available to Australians, but instead to support and increase users' ability to control the content that they consume.

Industry is most directly able to support user empowerment by responding to demand and designing their products and services in a way that maximises the ability of end users to control the content that they consume.

Government is best able to support user empowerment by investing in the education programs that are necessary to provide the media literacy education necessary to ensure that end users possess the skills and knowledge necessary to exercise control over the content they consume.

Question 17. Would co-regulatory models under which industry itself is responsible for classifying content, and government works with industry on a suitable code, be more effective and practical than current arrangements?

Telstra believes that the co-regulatory classification arrangements that are currently in operation on a range of different content distribution platforms have worked reasonably well to date and represent regulatory models worth building on in any future scheme.

The co-regulatory arrangements with which Telstra has the most experience is the regime that currently governs online content in Australia. Schedule 7 of the Broadcasting Services Act 1992, creates a framework governing the provision of online content via carriage services. This framework provides for the development of a co-regulatory industry code providing further detail regarding the implementation of the obligations of the Schedule.

To this end, Section 8 of the *Content Services Code 2008* developed under Schedule 7 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

¹⁸ Crawford, K. and Lumby, C., (2011), *The Adaptive Moment: A Fresh Approach to Convergent Media in Australia* at 44. Available online at <http://www.unsw.edu.au/images/pad/2011/May/Convergentmedia.pdf> .

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*¹⁹. This content assessment process mirrors the 'in house' classification arrangements in place for both the free to air and subscription television sectors.

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 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 mobile 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

¹⁹ Where the conditions in subclauses 20(1)(c) and (d) of Schedule 7 to the BSA are satisfied.

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.

The Effectiveness of the Co-Regulatory Scheme Established Under 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.

Telstra does however note that co-regulatory arrangements of this kind, while practical and effective, should not be seen as a way of avoiding the cost of classification. The cost burden of such arrangements, particularly where they require prospective self-assessment of content, are real and should be taken into account when making policy in this area.

Issues with the Co-Regulatory Scheme Established Under Schedule 7

Telstra notes that 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.

Question 18. What content, if any, should industry classify because the likely classification is obvious and straightforward?

The arrangements for online content with an Australian connection established under Section 8 of the *Content Services Code 2008* discussed above provide useful guidance with respect to the classification treatment of content for which the classification is obvious and straightforward. Under these arrangements, 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.

While Telstra does not specifically track complaints based on appropriateness of content, we are not aware of any complaints in the last year regarding the classification assessments made by Telstra's trained content assessors under this system. In this context, the use of trained content assessors by industry to assess the likely classification of content is both an effective and practical solution for all types of content.

Question 23. Should the classification criteria in the Classification (Publications, Films and Computer Games) Act 1995 (Cth), National Classification Code, Guidelines for the Classification of Publications and Guidelines for the Classification of Films and Computer Games be consolidated?

Telstra supports the consolidation of these classification criteria.

Aligning the classification regimes for games and films, including regulation of the display and advertising of R18+ content, will make it easier for parents and carers to assess the nature of gaming content by using their existing knowledge of film classification. Consolidating these criteria would allow parents who are unfamiliar with computer games to have greater peace of mind about the choices they make for their children. Parents will also be better able to use the family setting on their console (where available) to filter content which they deem inappropriate.

If adopted, to ensure that the positive effects of such a consolidation are fully realised, such a measure should be supported by a community education program.

The extent to which interactive content affects different groups of users differently from passive content could be judged and accounted for within a consolidated classification process based on continuing research.

Telstra supports the refused classification of content that is clearly inappropriate for sale. However, we recognise that the bulk of computer game players in Australia are adults capable of making their own decisions about whether to play games with an R18+ rating. According to research conducted at Bond University, the average age of game-players in Australia is 30, and that by 2014, the average age of those who play computer games will be the same as the average age of those who do not²⁰. The current regime, which refuses classification to any computer game that exceeds the MA15+ rating, merely

²⁰ Brand, J., Borchard, J. and Holmes, K, (2008), "INTERACTIVE AUSTRALIA 2009". Available online at: http://www.igea.net/wp-content/uploads/2008/10/IA9-Press-Summary-19_08.pdf

encourages adult players to source from overseas games that would otherwise be classified R18+ in Australia and could therefore not be sold here.

Question 24. Access to what content, if any, should be entirely prohibited online?

Telstra is supportive of a Refused Classification (RC) content blacklist of URLs compiled from the combination of a complaints-based system and known child abuse websites passed on by expert agencies in other jurisdictions.

As previously indicated, in December 2009, Telstra announced that it would voluntarily implement the blocking of a blacklist of child abuse websites compiled by ACMA²¹.

Since this announcement, and at the request of the Australian Federal Police under s313 of the Telecommunications Act, Telstra has successfully introduced the blocking of a blacklist compiled by INTERPOL as an interim measure while an ACMA blacklist is finalised.

This INTERPOL blacklist contains domains which host some of the worst examples of child abuse detected on the internet²². It has been set up to assist ISPs to limit the distribution of child abuse material in their network and is backed by an INTERPOL “stop page” as a means of increasing transparency. There is also a mechanism to enable domain owners to make a complaint about the blocking of a domain should they believe it is incorrectly placed on the list.

The blocking of this INTERPOL blacklist brings Telstra into alignment with major ISPs in the United Kingdom, Scandinavia and Europe.

Since Telstra has implemented the blocking of this blacklist, the Internet Industry Association has announced its intention to issue a draft industry code to allow other ISPs to voluntarily implement blocking of this list²³.

Question 25. Does the current scope of the Refused Classification (RC) category reflect the content that should be prohibited online?

Telstra is supportive of a refused classification content blacklist of URLs compiled from the combination of a complaints-based system and known child abuse websites passed on by expert agencies in other jurisdictions.

²¹ <http://telstra.com.au/abouttelstra/media-centre/announcements/telstra-welcomes-australian-governments-online-safety-measures.xml>

²² <http://www.interpol.int/public/THBInternetAccessBlocking/WorstOfList.asp>

²³ <http://www.iaa.net.au/index.php/all-members/892-internet-industry-moves-on-blocking-child-pornography.html>

Question 26. Is consistency of state and territory classification laws important, and, if so, how should it be promoted?

The consistency of State and Territory classification laws is increasingly important in the modern media environment. Media companies, like Telstra, who deliver their content via the internet, increasingly do so on a national, and even international, basis. In this context, differing State and Territory classification laws have the potential to impose significant costs by forcing media companies to artificially differentiate their content and services in order to comply with local regulations. Otherwise, should the costs of such differentiation for compliance purposes prove prohibitive, the alternative potential effect of jurisdictional inconsistency would be inefficiently expanding compliance with the highest level of regulation to content provided on a nationwide basis.

Selecting the best mechanism for promoting consistency of State and Territory classification laws is a question of inter-governmental relations that is in general, best decided by the Governments themselves. However, Telstra does submit that jurisdictional consistency could be better promoted in future than it is at present by explicitly providing that Commonwealth legislation touching on classification is intended to exclude concurrent State and Territory laws.

At present, Section 122 of the *Communications Legislation Amendment (Content Services) Act 2007*, the legislation that introduced Schedule 7 of the *Broadcasting Services Act 1992* and established the current regime for dealing with online content hosted in Australia explicitly 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 additional classification obligations leaving open the prospect of costly and inefficient jurisdictional inconsistencies being imposed on the providers of online content in Australia.

Attachment 1 – Telstra initiatives in the area of Cyber-Safety

The table below captures Telstra’s Cyber-Safety initiatives in the online environment relevant to this inquiry.

Area of focus	Initiatives led or supported by Telstra
<p>The online environment in which Australian children currently engage, including key physical points of access (schools, libraries, internet cafes, homes, mobiles) and stakeholders controlling or able to influence that engagement (governments, parents, teachers, traders, internet service providers, content service providers)</p>	<ul style="list-style-type: none"> • As part of its ongoing education and Cyber-Safety awareness initiatives for all age-groups Telstra has: <ul style="list-style-type: none"> ○ Launched an Internet and Cyber-safety webpage on Telstra.com in late 2009 ○ Distributed a <i>Telstra and Cyber-Safety</i> booklet across Telstra and to members of Australian Parliament containing hints and tips on a range of topics including cyber-bullying ○ Published a regular blog by the Officer of Internet Trust & Safety on the Telstra Exchange site. The blog provides practical information and tangible tips on how to be Cyber-Safe for a variety of audiences ○ Provided ongoing advice via the Ponderings newsletter and BigPond.com
<p>Abuse of children online, particularly cyber-bullying</p>	<ul style="list-style-type: none"> • In September 2009 Senator Conroy announced Telstra would be an industry partner with the Federal Government to link Australian children, parents and teachers with expert Cyber-Safety advice and targeted information via the new Cybersmart website created by the Australian Communications Media Authority (ACMA). Telstra has agreed to cross-promote ACMA’s Cybersmart website as part of our ongoing focus to help protect Australians from cyber-bullying and invasions of personal privacy • Telstra/BigPond has attained the Internet Industry Association (IIA) ‘Family Friendly ISP’ Seal Program status. This program is designed to dovetail with the Codes of Practice by providing a visible symbol, the "Ladybird Seal" to show which Australian ISPs are compliant with the IIA Codes. It is hoped that internet users, particularly those responsible for the care of children using the internet, will take advantage of the information

	and tools that compliant ISPs must offer as part of the code scheme
Inappropriate social and health behaviours	<ul style="list-style-type: none"> Telstra provides information and resources to the Australian public, not restricted to Telstra customers, about appropriate behaviour online. This ranges from informal programs such as blogging on Telstra Exchange to formal multi-year funding for community organisations from the Telstra Foundation
Exposure to illegal and inappropriate content	<ul style="list-style-type: none"> As required by law, Telstra uses an access control system to restrict access to commercial content classified MA15+ and or R18+ content, which it makes available to customers on its websites or mobile platform. Commercial content classified MA15+ is only accessible to customers who have declared they are aged 15 years and over Telstra customers wishing to access and purchase an R18+ classified movie from the BigPond Movies download service are required to become a member of the service. When applying to become a BigPond Movies member, a customer must provide their date of birth and credit card details which Telstra uses to verify that the customer is at least 18 years of age Telstra has also implemented processes and protections to ensure that people under 18 cannot access telephone sex services. Where Telstra only provides the underlying carriage service to enable the content to be delivered then Telstra is not considered to be providing the content and is thus not required to restrict access to content classified MA15+ or R18+ Access to certain restricted services is limited to customers who submit a written request to Telstra and are provided with a PIN password to access these services
Australian and international response to Cyber-Safety threats their effectiveness and costs to stakeholders, including business	<ul style="list-style-type: none"> Telstra has founding partner membership of the Virtual Global Taskforce (comprised of police forces from around the world working together to fight online child abuse) and has attained the Internet Industry Association (IIA) Family Friendly ISP status Safer Internet Day is an annual international awareness day organised by Insafe – a European network of Awareness Centres – to promote safer and more responsible use of online technology and

	<p>mobile phones, especially amongst children and young people. This event is managed by the ACMA in Australia and Telstra has participated every year since inception</p>
<p>Opportunities for cooperation across Australian stakeholders and with international stakeholders</p>	<ul style="list-style-type: none"> • Telstra has founding partner membership of the Virtual Global Taskforce (comprised of police forces from around the world working together to fight online child abuse) • Telstra has committed to working with cross-industry stakeholders to tackle the various topics attached to Cyber-Safety together. ITSWC members sit on Berry Street's BeNetWise Reference Group (a 12 month project looking at young at-risk people in out of home care and their access to technology and a recipient of the Telstra Foundation's Cyber-Safety grants) and Alannah and Madeline's Cyber-Safety and Wellbeing Reference Group • In April 2009 Telstra announced, in conjunction with the Australian Institute of Police Management (AIPM), that it will offer the Telstra Australasian Police Scholarship to the best police course participant in the AIPM Police Executive Leadership Program. The recipient will attend Harvard University to further their understanding of the implications of information communications/the internet on society • Telstra is the only Telco and large ISP represented on the Federal Government's Consultative Working Group on Cyber-Safety (CWG) – and were recently reappointed for the third time. The CWG is focused on aspects that Australian children face online including cyber-bullying and exposure to illegal/inappropriate content • The Telstra Foundation co-chairs the Technology and Wellbeing Roundtable, a group of private sector companies, NGOs and government who see technology as an enabler for young people
<p>Ways to support schools reduce the incidence and harmful effects of cyber-bullying</p>	<ul style="list-style-type: none"> • The Telstra Foundation's 'Spotlight on Cyber-Safety' has funded programs specifically targeting ways that schools can combat cyber bullying including the Alannah and Madeline Foundation's eSmart program and the Loddon Mallee Cyber Citizenship program
<p>Role of parents, families, carers and</p>	<ul style="list-style-type: none"> • In 2008 the Telstra Foundation provided funds to Professor Donna Cross at Edith Cowan University

<p>the community</p>	<p>to research and produce effective parent resources for families with teenage children</p> <ul style="list-style-type: none"> • Telstra partners with Government departments on nationwide awareness campaigns including the ACMA's Safer Internet Day in February, Australasian Consumer Fraud Taskforce Week in March led by the ACCC and the Federal Government's National Cyber-Security Awareness Week in June • Enabling devices for parental control: Telstra, via BigPond, provides a number of security products to help protect its customers from receiving inappropriate content, spam, viruses, and phishing attacks. These security products are available for businesses, parents and users alike. Information is available at: www.bigpond.com/internet/security
<p>Analysing information on achieving and continuing world's best practice safeguards</p>	<ul style="list-style-type: none"> • The Telstra Foundation was one of the first philanthropic bodies to identify Cyber-Safety as an important issue committing \$3 million over three years to programs aiming to help build children and young people's skills online. This commitment continues with the total allocation of funds to grant increased to \$6 million over six years • To ensure Telstra is seen as a leader in this important area, Telstra created the role of Officer of Internet Trust and the Internet Trust and Safety Working Committee (ITSWC) in October 2008. The Committee ensures Telstra coordinates all its business units' efforts in Cyber-Safety