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Submission in response to ALRC National Classification Scheme Review Discussion Paper (DP 77)

This document responds to the ALRC's request for submissions on DP 77 regarding the National Classification Scheme Review.

The submission is made on an individual basis rather than on behalf of the University of Canberra.

Authors

Dr Sarah Ailwood is an Assistant Professor in the Faculty of Law at the University of Canberra. She has broad research interests in the fields of law and text, with a focus on literature, life writing and gender. She is particularly interested in intersections between law and culture in traditional and 'new media' environments. She has presented at conferences and been published in journals in Australia and internationally. Dr Ailwood is also concerned with regulation, development and use of advanced platform and role-playing games, including Massively Multiplayer Online Games (MMOGs), reflected in parliamentary testimony and forthcoming publications.

Bruce Arnold is a Lecturer in the Faculty of Law at the University of Canberra, with a particular interest in online content regulation and harms. He has published widely in Australia and overseas on matters such as telecommunications regulation, privacy and 'new media'. He has been an invited keynote speaker at conferences on child protection and digital publishing. Mr Arnold has been cited in several hundred monographs, official reports, dissertations and articles and has been invited to make submissions to Parliamentary committees on matters such as online child protection and cybercrime. He has been a member of a range of industry policy-making and advisory bodies.

Basis for submission

The submission reflects work by the authors in industry, government and academia over the past twenty years. It is informed by an awareness of Australian and overseas legal frameworks, on a current and historical basis, and an awareness of how those frameworks affect content producers, consumers and intermediaries. It is founded on familiarity with the legal, commercial and psychological literature regarding impacts on minors and adults of offensive or other content, including for example concerns regarding trade practices, hatespeech, cyberbullying and obscenity.

Guiding principles for reform

We broadly endorse the principles identified by the ALRC to guide proposals regarding reform of the National Classification Scheme (NCS).

In particular, we strongly agree with Principle 5 regarding the need for a regulatory framework that will be responsive and adaptive to technological change and with Principle 8 regarding the focus upon content rather than platform or means of delivery. That framework reflects the needs of Australian consumers, content producers and distributors, and regulators.

Proposed Classification Scheme

We agree with the ALRC that the best option to address the limitations of the current NCS is the establishment of a new National Classification Scheme providing for a single national set of statutory classification categories and criteria which would be applied to all classifiable media content, regardless of platform or mode of delivery.

We agree that all content that is reasonably likely to be X 18+ must be classified and support the use of an industry classifier that operates on a transparent, accountable and consistent basis within a coherent legal framework.

In particular we note the importance of timeliness in responding to requests for classification and the inappropriateness of costs that will inhibit the growth of Australia's emerging multimedia industry (eg will serve as anticompetitive barriers to the entry of new creators/investors).

Classifiable Content

We agree with the ALRC's approach of reducing, rather than increasing, the volume of media content that requires classification. This is a realistic approach to creating a classification system that will be both meaningful in terms of consumer advice and adaptable across platforms and modes of delivery, particularly online.

However, the ALRC should be aware that this approach continues (and with respect to computer games, increases) the differential treatment of media forms under the current NCS, risking the continuation of consumer confusion.

Although the proposal to exempt computer games from classification if they are likely to fall within the existing G, PG and M ratings will be an effective solution to the problem of classifying downloadable games, particularly on hand-held devices, the differential treatment of games compared to television programs and feature films may be confusing to consumers.

Additionally, exempting this content from classification will not adequately address emerging consumer issues in a converged media environment, such as the connection between content such as games with the internet and with payment systems.

From a consumer protection perspective we note the desirability of an online 'parental advisory' indicator alerting minors and adults to 'stealth payments' for functionality

in virtual worlds marketed to children, as per our initial submission to the Commission.

Classification Categories

We agree with Proposal 9-1, that there should be one set of classification categories for all classified media content.

The proposed new classification categories, related explicitly to age, appear to be based on assumptions rather than on substantive evidence from Australian and overseas researchers regarding child and adolescent development. Nevertheless, the introduction of the T 13+ category, in addition to the PG 8+ and MA 15+ categories, provides an opportunity to resolve the current problem whereby content that could be deemed suitable for teenagers is classified M because of its unsuitability for children. The success of this system will depend very much on the criteria according to which content is classified, and particularly the creation of meaningful and not arbitrary distinctions between these classification categories.

Classification Criteria

We note that the ALRC has not itself addressed the criteria or the "classifiable elements" according to which media content would be classified in the new NCS, leaving this task instead to a "comprehensive review of community standards in Australia towards media content" under Proposal 9-5.

We appreciate that the tight timeframe in which this Review is being completed may have made this task impossible. However, we do not believe that the review of classification criteria, the classifiable elements and the concept of "impact" should be based as exclusively on a review of community standards as Proposal 9-5 suggests. The "classifiable elements" and arguably also the "impact" test are, like the current NCS, anomalous in an environment of digitised and converged media production, distribution and consumption.

Confining a review of these to "community standards" is unlikely to address, for example, the desirability of extending the classifiable elements to include connectivity of media content with the internet or with payment systems, or the inherent bias towards "offensive" content in the current regime.

Enacting the New National Classification Scheme

We agree that the most effective approach to establishing the legislative framework for the new NCS is through a single piece of legislation enacted by the Commonwealth Parliament, with the States referring legislative power to the Commonwealth under section 51(xxxvii) of the *Commonwealth Constitution*.

The proposed Classification of Media Content Act should be drafted to streamline the incorporation of the classification criteria and the classifiable elements (when they are determined by the proposed review), to avoid perpetuating the legislative cumbersomeness of the current regime and anomalies in the treatment of content by different jurisdictions.

Further Information

We would be pleased to expand on any point in this submission.

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