



**Australian Mobile
Telecommunications
Association**

National Classification Scheme Review

Issues Paper 40 – May 2011

AMTA Submission
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Introduction

The Australian Mobile Telecommunications Association (AMTA) is the peak industry body representing Australia's mobile telecommunications industry. Its mission is to promote an environmentally, socially and economically responsible, successful and sustainable mobile telecommunications industry in Australia, with members including the mobile Carriage Service Providers (CSPs), handset manufacturers, network equipment suppliers, retail outlets and other suppliers to the industry. For more details about AMTA, see <http://www.amta.org.au>.

AMTA welcomes the opportunity to participate in the Australian Law Reform Commission's (ALRC) Review of the National Classification Scheme (NCS) and to provide comment on the issues paper.

Summary

Mobile telecommunications content has been regulated under the auspices of the *Broadcasting Services Act 1992* as administered by the ACMA. The Act provides for some mobile content to age-restricted and some to be prohibited.

The mobile telecommunications industry also developed the Mobile Premium Services Code: C637 2009 which provides a co-regulatory framework for mobile premium services. The code is enforced by the ACMA.¹ And the IIA Content Services Code developed under the auspices of the Internet Industry Association also provides a self-regulatory framework for mobile internet content.²

Technological convergence is now delivering an increasing amount and variety of media and content to mobile phones and similar devices. The NCS has historically been concerned with print material, films, radio and television broadcasting and traditional computer games. Now, the aforementioned media is all available on the internet and can be accessed on a mobile device and previous methods of classification regulation are not able to keep up with either the volumes of content being produced and distributed or the various platforms and technologies by which people can access content now.

AMTA notes that the Senate Legal and Constitutional Affairs Committee recently published its report on its inquiry into the NCS. Recommendation 22 of the Committee's report recommends that the NCS should apply equally to all content, regardless of the medium of delivery.³

¹ Information on the code can be found at www.acma.gov.au and www.commsalliance.com.au**Error! Hyperlink reference not valid.**

² www.iaa.net.au

³ [Review of the National Classification Scheme: achieving the right balance](#), 23 June 2011

AMTA has concerns about the practicalities in extending the NCS so that it covers all content available in Australia, including online content that may often be sourced from foreign-based producers of content or be produced by internet users rather than more traditional content providers. Such an extension of the NCS would be almost impossible to administer, either by the regulatory body or by telecommunications service providers. Further, AMTA believes that the existing classification requirements that apply, for example, to film, may not be easily or appropriately translated to other platforms, such as mobiles.

AMTA supports Recommendation 30 of the Senate Committee's report that recommends that the Attorney-General direct the ALRC to consider all findings, proposals and recommendations of the Senate Committee's report.⁴ AMTA suggests that the ALRC give consideration to the Senate Committee's report and balance the recommendations of the committee against the findings made as result of its own broader review.

AMTA is also cognisant that the Convergence Review processes will have some overlap in policy considerations with the ALRC's review of the NCS and hope that both review processes will be consistent in their approach and findings.

AMTA suggests that a self-regulatory framework could be the most appropriate policy framework for classification of mobile content. Given the rapid pace of technological development and convergence in the mobile industry, AMTA suggests that any self-regulatory scheme needs to be light in touch and easy and inexpensive to administer. It is clearly not necessary to classify all mobile content and in fact, impractical to attempt to do so as the sheer volume of content would make the task unmanageable. AMTA suggests also that any self-regulatory framework should also support consumer education and the provision of end-user self-help tools which can range from simple phone locks to parental control software applications. AMTA notes that there are self-regulatory models already in place in North America and in Europe.

Classification and Mobile Telecommunications

The advent of smartphones means that mobile phones are no longer capable of just telephone calls and text messages. In fact, we now tend to refer to them as "mobile devices" as they incorporate so much more than a standard mobile telephone service. People now use their mobile devices to access the internet whenever and wherever they are. Smartphones enable access to the internet which incorporates access to social media and a broad range of other platforms allowing people to actively engage in social networking and the consumption, production and distribution of media and content while mobile.

Infonetics research shows that in 2010 there were more mobile broadband subscribers worldwide than fixed broadband subscribers. Further, Infonetics forecasts that mobile broadband subscribers will account for 28% of all mobile subscribers by 2014 and number 1.8 billion worldwide.⁵

⁴ Ibid.

⁵ Infonetics Research [Mobile Services and Subscribers Report](#)

In Australia your mobile device can provide you with access to various types of content:

- Mobile applications (mobile apps) and games
- Service provider proprietary content
- Mobile premium services
- Access to the internet
- Mobile television services

Note that while many mobile applications are simply games, many apps are enabling utilities designed for mobile devices. The mobile apps industry has experienced strong growth over the last few years which analysts expect to continue, in line with the increased penetration of so called “smartphone” mobile devices in the market. In December 2010 mobile apps in the Apple App store numbered 350, 000 while the Android Market accounted for 80, 000. In-Stat expects mobile app downloads to reach nearly 48 billion in 2015.⁶

The industry’s Mobile Premium Services Code and the IIA Content Services Code provide co-regulatory and self-regulatory frameworks for the provision of mobile content services. And the industry falls under the ACMA’s administration of the *Broadcasting Services Act* 1992. This ensures that mobile premium services and access to some service provider proprietary content is restricted based on age requirements where appropriate.⁷

There are three factors that are dramatically affecting the way mobile users access media and content today.

First, internet access means that content has been globalised. That is, mobile users in Australia have access to content regardless of origin via the internet. While some commercial access restrictions can be applied, for example, online retailers in the USA will not always provide content services to consumers with foreign addresses, these restrictions are voluntarily imposed by content providers in an otherwise open access internet environment. .

While mobile users in Australia are able to freely access international content, within the scope of the ACMA’s regulation, our Government’s ability to regulate online content or content providers is constrained by the limitations of its national jurisdiction.

Secondly, technological convergence means that mobile users are accessing media on their smartphones that once they viewed on television at home or on a PC. Further, the variety of and amount of content is increasing dramatically in line with the convergence trend.

Thirdly, much of the content available online is now user generated. Social networking platforms such as Facebook and YouTube are obvious examples of the interactivity of the internet, based on content that is increasingly created and distributed by individual users online.

⁶ [Cellular-News](#), Mobile App Downloads to Approach 48 Billion in 2015, 7 June 2011

⁷ [ACMA](#) Mobile Premium Services Information for Consumers; [Industry Code Mobile Premium Services](#) C637:2009

In light of the above factors and trends, AMTA believes that a NCS that allows for industry self-regulation and co-regulatory schemes is the preferred policy approach.

Further, AMTA suggests that the NCS must also be accompanied by increased efforts on the part of government and industry to educate consumers on cybersafety issues and digital literacy issues across all segments of the population.

Industry self-regulation and co-regulatory schemes should be utilised to allow industry to identify “submittable” material across various technologies and in various forms, without placing regulatory burdens on the production and delivery of clearly “non-submittable” material, such as many utility-based mobile apps and mobile games. Most mobile app developers are small enterprises who would be unduly burdened if classification processes and fees were to be imposed on them. Further, imposing such a regulatory burden would no doubt mean that many developers would simply not be able to afford to operate in the Australian market. On the other hand, a self-regulatory scheme would allow the mobile app industry to continue to innovate and flourish.

Content is at the core of convergence and will attract significant industry investment as a key feature of Australia’s emerging digital economy. While AMTA fully recognises that classification of content is a longstanding and important part of the policy and regulatory environment for the media sector, there is also an important need to support an environment that promotes investment and innovation in content development.

AMTA has provided comment on selected questions raised in the issues paper that are most pertinent to the mobile telecommunications industry.

Responses to Questions Raised in the Issues Paper

Approach to the Inquiry

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

The ALRC should focus on improving the existing framework.

AMTA suggests that a self-regulatory framework could be the most appropriate for the mobile telecommunications content industry. Any self-regulatory scheme would need to be simple to administer, inexpensive for industry and impose only light-touch regulation.

As consumers now play an increasingly active role in the creation and distribution of content, AMTA also believes it is imperative that both government and industry engage in building consumer awareness around cyber-safety and educating consumers about ways they can exercise control over the content they and their children view or interact with.

While mobile apps are regulated under the *Broadcasting Services Act 1992* and are in some cases subject to age-restrictions, in this emerging industry, there are clear examples of successful self-regulation where industry has either restricted the sale of apps or removed from sale apps that were deemed inappropriate for sale following consumer feedback. Similarly, consumers in various internet platforms or social media networks also actively

police other users and ensure that inappropriate postings are taken down by the hosts of the platform. The active engagement of consumers is vital for such self-policing to work

Given the size, diversity and scale of mobile application development firms (which include large numbers of individual sole traders), and the highly competitive international market in which they operate, the extent of regulatory burden imposed by the NCS will have a direct impact on the viability of Australian participants in these markets. This impact will be particularly acute on small scale and start up application developers who are often the sources of the greatest degree of innovation in these markets.

Why classify and regulate content?

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

AMTA supports the current purposes as contained in the National Classification Code as well as the policy objectives suggested by the Convergence Review Committee in its Framing Paper that:

- Communications and media services available to Australians should reflect community standards and the views and expectations of the Australian public; and
- Australians should have access to the broadest possible range of content across platforms and services.

What content should be classified and regulated?

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

AMTA recognises that drawing distinctions regarding classification regulation on the basis of platforms and technologies can be problematic. The process of convergence is increasingly blurring the lines between traditional platforms and technologies making it more and more difficult to draw a defensible line of differentiation.

However, there remain significant practical differences between the models of content production and distribution on various technologies and platforms. For instance, as already discussed, the sheer volume of content produced and distributed over the internet (including via mobile devices) makes the prospective classification of the entirety of this content impractical. Further, internet intermediaries are unable to play the kind of editorial role with respect to this content that film and television distributors are able to undertake. In this context, while it is recognised that differentiating between content on different platforms has become more difficult, attempting to apply traditional classification approaches to content regardless of its distribution platform is likely to create further inconsistencies and impracticalities.

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

AMTA sees potential for this suggestion to be implemented under a self-regulatory framework.

For example, while some mobile apps should clearly be restricted to adults based on their content, many of them are either utilitarian or are games that would not reasonably be considered submittable for classification, such as chess, crossword and Sudoku puzzles.

AMTA suggests the industry has demonstrated that it is capable of self-regulating mobile apps in the international markets as well as in Australia. Both retailers and developers should be able to apply classification guidelines to the apps they develop or sell. If there is any doubt or if there are consumer complaints, the framework could potentially permit a review of proposed classification by the relevant regulatory body. This would allow for the majority of apps to be developed and made available to consumers without the burden of having to put all material through an expensive and potentially lengthy (due to the huge volumes of material) classification process.

How should access to content be controlled?

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?*

AMTA asserts that the preferred and most effective method of controlling access to online content lies in empowering and educating consumers so that they can exercise their own controls over the content they choose to access and/or restrict their children from accessing online.

AMTA supports the position outlined by Crawford and Lumby,

“At the network layer, we argue, policy makers should focus on ensuring network openness, innovation and user choice. At the platform and content provider layers, government should work with industry and users, including in global fora, to encourage self-regulation while facilitating referral of genuinely disturbing material to national and international government regulatory instruments and agents. Community education about internet use, online security and legal obligations should be a priority in this area. There needs to be ongoing commitment to researching international approaches, emerging tools and community expectations.”⁸

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

As per our response to question 12 above, AMTA believes that educating parents, teachers, caregivers and children themselves is the best way to ensure that children are protected from inappropriate content online. Again, AMTA agrees with Crawford and Lumby’s proposal:

“Convergent media governance must take the full spectrum of stakeholders into account from the end-user to the parent, from the school into the wider community, to industry and government. A key plank of this cooperation is the need for government and industry to educate consumers and provide them with resources to work in online communities to identify problematic content and to notify

⁸ Crawford and Lumby, *The Adaptive Moment: A fresh approach to convergent media in Australia* Journalism & Media Research Centre UNSW

relevant organisations or authorities. Media literacy is vital. Education about opportunities and risks online is a particularly critical component of any strategy that aims to protect children, as well as maximise the potential for innovation and creative engagement.”⁹

Who should classify and regulate content?

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

AMTA suggests that the role of government agencies should be to set guidelines and policy objectives for the NCS. Industry bodies should be engaged by government to develop self-regulatory regimes. And both government and industry bodies have a role to play in educating and engaging consumers.

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?*

AMTA is strongly in favour of a self-regulatory model that would allow industry to classify content based on either an industry code or guidelines.

The sheer volume of content generated in a convergent digital economy makes this suggestion pragmatic and reasonable. It would surely be more efficient and allow content to be released within reasonable timeframes and with less cost. AMTA suggests that a government body would simply not be able to handle the volume of content that would be put through the classification system if it did not adopt either a self-regulatory model for the NCS.

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

AMTA believes that a self-regulatory approach based on an industry code of practice or guideline can vastly reduce the cost of compliance for the mobile sector and ensure policy objectives are met.

Reform of the cooperative scheme

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

It is very important for state and territory laws to be consistent. As consumers access more and more of content online and use their mobile devices to go online, geographic borders lose their relevance in terms of what a consumer may be viewing. It is simply impractical for the various states and territories to have laws that are not consistent.

Further, it is imperative that the Government have regard to international developments and initiatives so that there is some consistency, where appropriate, at an international level too.

⁹ Ibid. p 6