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Q1:

Unfortunately, I've not had enough time to form an opinion on this. However, I would like to express my concern about the inflexibility associated with granting all states a veto power over changes to the classification scheme.

I understand that the current situation probably represents a political compromise to allow the establishment of a national scheme without leaving the states feeling completely denuded of the ability to control broad classification policy decisions that directly effect them. However, the difficulty associated with correcting an obvious anomaly such as the lack of an R18+ classification for video games despite apparently overwhelming popular support is worrisome. What if cultural or technological developments in 5 years or so result in some part of a new scheme becoming out of touch with the needs of consumers and the public at large? It would be useful to have a mechanism to avoid a repeat of this situation. Unfortunately, I do not know whether this requires a referral of classification powers to the Commonwealth, a need for only majority support from state censorship ministers, or some other scheme.

Q2:

The primary objectives should be to:

1) Provide consumers with indications of the nature and strength of the content of popular media, to allow for better decision making and to reduce the burden of individual investigation or vetting, particularly when obtaining content for consumption by children.

2) To provide content distributors, such as stores and cinemas, with clarification regarding their duty of care to minors. More broadly, this could even include such uses as allowing a teacher to defend her decision to screen a particular film to a class to which a parent later objects.

Regarding the 4 principles of the National Classification Code: while I agree whole-heartedly with principles (a), (b) & (c), I am less comfortable with principle (d). It is difficult to argue against provisions aimed at curbing only the most offensive of content, yet I do not believe that information should be restricted simply because its consumption would offend others, even an overwhelming majority of others.

If a similar principle must exist (and I am not sure that it should) then I feel it would do better to be derived from a recognition of definite and quantifiable harm caused by the content's creation or viewing. Another way of expressing my opinion on this is that fictional depictions or abstract discussions (in any media) should never be censored against adults, while real depictions of offensive

acts may be censored where they can be demonstrated or reasonably assumed to be causing harm to individuals depicted within them. This may even extend to materials that cause a measurable negative impact on the public good, but only where the cause and effect mechanisms can be clearly identified or where the correlation is overwhelming and cannot be readily attributed to other causes.

This model of a forth principle stands opposed to the current one that provides for the enforcement of "community" concerns on individuals acting in a private capacity even where no demonstrable harm to individuals or society exists.

Q3:

Yes.

The existing scheme is very effective in assisting consumers making informed choices regarding the consumption of mainstream commercial content. The film and games classifications are well understood and the automatic classification of such content has come to be expected.

However, for all the reasons given in the Issues Paper, online content and particularly user-generated content would present an enormous challenge to classify, even with heavy industry participation (if it could be garnered).

Q4:

I believe that complaints-based classification is most likely to be effective when used as a supplement to self-regulation. For instance, the complaints-based review mechanism for public billboards that has been discussed recently in the media. However, its utility in the context of the internet seems to me to be marginal, except perhaps as a politically expedient non-solution presented as a "compromise" between interest groups.

As such, I'd suggest that content that is broadcast or otherwise made broadly public and does not require particular efforts on the part of the consumer to seek out would make a good candidate for a complaints-based mechanism of classification, as would unsolicited public content such as advertising.

Q5:

No. In my opinion, the nature of the content's consumption is a more important factor when considering the usefulness of a classification scheme than the nature of the content.

Q6:

Yes. The classification of "mainstream" content works well and there is a community expectation that popular media will be classified. By contrast, the classification of "user-generated" content is a fundamentally problematic proposition.

For all the reasons articulated in the Issues Paper,

Q7:

No. The burden of such a requirement on the exhibitor would likely be excessively high, particularly small exhibitors showing their own art. Any regulatory system would have to consider carefully the balance between protecting the public from unexpected viewings of potentially offensive content and

the right of the exhibitor and artist to expression, even confronting expression.

I do not believe that the discovery of unexpected potentially offensive content at an art exhibition constitutes a violation of a person's right to be protected from unsolicited material except where the person has been specifically deceived as to the nature of the exhibition's content.

The right of minors to be protected from offensive content warrants further consideration, although I do not believe it necessarily requires a strong regulatory response. An investigation and evaluation of existing measures deployed by prominent exhibitors to protect minors and inform their guardians would be useful.

I have already expressed my lack of confidence in principle (d) of the National Classification Code, but I would (perhaps naively) expect that exhibitions would automatically avoid the display of obviously offensive content to avoid the negative publicity that it would very likely attract. If the exhibitor believes that a particular expression using potentially offensive material is the best way to convey a message in which they strongly believe, then I feel that they should be able to make that statement with the understanding that they must accept any repercussions in the form of community backlash (e.g. boycotting).

Finally, I would note that while my only information on relevant recent art exhibition controversies comes from mentions in the mass media, I do not believe that any such events are sufficiently grievous as to warrant a revision of the existing self-regulatory model.

Q8:

No. While I do not feel that audio content is intrinsically less amenable to classification than content on other media, I have found that the existing system of self-regulation works very well. As such, there is little reason to pursue heavier forms of regulation for audio content at this time.

Q9:

As noted above, yes, with size dominating composition but both factors considered.

Q10:

Q11:

Q12:

Unfortunately, the only truly effective method would be to scan all communications and block encrypted or otherwise uninterpretable packets, with the possible exception of those destined to a vetted whitelist of sites (e.g. banks). I think it is clear that such an approach is ethically unacceptable and technologically problematic.

I find it difficult to envisage any successful "strong" controls that fully prevent access to all restricted content. Self-regulation of popular websites may be the simplest option, avoiding the spending of large quantities of public funds into what would likely amount to a "feel good" campaign.

Q13:

Unfortunately, in my opinion the only foolproof method is supervision.

Where this is not possible, I support the use of filtering packages installable onto PCs.

To my great chagrin, I have run out of time to elaborate.

Q14:

Q15:

Q16:

Q17:

Not for all media.

Q18:

Q19:

Q20:

Anecdotally, I find the classification categories easy to understand. Certainly the progression of content severity $G < PG < M < MA < R \leq X < RC$ seems to be well understood.

There may be some confusion regarding the difference between M and MA. TV programs rated M are often (if my memory is not toying with me) introduced as "recommended for Mature Audiences". So we have a situation where people often wrongly believe that MA stands for mature audiences and some confusion then develops with M. It does not help that "mature audiences" is poorly defined -- does mature mean adult? age of majority? post-pubescent?

Q21:

I am very happy with how the categories work in practice and see no need to introduce, for example, an explicit "12" classification such as they have in the UK. As far as possible considering principle (b) of the National Classification Code, the categories should be indicative, not prescriptive.

The deadline for submission is drawing close and I cannot remember if it is a defence for showing MA material to someone under 15 to be the minor's parent or guardian. If not, I would suggest that it should be.

More generally, I understand that explicitly denying guardianship as a defence to screening media classified R to minors was recommended (mostly due to public submissions) in the 1991 ALRC report to protect against abuse of the guardian's position. However, like most attempts to protect minors with specific age limits, there is a grey area that gets greyer the closer the minor draws to the cut-off age.

This may just be demonstrating my lack of understanding of the working of the law and possible flexibilities afforded to judges when sentencing such cases, but I find it hard to criticise (for example) a parent that permits their 16 year old teenager to view materials that may be considered R or X by the classification board, particularly given that the teenager has reached the age of consent. A responsible parent is in a better position to judge what is appropriate for their child than a lowest-common-denominator legal age.

I would encourage the ALRC to reconsider the denial of this defence, particularly in relation to older minors.

Q22:

I am not aware of the historical reasons for the classification scheme for printed publications, but if any consolidation were to occur it would seem to make sense to bring publications together with film and computer games classification categories. I was not even aware of the printed publication classification categories until reading the Issues Paper.

Q23:

Yes. As suggested in the Issues Paper, I believe that concerns about the varying impact of different media could be covered by appropriate wording of the code.

Q24:

Q25:

Q26:

Yes, though I have run out of time to comment further.

Q27:

Q28:

I would not be opposed to such a referral.

Q29:

I am not sure if this concern is within scope, but I am particularly concerned by the ability of the Classification Board and the ACMA to withhold the identities of media classified as RC. While I understand the rationale, I do not agree with it. It is my strong opinion that concerns over transparency trump concerns over individuals seeking material based on its presence on RC lists. To my mind, such individuals already have a disregard for the RC category and the availability of the lists is unlikely to significantly influence their behaviour.

In case I am misguided in my assumptions of the abilities of these bodies to withhold such data, I'll clarify by saying that I was prompted to raise this concern by my dissatisfaction with the provisions in the "Measures to increase accountability and transparency for Refused Classification material" by the Department of Broadband, Communications and the Digital Economy. These measures maintained that the mandatory blacklist would be private.

Finally, I also wish to note my strong support for the existing state of affairs whereby mere possession of any content (with the sole exception of child pornography) is permitted.

Other comments:

It is disappointing that I did not discover this call for submissions sooner than the 14th of July. It is my fault for not keeping abreast of such issues.