

National Classification Review: Google comments on the Issues Paper

Google welcomes the opportunity to provide comments in response to the National Classification Scheme Review issues paper released in May 2011. Google will confine its comments to policy issues relating to *online* content. In this paper we take a high-level viewpoint of the issues. We intend to make more detailed comments in response to subsequent discussion papers issued by the ALRC.

Summary

At Google we have a bias in favor of people's right to free expression in everything we do. We are driven by a belief that more information generally means more choice, more freedom and ultimately more power for the individual. We also recognise however, that freedom of expression can't be -- and shouldn't be -- without some limits. The difficulty is in deciding where those boundaries are drawn. These are central issues for the review of the Classification Scheme.

Google is pleased to see that the ALRC intends to liaise with the Convergence Review committee in its consideration of how best to approach the classification of media content in Australia. Any consideration of classification must take into account the realities of a converged media environment. The review must also take into account the broader policy priorities of government as outlined in the Government's National Digital Economy Strategy and reflected in the Government's clear commitment to place Australia as one of the world's leading digital economies by 2020 by moving the country to a high-speed internet access world through the National Broadband Network.

The media environment has changed dramatically in the twenty years since the ALRC last considered censorship and classification. Vertical media silos have been replaced by a horizontal model of networks, platforms and content. This fundamental shift and conceptual framework has been reflected in the Emerging Issues paper recently released by the Convergence Review.

This new environment requires a clean slate approach to thinking about the policy framework. At a time when technology has delivered the *potential* for users to access, create and distribute content anywhere and at any time, and when innovation has allowed Australians to embrace the ever increasing ways for that engagement to occur, it is imperative that frameworks for content regulation not operate as road-blocks to innovation, nor an unreasonable fetter on the free flow of information.

Google submits that, as recognised in the Office of Regulatory Review's Best Practice Regulation handbook, the policy principles that should guide content regulation in a converged media environment include regulating *only* when there is an in-principle need for government intervention, considering the full range of policy instruments available to achieve the

Government's policy goals (including user-led, co-regulatory or self-regulatory frameworks, with an emphasis on digital literacy and education).

At both the *platform and content* levels, it is imperative that any new regulatory regime take into account the workability of any government-imposed regime, as well as the cost. It is also critical that regulation be workable and effective. At the platform level, a robust safe harbour should be a central part of any policy or regulatory measures considered for platform providers.

At the *content* level, the classification regime must also take into account that content in a converged environment is moving across borders, platforms, devices and distribution channels, and that users in an online environment can actively self-regulate within their own communities in a manner that has not been possible with traditional forms of media. Indeed, it is critical that the classification regime recognise that the fundamental nature of content itself is shifting in a converged environment. Content is moving from the traditional model, of being defined by the medium on which it first appeared, to a complex ecology of dynamic models of content production and distribution¹.

A regime that seeks to impose a top-down approach to the types of online content people should be free to access could come at a great cost to freedom of expression.

Introduction

As acknowledged in the Attorney-General's reference to the ALRC, the media environment has changed dramatically in the twenty years since the ALRC last considered censorship and classification. The existing classification regime was developed in an age where the media landscape was characterised by technologically distinct vertical media silos: radio, television, Internet etc. These media publishers created the content to be consumed by a passive audience.

Today's media landscape is very different. The "audience" of passive recipients of content has been replaced by citizen creators and citizen journalists engaging interactively with media platforms/services such as YouTube, Facebook, Yahoo!7 and ninemsn, to create and distribute content. Vertical media silos have been replaced by a horizontal, converged landscape of platforms, content providers and users, facilitated by communications networks.

This new environment requires a clean slate approach to regulation. The existing rationales for classification policy - respecting the rights of adults to make informed choices, protecting children and restricting access to certain types of content - arguably remain relevant. However in this changed environment, how we determine the appropriate policy approach to regulation of content needs to be fundamentally reconsidered.

¹For more information, see the report *The Adaptive Moment: A fresh approach to convergent media in Australia* by Associate Professor Kate Crawford and Professor Catharine Lumby, available at http://jmrc.arts.unsw.edu.au/media/File/The_Adaptive_Moment_Convergent_media1.pdf

It is also important to recognise that other policy objectives are equally important. At a time when technology has delivered the *potential* for users to access, create and distribute content anywhere and at any time, and when innovation is resulting in ever new ways for that engagement to occur, it is imperative that Australian content regulation not operate as a road-block to innovation, nor a fetter on the free flow of legal content.

The world of communications is changing around us

Storage - the latest iPod has 160Gb of storage. When Gmail launched, it offered 1Gb of free storage. It now offers over 25Gb

Access - users can access, create and distribute content anywhere and at any time. There are 2 billion Internet users and 5 billion mobile users worldwide. Over 10 million internet users in Australia alone².

Tools of production - low barriers to entry mean that anyone can create content. Media publishers have been replaced by citizen creators and citizen journalists. In 2010, more than 13 million hours of content were uploaded onto YouTube. Blogger users are writing more than 250,000 words a minute. Increased smart phone access will accelerate this trend - over 70% of mobile phone sales in Australia are expected to be of smart phones³.

Towards a new model for content

The traditional 'publisher-to-audience' approach to thinking about content has little application to the converged media environment. Nor does a model that regulates content according to where it first appears.

In the new media ecology, content is no longer medium specific, and the old demarcation between content creators and consumers has broken down. The models of creation and consumption of content have changed. As well as traditional publishers, consumers and citizens are actively engaged in the creation and distribution of a vast array of content that may be consumed and re-used across many different platforms locally and globally.

This new media ecology requires a new way of thinking about the regulation of content. We think the new model for content requires an active partnership between government, industry

²<http://www.abs.gov.au/ausstats/abs@.nsf/mf/8153.0/>

³<http://www.theaustralian.com.au/australian-it/apples-iphone-leads-australias-huge-smartphone-growth/story-e6frgakx-1226021287594>

and users, with an emphasis on digital literacy and education as a means of promoting safe Internet use.

What principles should guide content regulation in a converged media environment?

- *Is there a **need** for regulation?*

Google submits that the starting point for any new classification regime must be to ask whether there is a *need* for regulation. Does market failure, or some other consideration, warrant government intervention? Google submits that prior to recommending a new classification regime, a clear public policy rationale for regulation, for example market failure, should be articulated. We also agree with Associate Professor Kate Crawford and Professor Catharine Lumby when they say that content regulation in Australia has not been built on sufficient empirical evidence about actual media consumption and community attitudes to media use.⁴

Google also agrees with the recent observation of ACMA Chairman Chris Chapman that regulation of a converged media environment should be “market-based to the extent possible, consistent with best practice in regulatory design which requires an in-principle need for intervention”.⁵

- *What are we trying to achieve, and what are the policy options for trying to achieve it?*

In the context of the broader digital economy and communications policy framework, Google agrees with the policy objectives of respecting the rights of adults to make informed choices, protecting children, and restricting access to illegal content, while ensuring that Australians have access to the widest possible choice of legal content and delivery platforms.

In achieving these objectives, the full range of policy instruments should be considered: user led initiatives, co-regulatory or self-regulatory frameworks, and an emphasis on digital literacy and education.

Industry plays an increasingly active role in helping users determine the ways in which they engage with and control their their access to media content.

⁴The Adaptive Moment: A fresh approach to convergent media in Australia by Associate Professor Kate Crawford and Professor Catharine Lumby, available at

http://jmrc.arts.unsw.edu.au/media/File/The_Adaptive_Moment_Convergent_media1.pdf

p 45

⁵ Chris Chapman, Speech to the Communications and Media Lawyers Association: The “convergence phenomena’ from a regulator’s perspective”, May 30, 2011

http://www.acma.gov.au/webwr/_assets/main/lib312076/camla_chris_chapman_speech.pdf

Example - the YouTube flag system

Step One: YouTube users click a flag button to report a video which they consider to be inappropriate.⁶ Flagged videos are routed into queues, awaiting manual review. There is a specialist review team working 24/7. The queues are 'smart' queues. Videos are prioritised for manual review depending on a number of things, including the reason given for flagging (sexual content is more likely to be fast tracked) and how many flags per view the video has received.

Step Two: once a video reaches manual review it is looked at by a trained, specialist team. Team members are able to collaborate and escalate difficult decisions to a higher tier and for cross-functional input if appropriate.

Step Three: a decision is made whether or not to take the video down, or age restrict it. Action is generally taken within one hour of the video being flagged.

Tools such as the YouTube flag system empower users to report illegal content. Google and other industry players are also actively engaged in educating users about their own platforms and about online safety.

Example - education initiatives

At Google, we seek to raise awareness of online safety:

Google provides a localised Safety Centre that contains tips from Google parents, advice from our partners and information about Google Safety Tools.

YouTube features a localised Safety Centre with content from local partners, including the ACMA, the Australian Federal Police, Kids Helpline and the Inspire Foundation.

Parents can elect to switch on YouTube Safety Mode, which gives users the option to choose not to see mature content that they may find offensive, even though the content is not against the YouTube Community Guidelines. With Safety Mode switched on, videos that have been age restricted will not show up in video search, related videos, playlists, shows and movies⁷.

We are also partnering with child safety organisations to raise awareness through YouTube channels. For example the ACMA has a YouTube channel for CyberSmart, and the Australian Federal Police have a channel for ThinkUKnow.

⁶ <http://www.google.com/support/youtube/bin/answer.py?answer=95403>

⁷ A demonstration of YouTube Safety Mode is available at <http://www.youtube.com/watch?v=gkl3e0P3S5E>

Another example of a local industry initiative aimed at increasing consumer confidence with respect to online interactions is the Australian Best Practice Guideline for Online Behavioural Advertising. Leading industry players and industry associations developed the Guideline to help participants deploy third party online behavioural advertising in a way that promotes and maintains consumer confidence.⁸

It should also be noted that industry players have a strong *market* incentive to act responsibly and to ensure that user concerns regarding content are addressed promptly and effectively. A service provider that was not responsive to user concerns would very quickly find its brand being devalued. At Google, we often say that our users are just one click away from switching to another service. Acting responsibly in relation to user concerns about content is an important part of maintaining user trust in the services we offer. The positive steps being taken by industry players to manage and control access to content on leading sites is an indication of how freedom to innovate can lead to both the development of new services and technological controls to ensure users can safely interact with these new services.

Users themselves are also actively engaged in online content regulation. Facilitated by the online tools set out above, users self-regulate within their own communities, and are quick to report harmful content or content that violates the norms of that particular user community.

Google submits that government action is appropriate when it comes to policing the *worst* content, such as child abuse material. Dealing with this kind of content is best tackled through the criminal law framework: i.e., law enforcement agencies and the courts. These arms of the state have at their disposal the expertise and the resources to identify and prosecute those who produce, distribute, and consume child abuse material. Of course, industry also plays a role in removing and reporting child abuse material. The voluntary filtering of child abuse material is a well established model in for example the UK, Canada and New Zealand, and has been proposed by three ISPs in Australia. Google and other industry players also report to the appropriate law enforcement authority any child abuse material that they become aware of .

Government also has an important role to play in leading industry efforts to educate users and working with industry to promote the government's policy objectives.

- ***Policy frameworks must recognise technical realities***

The existing classification regime is unworkable in a converged environment. A new regulatory framework must take into account the particular features of each layer of the converged media landscape - the network, the platforms, and the content layers - and apply the appropriate policy instrument.

⁸ See <http://www.youronlinechoices.com.au/wp-content/uploads/2011/03/Australian%20Best%20Practice%20Guideline%2014%20March.pdf?PHPSESSID=e08fc2f7f8773ee9502f51620fbb3f85>

At the network level, this will involve promoting competition and greater transparency to preserve the open nature of the Internet to ensure that Australians continue to enjoy the benefits of that dynamic environment. Google submits that a light-touch approach to policy and regulation is the best means of achieving this in the first instance.

At a platform level, the sheer amount of content, and the often global nature of services, renders any classification obligations on the platform provider not only prohibitively expensive, but also practically impossible. 48 hours of content are uploaded onto YouTube every minute. Platforms such as YouTube simply have no practical way of being aware of what content is posted to their services unless and until they are notified by a user or government authority. To be effective, a policy framework must acknowledge these practical limitations. Google submits that a robust safe harbour should be a central plank of a framework designed to address online content.

At the content level, a classification regime must take into account the fact that content in a converged environment is moving, locally and globally, across platforms and distribution channels. The government's approach to policy at this level should also take into account the ability of users in an online environment to self-regulate within their own communities. A regime that seeks to impose a top-down approach to what types of content people should be free to access, might be un-workable, and could come at a great cost to innovation, access to information and freedom of expression.

What types of content should be subject to government intervention?

Recent evidence suggests that most people agree in principle with the right to free expression on the internet. For example, a recent global survey found that 4 out of 5 Australian adults considered internet access to be a fundamental right, with more than half (53%) considering that the internet should never be regulated by governments⁹. In this context, the challenge for policy makers comes in balancing this right with the need to provide protection to citizens in appropriate circumstances. Nowhere is that challenge greater than on the web, where blogs, social networks and video sharing sites allow people to express themselves - to speak and be heard - as never before.

At Google we have a bias in favor of people's right to free expression in everything we do. We are driven by a belief that more information generally means more choice, more freedom and ultimately more power for the individual. We also recognise however, that freedom of expression can't be -- and shouldn't be -- without some limits. The difficulty is in deciding where those boundaries are drawn.

Google acknowledges that government intervention is appropriate when it comes to the prevention of child abuse material, primarily through direct law enforcement action and by

⁹http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/08_03_10_BBC_internet_poll.pdf

working co-operatively with industry and governments in other jurisdictions to eradicate this material. Google agrees that there is an in-principle justification for government prohibition of this kind of material (subject to an effective safe harbour for network and platform providers). Google has a global all-product ban on child pornography, which is illegal in almost every country.

When it comes to a broader class of controversial material, such as material dealing with safer drug use or material dealing with euthanasia, which is not universally recognised as illegal, Google submits that government prohibition is inappropriate, particularly in a converged media environment where users have greater freedom than ever before to play an active role in determining what kinds of content they wish to access and have their children access, through parental control tools such as YouTube Safety Mode.

Online communities impose and enforce their own norms - which differ from community to community - when it comes to this kind of material, which may be lawful to view, but which some may find offensive. In Google's view, that is as it should be. To the extent that the existing Australian classification regime treats this material as prohibited content, it is inconsistent with the approach in comparable democracies¹⁰. Google urges the ALRC to take this opportunity to recommend a regulatory regime that will bring Australian content regulation in line with that in other western liberal democracies.

Google is pleased to provide these short comments to the ALRC's Issues Paper. We look forward to considering the issues raised in the ALRC's discussion paper on these issues in due course.

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¹⁰For example, in July 2008, the print edition of The Peaceful Pill Handbook by Dr Philip Nitschke was listed No. 66 on the Amazon.com global Bestseller List. This same edition is banned in Australia. A censored version of the book was approved for publication in New Zealand in June 2008. Source: <http://www.exitinternational.net>