CI 2467 R Harvey

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Proposal 5–1:
Agree
Proposal 5–2:
For (a) (b) & (c) Agree
(d) Disagree any censorship and restrictions should be the subject of separate legislation. This is primarily for clarity of purpose. A separate Act designed purely for restricting or prohibiting the distribution of content would be a lot simpler, easy to manage and clearer. This also enables separate platform restrictions to be instituted if it is found to be necessary without disturbing the classification system. The imposition of access restriction schemes on the internet is fraught with problems particularly in regard to age restrictions for non-commercial material. To try and legislate for all platforms for both classification and regulation within one Bill will be a nightmare that can only end up recreating the confusion that already exists.
(e)I think that this should should refer to industry "classification codes of practice" not just "industry classification codes". The inference at the moment is that Industry can develop their own classification codes which I don't think is the intent.
(f)Agree - provided this refers to the enforcement of correct classification of material and not to restrictions such as access to material in certain classification categories and age related restrictions which should be dealt with in a separate Act and may need to be platform specific.
Proposal 5–3:
The Classification Board should also:
1. have an education role including training of industry classifiers and their accreditation;
2. the audit of industry classifications to measure compliance;
3. the creation and maintenance of a list equating classifications made by acceptable overseas classifiers to Australian classifications.
4. the imposition of sanctions and referral for prosecution where necessary for intentionally failing to classify or carelessly or maliciously classifying incorrectly; and
5. The ongoing review at specific periods (preferably every 2 years) of community standards and the appropriateness of the descriptor for each category. A separate report to be made to parliament at the end of each period showing their findings and any recommendations for changes and adjustments.
A separate Regulation Act should be made establishing a regulatory authority who would be responsible for regulation of the access to particular categories for each means of content distribution including cross platform distribution as set out in the Act. The
regulation Act should also set out the means by which access will be restricted or denied if it is deemed necessary.
Proposal 5–4:
The definitions need to apply to all content that is made available for consumption within Australia or they will not be "platform-neutral". If we are going to mention television then film, DVD, Video, Print, Computer Games etc. should also be mentioned.

Proposal 6–1 :
How long is a "feature-length" film? What about short films such as those shown on TV or at film festivals? Will they be exempt? Why shouldn't all media content that will be sold, hired screened or otherwise distributed publicly for profit be classified beforehand? If the producers or distributors of material were held responsible for ensuring that the correct classifications and markings were on material prior to distributed within Australia, the Classification Board could be concerned with:
classification of doubtful items voluntarily referred by producers or distributors at little or no cost;
Formal classification in support of legal proceedings at full cost;
Review of classifications which have been subject to unresolved objections at full cost to the loser;
See also my comments on Proposal 5-3.
Proposal 6–2:
Why shouldn't all games be classified prior to distribution? Why isn't the advisory capacity of the T13 and lower being protected? If the game is not "commercial" ie freeware then does this mean that it doesn't need to be classified even if they would be rated MA 15+ or higher?
See also my comments above.
This proposal doesn't embrace either Principles 3 or 4.
Proposal 6–3:
Agree Subject to adjustment to Proposal 8-1 to rectify the problem identified.
Proposal 6–4:
Agree
Proposal 6–5:
I am of the opinion that any media content that could be classified MA 15+ or higher where there is any doubt about the correct classification must be referred to the Classification Board for classification. In all other cases there is no reason that an qualified, industry classifier could not make the classification. See my comments on Proposals 5-3 and 6-1
Proposal 6–6:
(a) Before any legal action is taken against a person due to a classification or likely classification, the classification should be confirmed by the Classification Board. It is totally against natural justice for a person to be charged with an offence that might occur. It would be like charging someone with murder because they had a gun in their hand and concluding they therefore were likely to use it for murder. It is also open for authorities to use this abusively by maliciously charging someone with an offence which has not occurred on the pretence they thought the material was likely to be RC. If you don't think this can happen I suggest that you check the NSW Police action in respect to the Bill Henson photo exhibition and what the final Classification Board decision was.
(b) Agree
(c) Agree but strongly protest the production of a secret Government list as it is sinister and open to abuse and unrelated additions. eg British Telecom has now been ordered by their Courts to block a site involved in copyright infringement as part of their "clean feed" filter which was supposedly only used to block child abuse sites.
Proposal 6–7:
Agree

Proposal 6–8:
Industry bodies should develop an industry code of practice for the classification of all material to be distributed for gain within Australia. The classification of all material in my opinion is required to satisfy Principle 4
Proposal 7–1:
(a) Why? The majority of films are already classified for release in their home country and in the vast majority of cases can easily be classified in Australia based on that classification. The USA doesn't have government regulated classification of film. All the classification is done by the industry. There is no reason that Australia's industry cannot do the same. This would mean a significant cost saving to industry and the treasury. The only thing to be routinely referred to the Board would be those that do not easily fit into one particular category and there is doubt about the correct category. The Board should be able to prepare a list of overseas classifications, in particular the USA and UK where the vast majority of films come from, and the Australian equivalent classification which the film distributor could confidently use without the necessity for the Classification Board to even look at the film unless there was a formal complaint.

(b) Again, Why? Surely the producers/distributors are capable in the majority of cases classifying the product. Why shouldn't they be required to classify for all levels the same as the film industry? They should be only referring for Board decision items that are in doubt.

(c) Agree Subject to a stringent review of the RC category descriptor with an emphasis on a stringent scientific assessment of the harm that material would do to the consumer. It is noted with some concern that three studies over the past 40 years have shown the availability of child sexual assault material has reduced the reported incidents of child sexual assault in crime statistics in three different cultures.(2) It is also noted that these studies have shown a reduction in all sexual assault reports. Anecdotal evidence from the USA is showing that increased access to the internet and therefore pornography (Australia's X18+ and most of its RC material) has resulted in a reduction in sexual assaults.(3)

(d) Agree

(e) Agree
Proposal 7–2:
Agree
Question 7–1 :
There is no reason that X 18+ cannot be classified by either the Classification board or an authorised industry classifier. Material that may be classified RC would be required to be classified by the Classification Board due to 7-1(c). Material currently in the RC category that does not require an illegal act for it to be produced should be moved to the X18+ category. eg fetish depictions.
Proposal 7–3:
Agree
Proposal 7–4:

Disagree authorised industry classifiers should only be approved by the Classification Board. If the responsibility for classification is going to be with the Board then they should have total control over training, recognition and oversight of industry classifiers. Giving this responsibility to someone else is likely to be inefficient and more expensive.

Proposal 7–5:

Disagree Classification of material should be under the control of the Classification Board. If "classification instruments" are to be developed and used then the Classification Board would be best qualified to introduce and administer such a system.

Question 7–2:

If the classification training was to become part of the AQF then it would need to be at the Graduate Certificate Level in order to give the public confidence in the competence required of a qualified classifier. The Board would be the best qualified and experienced to provide accreditation of courses and audit them. I would think that the Classification Board should be the only one to provide classification training and accreditation so that consistency and quality of training is always maintained.

Proposal 7–6:

(a) Agree

(b) Agree

The Classification Review Board should be maintained to review, on appeal, disputed review decisions of the Classification Board. The costs of this review should be born by the losing party The Classification Review Board should be able to refuse to review a Classification Board decision where there has been a unanimous Classification Board decision or the appellant hasn't shown a just cause for the Classification Board decision to be reviewed. eg error or inconsistency

Proposal 7–7:

(a) Only on the recommendation of the Classification Board after serious misclassification by the accredited classifier.

(b) Only on the recommendation of the Classification Board as suggested above.

(c) Reluctantly agree although it would be preferable that this is done by the Classification Board

Proposal 8–1 :

Strongly disagree. Get out of my living room. What you are suggesting is that a parent, who has determined their child aged 17 years and 6 months is mature enough, cannot sit down in there own home with them and watch an R18+ rated DVD. This proposal appears to totally ignore Principles 1, 2 and 7.

Proposal 8–2:

See my comments to Proposal 8-1 which apply equally to this proposal,

Proposal 8–3:

Disagree. This would mean that it would be possible for MA 15+ material to be displayed on outdoor advertising or allow an unaccompanied 9 year old child to access a public theatre to watch an MA 15 + film. It would seem to fail Principle 3

Proposal 8–4:

(a) Restricted access technologies often use credit/debit card verification to prove that a person is an adult. These cards are available to children and teens so are really not terribly useful. Any other system such as the 100 points system would be an invasion of privacy and also increase the risk of identity theft and fraud. Apart from an Australia wide identity card which confirms the age of the holder I don't know of a system that would work satisfactorily. I would also suggest that such a system would be a nightmare to administer.

(b) Absolutely agree. This puts the onus for restricting access squarely where it should be - with parents and is the only effective and proven way for children's access to be controlled on line.

(c) Agree

Question 8–1:

The artificial restriction of content to time-zones is a waste of time, effort and money. It is currently possible to watch an R 18+ movie on pay TV in your home at 8-30am any day of the week. You can do the same for X 18+ movies on the internet. With the change to digital television nearly every set will have a child proof lock which will enable parents to restrict access based on the classification. Individuals need to be responsible for what content they consume and parents need to be responsible for their children's access to content in their home.

Proposal 8–5:

Agree

Proposal 8–6 :

Agree to all.

Proposal 9–1 :

The use of a refused classification (RC) category suggests that the Classification Board is to too lazy or too stupid to classify all material they see. The RC category has largely been used to encompass material that is politically sensitive and politically difficult to deal with. This has usually been accompanied by loud noise from minority groups together with dubious if not misleading research deliberately skewed to support their particular cause. eg The Australian Christian Lobby (ACL) campaign against a safe sex message for gays posted in a bus shelter in Queensland. The add was initially removed due to a concerted campaign by the ACL in Queensland. (1)

As an additional example I would point to the claims that pornography and child pornography in particular increase the sexual abuse of women and children. There have been three studies over the past 40 years in three different countries that have all shown that an increased availability of pornography has resulted in a reduction in reported sexual assaults including sexual assaults against children.(2) It would seem that the RC category may actually be causing harm to those very people it is designed in part to protect. (Note: This is not an endorsement of Sexual Assault or Child Abuse by the writer rather a desire for better protection and support for victims of these crimes.)

One has to question whether a general RC list shouldn't be replaced by a "banned" list of specific items which would require justification for each item on the list and thus require the general public to determine for themselves what they want to read, see or hear without Government or bureaucratic

interference or supervision. At the worst I consider RC should only contain material it is illegal to acquire, possess and distribute in Australia.

Proposal 9–2:

Agree

Proposal 9–3:

Agree except that material classified RC should have a requirement for stringent consumer advice as to why it is considered RC and this should be publicly available. If material is going to be denied to the public contrary to Principle 1 then the public should be told why in some detail.

Proposal 9–4 :

Agree

Proposal 9–5 :

The Classification Board should be reviewing standard on an ongoing basis so it can address in a timely manner any changes in community standards which occur. A major review every two to three years with a significantly larger number of participants surveyed than in the standard review would be desirable. Five years between revues seems a bit long.

Proposal 10–1:

The existence of a classification that is called Refused Classification is an indication that there is material that the Classification Board is incapable of classifying. This calls into question the basic competence of the Classification Board. If they are incapable of classifying some material why would they be competent to classify material which is MA 15+? The Classification Board should be able to classify all material into meaningful categories so that the content can be understood and informed choices made. Any regulation of material should be made independently based on the Classification Board classification and be in the hands of law enforcement authorities and not the Classification Board.

The simple fact is that filtering at the ISP level will not stop access to any material. The AFP has acknowledged on numerous occasions that child sexual assault material is not generally found on the world wide web but is traded or swapped by peer to peer access. Home computer based filters are capable of dealing with restricting access to various levels of material and this includes P2P. Your attention is again drawn to what I have provided at Proposal 9-1 and the work referenced.

Proposal 11–1:

Agree

Proposal 11–2 :

(a) Agree

(b) Agree There should also be an ability for industry classifiers to obtain a quick no cost second opinion from the Board in regard to contentious matter.

(c) Agree

(d) Agree

(e) Agree

(f) Agree

(g) Agree

(h) Agree
(i) Agree
Proposal 11–3 :
Agree with all
Proposal 11–4:
Agree subject to the existence of a simple judicial appeals mechanism for those who are subject to a compliance order by the Regulator.
Question 12–1:
The Regulator should provide a place for an appeal if the producer or distributor has rejected a complaint to them, much the same as ACMA currently acts as an appeal body for rejected complaints to TV stations. The Regulator should be able to refuse to investigate a complaint from a known serial complainant who regularly has their complaint dismissed. The Regulator should also be entitled to treat multiple complaints which have clearly been orchestrated by one person or group as a single complaint.
Proposal 12–1 :
(a) Agree
(b) The Classification Board should be the sole arbiter of the correct classification of material unless the Classification Review Board is continued. The Regulator should only be able to investigate and act on complaints about breaches of the industry codes of practice and possibly allowing inappropriate access to; classified material, incorrectly classified material and unclassified material.
(c) Absolutely and adamantly NO. The Classification Board should be responsible for this as they are ultimately responsible for correct classifications being made. The Classification Board needs to be able to control the quality of external classifiers and their output.
(d) Agree
(e) Agree provided that the involvement in this activity is restricted to the regulation of content and does not include anything related to the classification of material.
(f) The Regulator now in effect becomes part of the Classification Board and or visa-versa. The distinction between the classification of material and regulation of material is again blurred and the impartiality of decisions by both parties will undoubtedly come in to question in the mind of the general public.
(g) The Regulators involvement should be limited to the regulation they are tasked with such as industry codes of practice and enforcement of regulations. Only the Classification Board should be doing this for matter related to the classification of material and based on their ongoing research mentioned at 9-5
(h) All classification issues should remain the responsibility of the Classification Board. The Regulator should regulate only and its research reports and recommendations should be limited to the regulation of content.
(i) Education of the public about the new National Classification Scheme should be the responsibility primarily of the Classification Board. The Regulator should only be providing information on any new regulations enacted and how to comply with them.

I am not sure that I know what you mean by the phrase "promoting media literacy". I would have

thought that the vast majority of Australians are able to read and write and are therefore media literate.

Proposal 13–1 :

Agree

Proposal 13–2:

Agree

Proposal 14–1 :

A new Act to regulate as needed the distribution, possession and distribution of content should be enacted and the "Classification of Media Content Act" should concentrate solely on the classification categories descriptors and the laws required to ensure they are correctly displayed for the information of the public as set out in Principle 4.

Proposal 14–2 :

This will change nothing and there would seem little or no reason to introduce a new classification system if this old regulatory system remains in place. The States clearly don't believe in any of the principles that underlay the Commonwealth classification system as evident by the current attempts to introduce an R 18+ rating for interactive games. It would seem that if we are to have a truly workable national classification and regulatory system the States must be excluded.

Proposal 14–3:

I again comment that the Classification Act should not contain regulatory provisions and this should be covered by a separate Media Content Regulation Act.

(a) Agree

(b) Agree

(c) Agree

(d) I hope that you mean an industry based classification code of practice because each individual industry is not going to be developing a classification code.

(e) Agree subject to there being a transparent, preferably judicial, appeals mechanism also in place to review decisions of the Regulator.

Proposal 14–4:

Agree

Proposal 14–5 :

I would reject this as it enables sequential minor breaches without the imposition of consequential harsher penalties. I would also suggest that there should be no legal action taken in regard to minor breaches until it has been investigated and discussed with the offender with the intent of remedying the problem. It is possible that the minor breaches are indicative of underlying issues that could escalate and need remedial action by industry if related to an industry code of practice.

The exclusion of judicial penalty considerations is a cost saving measure which is often seen as a revenue raising exercise by the public as a Government and not a real attempt to prevent or remedy the breach that has occurred.

Upload supporting documents:

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