Submission in Response to the National Classification Scheme Review

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1 Introduction

My name is Geordie Guy. For the past several years I have been an advocate and campaigner for what I term *online rights*; those freedoms that Australians may (or may not) enjoy offline, which are eroded or otherwise mistreated online due to the perceived differences technology makes. While I don't work with or represent a body or lobby group, I have previously worked with Electronic Frontiers Australia (upon whose board I sat as the vice chairman), as well as other groups and communities concerned with issues such as online privacy and censorship. I have appeared in public debates and guest lectures, on countless television and radio shows, as well as in countless print articles on issues of censorship and our online Australia, both representing EFA and my own independent expertise. I run a website at http://www.geordieguy.com on issues of online rights which saw 25,000 visitors in the twelve months leading up to my submission. I don't think it's unduly conceited to assert that I have a working knowledge of the issues that commission seeks to investigate.

I welcome the opportunity to submit responses to the National Classification Scheme Review.

2 Explanatory Notes

In this submission paper, some wording requires some explanation. In Australian technology policy, the words "filtering" and "censorship" are sometimes used interchangably. This submissions paper adheres to correct definitions where "filtering" is used in circumstances where somebody excludes or includes content themselves, and "censorship" where it is done by another party without their intervention. That said, because "filtering" is significantly more palatable to the electorate, the Government routinely uses the word "filtering" in place of "censorship" (conjuring images of a water filter rather than black bars across newsprint) and this usage is routinely copied by media and the electorate. Where this submissions paper quotes or paraphrases others, their choice of phrase — erroneous or otherwise — is preserved.

3 Submissions Against the List of Questions in Issues Paper 40

The following are my responses to each of the questions outlined in the issues paper.

3.1 Approach to the Inquiry

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

To understand what approach should be taken we need to understand what objective we have when we maintain our classification system. Classification systems generally exist to provide information about a particular thing which may assist people who are ill-informed about the nature of that thing, to understand the thing or make choices relating to it. An example of an informative classification is that in which rocks are divided into three classes based on how they came to be; metamorphic rocks which came about by pressure and heat, sedimentary rocks which are formed by compressing layers of loose sediment and igneous which are crystalline solids forming from cooling magma. A choice-fuelling classification is that of wool, which is classified into various degrees of fineness such that choices can be made around its use, and ultimately its value.

Our classification of media is similar in some ways to these examples, but serves an additional purpose. Media that Australians consume for the purposes of entertainment or information (or indeed, both) is classified to fuel choices around what a person may wish to consume, or allow those in their care to consume, but additionally a legal framework exists which compels Australians (mostly of a certain age) not to consume certain types of media or suffer those in their care to consume it. Indeed in Australia, we uniquely have a category of media which is not only populated by material such as child abuse depictions which are illegal to possess, but also material which is not illegal but merely distasteful or deals with a matter which is related to an offensive topic, and is forbidden for sale nationally, and illegal to posses in some jurisdictions[1].

The complexity and cost of our system is phenomenal. It is administered by a board which is instructed by politicians[1] and in no way reflects society's values[20].

The matter of the secondary purpose that our classification system serves, censorship of material that is legal yet distasteful, is a grave one. This has

led to Australia being poorly considered by organisations which monitor free access to information[11] . To think of Australia as a country which outside critics describe as one of the least free is unacceptable to me, and it's my submission that the dual purposes of our classification system cannot be reconciled without a rebuild, and the exclusion of much of one purpose. I see attempts to find how to rectify the classification system rather than rebuild, as being like achieving a sphere by cutting off corners of what begins as a cube. The labour intensiveness and number of attempts required would be a waste of resources, and each attempt would afford additional unnecessary opportunities to the overrepresented lobby groups in Australia which seek to impose more acute restrictions on media.

In short, it is too broken to be fixed. We need a new one.

3.2 Why classify and regulate content?

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

To the extent such information is not otherwise available, the scheme should provide information about what a consumer might expect from a piece of media, removing the necessity for them to consume it to find out. The scheme should not seek to be an instrument for the restriction of access to material (particualrly that which is otherwise legal), and should not seek to classify material for which another instrument exists to reasonably access the same information. Wherever possible, the classification scheme should assist with self-regulation of media bodies — which unbeknown to most Australians is how the media they consume is classified — the scheme should return to its original remit that an adult should be able to consume what media they choose.

3.3 What content should be classified and regulated?

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

This question is one of two similar questions which see both those involved with implementing our classification framework and those who live under it, wring their hands with varying degrees of dismay and vexation. It's high time the matter was put to rest. The other similar question, is should the technology or platform used to access content affect the severity of the classification awarded to it, i.e. "Should a computer game depicting a degree

of violent behaviour, receive a more condemning classification than a movie depicting the same, because a computer game player uses a control device to deliberately interact with the content platform to bring about the violence?". The inquiry asks only one of those questions but I submit it's important to tackle both together. Decades, literally decades, of attempts to draw links between various specific platforms and physical, societal and mental harm associated with their use have come back either unable to do so, or drawing conclusions that are subsequently mulched in new research[27]. As such, it seems that the original intent of our system seemed like the correct one; to inform media consumers about the experiences they would have consuming media, without regard to the method of consumption per se. If we succumb to the idea that every new media form that arises requires classification we necessarily implement a framework that glosses over inconsistencies in the way we access media (for example our current regulatory framework which sees the Broadcasting Services Act describe the Internet as a movie), and we necessarily bite off more than we can chew — for example since 2008 Google has indexed a trillion webpages[14]. If we assume that newer, more "realistic" media forms require more strict controls, in what way do we treat future trivial depictions that are very realistic? As an example, do we rate a clothed adult slapping another clothed adult in face R18+ in the future, when technology advances such that the depiction is indiscernible from reality[2]?

I submit the only reasonable option is to be extremely cautious and hesitant to apply classifications to new media, in only the most extraordinary circumstances should we move to encompass new delivery forms at all. I similarly submit that we ought never treat media delivered by new methods as more fearsome than that delivered by old. Australian society has seamlessly moved from watching 35mm film, to VHS, to digital video, to Blu-ray™, remarking only on the content. Movie reviewers who describe the themes and content of media don't refer to the platform (unless perhaps in cases like a movie originally released on an old format is updated for a new), why does the classification framework seem intent on donning the responsibility of pointing out a distinction nobody else feels is relevant?

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

Why should the offense taken by an individual in relation to content be taken as an indication that Australian society at large requires more information about the content? If we consider the secondary reason the Australian system classifies, why should the offense of an individual be taken as a reason to prohibit other Australians from accessing the content? It is my

submission that there is not, and has never been, a valid argument in favour of a complaint-based system for classification and censorship. It serves only to create an illusion that while the task of forming an opinion on every piece of content and delivery mechanism for it is impossible, anything significantly offensive so as to generate complaint can at least be dealt with by our classification system. It regrettably ignores the unworkably low threshold at which Australian society's most upsettable become upset, essentially trying to apply the standards of the thin, far end of the bell curve to the majority bump in the middle. Even in the eyes of those who disagree with me on most matters, it may be asserted that a complaint-based system ignores the fact that society's most impervious "other thin end" will never complain at all.

3.3.3 Question 5. Should the potential impact of content affect whether it should be classified? Should content designed for children be classified across all media?

In the years I've dealt with such matters I've never really understood what "impact" means with regard to media. Ordinarily in the absence of information that clarifies matters like these, I come up with my own from my experience. I'd like to invite the inquiry to adopt my definition;

> Impact, with regards to media consumption, refers to the extent to which the lives of the people targeted as the likely consumers of the media are negatively impacted, or could reasonably be expected to be impacted negatively.

So to give my definition something of a trial run, if media is marketed as suitable for eight to twelve year-old children, review copies are advanced to publications that target that demographic, and parents are propelled into widespread outrage upon its release because it contains explicit violent scenes necessitating the children to be comforted, that is high impact. If media is marketed to thirty year-old men and contains topless women and people being shot, that is low impact, as it is a remarkable thirty year-old man indeed to not have been exposed to such things or to require a couple of days off work to get his sleep patterns back to normal after exposure. This may come across as self evident to the point of facetious, but I can point to literally dozens of examples where whatever definition of "impact" the classification system appears to be operating under is completely different to mine. Mortal Kombat 9, the 9th instalment (unsurprisingly) of a computer game franchise which depicts various competitions from a side-on perspective between martial artists, was recently banned in Australia[30]. This is a game that was rated "18" in the United Kingdom, clearly targeted at adults,

yet was banned because under Australia's classification system the highest rating a computer game can be provided is MA15+. Of the Australians who chose to risk a customs seizure notice for "importing an offensive thing", I'd willingly wager not one of them had a negative impact to their lives as a result; unless of course they were assessed the maximum fine of $110,000 for their indiscretion. There is ample evidence to suggest that it was imported by Australian adults, predominantly from the UK or New Zealand. While I question the legitimacy of a concept of impact in terms of taking offence or not understanding the themes in media, it is widely agreed (globally) to a unique extent, that age is the sole deciding factor for classification. That being the case, consistent advice as to the likelihood of suitability of media with regards to age, should be applied everywhere it's otherwise logical to classify at all.

3.3.4 Question 6. Should the size or market position of particular content producers and distributors, or the potential mass market reach of the material, affect whether content should be classified?

It already affects how the content is classified, why make it official? In 2011 with a world connected with broadband, there is no such thing as "potential mass market reach". Every movie, every game, every music track, every teenager doing a skateboard trick recorded on a handheld camcorder, is available to a global audience of two billion people, probably immediately and probably for free. If the classification system seeks to consider this, and I submit it shouldn't, it needs to consider every piece of content to have the maximum market impact. Where the classification system pretends this is not the case and honours the artificial constraints of statehood, we have a circumstance whereby computer game publishers who are sufficiently large and resourced run multiple appeals or reviews with the classification board so they can tweak games so they can be squeezed into MA15+. Of course that neglects the ones who aren't that well off, and who assert that if the Australian government won't treat its citizens like grown-ups, they have neither the time nor inclination to engage with the bureaucracy to get their title in front of a market of only 20m people[5] while a market many times that size exists in the United States alone (before other English-speaking markets are considered). Meanwhile independent producers can't afford to engage with the classification process at all and can't release their work, or do so with it unclassified.

The burden of our absurd system already applies an unintentional observer effect on creative production and media consumption, it's my submission that

not only should the classification framework not seek to distinguish between market position or size of producers, it should move immediately to remove the extent to which it does today.

3.3.5 Question 7. Should some artworks be required to be classified before exhibition for the purpose of restricting access or providing consumer advice?

In line with my previous submissions, there is ample information already available to attendees to make informed choices about the media they consume at an art exhibition. Such exhibitions have admission processes (whether or not they include fees or collecting an information pack about the exhibition) at which Australians would understand the nature of what they are to view. There is nothing to be gained from classifying artwork under the belief that someone might somehow make it all the way into an exhibition which outrages them. In the circumstances where this may occur, the artist may contend that the very point of the art was to generate outrage, in which case I return to my submitted definition of "impact" and question how the affronted gallery viewer's life is meaningfully harmed by a distasteful artistic expression.

Previously in my submission I referred to computer game publishers modifying their games for an Australian market or alternatively refusing to release here, depending on their means. I further submit that were the government to actively pursue such classification for art, we would logically live in an Australia where artists modify their art to avoid negative classifications. A lot of rhetoric exists around our censorship regime, but we need to reset the line on what we call hyperbole when the government actively censors art. Luckily they appear to be currently reticent to do so, or at least pay due heed to context such as in the case of Bill Henson[16].

3.3.6 Question 8. Should music and other sound recordings (such as audio books) be classified or regulated in the same way as other content?

To what other content are you referring to? Imagine I wake up on a Sunday and spend a few hours playing a computer game I purchased in the US, watch a movie I bought and downloaded from a website and then head to the airport and catch a plane to Melbourne because I'm working there this week. On the plane I briefly flick through a book on my eBook reader (an Amazon Kindle), but put it away when the news is shown on the in-flight entertainment system. When I arrive at my hotel on the other side, I watch the news on ABC News 24, and channel flick between SBS and an old movie

on channel 7.

The computer game was rated by the ESRB, a non-profit, self-regulatory body established in 1994 by the Entertainment Software Association (ESA). The movie I bought and downloaded from a website was rated by the MPAA, the US industry association for movie publishers. On the plane my book was unrated, the suitability of it is determinable from customer generated reviews on Amazon.com though. The airline rated its news cut itself, and at the hotel News 24 and SBS are both (separately) self-rating and regulated because they were literally forgotten about when the arrangements that put Free TV Australia (under whose industry code my channel 7 movie was rated) into place were conducted.

There is a pervasive mythology in Australian public policy that we have a unified and functional system of government regulation for media. This is a favourite of censorship advocates, whose purposes it serves to characterise our classification and censorship system as unified and functional, with the exception of whichever thing they currently wish to have censored. It is much easier to affect public policy by identifying your agenda as an anomaly problem that requires a simple fix to "harmonise" it with other things of its type. Few groups make more use of this tactic than extremist religious groups seeking to have the Internet censored by the government. It is my submission that music and other sound recordings such as audio books, remain unclassified or industry self-regulated to the extent they currently are. There is no unified system to harmonise sound recordings with, and were there to be one, I rely on my previous submissions with regards to the extent people rely on ratings as opposed to other sources of information, and the true impact of offensive content.

3.3.7 Question 9. Should the potential size and composition of the audience affect whether content should be classified?

The issues at play here are similar to Question 6 but from the opposite perspective. My submission is similar. The size and composition of an audience already has more regulatory affect on a publishers than classification could ever account for. This is predominantly due to the fact that publishers wish to make money, and the way they do this is to appeal to as many people as possible, and in order to appeal to a large number of people it is inadvisable to be offensive because you are statistically more likely to have people in your audience who will dislike it. My only other submission with regards to size and composition is that one feature of our classification regime that makes relentless sense, is the treating of children as separate to adults, however I refer to my previous submission that the classification system is

only one source of information on which parents rely when making choices for children.

3.3.8 Question 10. Should the fact that content is accessed in public or at home affect whether it should be classified?

I submit that the only affect of segregating classification between public places and private homes is a reduced likelihood that someone will inadvertently be exposed to that which they find offensive in a private home. The administrative complexity in adding yet another consideration around classification (which is largely addressed already, the board knows for example that computer games are rarely exhibited publicly) can not possible bring a net benefit.

3.3.9 Question 11. In addition to the factors considered above, what other factors influence whether content should be classified?

Why is the inquiry seeking further factors on which material should be classified and how? I refer to my previous submissions that the aim of a classification system should be to provide information about what we can expect from media without having to consume it to find out, in instances where that information doesn't exist elsewhere.

3.4 How should access to content be controlled

3.4.1 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?

There are no effective methods of controlling access to online content, and the classification scheme should cease attempting to restrict content online. Since 2007 there have been numerous plans by the ALP Government to censor the web. The first was announced in a policy handout called "Labor's Plan for Cyber-safety" which announced:

> *Mandatory ISP Filtering* A Rudd Labor Government will require ISPs to offer a "clean feed" internet service to all homes, schools and public internet points accessible by children, such as public libraries. Labor's ISP policy will prevent children from accessing any content that has been identified as prohibited by ACMA.[2]

Since that initial policy offering of requiring ISPs to provide the option of a censored service, the policy morphed to one which was mandatory for

all Australians with senators later insisting that it was always meant to be so[26]. The policy then changed to a two-tier system where prohibited content (defined by ACMA as that which is, or would be, rated RC, X or both MA15+ or R18+ and not protected by an access control system) was mandatory to be blocked and an additional option provided for less offensive material to be banned. The policy then morphed to mandatory blocking of refused classification (that which can't be otherwise rated) with no optional component[8]. On each occasion those responsible for the proposal have insisted that the plan has not changed, and that whatever iteration is current has been the proposal since inception, dismissing criticism of the changes as cosmetic or incidental. As it currently stands, the proposal is to require ISPs to restrict access attempts to material that is RC which includes content legal to own offline in most jurisdictions. In support, the government relies on technical feasibility demonstrated in a "live pilot" test conducted by Enex Test Labs[6] which the communications minister declared a success[3] but was roundly criticised as a failure by stakeholders[28][24] with one participant even quitting the trial before the conclusion[7]. The criticisms of the report focus on two problems, firstly the trial excluded the world's most popular websites as they are unable to be censored due to traffic intensity[21], the Department of Broadband Communications and the Digital Economy had originally asked those sites to voluntarily remove refused classification content but were told the category is too broad[29]) and secondly while the report showed accurate censorship systems and those which did not inhibit speed of Internet access, the products which were fast were inaccurate and those that were accurate were slow. The trial almost certainly constituted a breach of relevant laws[22] (despite protests from the government that their accuser — who by day is a lead engineer for one of Australia's largest ISPs — didn't understand the technology).

Over nearly four years to date I've watched the government stomp on every mine in a regulatory minefield of failed policy aims and even less successful attempts to prove technical feasibility of the proposed solution. There has never been an articulated problem that the proposal seeks to resolve (other than rhetoric about child abuse material or sexual violence which are illegal in any event), and there has never been genuine engagement with the Australian community on the issue that was devoid of misinformation. There is no threat from online content that has been clearly articulated by the government, even if there was, other mechanisms would've solved the problem by now (such as ISPs that offer a filtered service or filtering software), even if it wasn't solved, the government is incapable of instituting a national censorship scheme for the Internet that will allow the same standard of Internet access enjoyed currently. It's a mess. Let's just stop.

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

It's my submission that childrens' access to inappropriate content online is best handled the same way inappropriate content is handled offline — by family in the home, teachers in schools, and by the natural authority figures in each circumstance that normally moderate the behaviour of children and broker what media they can consume. There will be criticism that some parents are unfit to the task, that criticism is almost certainly true, but it doesn't support further investigation into content control at a national government level. It's not going to be possible to catch every attempt to sneak a look at a woman in her underwear (or out of it) online, but thankfully available research tends to point to the fact that parents know how to handle what ACMA refers rather melodramatically to as a "cybersafety incident"[3][10].

3.4.3 Question 14. How can access to restricted offline content, such as sexually explicit magazines, be better controlled?

The inquiry should not focus on ways to better control sexually explicit magazines, in fact it should become the most recent effort to remove the pointless ban on X rated material. Despite sale of pornography being illegal in every state, adult "bookshops" thrive and effectively self regulate, refusing sale to minors and declining to retail material which is "more" illegal (for example involving children or animals). Given that the industry self regulates despite being under the constant threat of criminal action, and there is obviously both supply and demand for adult content, what is gained by continuing to outlaw the sale? In June 2010 a blitz on the retailers imposed thousands of dollars of fines and sent the Daryl Cohen to jail in what was the first pornographer to be sent there in over six decades[15]. We are going backwards, not forwards. There is no evidence to suggest people are harmed by this material other than those who live with the likelihood that their trade, however distasteful it is, may become the target of the attorney general. I submit that sexually explicit magazines should be legal to sell, in a controlled manner similar to tobacco and liquor with fines levied against those who sell to minors or acquire for minors.

3.4.4 Question 15. When should content be required to display classification markings, warnings or consumer advice

In the instances where that advice is not available elsewhere. Even in instances where it's not, it can be considered carefully as to whether the

classification system should bother putting its shoulder to the wheel with a thought experiment. I've selected two movies from two public online databases and I am not going to advise the inquiry what they are rated. I'd like to invite the inquiry to consider which is suitable for children based only off the names of the movies, and the cast. The first movie is called Aguirre: The Wrath of God, and stars Klaus Kinski, Ruy Guerra and Helena Rojo. The second is called My Wife's Hot Friend Vol. 10, and bills Amy Fisher, Jenni Lee, Tommy Gunn and Billy Glide as the stars. Does the inquiry need to be given an alphabetic code such as *PG* to know which is suitable for thirteen year-olds (or for that matter some thirty year-olds)? Suppose, for whatever reason, both movies had information from a government body on them confirming them suitable for seventeen year-olds to watch, does the inquiry consider that Australian parents would show the second example movie at a seventeen year-old's birthday party on the basis of that advice? If the information isn't available (say the movies were available for purchase online from a non-Australian entity), how much time does the inquiry suppose a parent might spend searching the second example movie's description for an Australian Government-provided indication of who the movie is suitable for? When I submit that information provided by a government body is only useful in the absence of other information, I'm not only alluding to the Canadian Home Video Rating System, Free TV Australia, Cathay Pacific or any of the other potential providers of information about formal categories for motion pictures. I'm alluding to the fact that for decades upon decades, our classification system has been predicated on the idea that parents — all things being equal — will en masse make the stupidest decisions that adults have ever been known to make, unless a censorship system exists to stop them. By and large, we have the information we need to make informed choices in an online world about what we and our children should watch. Where we don't, the Australian Government is somewhere towards the back of the arrière du peleton in terms of decision-informing information sources. There are no recorded fatalities as a result of this situation.

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

I'd like to submit on that question starting with the last element, because users have never been made involved in Australia about the regulation of content — at least users have never been involved and then witnessed the involvement have any bearing on regulation. Allow me to provide an example,

other than the one in which 59,678 submissions to the public consultation on an adult rating for computer games in which over 55,000 sought the rating and nothing happened.

In the early nineties parliament considered that R and X rated material might be included on subscription or "pay" TV services. That's a somewhat natural progression, in 1993 as now it was the case that while a TV that just receives commercial signals can show any garden variety sitcom to anyone, someone paying for a service that is normally free may be doing so with an intent to purchase something premium or specific and might want their tastes reflected in the product even if those aren't the tastes of everyone. Put simply, if I'm paying for it, I clearly care enough that watching *Pulp Fiction* on it should be an option. A public consultation was suggested to determine whether the electorate might want adult material to be potentially available on pay TV when it was paid for by adults. Parliament instructed the Australian Broadcasting Authority (now ACMA), to conduct a survey, the results of which were tabled in Parliament on 7 December 1994 in a report titled *R Classified Programs on Pay TV* [12]. It recommended that Parliament approve the broadcast of R-rated programs by subscription television broadcasting licencees. This recommendation was based on the fact that 82 per cent of a survey of 2440 Australian adults agreed that adults should have the option of watching R-rated programs on pay TV. Majority support for this proposition was apparent across all segments of the population as defined by age, gender, parental status, state of residence and area of residence. Agreement varied from a high of 93 per cent (18-24 years of age) to a low of 73 per cent (65 years and over). The respondents to the survey were informed that the availability of R-rated material would be conditional on the approval of disabling devices installed in the set top boxes provided by pay TV operators. Such devices could. for example, require personal identification numbers to be entered before the programs could be viewed. Other results of the survey were:

- 54 per cent thought that R-rated sexual violence should be permitted on pay TV;
- 69 per cent thought that R-rated violence should be permitted;
- 70 per cent thought that R-rated sexual content should be permitted;
- 54 per cent nominated 11 p.m to 6 a.m. as an acceptable time for the broadcast of R-rated programs on pay TV;
- 50 per cent nominated 9-11 p.m. as an acceptable time;

- 10 per cent said "never/no time";
- 8 per cent said that any time was acceptable (respondents could give more than one response on acceptable time slots).

So, the government told people to speak, and the government's broadcasting authority listened, and the people resoundingly spoke. But you cant watch *Fight Club* on Foxtel because parliament declared that a response so contrary to their expectations was indicative that the question was poorly worded and subsequently misunderstood.

The politicians reverted to their default state, not doing what people wanted them to do, doing what they wanted to do with the belief that people wanted them to do that, and they shelved the discussion until such time as they could figure out a way of re-asking the question to get the answer they'd preconceived. I submit that the government should surrender its role in the regulation of content so far as deals with content which is not actually illegal, and then it should direct law enforcement agencies to act. Industry bodies should self regulate their industries — which has been proven to work largely because content which society finds highly offensive tends to run orthogonal to industry aims of commercial appeal to a wide audience. Users will continue to regulate content to themselves and their families the same as they always have, and no inquiry whether it gives the classification system a well needed injection of sanity or slips under the waves of a coordinated letter writing campaign from moral outrage manufacturers, will ever change that.

3.4.6 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?

The government (this one in particular, but Australian governments in general) has a habit of finding itself under pressure from special interest groups to "get tough" with industry codes under routine assertions that self-regulation has failed[17], these typically tend to gloss over reality and assume self-regulation is some sort of experiment that has run its course and produced a negative result. The government then becomes combative over the issue, creating an iterative process where the industry code stays a half-step ahead of the government-escorted interest group aims, with industry attempting to meet the minimum possible lobbied demands to avoid the code being vacated and the government formally taking over the regulatory role. This is particularly evident at the moment with Internet Industry codes of practice which are under a full frontal assault from niche and fairly extreme interest groups,

and have subsequently been modified to include processes whereby ISPs notify their customers of every supposed inadvertent use of their product from potential virus outbreaks to accidental infringement of copyright. This shouldn't be surprising; it's only one possible undesirable outcome from a process whereby government instructs the industry to come up with a set of rules to live under, which the government then enforces. The process has a fifteen year history[19] of keeping about half the people happy half the time, because it's a government scheme which regulates an industry under threat of delicensing described and acted out as a "co-operative scheme" to cast the illusion of less regulation. This approach is generally more palatable then the government outright directing private businesses to act as moral police, but less satisfactory than the government simply retiring its role in interfering with a process to provide information that is available elsewhere or saving Australians from perceived harm from offense.

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

If the likely classification of content is obvious and straightforward I submit that there is no defensible reason to classify it at all.

3.5 Classification Fees

3.5.1 Question 19. In what circumstances should the Government subsidise the classification of content? For example, should the classification of small independent films be subsidised?

If the Government believes that classification of content is a necessity for society that is not provided or inappropriately provided by other means, then the government should fund its existence. This is consistent with the government's approach to healthcare, law enforcement etc. which are services that would not be appropriately provided if the government didn't provide them. The harm that the exorbitant costs of classification currently does to industries and communities (in particular, independent development of games which are given away free of charge but in theory should be assessed a fee of up to $2,040 to be classified), needs to stop.

3.6 Classification categories and criteria

3.6.1 Question 20. Are the existing classification categories understood in the community? Which classification categories, if any, cause confusion?

To the point people consider them relevant, the categories are generally understood. In any event the community uses the categories as one input to a many-input decision process and the categories are not sufficiently illogical to derail that. There a few areas of confusion which are the result of complexity introduced either through lobbying or natural bureaucracy. RC causes the most confusion because there is no international analogy, people assume it is shorthand for "illegal" because it has been used as a political football or at least misrepresented in support of regulatory changes. The introduction of MA15+ in 1993 by the Classification Board to spin out a supposedly impactful subcategory of M rated material caused confusion then and causes it now — If the problem is that some material is too offensive to be recommended for those under than 15, the solution of a sub category that insists on the exact same age limit but is legally enforceable rather than a recommendation, makes less than no sense at all. The existence of elements for free-to-air television that exist only under that classification scheme is confusing, the absence elsewhere of an AV category as well as the endnotes provided by a foreboding voice-over; ("*it contains strong violence, and adult themes*") is not widely understood to be due to it being a feature of a self-regulatory scheme.

3.6.2 Question 21. Is there a need for new classification categories and, if so, what are they? Should any existing classification categories be removed or merged?

I submit that where the government involves itself in classification at all, it should adopt the same format that some other countries impose whereby the recommended minimum age of viewers is described (so instead of "M", consider "15"). Ideally a single category of "18" would suffice to describe content as being targeted at adults rather than children. Classification information which approaches important cultural or religious beliefs such as the warning to indigenous viewers that content may include recordings of people who have passed away (which they may wish to avoid) should continue to be cautiously supported to the extent that they do not challenge either anti-discrimination legislation or the beliefs of a wider Australia[4].

3.6.3 Question 22. How can classification markings, criteria and guidelines be made more consistent across different types of content in order to recognise greater convergence between media formats?

The only genuinely agreed on criteria on which Australians routinely consider the suitability of content is age, therefore in line with my submissions for previous questions, the marking should indicate the desired minimum age of the consumer.

3.6.4 Question 23. Should the classification criteria in the Classification (Publications, Films and Computer Games) Act 1995 (Cth), National Classification Code, Guidelines for the Classification of Publications and Guidelines for the Classification of Films and Computer Games be consolidated?

There is a embarrassingly stark conflict between the guidelines and the criteria, presumably because the criteria are overwhelmingly wide. But much narrower guidelines haven't led to the criteria being interpreted in such a way that censors are less censorious, they have just been used as a tool for politicians to claim that the criteria are narrower than they actually are. In the early weeks of 2010, I was contacted by various production staff attached to the television program *Hungry Beast* which was a light entertainment / current affairs program and was intending to investigate the government's mandatory ISP censorship proposal. I spent several hours over a few phonecalls explaining what was exactly intended to be blocked, how the blocking would work, what the consequences of circumventing the censorship might be, and contrasting the proposal to other implemented regimes such as those in China, Iran, Thailand and the middle east. Prior to the show running, on February the 9th, I was contacted by an ABC radio journalist who purported to have poll results showing 80% support for Internet censorship in Australia, and wanted to know what my opinion was on that statistic. The journalist refused to attribute who had conducted the poll (and I didn't connect the pending Hungry Beast episode to this), but I made some comments that informal polling I had put the number at invariably less than 10% when people understood what the proposal was, and around 50% when people didn't (indicated by additional comments such as "I am a small business owner and crippled by spam" or "my computer isn't as fast as when I bought it", irrelevant to the issue and just expressing frustration at computers and/or the Internet). The next day I was quoted by ABC News stating that where people understood the proposal, they opposed

it[13]. When the Hungry Beast episode ran, there was outrage in the anti-censorship community at the poll which turned out to be central to it. Some of this was unfounded, with people angrilly declaring the sample size to not be representative (it was in reality, perfectly fine and similar to that used for all political polls), that the results were in conflict with a *Whirlpool* broadband discussion website poll (which at the very least has selection errors) and because it was conducted by telephoning people on landline telephones, artificially selected those who have fixed home telephone services and therefore those who are highly informed on Internet matters and opt to replace a home phone service with mobile or voice over IP (VoIP) services (plausible, but most widely accepted polls are conducted via fixed telephone). Dismissing these reasons as frustrated squabbling, I investigated why the poll might have returned that result. The poll methodology includes the following;

> Survey participants were first read a definition of "Refused Classification" as follows:
>
> Images and information about one or more of the following:
>
> > sexual abuse violence , exploitative or offensive sexual fetishes; and instructions on or promotion of crime, violence or use of illegal drugs

That's not the criteria that do make up the RC category, it's a paraphrasing of the guidelines of what probably *should* out of those criteria. Hungry Beast responded to the less reasonable insistences that the poll was flawed but in the time up until the show was discontinued, never addressed my criticism that they had confused the criteria of RC with a "worst of" set of guidelines designed to selectively narrow them. Both the criteria and within them, the guidelines, are hopelessly broken and I submit must be scrapped and reconsidered from scratch. Over the years additions and further definitions have been added to them despite a complete dearth of evidence as to why, with the bogeyman of the day becoming eligible to be banned (fetishes, terrorism etc). Far from reflecting community standards, I submit the classification board would find it impossible to identify a person who would agree with them, providing that person was not a member of the board.

3.7 Refused Classification (RC) category

3.7.1 Question 24. Access to what content, if any, should be entirely prohibited online.

That which is illegal to possess, and the prohibition should be enacted via a described course of behaviour which establishes a criminal offence and associated penalty. To continue to maintain a category of material which is not illegal but which is prohibited anyway, obviates both the idea that adults should be able to see and hear what they please, and that if something is so abhorrent that Australians believe it should not be avaiable, we have a legal system that is capable of dealing with the matter.

Refused classification has been an abhorration in Australia for decades and it's time to retire it.

In so many instances, that which seeks to act like a legal authority without actually being a legal authority, is vacated as a disallowable instrument. How did we ever wind up with this category? Why is the inquiry seeking to define it rather than banish it?

3.7.2 Question 25. Does the current scope of the Refused Classification category reflect the content that should be prohibited online?

I have previously submitted that no content should be prohibited online, rather the law should punish people who break it, however the refused classification category requires further criticism. The current scope of refused classification is contained in roughly three pieces of law. I say roughly because since 1996 the refused classification category has included "matters of crime or violence"[18], so in theory every criminal law act and every criminal code (which defines *matters of crime*) contribute to the body of content which is refused classification. The Classification (Publications, Films and Computer Games) Act 1995 sets out the broad outline of the system and refused classification specifically in the National Classification Code which is a schedule of the act. The act also provides for guidelines which the censorship ministers can set out, that further defines RC. Finally, section 100.1 of the Commonwealth Criminal Code defines *a terrorist act*, and material which advocates such is refused classification under the code and guidelines. So what is the net result of what is refused classification? It is certainly not as Senator Stephen Conroy describes; at least it's not circumscribed by his description. Senator Conroy routinely describes the category either *like* or *including* "child pornography, bestiality and rape"[4][31][9][25]. Of course these things are simply selectively paraphrasing of the guidelines, if we use each possible description we understand refused classification to

also include;

- all computer games that are unsuitable for a minor to see or play under the NCC
- any sexual activity which depicts a fetish; which is an object, action or non sexual part of the body that gives sexual gratification under the Classification Guidelines that excludes that material from an X rating
- material which seems to depict, express or otherwise deal with matters of sex, drug misuse or addiction, crime, cruelty, violence or revolting or abhorrent phenomena in such a way that they offend against the standards of morality, decency and propriety generally accepted by reasonable adults to the extent that they should not be classified under the NCC[5]

It's my submission that the refused classification category can be considered to functionally include the sum of all media content to one extent or another, it is useless as a reflection of any standard, and Australia should seek to join the international community in no longer maintaining such a category.

3.8 Reform of the Cooperative Scheme

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

It's my submission that state and territory classification laws should differ to the extent that the inhabitants of the states meaningfully differ — is a Queenslander meaningfully different to a Victorian in the offense they take to a movie? What do we do in the instances where someone moves from state to state, do we assume that they change to become more or less offended to match their new home? New South Welsh are the same as Queenslanders, who are the same as South Australians, who are the same as the remaining states in turn. The differences in classification regimes exist because the *politicians* were different in instances where the laws were formed. This has been the case ever since the early 1980s in which all the governments sought to implement a classification system based on the Australian Capital Territory's, Queensland and Tasmania opted out in 1983 refusing to permit X rated material, and all the other states followed within about a year.[23] To this day every state has its own enforcement act for classification, and the Northern Territory (outside the indigenous intervention areas) and the ACT are still the only states which permit the sale of X rated material at law.

3.8.2 Question 27. If the current Commonwealth, state and territory cooperative scheme for classification be replaced, what legislative scheme should be introduced?

An act to remove the responsibility of classification and censorship from ACMA and the classification board, and to establish a separate statutory body whose remit is to advise people on the content of media in the instances where reliable advice is not otherwise available, and to advise the Australian Federal Police of any content it is aware of which is illegal.

3.8.3 Question 28. Should the states refer powers to the Commonwealth to enable the introduction of legislation establishing a new framework for the classification of media content in Australia?

Ideally the states would abandon the matter and refer powers to the various industries to self-regulate. In the absence of that, I've previously submitted that there is no meaningful difference between the collective offendable sensibilities of the inhabitants of each state, so it makes more sense for media regulation to be a federal concern. My only worry would be that our current classification system; the result of critical evaluation of the standards of reasonable politicians and lobby groups, would be consolidated into a single body which would be more susceptible (or at least less time-consuming) to pressure. As it currently stands, bad decisions have been made with regards to , classification for a number of years, but it's been difficult or impossible to "harmonise" those bad decisions outside of the jurisdiction they were made in. If media regulation were federalised an interest group seeking to export its morals to the country would need only to establish an office in Yarralumla instead of one in Sydney, Melbourne, Brisbane, Adelaide, Hoabrt and Perth as is currently the case.

3.9 Other issues

3.9.1 Question 29. In what other ways might the framework for the classification of media content in Australia be improved?

By the inquiry considering submission campaigns by niche groups within the bounds of their likely representativeness of Australian society as a whole, and making recommendations in line with contemporary Australian values which are diverse and unafraid. I wish the inquiry the best of luck.

Notes

[1]Refused Classification material is prohibited for possession in the parts of the Northern Territory subject to the "intervention" as material warranting a classification above MA15+ is banned. It is banned for possession in Western Australia under the Classification (Publications, Films and Computer Games) Enforcement Act 1996

[2]I have personally raised this issue with members of the classification board in a meeting, they were unable to provide an answer

[3]It's worth noting that "cybersafety" as a term is almost exclusively an Australianism. Use of the term outside of Australia is scarce, and even within Australia it exists almost entirely as government jargon, occasionally featuring in education and accademia. Other countries don't generally consider the parts of safety which are exclusively online issues to be important enough to be spun off with their own neologism, even if they do note some of the differences between safety in the park and safety on Facebook.

[4]Some sections of the Christian community rely on sections of the bible and religious tradition to proscribe homosexuality as contrary to their beliefs; it would nevertheless be contrary to Australian law and the broader national identity to warn of content which dealt with homosexuality.

[5]Each of these elements stands alone, so material which "deals with cruelty" can be considered RC

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