

CI 753 R Harvey

First name: Robert

Last name: Harvey

Q1:

The ALRC should be looking at developing a new framework for classification that will cover all material regardless of its method of distribution. The classification system should be designed to provide the potential consumer with the necessary information to determine whether or not the material is likely to offend them and is appropriate for their intended use. Classification should be seen by consumers, classifiers and distributors as a tool to enable informed choice.

Regulation of material and its dissemination should be the subject of separate legislation.

One of the big problems with the current classification system is that it is fragmented across different media and is seen as a regulatory system which should protect people from offence. Currently it doesn't provide any content information for example on magazines some of which contain material that would attract an M rating if disseminated on TV. (eg New Idea and Womans Day)

Q2:

The primary objective of a national classification system should be to advise the general public what type of material will be encountered in their interaction with the material. It should be uniform across all material and easily understood. The national classification scheme should not be regulatory so that there is no confusion in the mind of any person that it is an advisory scheme and that regulation is a separate issue.

Q3:

The classification of material should be independent of its delivery method. The same material can be delivered in a number of different ways eg. a book may be printed on paper, be in an audio form, be in an ebook form. How the material is delivered doesn't effect its content. If the classification is dependent on delivery method then it completely and utterly destroys any value in classifying material.

Q4:

All content should be classified by the producer of the material. The classification should be clearly shown on the material. An appropriate complaints mechanism at the distribution or production level is needed with a suitable appeal mechanism.

Q5:

No. All material should be classified. The the classification should indicate, its age group suitability what is in the material and if necessary its level of likely impact.

Yes. Currently this is done for TV and children's material is usually segregated in retail outlets. An increase in the number of sub-classifications for children based on age would also be worthy of consideration.

Q6:

No. Classification should be designed to allow informed choice by consumers and should be universal regardless of the distributor or market size.

Q7:

All artworks should be classified before exhibition to provide consumer advice. Restriction of access should be a matter left for the producer and distributor or exhibitor and be determined by the classification.

Appropriate regulation should be introduced if required

Q8:

Yes. Everything should be classified. Regulation if necessary should be separate to classification.

Q9:

No. The classification of material should provide content information to the potential audience regardless of size so they can determine if they want to interact with the material.

Q10:

No. The classification is an advisory for the individual regardless of their location. Regulation should be introduced to differentiate between home and public consumption if necessary. If a classification system is to work then it must be universal and understood by those disseminating the material and the consumer.

If deemed necessary then separate regulations should be made to limit the accessibility of certain material in

public. eg TV, Films and advertising.

Q11:

All content should be classified. For a classification scheme to be trusted and accepted it must only classify material so that the consumer is aware of what is going to be encountered and can freely choose whether to interact with that material.

The inclusion of a regulatory function within the classification system immediately removes choice and responsibility for their own actions from the people and vests it in the Government. This causes distrust and scepticism about the classification system which is ultimately almost as bad as not having one.

Q12:

If you want to regulate what can be accessed online then you have to turn the Internet off. ISP based filtering doesn't work because it is easily circumvented. The "Great Firewall of China" doesn't work.

Efforts to block access to the internet content in the Middle East didn't work it was circumvented. The USA government is currently developing software to circumvent blocking of internet content. The simple fact is you can't stop people accessing what they want to access on line.

If you want to ensure that your children are unable to access content that you as a parent would deem inappropriate you need to properly set up the personal computer that they use in a public area of the house so you can supervise them and activate a content filter so it is appropriately set for each child.

If you want your internet content to be filtered then you do it on your personal computer system by obtaining the necessary software or using the filter already in your operating system.

If we subscribe to the view that "adults should be able to read, hear and see what they want" then we also must take individual responsibility for what we do read, hear and see.

If you seek out material on the internet and it happens to offend your personal taste it is easy to move away from it. The days of pop ups on the internet are over with most browsers now able to block them.

Q13:

The access by children of inappropriate content is largely the responsibility of the parent(s) and organisations that are providing public access to the internet such as schools, libraries and internet cafe type services. These should be required, and most already do, to have in place an appropriate filtering system that is network or individual computer based.

There will never be a system that can 100% block inappropriate content from access by children. My recollection is that I managed to access what would be called inappropriate material when I was in puberty. I had friends the same age and some of them had older siblings and they liked to share. I didn't have the internet to use because it hadn't been invented. I might add that the experience didn't do me any harm. I am sure that the number of adults in this world that share my experience far exceeds those that don't.

Q14:

Regulation of material that has been classified should be covered by separate legislation and not be attempted with in the classification system. This is one of the reasons that there are problems with the current system.

Regulation can be achieved by requiring segregation, limiting or banning display of the material or limiting the retail outlets that can market the material.

Whilst ideally this would best be done by the States ceding the power to legislate on what material is to be restricted and control measures to the Commonwealth, it can if necessary be done by the individual States and Territories.

There is no reasonable explanation for the laws in this regard to be different from one State or Territory to another.

The current situation suggests that if I go to the ACT from SA or WA I am changed in some magical way so I can now suddenly acquire X18+ material without some undefined harm befalling me which would occur in those other states.

Q15:

All material should as far as practicable display a classification marking. While it would be impossible to enforce a classification marking or warning on overseas hosted internet pages a lot would voluntarily comply. If the classification system is widely accepted then people would tend not to visit unclassified sites which would put pressure on overseas sites to comply. This already occurs with a lot of Pornography sites who will use a splash page to indicate that the material is only suitable for people over the age of 18.

Q16:

The Government(s) through legislation should define the overall regulatory framework for all material that they deem should be illegal or restricted by:

- restrictions on place and time of exhibition
- restriction on access to some materials on an age basis
- specifically banning specific material
- Providing appropriate penalties for serial misclassification and serial unwarranted complaints about classification
- Provide an independent board or commission to
 - review unresolved complaints between consumers and providers and where necessary refer those cases of misclassification or vexatious complaints for prosecution.

- Provide free education for producers, distributors and retailers of material on how classification should be done
- Assist with the classification of doubtful material where requested by producers and/or distributors
- Provide education to the general public on the classification system and review system.

Industry bodies should provide advice to their members on how classification should be done and in co-operation with the government board organise education of their members. They should make representations to the government on the workings of the scheme and suggest methods of improvement. They might also provide a centralised first review service to handle users complaints for their members.

Users should be able to lodge a formal complaint with the retailer, distributor or producer of the material about its classification. Unresolved complaints should be able to be referred to an independent board which would be empowered to make re-mediation orders or if necessary referral for prosecution.

Q17:

My thought is that the producer of material, the distributor of material and the retailer of material all would know what market they are attempting to reach. It would therefore seem that these people in the vast majority of cases could successfully and accurately classify their own material.

The government role should be to set out a universal classification code that applies to all material regardless how that material is going to finally reach the consumer and put in place a scheme to educate the stake holders on how material should be classified. There should be a Board established to facilitate education and to review those cases where a complaint is unsuccessful and referred for review.

The government would need to introduce legislation to allow judicial review of the decisions of the Board and should also introduce appropriate legislation to enforce the use of correct classification and to penalise the serial offenders in misclassification and those serial complainants who continually have their complaints dismissed.

Q18:

All content that is being offered for consumption should be classified by either the producer, distributor or retailer in the first instance.

Q19:

If the classification is being done by as described above there is no need for the Government to subsidise the actual classification of content.

The Government would be required to bear the cost of the Board mentioned in above which would be responsible for appeals that are made to them against review decisions of producers, distributors or retailers. They would also be responsible for the costs associated with the education of the general public, and those actually classifying material.

Based on the experience of the Television industry and the Outdoor Advertising industry as described to the Senate Committee Review of the National Classification Scheme the number of referrals for review would not be very high.

The classification work in the form currently done by the Classification Board would no longer be required.

If this model were to be adopted it is probable that the overall cost to Government of classification

would be reduced. Regardless of this as the classification system is designed for the benefit of all Australians any costs of implementing it should also be the responsibility of all Australians and be an expense on General Revenue.

Q20:

The category that causes the most confusion in the community is Refused Classification. The majority of people either think that this only contains child pornography or that it contains any type of pornography.

A lot of people would not be aware of the existence of the X18+ classification or of the RC classification. Most peoples knowledge of the classification system is limited to what they see displayed on TV and in film advertisements and at movie theatres.

Q21:

Yes there needs to be a change to the classification categories. There should be a broad set of categories which would cover:

1. Pre-school children
2. Primary school children (5 - 10 years old)
3. Young Teenage (11 - 15 years old)
4. Mature teenage (16 - 18 years old)
5. Adult (over 18)\

These categories would be denoted by an individual colour coded shape and a single capital letter (eg in order from above P, C, T, M, A)

A sub classification within each of the main categories using lower case letters would then denote the type of content that is contained in the material. This could closely follow what is already used by the television industry.

It would include sub classification in the Adult category for soft core pornography, hard core pornography, sexual fetishes, extreme violence, child pornography and other material currently contained in the X18+ and RC categories which would be discontinued.

Industry based agreements or separate legislation if necessary should, where necessary be used to regulate the access, dissemination or prohibition of material.

Q22:

The classification markings outlined above can easily be used on any media format. The markings can be produced as a sticker or printable marking for inclusion on physical material such as publications, videos, CDs and DVD's. A marking in a proscribed location and or a splash screen at the commencement of material can be displayed on TV, Films and material designed to be displayed on a digital display screen. Audio material that is not delivered on a physical device such as a CD can have an audio classification advice at the start.

Whilst it is not possible to enforce the use of classification markings on overseas content delivered over the internet it is probable that overseas suppliers will see it as a commercial advantage to adopt Australian classification markings as it will increase customer confidence in their organisation and products.

Q23:

The the legislative criteria for classification as currently exists should be repealed and new legislation introduced to:

1. Give effect to a new classification code
2. Give effect to a new regulatory code.

The introduction to that classification code should be amended to read:

Classification decisions are to give effect, as far as possible, to the following principles:

- (a) adults should be able to read, hear and see what they want;
- (b) minors should be protected from material likely to harm them and while this is principally the responsibility of parents, guardians and carers those people should reasonably expect to be able to receive easily interpreted information on content to assist them in this role;
- (c) everyone should be protected from exposure to unsolicited material that they find grossly offensive;
- (d) everyone deserves to be able to make a preliminary decision on whether to reject reading, seeing or hearing material that they would personally find offensive whether alone or in company.

This has been taken from the current classification code and changes have been made to paragraph (b) to enforce the concept that the purpose of classification is to provide advice and not to supplant the responsibility of carers. The change to (c) is to exclude the expectation that everyone will be protected from being offended by anything. The inclusion of (d) is to enforce the principle that the classification code is advisory and purely designed to assist decision making.

Q24:

Access to online content is virtually impossible to prohibit as there is no completely effective means of stopping access and prohibition is therefore a waste of time and money for no result.

Prohibiting content is likely to have a "Streisand effect" which means that you have far more people looking at the content than if you did nothing.

Illegal material will usually be taken down by the web host if they are contacted as it will usually contravene their Terms of Service regardless of the current law in their country.

It is considered that the RC category and the current list of prohibited material should be abolished. Prohibited content should only be that content that it is illegal to possess or distribute under the Criminal Code or similarly enacted legislation.

Q25:

Included as RC are " Computer games that (d) are unsuitable for a minor to see or play" [National Classification Code (May 2005)]

The average age of gamers in Australia is 30 yet they are restricted to playing games that are for minors. This is despite the opening statement "Classification decisions are to give effect, as far as possible, to the following principles:

- (a) adults should be able to read, hear and see what they want;"

It would seem that this declaration has been ignored for some reason by our law makers and it has made Australia a laughing stock in the international gaming community.

RC Material also includes material that:

describe or depict in a way that is likely to cause offence to a reasonable adult, a person who is, or appears to be , a child under 18 (whether the person is engaged in sexual activity or not);

The Interpol filter which Telstra has announced they are using "blocks images and movies which fit the following criteria:

- The children are real. Sites containing only computer generated, morphed, drawn or pseudo images are not included.
- The ages of the children depicted in sexually exploitative situations are (or appear to be) younger than 13 years.
- The abuses are considered severe by depicting sexual contact or focus on the genital or anal region of the child.

<http://www.interpol.int/Public/THBInternetAccessBlocking/Criteria.asp>

There is obviously a vast difference between the Interpol categorisation and Australia's.

In the USA performers in sexually explicit material must provide proof of their age for the manufacturer and they must be over 18. My understanding is that if there is no proof of age then the movie is considered to be child pornography. This is administered by the FBI.

Again Australia's attitude to pornography and child pornography is considered a joke by USA citizens.

Until these anomalies are addressed we will have the situation where material that is legal in the USA or Europe is illegal in Australia It will be pointless and almost impossible to prohibit such content on line.

The age of a participant in a sexually explicit production should surely be a matter of fact. not a matter of opinion. Australia also is in the unique situation where cartoons and other non real life images can be given an RC category and thus be considered child pornography.

Exactly what "a reasonable adult" is for the purposes of the law is something I can't come to grips with. This is purely a matter of opinion and I would suggest that if you put the same material before 5 Judges you would get 5 differing opinions as to the level of offence it would cause a reasonable adult.

It is fairly obvious that the RC category is too imprecise and has been introduced as a lazy way to catch material that the parliament didn't want to address because they considered it too confronting. Accordingly I recommend that consideration be given to the RC category being abolished and that the regulation of material be done under separate specific legislation that is not related to the classification system.

Q26:

It is incomprehensible to me that a person living in WA is defective in some way that requires that they not be able to access the same material as a similar person living in the ACT.

The classification and regulation of material should only be controlled by Australian Government legislation so that all Australian citizens are treated equally. They are already required to provide regulation at the border and the duplication by the States of this regulatory role causes confusions and conflicts and is a waste of resources.

The States have managed to demonstrate a lack of co-operation with each other and the Australian Government in making the current system work. Unfortunately they seem to be more interested in political one up man ship or personal bigotry. The most recent example of this is the attempt to introduce an R18+ category for computer games. This has dragged on for about 10 years with one State stopping it happening, allegedly because of religious belief.

The States can either cede their powers to the Australian Government or the Australian Government can put the case to a referendum and seize the power.

Q27:

The Commonwealth should legislate to:

1. require classification of all material that is to be disseminated in Australia or produced in Australia. It should acknowledge that material from overseas can not be forced to be classified.
2. provide appropriate sanctions for deliberate or serial misclassification and publish a list of these people and of overseas producers of on line content who don't voluntarily classify.
3. prohibit the distribution and possession of material that it finds will be harmful to the general population and prohibit the dissemination of age inappropriate material to minors.
4. Empower State and Territory law enforcement organisations to enforce breaches of the laws enacted to give effect to (3)

Q28:

It would be the easiest solution to the inconsistencies that exist in Australia in respect to the classification and regulation of material if the States referred these powers. (See answer to previous Question)

Q29:

One of the big problems with the classification and regulation of material is that there are a number of groups who try to, and unfortunately too often succeed in, influence classification and regulation. These groups are usually motivated by self interest or personal belief and have little or no regard for people who may have a different motivation or belief. Their case is often backed by dubious research, usually by supporters, that has little or no scientific research credibility.

In considering classification I have indicated I consider that it should be separate to regulation and its purpose should strictly be to inform and not to prohibit. Doing this will insulate the classification system from attempts to have material banned and enhance the standing within the community of the system and its value.

In considering whether material should be regulated or banned the Government should be required to specifically enumerate what harm they consider the material will cause the Australian population and the advice or scientific study that has led them to that conclusion. This will effectively reduce the temptation for Governments to bow to pressure groups and assist them to make rational informed decisions not pressurised emotional ones.

Other comments: