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## **Submission in response to the National Classification Scheme Review Discussion Paper**

The Justice and International Mission Unit welcomes this opportunity to make a submission in response to the National Classification Scheme Review Discussion Paper.

The Unit's primary interest in the review is in ensuring Australians are not able to purchase or possess material which creates harm in its production, viewing or distribution. Our particular focus is on the scope of the RC category. We have addressed the relevant proposals or sections of the discussion paper below.

### **Guiding Principles for Reform**

Using the limited INTERPOL list, Telstra alone redirected 84,000 attempts to access blocked child sexual abuse sites by its clients from the period of 1 July this year to 15 October.<sup>1</sup> This suggests the size of the problem here in Australia is not insignificant.

The Unit acknowledges the important role for the National Classification Scheme to articulate and enforce community standards which uphold certain principles and is consistent with other human rights standards and obligations that Australia has signed up to.

The Unit is generally supportive of the eight principles developed to guide the reform. However, we believe the intent in Principle 3 should be broadened to be a general principle of harm minimisation.

Most discussion around the National Classification Code focuses only on the harm to those who view the material. The Unit believes consideration of harm must extend to its production and to whether the purchase, viewing or consumption of the material will stimulate further demand, thus increasing the harm caused in its production.

This particularly applies to child sexual abuse material which harms victims in the production of the material but also in their re-victimisation which occurs when victims know that people can view images of their abuse on line. Victims suffer extreme feelings of helplessness knowing that it is very difficult for those images to ever be completely removed.<sup>2</sup>

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<sup>1</sup> Senate Estimates hearings Assistant Commissioner Neil Gaughan, Australian Federal Police, Oct 18 2011

<sup>2</sup> C. Atkinson & D. Newton, Online Behaviours of adolescents: Victims, Perpetrators and Web 2.0, *Journal of Sexual Aggression*, March 2010, Vol. 16, No. 1, p. 109

The Unit notes that adults are also trafficked and forced to produce sexual abuse material for sale on the internet. Thus a classification system that allowed for violent rape materials to be available for viewing by Australian adults may facilitate human trafficking by allowing Australia to contribute to a market for such materials.

Extending Principle 3 to be one of harm minimisation also provides a reasonable balance to the rights of adults to 'read, hear, see and participate in the media of their choice' asserted in Principle 1.

#### **Proposal 6-5, Proposals 7-1 to 7-7**

The Unit is concerned all Refused Classification material will only be able to be classified by the Classification Board, if this means a significant delay in being able to deal with child sexual abuse material. According to the UK Internet Watch Foundation, the average length of time child sexual abuse images are hosted has been reduced from years to just days<sup>3</sup> as a result of take-down notices, ISP level access disruption and other law enforcement activities. Therefore, to allow ISP level access disruption to be an effective tool in curbing commercial child sexual abuse operations on the internet means the classification should be done in under a day. Unless the Classification Board is resourced to be able to achieve this outcome, other regulatory bodies and their officers, such as the ACMA, should be permitted to classify child sexual abuse material as RC and have it added to a disruption list for ISPs. There should then be an avenue for appeal to the Classification Board if someone believes the material in question is not child sexual abuse material that should be classified as RC. Also, the ACMA officers might refer suspected child sexual abuse material to the Classification Board if they themselves were uncertain if the material should be classified as RC (such as child nudity material where there is uncertainty if the material constitutes sexualised material).

Given the serious harm that can be inflicted in the production of RC material (such as child sexual abuse material) and the harm that can result to those accessing material, Government has a responsibility to protect the community and uphold basic human rights standards. Government must directly regulate content that is likely to involve harm and not leave dealing with such material to industry co-regulation.

The Unit supports the proposal for co-regulation schemes with industry to classify material at the lower end of the classification range G, PG and M and therefore direct more regulatory resources towards that material likely to cause the greatest levels of harm.

The Unit notes that industry cannot be solely relied upon to classify all content. Auditing is required with any industry classification. The Unit notes the earlier example it provided of Amazon selling online a guide to sex between adults and children and initially defending its decision to do so.<sup>4</sup> The Unit further notes the evidence provided to the Senate Legal and Constitutional Affairs References Committee of failings in industry self-compliance with serial classification declarations and display of restricted publications.<sup>5</sup> The Classification Board revoked the classification of seven adult publication titles in the 2009/2010 period from a total of 60 serial classification declarations, an industry self-regulation failure rate of over 10%.<sup>6</sup>

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<sup>3</sup> Internet Watch Foundation, '2010 Annual and Charity Report', p. 1.

<sup>4</sup> See for example Helen Popkin, "Amazon defends 'Pedophile's Guide'", 11 October 2010, [http://www.msnbc.msn.com/id/40112145/ns/technology\\_and\\_science-tech\\_and\\_gadgets/t/amazon-defends-pedophiles-guide/](http://www.msnbc.msn.com/id/40112145/ns/technology_and_science-tech_and_gadgets/t/amazon-defends-pedophiles-guide/)

<sup>5</sup> Senate Legal and Constitutional Affairs Reference Committee, 'Review of the National Classification Scheme: achieving the right balance', June 2011, Chapter 4.

<sup>6</sup> Senate Legal and Constitutional Affairs Reference Committee, 'Review of the National Classification Scheme: achieving the right balance', June 2011, p. 34, para. 4.6.

### **Proposal 9-1**

The Unit supports the use of one set of classification categories applied across all media platforms. The Unit supports the new categories proposed C, G, PG 8+, T13+, MA 15+, R, R18+, X18+ and RC. The use of more specific categories would further assist in helping parents to restrict material that may harm or disturb their children.

### **Proposal 10-1**

The Unit supports the intent outlined in Proposal 10-1 for the requirement of the classifier to stipulate whether material deemed RC contains 'real depictions of actual child sexual abuse or actual sexual violence' with a view to this material being prioritised for inclusion on a 'blacklist' for ISP level access disruption.

However, the Unit would like to broaden the range of material that is stipulated to include 'real or *simulated* depictions of actual child sexual abuse or actual sexual violence'. This is consistent with Australia law covering child pornography, as well as the laws of other comparable jurisdictions. Such pseudo images of child sexual abuse (which can range from actual photo manipulation to computer generated images) are illegal under UK and US law and the Council of Europe Cybercrime Convention 2001, as examples.<sup>7</sup> Thus, Australia would be deviating from the international norm in suggesting that pseudo-images of child sexual abuse are more acceptable than depictions of actual child sexual abuse. There are very real concerns that pseudo images feed an appetite for actual child sexual abuse images, and it is extremely rare for offenders to only possess pseudo images.

The majority of anecdotal complaints the Unit has heard in relation to the current RC category is that it does not permit access to material instructing in suicide, euthanasia, criminal acts of graffiti or the safe use of illicit drugs. We believe that this material is more likely to result in harm within the community than good. The decision to make it available to Australians should be through the democratically elected Parliament. As a matter of principle, it should not be left to individuals in a democratic society to be able to decide which laws they will abide by and which to ignore, in this case by accessing material via the internet on servers hosted overseas.

It is reasonable the RC category actually allow for shifts in community standards over time. However, it should also be consistent with the international human rights standards that Australia is a States Party to. For example, child sexual abuse materials are prohibited in Article 34 of the *UN Convention on the Rights of the Child*, the *Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography* and ILO Convention No 182 on the Elimination of the Worst Forms of Child Labour.

### **Proposal 11-2**

The Unit supports the proposals in 11-2. Businesses and ISP providers should be left in no doubt as to their obligations to report or restrict access to material particularly in the RC category.

Both the Australian Crime Commission and the Australian Federal Police have complained that the IT industry currently do not adequately assist them through their failure to report online criminal activity (The Age 18/10/2010). In the case of the AFP, they publicly complained about the case where Facebook detected the activities of a child exploitation network and failed to report this network to law enforcement (AFP media release 27 August 2010).

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<sup>7</sup> Yaman Akdeniz, 'Internet Child Pornography and the Law', Ashgate Publishing Limited, Surrey, UK, 2008, pp. 20-24, 100-122, 197.

Some online businesses have demonstrated they cannot be relied upon to deal with child sexual abuse material even when they become aware of it. Amazon defended their online sales of the how-to manual for sex with children '*The Pedophile's Guide to Love and Pleasure*' under the banner of being opposed to censorship.

**Proposal 11-4**

The Unit supports the proposal for the regulator to have the powers to enforce compliance with the code particularly in the case of material which must be classified or restricted. As mentioned earlier, we support regulatory and enforcement resources being directed into those areas likely to cause the greatest amount of harm.

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## Appendix 1

### Summary of Justice and International Mission Unit's preferred regulatory response to online material

Classification category of the online material	Regulatory Response
Illegal abusive material, such as child sexual abuse material	<ul style="list-style-type: none"> <li>• Criminal sanctions for production, distribution and possession</li> <li>• Requirement on ISPs and content hosts to report such material to authorities</li> <li>• Requirement of content host to remove material</li> <li>• Requirement on ISPs to disrupt ready access to material where content removal is not possible, by blocking access to a listed that is updated at least daily</li> <li>• Measures to educate offenders and potential offenders to deter access and possession related offences</li> <li>• Working with financial institutions to disrupt payment to online commercial sites through bodies such as the Asia-Pacific Financial Coalition Against Child Pornography</li> </ul>
Refused Classification material outside of that attracting criminal sanctions	<ul style="list-style-type: none"> <li>• Requirement on ISPs and content hosts to report such material to authorities</li> <li>• Requirement of Australian content host to remove material</li> <li>• Requirement on ISPs to disrupt ready access to material where content removal is not possible, using a list updated at least daily</li> <li>• Parent and minor education to minimise exposure to such material</li> </ul>
X18+, R18+ and MA material that may offend some adults and may harm or disturb minors	<ul style="list-style-type: none"> <li>• User side filtering or user requested filtering from ISP or filtering provider</li> <li>• Parent and minor education to manage responding to the presence of such online material</li> </ul>