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Submission to the National Classification Scheme Review Discussion Paper

Google welcomes the opportunity to provide comments to the Australian Law Reform Commission's National Classification Scheme Review Discussion Paper. Although the Discussion Paper canvasses a wide range of important policy considerations, Google will confine these comments to proposals and issues affecting online content.

Executive Summary

The context relevant to this review

Any review of classification laws must have regard to the way in which the media landscape has changed dramatically in the 20 years since the last review was undertaken. Extraordinary changes have occurred in the media landscape since the existing classification regime was first implemented. The new "media ecology" is a very important part of the context for the National Classification Scheme Review.

New globalised online content platforms - such as Facebook, Twitter, YouTube, Wikipedia and Flickr - are facilitating new forms of communication. These platforms differ fundamentally from traditional content channels such as television and radio. The nature of these platforms - including that they are platforms for others to upload content to, the volume of content uploaded and the fact that they provide services on a global basis at scale - fundamentally alters the way that policy makers must think about regulatory frameworks for content.

The Classification Review is of *critical* importance to achieving the Government's goal of Australia becoming one of the world's leading digital economies by 2020. Google urges the Commission to have regard to the way in which any regulatory reform is likely to impact on continued growth and innovation in the Australian digital industries.

Google's responses to the Commission's proposals regarding regulation of online content

Internet companies such as Google have strong commercial incentives to respond to user concerns regarding content standards, and are doing so:

- YouTube provides simple and effective ways for users to report any content that breaches community standards or guidelines, or otherwise causes concern to site users. This content is then reviewed by YouTube and removed as appropriate.

- YouTube, and the Google-owned Android Market app store, empower users with tools that enable them to exercise informed choices about the content accessed.
- Another key plank of our approach is education: ensuring that users - including parents and children - acquire the digital literacy skills that enable them to navigate the internet safely. Educational initiatives include the YouTube Safety Centre (providing information and tools for parents), and partnering with child safety organisations to raise awareness through YouTube channels such as the ACMA YouTube channel for CyberSmart and the Australian Federal Police channel for ThinkUKnow.

Google notes Guiding Principle Seven for reform, that classification regulation should be kept to the minimum needed to achieve a clear public purpose, and should be clear in its scope and application. Applying this principle, Google submits that no case for *government* regulation of online content has been made out. Recent research by the ACMA suggests that Australian internet users agree. We acknowledge that there are some circumstances where government intervention is appropriate and required, for example addressing the distribution of child abuse imagery via policing initiatives and the criminal law. However, for other types of content which is not illegal but may be contrary to some community standards, we submit that self regulation is effective and in many (if not most) circumstances, more efficient than regulation.

Pre-classification of content is unworkable for many, if not most, online content platforms. With 48 hours of content being uploaded to YouTube every minute, more than 250 million photos being uploaded on Facebook on average each day, and similar issues of scale for other similar platforms, there is simply no practical way of scrutinising content unless and until the platform provider is notified.

Also, as the Commission itself has acknowledged, age-based restrictions are very difficult to enforce in any robust way. They also give rise to very real privacy considerations. Google is pleased to see that the Commission has recommended against mandatory access restrictions on media content classified or likely to be classified MA15+. However, we are concerned that the proposed age-based restrictions on adult content would be unworkable in practice.

The context for the ALRC's review - How has the world changed since the classification regime was first implemented?

The Commission has acknowledged, in Chapter 3 of its discussion paper, the extraordinary changes that have occurred in the media landscape since the existing classification regime was first implemented. The new “media ecology” is a very important part of the context for the National Classification Scheme Review. So too is the way in which the internet has transformed the economy.

Before commenting on the detailed proposals set out in the Discussion Paper, we think it is helpful to consider this background context in some detail.

An increasingly digital economy

The Commission has itself referred to the Oxford Economics study which found that the three business sectors that anticipated the most dramatic transformations over a five-year time frame were: IT and Technology; telecommunications; and entertainment, media and publishing.¹ These digital sectors are transforming the economy.

A recent study on the impact of the internet on the Australian economy estimated that the direct contribution of the internet to the Australian economy was worth approximately **\$50 billion** or 3.6 per cent of GDP in 2010. That is expected to increase by at least \$20 billion over the next five years to **\$70 billion**,² although the study authors suggest that this estimate may well turn out to be on the low side in light of the fact that it is currently impossible to predict the myriad applications that will be made possible by broadband connections (ibid p46). In our view, this growth rate can only increase as the rollout of the NBN progresses.

To put those figures into some context, the retail industry, and the education and training sector, each contribute \$53 billion to the economy. Agriculture and fishing contributes \$27 billion. The arts and recreation sector contributes \$10 billion.

Australian internet activity has almost doubled in the last four years (ibid p31). As more Australians have access to faster connection as the NBN is rolled out, that use can be expected to accelerate (ibid).

Use of social media is growing exponentially. In their annual *Predictions*, Deloitte suggested that in 2011 social networks will pass the milestone of 1 billion unique members globally this year.³ Increasingly, social media is being embraced by the business sector as an essential means of connecting with customers.

A new media ecology

The model of a professional media sector delivering content to passive consumers has been replaced by a model in which the lines between creation and consumption of content have been blurred. Content *creation* is no longer the sole preserve of a “media sector” – professionally produced content from traditional sources competes with user generated content shared via social networking sites, blogs, video and photo-sharing sites, and the comment sections of mainstream news sites. Content *consumption and engagement* is no longer a one way street – consumers are interactively engaged, responding to content, and in that process generating new content to be shared with others.

In their 2010 report, *The Adaptive Moment: A Fresh Approach to Convergent Media in Australia*, Associate Professor Kate Crawford and Professor Catharine Lumby describe this new media ecology:

¹ Oxford Economics, *The New Digital Economy: How it Will Transform Business* (2011), cited in the ALRC discussion paper, p 51

² The Connected Continent: How the internet is transforming the Australian economy, Deloitte Access Economics, August 2011 https://www.deloitteaccessseconomics.com.au/uploads/File/DAE_Google%20Report_FINAL_V3.pdf, p 2

³ Deloitte, *Technology, Media and Telecommunications Predictions 2011* http://www.deloitte.com/assets/Dcom-Australia/Local%20Assets/Documents/Industries/TMT/2011_TMT_Predictions_Australia_Web_FINAL.pdf

“...users are driving the public culture of the internet, evidenced in the growth of blogs, social media sites, video and photo sharing services, and within the comments structures of all mainstream news and discussion sites. This kind of everyday participation makes or breaks online communities and internet businesses, and it is an essential part of the contemporary media industry. This represents a significant disruption of previous media models, where the consumer received a finished product, at the end of an economic chain of production, to become an active player in a dynamic cycle of ever-changing content. Users determine where and whether a community will develop online, and how long it will last...

..Through their participation, [users] create normative language and behaviours, thus determining what will become the acceptable uses of an online space. Everything, from bonding and discussion, to fights, criticising and ‘trolling’, to creating content, downloading, and simply ‘listening’ to other users, create a current of activity that eventually shapes online engagement for other participants.⁴

The innovation that has emerged from the new ecology of content creation is really quite astounding.

New concepts of ‘community standards’

As the Discussion Paper recognises, in the context of media regulation, ‘community standards’ represent a set of principles that endeavour to ensure that public expectations about media content are met. These public standards may change over time or vary within different contexts.

In the case of the online world, we submit that these standards have become even more granular and varied according to the specific contexts and standards of online communities. As has been noted by Professors Crawford and Lumby, “social mores and community perceptions differ markedly across cities, rural and regional areas and ethnic and religious groups” (ibid p47). As the internet becomes populated by more and more diverse communities of interest, traditional rationales for government regulation of content that is legal, but likely to be offensive to some, have less widespread relevance. As we discuss further below, online communities of interest are setting and enforcing their *own* community standards.

The importance of the Australian digital economy to policy considerations

The Government has identified the digital economy as being “essential to Australia’s productivity, global competitiveness and improved social well being”, and has set itself the goal of becoming one of the world’s leading digital economies by 2020.⁵ As outlined in the Government’s discussion paper as part of the development of the Cyber White Paper (*Connecting with Confidence: optimising Australia’s digital future*), this:

“... is an optimistic vision which views digital technologies driving productivity, innovation and integration across our economy: empowering citizens; increasing the reach of critical

⁴ The Adaptive Moment: A Fresh Approach to Convergent Media in Australia, <http://www.unsw.edu.au/images/pad/2011/May/Convergentmedia.pdf> p 43

⁵ National Digital Economy Strategy, p 12

services and reducing their costs; and connecting Australians to one another and to the world”.

A key part of a successful digital economy is ensuring that Australia’s online media, communications and creative sectors are thriving.

Recently, members of the internet and online games industries, including Google, ninemsn, Yahoo!7, AIMIA, the Games Developers’ Association of Australia and the Interactive Games and Entertainment Association got together to take a look at how advances in technology were creating new opportunities for Australian content creators now that the tools of content production and distribution are in their hands.

This led to an event, Creative Australia Online, at which innovative methods of Australian digital production, distribution and audience engagement were showcased. Some examples and case studies drawn from Creative Australia Online are at **Appendix 1**.

Google submits that the Classification Review is of *critical* importance to ensuring that the Australian innovation on display at events such as Creative Australia Online continues to occur. A regime that supports investment and innovation in the internet economy is essential if Australia is to take full advantage of the social and economic opportunities that the internet provides.

Google would like to see a classification regime which recognises the importance of the Government’s digital economy goals and recognises the importance of establishing Australia as a globally competitive and attractive place to establish an internet content business.

The ALRC’s eight guiding principles

Google is in broad agreement with the Commission’s eight guiding principles for reform:

- 1. Australians should be able to read, hear, see and participate in media of their choice*
- 2. Communications and media services available to Australians should broadly reflect community standards, while recognising a diversity of views, cultures and ideas in the community*
- 3. Children should be protected from material likely to harm or disturb them*
- 4. Consumers should be provided with information about media content in a timely and clear manner, and with a responsive and effective means of addressing their concerns, including through complaints*
- 5. The classification regulatory framework needs to be responsive to technological change and adaptive to new technologies, platforms and services*

6. *The classification regulatory framework should not impede competition and innovation, and not disadvantage Australian media content and service providers in international markets*

7. *Classification regulation should be kept to the minimum needed to achieve a clear public purpose, and should be clear in its scope and application*

8. *Classification regulation should be focused upon content rather than platform or means of delivery*

Google submits that each of these Guiding Principles *can* be given effect to in the online environment, but they may need to be implemented in non-traditional ways. Achieving this in the context of user generated content and other online content platforms will only be possible by fully recognising the technical and practical realities of the converged media landscape that render traditional approaches to content regulation inappropriate for the online world.

We note in relation to Guiding Principle Eight, that we agree in principle that there is much to be said for the principle that all content that is alike should be addressed on a technology-neutral basis, however there may be technical or practical reasons why this can be unworkable in practice. As described below, there are technical challenges created by the volume of content being shared and consumed online and hence great care must be taken when considering notions of regulatory parity.

The guiding principles in context – online content platforms

In assessing how the guiding principles should be applied to online content platforms (OCPs) such as YouTube, Blogger, Picasa and similar services, Google submits it is critical that 5 key aspects of OCPs are recognised:

1. OCPs are global in nature

An important feature of the new landscape relevant to any consideration of content regulation is the emergence of globalised OCPs, such as Facebook, Twitter, YouTube, Wikipedia and Flickr. These platforms differ from traditional media platforms in that they are global in nature - they are providing services to users in many countries, at scale.

Consistent with their global nature, OCPs are developed, managed and hosted from diverse locations around the world. In this context, Guiding Principle Six is very important (the classification regulatory framework should not impede competition and innovation, and not disadvantage Australian media content and service providers in international markets).

The classification regulatory framework has the capacity to make Australia a more (or less) attractive place for investment and innovation. It is a necessary part of any business case analysis for a company contemplating establishing services in Australia (whether as a start up

deciding whether to commence operations or an established company deciding whether to expand operations) to evaluate the regulatory framework. An unworkable or overly burdensome classification framework would potentially make a country a less attractive place to set up business.

2. *The role of the OCP*

OCPs differ fundamentally from traditional content distributors and publishers such as television, radio or cinema. They host content that is uploaded by others, and play a minimal, if any, editorial or curatorial role in relation to the uploaded content hosted on the OCP.

An OCP does not know the nature or type of content that will be uploaded to the site prior to it being uploaded. For example, a YouTube user can create a video in his or her house, edit it on a home computer or smart phone, and upload that video to YouTube. There is no technical or procedural way for YouTube to know that the user is creating that video, or know the nature of the video being created (ie, whether it will be suitable for children or adults). YouTube or any other similar OCP would only know of the existence or content of a video if another site user ‘flags’ or reports that video as being inappropriate or otherwise in breach of YouTube’s community guidelines (or if YouTube receives notification from, for example, a law enforcement agency). Similar practical considerations apply to all OCPs, whether they are other Google platforms such as Google +, Blogger or Picasa, or other sites such as Facebook, Twitter or Wikipedia.

3. *The volume of content on OCPs*

The practical issues highlighted above are exacerbated by the sheer volume of content uploaded to OCPs. For example:

- there are 48 hours of video uploaded to YouTube every minute. That’s *double* what is was last year.⁶
- there are 1 billion tweets sent by Twitter users every week.⁷
- Facebook has more than 800 million active users.⁸
- Flickr members upload more than 3500 images per minute and Flickr now contains more than 6 billion images.⁹

The volume of content hosted on these platforms fundamentally alters the way that policy makers must think about regulatory frameworks for content. Shaping what was broadcast and when, how and by whom, was relatively simple in a world with a defined, limited number of television channels. The converged world makes this exponentially more difficult and in some cases, technically impossible or impracticable. With 48 hours of content being uploaded to YouTube every minute, more than 250 million photos being uploaded on Facebook on average each day, and similar issues of scale for other similar platforms, there is

⁶ http://www.youtube.com/t/press_statistics

⁷ <http://blog.twitter.com/2011/03/numbers.html>

⁸ <https://www.facebook.com/press/info.php?statistics>

⁹ <http://www.searchenginejournal.com/the-growth-of-social-media-an-infographic/32788/>

simply no practical way of scrutinising content unless and until the content platform is notified.

Crawford and Lumby sum up this reality when they note that nations face challenges in enforcement due to the sheer volume of online user-generated content:

The amount of material generated and viewed – some of it ephemeral – is clearly beyond the capacity of any national or international regulatory body to monitor and regulate in real-time. In practical terms, there are simply not enough people with hours in the day to monitor and flag the sheer volume of content created by users on a daily basis.¹⁰

Google submits that it is imperative that any new content regime have regard to the limitations described above.

4. *How users interact with OCPs*

Individuals play an active role in how they interact with content on OCPs. Users are actively choosing content to consume, creating content, commenting on content and reporting content that they believe is inappropriate. Australians are now much more in control of the content they consume and have been given the tools to create, edit, mash-up, distribute, share and comment upon content like never before.

Further, in the internet environment, online communities set, refine and enforce their own community standards. If content is made available that is considered to be unacceptable or offensive, users will protest and remedial action can be taken very quickly. Online businesses risk their livelihood if inappropriate content is repeatedly published as audiences and advertisers will quickly switch to other content sources.

5. *Community expectations of OCPs*

Google submits that no case for government regulation of online content has been made. Recent research by the ACMA suggests that Australian internet users agree.

The recently released report by the ACMA, *Digital Australians: expectations about media content in a converging media environment*, found that Australian internet users:

- do not expect online content (and in particular user-generated content) to attract the same regulatory treatment as professionally produced content;
- consider that “community standards” applying to user-generated content should be set by those who consume the content;
- acknowledge the futility of any attempt to regulate online content; and

¹⁰ The Adaptive Moment, p 44

- feel very strongly that government restriction of online content would be “suppressive”.¹¹

These findings are consistent with the view expressed in the Discussion Paper that “although some have called for the classification of everything, there appears to be only a very limited community expectation that ... websites and other online content be formally classified”.¹²

The ACMA also reported:

In contrast to expectations about professional content, participants did not see user generated content as something that should, or could, be regulated. Participants recognised that the internet is a tool for individuals to express themselves and their view. It also provides people with a vast array of choices about where to source information and is a means by which to educate people. Respondents felt very strongly about this. They considered that placing limitations on what can be accessed on the internet would be suppressive and did not accord with Australian culture (ibid).

While some respondents voiced concerns about children being exposed to content containing violence, the ACMA reported that:

...in practice, all participants recognised that a classification and ratings system for user-generated content would logistically not be possible, given the sheer amount of this type of content that is available online...Participants also recognised that it would be impossible to police or enforce classification or ratings systems among site providers ...
Ultimately, any sense of community standards applying to user-generated content was driven by those who consumed that content. People considered it was up to them to censor or regulate any content they were not happy with, either by not visiting the site or by complaining about it to the site owner or administrator. (Ibid pp55-56)
[Emphasis added]

The ACMA research also found that parents *accepted* that they should take responsibility and act as the regulator of their own children’s internet use:

Many said they were able to achieve this by using a number of tools or mechanisms. First, they felt that educating themselves and ensuring their children were educated about the possible dangers of online content helped them to manage usage. Parents talked about trying to keep up to date with developments. However, it was evident that not all parents were finding it easy to keep up with the rapid changes or knew what to look out for. Second, parents recognised that actually monitoring their children’s use, while not always possible, was still one of the most effective means of regulating usage. Third, they accepted that there is hard and soft infrastructure that helps them to regulate access. For example, only allowing their children to have a standard

¹¹ Digital Australians: expectations about media content in a converging media environment, the ACMA, October 2011, http://www.acma.gov.au/webwr/assets/main/lib410130/digital_australians-complete.pdf p 55

¹² Discussion Paper, para 6.54

mobile phone, instead of a smartphone, is one way to limit access to content. They also talked about having a limited download amount and content filters to their internet at home. Some also used the parental lock function that is available on some digital televisions. (Ibid p56)

These findings are in line with the findings of Crawford and Lumby to which we have already referred. They highlight the centrally important role that internet **users** are playing in setting and enforcing community standards online, and of industry working together with users to provide the tools for this self-regulation to occur and to promote digital literacy.

The guiding principles are being implemented online

In relation to Guiding Principle One, Google notes that through the internet and OCPs, Australians have access to a broad range of content. The internet is a platform for an incredibly diverse array of cultural, entertainment, news, educational and general informational content.

Most Australians are taking up the opportunity to access this content. Research by the ACMA found that “nearly 15.1 million (83 per cent) persons aged 14 years and over went online during the December quarter of 2010” and “on average, 18.8 gigabytes of data was downloaded per internet subscriber in Australia during the December quarter of 2010” (ACMA research report: The internet service market and Australians in the online environment, July 2011, http://www.acma.gov.au/WEB/STANDARD/pc=PC_410069).

Further, as described above, Australians are embracing the opportunities that OCPs provide to create content and engage with online communities of interest.

In relation to Guiding Principles Two, Three and Four, OCPs are taking many steps to ensure consumer concerns regarding online content are being addressed. Quite apart from a desire to be “good corporate citizens”, internet companies have strong commercial incentives to respond to user concerns regarding content standards. In order for a service to be successful, users must feel comfortable using the service. Providers want their brand associated with comfort, safety and security. Ultimately, it is imperative to a provider’s bottom line to get this right. Otherwise, users will switch to a different service. This is most true in the highly competitive world of the web, where an alternative is just a click away.

As Crawford and Lumby have observed:

Large private companies engaged in platform or search engine provision in the online space ...have to be aware of managing their brands in relation to user communities and perceptions of how flexibly and transparently they support the needs and views of those communities. ...

How responsively and responsibly internet companies listen to user concerns and incorporate them into their own development and governance may underpin the success of business models in the convergent media environment in the future.¹³

We have set out at **Appendix 2** the policies and processes adopted by Google to give effect to the guiding principles. These include:

- Clear policies regarding what content is and is not acceptable, eg the YouTube Community Guidelines.
- Tools that provide users with simple and effective ways to report any content that breaches community standards or guidelines, or otherwise causes concern to site users, eg the YouTube flag system.
- Tools that enable parents to determine what level of content they wish their children to be exposed to on YouTube and the Android Market online app/game store.
- Educational initiatives such as YouTube Safety Centre and our partnership with The Alannah and Madeline Foundation's eSmart Schools program (www.amf.org.au/esmart).

The role of self-regulation

In considering what role Government should play in the regulation of online content, we urge the Commission to have regard to the Government's *Office of Best Practice Regulation* handbook, published by the Office of Regulation Review (ORR), which sets out the best practice process for policy design and evaluating between competing regulatory approaches. This requires consideration of at least the following questions:

- Has a case for regulation of the internet been made out? What clear public purpose is sought to be achieved?
- Is this purpose *already* being achieved without regulation? (by user-regulation, industry self-regulation, market-based mechanisms etc)? If so, is the best approach to "take no action"?
- If not, how can the purpose be achieved with the *least* amount of government intervention; i.e. what policy levers apart from government regulation are available to achieve the desired policy outcomes?
- Are there any technical or other obstacles that make it likely that a particular mode of regulation is likely to be *ineffective*, thus imposing costs on industry with no public benefit?

Google submits that applying the ORR principles to the online environment as outlined in this submission suggests that at this time, a case has not been made out for government regulation of the internet and that self-regulation is the most efficient and effective approach in the current environment.

Self-regulation could take the following forms:

¹³ The Adaptive Moment, p42

- Voluntary industry codes of conduct that recognise and acknowledge the various ways in which *different* internet companies are addressing consumer concerns regarding content (consistent with Proposal 6-8); or
- Voluntary company-based codes of conduct, that set out the ways in which a *particular* internet company is addressing these concerns (consistent with Proposal 6-8 and potentially Proposal 7-5).

Google acknowledges that there are some circumstances where government intervention is appropriate and required, for example addressing the distribution of child abuse imagery via policing initiatives and the criminal law. However, for other types of content which is not illegal but may be contrary to *some* community standards, we submit that for online content, such as that uploaded to OCPs, self regulation is effective and in many (if not most) circumstances, more efficient than regulation.

Google submits that self-regulation in the form outlined above has at least the following advantages over Government regulation:

- Self-regulation is line with consumer expectations regarding online content, as set out in the ACMA's recent study on expectations about media content in a converged media environment. The ACMA research found that consumers consider that "community standards" applying to user-generated content should be set by those who consume the content, and that they feel very strongly that government restriction of online content would be "suppressive".¹⁴
- Self-regulation is the most effective means of giving effect to Guiding Principles Five and Six (ie ensuring that any regulatory framework is responsive to technological change, and does not impede competition and innovation, nor disadvantage Australian media content and service providers in international markets). A self-regulated industry is best placed to respond rapidly to technological change, tailoring content reporting and rating tools as new services and platforms emerge. Further Government regulation of Australian based online businesses would further entrench existing competitive distortions between local and offshore content hosts, making Australia less attractive to foreign investment and undermining the Government's National Digital Economy Strategy objectives.
- Self-regulation is the only *practical* means of addressing concerns regarding online content. Mandatory pre-classification and age verification is simply unworkable online. Industry-based approaches that empower users to set and enforce their own community standards, and industry responding quickly to notifications from users regarding offensive content, are working effectively to achieve the desired policy goals.

Comments in relation to specific proposals in the Discussion Paper

We are pleased to see that the Discussion Paper acknowledges the practical limitations on online content platforms pre-classifying online content.¹⁵ However, we are concerned that the

¹⁴ Digital Australians: expectations about media content in a converging media environment, the ACMA, October 2011, http://www.acma.gov.au/webwr/assets/main/lib410130/digital_australians-complete.pdf p 55

¹⁵ Discussion paper, paras 6.9 to 6.12

Commission has put forward proposals that appear not to have full regard to these practical limitations, and that may result in unworkable classification and labelling obligations being imposed on internet platforms.

Google wishes to address eight specific proposals contained in the Discussion Paper that would pose particular difficulties for online content platforms:

1. *Proposed definition of media content*

The Commission has proposed that the new classification regime would apply to “media content”.¹⁶ It appears that the definition of “media content” is intended to include user generated content. Google submits that proposals in the Discussion Paper to impose classification obligations on a platform hosting user generated content are impractical, in part because online content platforms have no way of knowing what has been uploaded unless and until they are notified by a user. As we discussed above, recent research undertaken by the ACMA suggests that consumers agree with this, and do not expect user generated content to be subject to regulation.¹⁷

2. *Classification obligations on the ‘content provider’*

The Commission has proposed that obligations to classify content will rest with the “content provider”.¹⁸ It is not clear whether the Commission intends that internet platforms be treated as “content providers”, or whether these obligations are intended to apply only to the person who has uploaded content. If the former, then Google submits that the proposal is impractical for the reasons we have outlined above. We would also be concerned, however, to see local content creators being placed at a competitive disadvantage to overseas competitors who would not be subject to the same burden. As the Commission has itself noted at para 6.13 of the Discussion Paper, sole traders and small-to-medium enterprises “form the backbone of the emergent digital media content sector”, and excessive regulation may be particularly disadvantageous to these smaller players in a way likely to undermine Guiding Principle 6.

3. *Age verification*

Google is pleased to see that the Commission has recommended against mandatory access restrictions on media content classified, or likely to be classified, MA15+.¹⁹ We agree with the Commission that legal access restrictions for this kind of content are near impossible to enforce and are widely seen as ineffective. We also note that recent research has found that government regulation that results in social media sites seeking to impose age-based restrictions on users is not only ineffective, but is having the unintended consequence of undermining parental efforts to protect their children online. A recent US study reported:

¹⁶ Discussion Paper, para 5.34

¹⁷ Digital Australians: expectations about media content in a converging media environment, the ACMA, October 2011, http://www.acma.gov.au/webwr/assets/main/lib410130/digital_australians-complete.pdf p 55

¹⁸ Discussion Paper, para 5.34

¹⁹ Proposal 8-3

Facebook, like many communication services and social media sites, uses its Terms of Service (ToS) to forbid children under the age of 13 from creating an account. Such prohibitions are not uncommon in response to the Children's Online Privacy Protection Act (COPPA), which seeks to empower parents by requiring commercial Web site operators to obtain parental consent before collecting data from children under 13. Given economic costs, social concerns, and technical issues, most general-purpose sites opt to restrict underage access through their ToS. Yet in spite of such restrictions, research suggests that millions of underage users circumvent this rule and sign up for accounts on Facebook. Given strong evidence of parental concern about children's online activity, this raises questions of whether or not parents understand ToS restrictions for children, how they view children's practices of circumventing age restrictions, and how they feel about children's access being regulated. In this paper, we provide survey data that show that many parents know that their underage children are on Facebook in violation of the site's restrictions and that they are often complicit in helping their children join the site. Our data suggest that, by creating a context in which companies choose to restrict access to children, COPPA inadvertently undermines parents' ability to make choices and protect their children's data. Our data have significant implications for policy-makers, particularly in light of ongoing discussions surrounding COPPA and other age-based privacy laws.²⁰

Google remains concerned, however, by the proposed age-based restrictions on adult content.²¹ As the Commission itself has acknowledged, verifying the age of users of online platforms, many of which operate globally and on a massive scale, in a robust manner is very difficult to accomplish. In any event, it could impact on people's privacy to require a person to enter driver's licence details or equivalent to view online content. We have provided more detail on the difficulties associated with age verification at **Appendix 2** to our submission.

4. *Content required to be classified*

The Commission has proposed that media content that falls within one of the following categories should be required to be classified:

- feature length films produced on a commercial basis
- television programs (other than news or other exempt content) produced on a commercial basis
- a computer games produced on a commercial basis and likely to be MA15+ or higher
- content likely to be X18+
- content that may be RC

Google submits that this proposal is problematic for several reasons:

²⁰ Why parents help their children lie to Facebook about age: Unintended consequences of the 'Children's Online Privacy Protection Act' by Danah boyd, Eszter Hargittai, Jason Schultz, and John Palfrey. *First Monday*, Volume 16, Number 11 - 7 November 2011
<http://www.uic.edu/htbin/cgiwrap/bin/ojs/index.php/fm/article/viewArticle/3850/3075>

²¹ Proposals 8-1 and 8-2

The concepts of “feature length film” and “television program” each appear intended to apply to content that has traditionally been consumed offline. As more made-for-internet content is created, these concepts are likely to become contested, and may be found to include a much broader range of content than was intended.

Similarly, the concept of content that has been produced on a “commercial basis” is likely to become contested in a converged media landscape where the lines between content creation and consumption are increasingly blurring.

As we’ve already discussed, in light of the volume of online content, content platforms have no practical means of determining whether content is or is likely to be MA15+, X18+ or RC in advance of the content being uploaded. Any obligation imposed on the online content platform, assuming they were a “content provider”, to pre-classify content would be completely impractical. The only *feasible* approach to regulating this content is for content platforms to rely on users to notify them of content that may fall foul of the site’s standards in order that this content can be reviewed and removed if considered appropriate.

Although it is not feasible for online content platforms to *themselves* pre-classify content uploaded by users, these platforms do take their responsibility to provide a comfortable, safe and secure online environment seriously. To this end, Google has developed systems for managing content on its services. This is discussed further in Appendix 2, which includes an outline of the approach taken to content on YouTube, and on Android Market. In summary, Android Market requires app and game developers to include a rating for all apps and games that they upload onto Android Market in order that parents can determine and lock an appropriate level of content exposure on any Android device used by their children; and YouTube Safety Mode gives users the option of choosing not to see mature content that they or their children may find offensive, even though the content is not against the YouTube Community Guidelines.

5. *Authorised industry classifiers*

The Commission has proposed that some media content could be classified by “authorised industry classifiers” rather than the Classification Board. Under this proposal, an OCP would be required to arrange for an Australian accredited classifier to review and classify content that may have been uploaded by users anywhere in the world. Google submits that the global nature of OCPs – as well as the volume of content - makes this proposal highly impractical. In the case of YouTube and the Android Market, US-based online content platforms could be required to have an Australian accredited classifier classify content according to Australian classification guidelines that in many respects differ from the content ratings users in other countries would expect, and differ from the content ratings applied to the content by those who have uploaded it (as discussed at point 4 above and Appendix 2).

6. *Marking content*

These same concerns apply to the proposed obligation to mark content that is required to be classified.²² Much content – for example apps and games that can be downloaded from the Google-owned Android Market - is subject to ratings that enable parents and others to determine what content they wish to access or allow their children to access. This is discussed in more detail in Appendix 2. Importantly, though, these ratings are not applied by Google, they are applied by the person who uploads the content. They also apply globally, so while they tend to roughly approximate to the Australian content rating categories, there are differences.²³ Requiring specific markings therefore becomes problematic, whereas if the framework were to recognise *similar* systems for markings, the policy objective may be achieved in a workable way.

7. *Advertisements*

The Commission has also proposed that advertisements for content that must be classified “must be suitable for the audience likely to view the audience”.²⁴ It is not clear from the Discussion Paper whether the concept of an advertisement for content is intended to be confined to an advertisement that expressly refers to, promotes etc the content, or rather includes ads shown alongside content, such as those that are generated when a user watches a YouTube video. If the latter is intended, Google submits that the proposal is unworkable for the reasons already discussed; ie there is no way of determining in advance what advertisement will appear in connection with any particular video.

8. *Refused Classification category*

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

Recent evidence suggests that most people agree in principle with the right to free expression on the internet. For example, a recent global survey found that 4 out of 5 Australian adults considered internet access to be a fundamental right, with more than half (53%) considering that the internet should never be regulated by governments.²⁵ In this context, the challenge for policy makers comes in balancing this right with the need to provide protection to citizens in appropriate circumstances. Nowhere is that challenge greater than on the web, where

²² Proposal 8-5

²³ See below for a more detailed discussion in the context of the rating system used in the Android Market

²⁴ Proposal 8-6

²⁵ http://news.bbc.co.uk/2/shared/bsp/hi/pdfs/08_03_10_BBC_internet_poll.pdf

blogs, social networks and video sharing sites allow people to express themselves - to speak and be heard - as never before.

Google acknowledges that government intervention is appropriate when it comes to the prevention of child abuse material, primarily through direct law enforcement action and by working cooperatively with industry and governments in other jurisdictions to eradicate this material. Google agrees that there is an in-principle justification for government prohibition of this kind of material (subject to an effective safe harbour for network and platform providers). Google has a global all-product ban on child pornography, which is illegal in almost every country.

When it comes to a broader scope material, some of which may be politically or socially controversial, and which may not be illegal in comparable countries, Google submits that government prohibition is inappropriate and unworkable, particularly in a converged media environment where users have greater freedom than ever before to play an active role in determining what kinds of content they wish to access and have their children access, through parental control tools such as YouTube Safety Mode.

Google urges the ALRC to take this opportunity to recommend a regulatory regime that will bring Australian content regulation in line with that in other western liberal democracies.

Conclusion

In conclusion, Google submits that any new classification regime must have regard to the technical and practical realities of a converged media landscape. As we hope to have illustrated, we think that each of the ALRC Guiding Principles *can* be and *is being* given effect to in the online environment, notwithstanding that this is happening in non-traditional ways.

Finally, we urge the Commission to have regard to the importance of this review to the Government's digital economy goals. Google would like to see a classification regime which recognises the importance of establishing Australia as a globally competitive and attractive place to establish an internet content business.

We would be pleased to discuss these comments with you further.

Kind regards

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Appendix 1: Creative Australia Online

In September 2011, a range of companies sponsored Creative Australia Online, a showcase of exciting Australian content across digital platforms. The showcase highlighted the innovative methods of production, distribution and audience engagement that are finding contemporary success.

Presenters such as the creators of *Beached* Az, the Sydney Opera House, YouTube, Aussie games developers, and the interactive news teams at ninemsn and Yahoo!7 demonstrated how the internet offers Australians unprecedented opportunity to produce and distribute content. Presentations and hands on demonstrations showed how advances in technology mean that content production is widely accessible. Australians are creating content that reflects our culture, reaching audiences at home and abroad.

More information about Creative Australia Online is available at <http://google-au.blogspot.com/2011/09/creative-australia-is-online.html>. A ‘highlights reel’ of the presentations is also available.²⁶

Some examples of Australian content creators enjoying local and international success online highlighted at Creative Australia Online included:

Users engaging in co-productions with “professional” content makers to tell Australian stories: Map My Summer

A recent collaboration between Screen Australia and YouTube – Map My Summer – invited users to upload videos (anything from mobile phone footage to a short file) to web portal that celebrated the collective Australian summer experience. The project involved legendary filmmaker George Miller selecting an upcoming local filmmaker, Amy Gebhardt, to create a short film based on the footage uploaded by users onto the Map My Summer web portal.²⁷ This collaboration between “professional” content creators and users resulted in an entirely new cultural genre. The film was a chronicle of an Australian summer, as told by those who lived it.

Australian content creators using the internet in conjunction with traditional cinema release to promote and distribute their content: The Tunnel

*In May 2011, a group of Sydney filmmakers partnered with BitTorrent to promote and distribute their film, *The Tunnel*, through the US software-maker’s internet platforms after a more conventional cinema release.²⁸ The film won the award for Best Use Of Social Media, Viral Or Word of Mouth at the 17th Annual Australian Interactive Media Industry Association awards, and was nominated for the Cross Platform Interactive award at the 2010 Australian Directors’ Guild awards.*

²⁶ <http://www.youtube.com/watch?v=9vQXfOdG3mQ&feature=related>

²⁷ <http://www.youtube.com/watch?v=ZBxvJ8AcAiQ>

²⁸ <http://www.smh.com.au/technology/technology-news/filmmakers-bet-on-bittorrent-for-a-hit-20110517-1eqdb.html#i>

Classical musicians from around the world are coming together via the internet:

YouTube Symphony Orchestra

The YouTube Symphony Orchestra is a recent example of the internet being used to break down barriers to inclusion - both on the part of musicians and on the part of audiences. In 2010, musicians from around the world were invited to post an audition on YouTube. A panel of international musical experts selected more than 300 finalists from 46 countries based on skill and technique. Nine orchestras around the world participated in the judging, including London Symphony Orchestra, Berliner Philharmoniker and Sydney Symphony. During a week of online voting in December, the YouTube community gave their input on the finalists. The 101 musicians who were finally selected to take part in the YTSO were flown to Sydney for a series of seven sold-out concerts at the Sydney Opera House. The event was also watched by millions of Australians (there were 2.42 million streams in Australia) and many more millions of oversea viewers (there were 33 million streams around the world) who were unable to attend in person. The internet was not only integral to the delivery and consumption of this cultural event, but also to its creation.

The internet changing the way that news is gathered and told: ninemsn and Yahoo!7

Shaun Davies from ninemsn and Samantha Yorke from Yahoo!7 discussed the way in which the internet is changing both the creation and consumption of news media by blurring the distinction between audience and creator “and transforming the idea of an Australian story”. Ninemsn is working on the creation of a tool that will automatically deliver the mass of user content that it receives via email, Facebook etc into a content management system so that it can fact checked and edited for style, and then “push-published straight up onto the web”. See a video of the Davies/Yorke presentation [here](http://www.youtube.com/watch?v=eoTBRgQMFLU) (<http://www.youtube.com/watch?v=eoTBRgQMFLU>).

Innovation in the development of online games

Tony Reed from the Games Developers Association, Shainiel Deo from Halbrick Studios (creators of Fruit Ninja online game); John Passfield from 3 Blokes Studios (creators of Hospital Town); and Robert Connolly (director of Romulus my Father), discussed the innovation that is occurring in the digital game space. See a video of their presentation [here](http://www.youtube.com/watch?v=ZMZ9HE1LQgQ) (<http://www.youtube.com/watch?v=ZMZ9HE1LQgQ>).

Viral success leads to commercial success

Young Australian animators Jarod Green, Nick Boshier and Anthony McFarlane, discussed the way in which a YouTube video that went viral led to their highly successful online cartoon series Beached Az. You can see a video of their presentation [here](http://www.youtube.com/watch?v=NQTTAVvOFuE) (<http://www.youtube.com/watch?v=NQTTAVvOFuE>).

Arts companies and the internet

Traditional arts companies are also looking to use the internet to increase audience reach and/or access new income streams. For example, the Sydney Opera House is expanding its engagement with people around the world. You can hear about their digital strategy in [this video](http://www.youtube.com/watch?v=7CJhbK3DXZg) of their presentation at Creative Australia Online (<http://www.youtube.com/watch?v=7CJhbK3DXZg> at 3.55).

Appendix 2 – How is Google giving effect to the ALRC’s guiding principles?

YOUTUBE

Clear Policies regarding what content is and is not acceptable

All users of YouTube must abide by the terms of use and the [YouTube Community Guidelines](#) before uploading videos. The YouTube Community Guidelines are written in easy-to-understand language and are designed to provide users with clear rules on what content is acceptable and what is not. Unacceptable content includes pornography or sexually explicit content, graphic or gratuitous violence and videos showing someone being harassed.

A person who is found to have breached the YouTube Community Guidelines is issued with a warning. If a person breaches the guidelines three times, their account is deleted. The deletion of an account results in the removal of every video and comment uploaded to the site by that user.

Notice and takedown

While pre-classification of content is not practical for the reasons discussed, all major social media sites and user generated content platforms, including YouTube, offer simple and effective ways for users to report any content that breaches community standards or guidelines, or otherwise causes concern to site users.

The YouTube flag system

The YouTube flag system is a collaboration between industry and users that empowers users to report harmful content, or content that violates the norms of their particular user community. YouTube is able to respond quickly and take action where appropriate. The system operates as follows:

- YouTube users click a flag button to report a video which they consider to be inappropriate.²⁹ Flagged videos are routed into queues, awaiting manual review. There is a specialist review team working 24/7. The queues are ‘smart’ queues. Videos are prioritised for manual review depending on a number of things, including the reason given for flagging (sexual content is more likely to be fast tracked) and how many flags per view the video has received.
- Once a video reaches manual review it is looked at by a trained, specialist team. Team members are able to collaborate and escalate difficult decisions to a higher tier and for cross-functional input if appropriate.
- A decision is made whether or not to take the video down, or age restrict it. Action is generally taken within one hour of the video being flagged.

²⁹ <http://www.google.com/support/youtube/bin/answer.py?answer=95403>

- In addition, YouTube has developed digital hashing technologies – essentially a “fingerprinting” technology – to prevent the re-upload of files that have been removed, and is continually developing tools to promote this goal.

Internationally, self-regulatory initiatives such as the European Union Safer Social Networking Principles outline these proactive notice and takedown initiatives.³⁰

User controls

Content platforms are empowering users with tools that enable them to exercise informed choices about the content accessed via internet sites. Again, while it is not feasible for online content platforms to *themselves* pre-classify content uploaded by users, they do employ tools which are used by those uploading content to apply a rating to the content, thereby enabling users, including parents, to choose content based on those ratings.

YouTube Safety Mode

YouTube Safety Mode is a tool that operates at the family level. Parents are empowered to determine what content they wish their children to be exposed to. It is easy to set up - a user or parent simply needs to click ‘Safety Mode’ at the bottom of every page to open the preference setting. By switching on this tool, users have the option of choosing not to see mature content that they or their children may find offensive, even though the content is not against the YouTube Community Guidelines. An example of this type of content might be a newsworthy video that contains graphic violence such as a political protest or war coverage.

Videos that have been age restricted will not show up in video search, related videos, playlists, shows and movies. A demonstration of YouTube Safety Mode is available at <http://www.youtube.com/watch?v=gkI3e0P3S5E>

ANDROID

Android Market

The Google-owned Android Market is an online app and game store for Android OS devices. App and game developers have uploaded more than 200,000 apps to the Android Market. More than 4.5 billion apps have been downloaded by users.

Android Market requires app and game developers to include a rating for all apps and games that they upload onto Android Market. Apps are rated according to four content rating levels: Everyone, Low Maturity, Medium Maturity, High Maturity.

Users are empowered with the option to choose suitable levels of content through parental controls on apps that can be downloaded from Android Market. Parents can use a PIN to determine and lock an appropriate level of content exposure on any Android device used by their children.

³⁰ http://ec.europa.eu/information_society/activities/social_networking/docs/sn_principles.pdf

While no filter is 100% accurate, and the rating system is no replacement for parental engagement, this system is designed to give users greater control over the content their families come across.

Users can also flag an app for review by the Android team. The Android team reviews the flagged app according to the Android Market content policies, which prohibit certain kinds of content, including sexually explicit material. This flag system operates in the same way as the YouTube flag system discussed above.

EDUCATION

Another key plank of our approach is education: ensuring that users - including parents and children - acquire the digital literacy skills that enable them to navigate the internet safely.

We have a dedicated Google Family Safety Centre (www.google.com.au/familysafety) which contains tips from Google parents and advice from Google partners, as well as information about Google Safety Tools such as Google SafeSearch.

Also, the [YouTube Safety Center](#) contains tips from local Google partners, as well as information about Google Safety Tools such as the YouTube community flagging system. Our local partners who have contributed content to the Centre include the ACMA, the Australian Federal Police, Kids Helpline, Inspire Foundation and Bravehearts.

In addition, we support educational efforts to increase awareness about digital citizenship. In Australia we support non-profit organisations including The National Association for Prevention of Child Abuse and Neglect (NAPCAN), Inspire Foundation, The Alannah and Madeline Foundation, Kids Helpline, Bravehearts and Hector's World, to provide online public service announcements that promote access to resources about safety and other educational efforts. We actively support their efforts to raise awareness and educate people about digital citizenship. This includes our support for The Alannah and Madeline Foundation's eSmart Schools Program (www.amf.org.au/esmart).

Another education initiative is the Cybersafety Help Button.³¹ This is a joint initiative between industry and government arising out of the Consultative Working Group, which advises the government on cybersafety issues. The Help Button provides easy online access to cybersafety information and assistance available in Australia. It offers counselling, reporting and educational resources to assist young people deal with online risks including cyberbullying, unwanted contact, scams and fraud, and offensive or inappropriate material.

AGE VERIFICATION

As the Commission notes in its Discussion Paper, many responsible content providers, including YouTube, do impose age restrictions on certain content.

For example, YouTube imposes an age restriction on content that has been flagged by users and found by YouTube staff to be inappropriate for general viewing. When a video has been

³¹ http://www.dbcde.gov.au/online_safety_and_security/cybersafetyhelpbutton_download

age-restricted, a warning screen is displayed and only users who are signed in and 18 or older can watch it. In order to reduce the chances of users accidentally stumbling across these videos, they are excluded from certain sections of YouTube (e.g. pages like 'Most Viewed').

As to how the age restriction is enforced, YouTube relies on self declaration by the user. Upon creating a YouTube account, a user is asked to enter their age. There is no announcement of this on the front page so that people are not alerted to fact and the likelihood that someone might enter a false date of birth is not increased. The process described above is the industry standard.

The Commission has proposed that methods of restricting access to persons over 18 years could be dealt with in industry codes. Google submits that any obligation to restrict access that resulted in content platforms and websites being required to obtain documentary proof of age - such as licence details or credit card details - would be potentially problematic. Requiring users to provide personal information, such as licence or credit card details, has the potential to impact upon user's privacy. This is particularly the case where the personal information is being provided in circumstances where it is not required for any purpose other than age verification.

Also, recent US research has highlighted the way in which arming users - including parents and children - with information and tools to enable them to safely navigate the internet is likely to be far more effective in protecting children than regulations that result in content platforms seeking to restrict access based on age. This research found that far from protecting children online:

*Legislative efforts to increase minimum age requirements or strengthen age verification ... serve to position the government as "in loco parentis," thereby undermining parental rights and freedoms.*³²

Google submits that in light of the ease by which age restrictions can be overcome, the potential downside of imposing age verification obligations on content platforms far outweigh any potential benefit. We think a 'whole picture' approach - self-declared age restriction, user warnings, Community Guidelines, and tools such as the YouTube flagging system and the YouTube Safety Centre - are more likely to be effective in achieving the policy objective of assisting parents and protecting children.

³² Why parents help their children lie to Facebook about age: Unintended consequences of the 'Children's Online Privacy Protection Act'

by danah boyd, Eszter Hargittai, Jason Schultz, and John Palfrey.

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<http://www.uic.edu/htbin/cgiwrap/bin/ojs/index.php/fm/article/viewArticle/3850/3075>
