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By email: info@alrc.gov.au

Professor Terry Flew
Commissioner
Australian Law Reform Commission
Level 40, MLC Centre
19 Martin Place
Sydney NSW 2000

Dear Professor Flew,

National Classification Scheme Review

I refer to our meeting at the offices of the Australian Law Reform Commission on 25 November 2011.

During that meeting, we discussed the Internet Industry Association (***IIA***) position in relation to the National Classification Scheme Review Discussion Paper issued in September 2011 (***Discussion Paper***). Further to that meeting, you asked whether the IIA might be able to confirm its position regarding what it sees as the major issues with the existing scheme and the proposals in the Discussion Paper.

Accordingly, I confirm the IIA's views as follows:

- The current requirement that all content provided in Australia be classified by the Classification Board or an Australian trained classifier using the Australian classification symbols, is overly restrictive. In particular, in respect of online content, the IIA believes that the classification regime should accommodate and recognise overseas classifications of content. This might occur by, perhaps, requiring that the overseas classification be displayed with the content, with a notice clearly indicating the country where the classification was made. Consumers might then also be provided with a link to information regarding the meaning of the foreign classification or an industry approved interpretation of the foreign classification in terms of local standards. This approach would greatly enhance the ability of online providers to source and make available a wider range of content.

- The Restricted Access System declaration (***RAS***) is unworkable to the extent that it requires an online service provider to obtain evidence that a customer is 18 years or older before providing access to material that is rated R18+. In contrast, currently, under the IIA's industry code, use of a credit card is regarded as sufficient evidence that a customer is over 18 years of age. This is the case, notwithstanding that it is impossible for online service providers to know whether the card provided is a debit or a credit card and/or whether the person holding the card is in fact 18 years or older. Indeed, it would be prohibitively costly for a provider of an online service to obtain evidence of the age of each individual customer. Further, even if evidence of age were obtained, it would be difficult for the online service provider to verify the authenticity of such evidence or to ensure that the person in respect of whom evidence of age is provided, is in fact the

person watching the film. The impracticality of the evidence of age requirement is exacerbated by the fact that numerous mainstream films are classified R18+. Consequently, in our view, the requirements set out in the RAS should be replaced with a requirement that the provider publish a "click-through" acknowledgement that the viewer is 18 years or older.

- The IIA does not support the requirement that certain content, such as films and some video games, be classified only by the Classification Board or a substitute government agency. The IIA supports the existing regime to the extent that only commercial content providers are required to have trained classifiers and believes that where trained classifiers are available, they should be entitled to classify all forms of content.

- The IIA supports the existing complaints-based system for the enforcement of classification rules in relation to online content.

- The IIA supports the proposed use of industry codes to ensure that online customers have information about the nature of content that is on offer and an ability to obtain and deploy restricted access technologies if they wish.

- The IIA does not support the proposed creation of a single agency with the wide remit described in the Discussion Paper, to the extent that it would require content service providers to deal with both the Australian Communications & Media Authority (***ACMA***) and the new regulator. The existing arrangement under which the correctness of content classification is determined by the Classification Board while issues of regulatory compliance in relation to a range of matters are dealt with by ACMA is, in our view, preferable to a splitting of regulatory responsibility between ACMA and the new regulator.

Please note that some of our members have made their own submissions to the ALRC. This submission is not intended to replace the views of individual members.

We hope these comments are of assistance. Please do not hesitate to contact the writer if you have any questions or seek clarification of our comments.

Yours faithfully,
Internet Industry Association

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