

## Submission on the Communications Legislation Amendment (Content Services) Bill 2007 (Cth)

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### 1 Introduction

This submission is made by DMG Radio (Australia) Pty Ltd (“**DMG**”) in response to the invitation for submissions on the Communications Legislation Amendment (Content Services) Bill 2007 (Cth) (“**Bill**”) by the Senate Environment, Communications, Information Technology and the Arts Committee.

DMG is firmly of the opinion that, in order to survive in a time of rapid technological progress, it is crucial that the commercial radio industry take advantage of new technologies, including the internet and mobile phones. The Bill will have a profound impact on the commercial radio industry’s ability to make use of such technologies and to compete effectively in the future.

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### 2 Executive Summary

- DMG is supportive of the Bill’s objectives to respect community standards and establish measures to protect children from exposure to inappropriate content. Nonetheless, DMG has substantial concerns about the Bill and its potential detrimental effect on the competitive viability of the commercial radio industry.
- DMG believes that user-generated content should be exempted from the Bill, as commercial radio providers do not control that content and any requirement for them to pre-vet that content would take away from the industry its most significant and distinguishing factor, being its ability to communicate with its users in a fashion that is live and in “real time”.
- DMG is concerned about the impracticalities associated with the age verification requirements in the Bill and is also concerned that those requirements have the potential to significantly reduce the audience for commercial radio.
- The service cessation notice regime for live content service providers seems unduly harsh. DMG proposes a number of measures that would provide additional flexibility while still addressing the regulatory objective of ensuring that live content services do not provide prohibited content.
- The role of trained content assessors envisaged by the Bill does not fit well with the demands of commercial radio. DMG suggests that the

existing provisions be remodelled in favour of a “reasonable diligence defence” for live content service providers.

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## **3 Key issues**

### **3.1 Exception for user-generated content**

The lack of any exemption or other special treatment for user-generated content in the Bill is problematic. Commercial radio, more than other content industries, relies on a conversational connection with its audience, including through talk back radio, “requests” programs, competitions and other live and “real time” exchanges. With new technologies, this naturally extends to user forums and other user-generated internet and mobile content, including video content. Due to the extra difficulties involved in controlling and monitoring user-generated video content, it should be treated distinctly from content produced by commercial radio providers themselves. Commercial radio providers should not be held responsible for content they cannot control. It is true that traditional radio services are often subject to delay mechanisms and those mechanisms enable some audio content to be “dumped”. However, the classification of video content is a more complex process and requires more than just a simple audio filter. DMG believes that the benefits of new technologies, including the internet and mobile phones, will be denied to a large extent to the commercial radio industry, if video content cannot be live and in “real time”. The commercial radio industry will therefore be denied the opportunity to take advantage of new technologies in a manner that is consistent with the manner of delivery of its existing services. It would be unworkable for the commercial radio industry if its traditional audio services were live and in “real time” but its internet and mobile phone services could only be provided after pre-vetting. The services would not be consistent and, as a result, one could not feed onto or off the other. They would be forced to become separate and distinct services and could not be integrated. The same does not apply to television and other mainstream media that would still be able to take advantage of new technologies in a manner that is consistent with the manner of delivery of their existing services, even under the proposed rules contained in the Bill.

### **3.2 Age verification requirements**

DMG is concerned that the extension of the definition of “prohibited content” to include fee-based MA 15+ video content will have the practical effect of denying a significant proportion of our audience access to content to which they are entitled. Typical age verification technology relies on credit cards, which are not available for people under 18. DMG is not aware of any viable, widely used age verification system that specifically addresses those aged 15 to 17 years. This means there is a real chance that the 15 to 17 year old market will not be able to access content to which they should be permitted access.

Age verification mechanisms are also cumbersome and likely to discourage potential audience members from consuming the restricted content. This has the potential to severely undermine commercial radio’s ability to maintain its strong connection with the youth of Australia. DMG is further concerned that such age verification mechanisms might even result in people under 18

turning away from commercial radio altogether and instead looking to other less regulated multi media service providers for information and entertainment.

DMG in these circumstances contends that a representation by a user of its services that he or she is 15 or more, should be enough, so long as that representation is made through a positive action taken by the user (e.g. clicking on a box that states “I am 15 years of age or more”).

### **3.3 Service cessation notices for live content services**

The service cessation notice regime in the Bill for live content services is unnecessarily harsh. The commercial radio industry is heavily dependent on live, unscripted content. It is the very nature of radio and radio related content that it is live, not pre-recorded and has been since the industry’s inception. Any threats to the continued operation of live services therefore have a particularly strong impact on commercial radio providers. The Bill’s immediate leap to the issuing of service cessation notices, and the lack of guidance about how these notices are to operate, has the potential to undermine the commercial radio industry’s ability to make full use of the opportunities for development offered by the internet and mobile phones.

For instance, it is unclear whether a service cessation notice issued under clause 56 must be directed only at the offending aspect of the service or at the service in its entirety. This confusion arises in part because, unlike for take down notices and link-deletion notices, service cessation notices are directed at the live content service, rather than the prohibited content itself. While the undertakings scheme in clauses 57 and 58 provides some welcome flexibility, DMG notes that the decision as to whether to accept the undertaking from the service provider is ACMA’s, who may refuse.

Consequently, DMG suggests that:

- (a) the Bill should include a provision allowing ACMA to issue a formal warning to a live content service provider before issuing a service cessation notice, in the same way that ACMA issues formal warnings for breaches of industry standards in clause 96;
- (b) the Bill should make it clear that service cessation notices apply only to the offending part of the service; and
- (c) the Bill should provide that ACMA must accept undertakings offered by the provider if ACMA is satisfied that the undertakings address the conduct that is the subject of the notice.

### **3.4 Trained content assessors**

The treatment of trained content assessors in the proposed industry codes and standards poses difficulties for the commercial radio industry. Clause 81 of the Bill provides that a commercial content service provider must not provide live content unless a trained content assessor has given advice about whether the live content is likely to be of a kind that would be substantially likely to be classified MA 15+ or above.

This model does not fit well with the longstanding tradition of radio content that is live and in “real time”. Requiring a trained content assessor to give advice on every piece of live content to be generated, in particular by users themselves or by guests or other third parties, over which the radio provider has no control, is unduly burdensome from both an administrative and financial point of view.

DMG therefore proposes that, for live content services, rather than requiring a trained content assessor to give advice before the content goes to air, providers be subject to a “reasonable diligence” defence, as found in clause 52(4) (for hosting service providers) and clause 68(4) (for links service providers). This would allow radio stations to provide live video content as long as those stations have taken reasonable efforts to train those staff members responsible for inviting, aggregating and posting that video content to its websites and to mobile phones, and as long as those radio stations have taken reasonable efforts to set out for users, guests and other third parties the tests to be applied when providing video content to the radio stations for their websites or for mobile phones.