The Senate
Standing Committee on
Legal and Constitutional Affairs

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Inquiry into the Australian Film and Literature Classification Scheme

AMTA Submission

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1. Overview

1.1 The Australian Mobile Telecommunications Association (AMTA) is the peak industry body representing Australia's mobile telecommunications industry. Its mission is to promote an environmentally, socially and economically responsible, successful and sustainable mobile telecommunications industry in Australia, with members including the mobile Carriage Service Providers (CSPs), handset manufacturers, retail outlets, network equipment suppliers and other suppliers to the industry. For more details about AMTA, see http://www.amta.org.au.

1.2 AMTA welcomes the opportunity to make a submission to the Senate Standing Committee on Legal and Constitutional Affairs Inquiry into the Australian film and literature classification scheme.

1.3 AMTA's submission provides comment in relation to one of the terms of reference of the Inquiry, namely,

> **"(m) the effectiveness of the National Classification Scheme in dealing with new technologies and new media, including mobile phone applications, which have the capacity to deliver content to children, young people and adults;"**

1.4 Since the National Classification Scheme was last reviewed in 1991 the trend towards convergence and the emergence of new technologies is remarkable. Not only has new technology been developed, it has been widely adopted by consumers who are now able to access content using an increasingly varied number of devices, many of them mobile. Consumers with mobile devices now have access to mobile broadband, mobile television, and a plethora of mobile applications available in the market, as well as traditional computer games and premium mobile content services.

1.5 AMTA is of the opinion that while some content can now be accessed more readily in a converging and increasingly mobile environment, the regulations relating to content should remain focussed on the content itself, and not the means or technological platform used to access it. Content regulation must be platform neutral. It should make no difference which "screen" a consumer uses to view content, the regulation of that content must be equitably applied to each platform.

1.6 Similarly, AMTA prefers a policy framework that is based upon the principle of regulatory forbearance. In terms of Australia's classification scheme, the underlying policy has traditionally been to only regulate content where there was a perceived need to protect the public or maintain widely held public standards, or a demonstrated need to protect minors. For example, in Australia, the distribution of the vast majority of books and other publications is not actively regulated under the classification scheme. The scheme only regulates content and its distribution where there is a demonstrated need for such regulation.

1.7 AMTA therefore makes the argument in this submission that the vast majority of content available in the form of mobile applications does not warrant regulation by the national classification scheme. The vast majority of mobile applications are clearly and demonstrably "non-submittable" material.

1.8 AMTA also maintains that any regulation of content must clearly define roles and responsibilities for the production of content, delivery of content and provision of carriage services.

2. Regulatory Forbearance

2.1 AMTA strongly prefers a policy framework based on the principle of regulatory forbearance and an evidence based approach to regulation. Unless market failure can be both shown to exist and demonstrated to be enduring, regulatory forbearance should be the preferred approach of government.

2.2 As both government and industry recognised in the *2000 Convergence Review*[1], in a converging world there is risk that intervention that is premature or unjustified can have unintended and undesirable consequences.

> *"…one of the working assumptions identified for all convergence scenarios was a high level of structural uncertainty. The structural nature of convergence, and the unpredictable effects of countervailing trends, means that the progress and outcomes of convergence cannot be determined in advance. No-one knows how convergence will unfold, and navigating the structural transition is the major commercial and regulatory challenge.*
>
> *The relevant approach in this case is **regulatory forbearance**: 'Policy intervention is confined to identifiable, significant and persistent market failure to achieve desired national outcomes.'*

3. Platform Neutrality

3.1 The Classification scheme needs to be platform neutral in its application. That is, it should not matter which screen a consumer is using to view or interact with media and content, the same regulations, if any, should apply in a way that is transparent across platforms and industries. The current classification scheme was devised when there were clear and distinct boundaries between platforms, for example, broadcasting services and telecommunications services.

3.2 Convergence means that these boundaries are increasingly blurred to the consumer and it is imperative that industry has a level playing field upon which to deliver both content and carriage services to consumers. As consumers are already able to access the same content or media on various screens and across various platforms, regulations need to be consistent and equitable in their application to all delivery platforms.

[1] *Final Report of 2000 Convergence Review*, p47, tabled in Parliament 10 May 2000

3.3 Regulation that touches on content must also clearly define different and transparent levels of responsibility for the production of content, delivery of content and provision of carriage services.

4 Policy Parameters of Classification Scheme

4.1 AMTA notes that the Classification scheme has historically been used in Australia to regulate content only in areas where there has been a perceived need to either protect minors or the public more generally. The underlying policy of the scheme has been to make media and content freely available in most instances to Australians, but to protect children from potentially harmful media and material and to protect the whole community from material that is widely agreed to be unacceptable in Australia.

4.2 The areas that have thus been regulated under the classification scheme have historically included films, some publications and more recently computer games and some video content developed specifically for mobile phone premium services. The ACMA is also responsible for submitting online content for classification where and when appropriate.

4.2 The underlying principle of freedom of choice to view content is widely accepted in the Australian community and has been historically the basis for the classification scheme. AMTA suggests that this principle remain fundamental to the policy parameters or framework of any proposed changes to the classification scheme.

5 Mobiles and Classified Content

5.1 There is now a myriad of mobile applications available online in Australia and mobile applications and games are increasingly downloaded and used by Australian consumers. AMTA maintains the vast majority of mobile applications, including many games, consist of content that would not be considered “submittable” under the current Classification scheme.

5.2 Computer games sold in Australia have historically been subject to the classification scheme, but it is increasingly unclear how to distinguish between computer games as we have traditionally known them and the increasing number of available mobile applications or utility applications. The majority of mobile applications, even those that are games, do not tend to include content that would normally be considered “submittable” under the classification scheme. Yet it is hard to define a “game” that may cause concern from the many “games” that would not, such as a Sudoku application for a mobile. They both may be available for download to a mobile device.

5.3 In fact, the majority of mobile applications and games are available free or at very little cost to consumers. Further, most application developers are individual hobbyists or small enterprises who would not be able to bear the standard cost of classification.

5.4 Likewise, Australia with its small population is perceived as a small market to many application developers. Additional costs of regulation in this area would impact developers who would simply choose to avoid releasing applications in Australia.

5.5 Many mobile applications are increasingly used by businesses to improve productivity and efficiency. Many of these mobile applications are quite simple and inexpensive and yet they deliver substantial benefits in productivity. Limiting the development and release of mobile applications in Australia is not economically desirable. Mobile applications can be used to deliver tangible productivity benefits, for example, by enabling business resource and inventory management and real-time sales information updates. Businesses are better able to communicate with employees using various mobile applications now available. Clearly none of these types of mobile applications would require classification.

5.6 There are now hundreds of thousands of mobile applications available to the consumer through online stores. The providers of such online stores have already implemented their own guidelines and safeguards with respect to applications available in their stores. AMTA maintains that the vast majority of these applications are not “submittable” material in nature and that, in any case, the industry is successfully self-regulating in this market.

5.7 Computer games sold in Australia that are currently classified may be modified to allow them to be played on a mobile phone or similar handheld device. AMTA would argue that where the modifications are simply technical in nature and do not affect the content or substance of the game the same classification should automatically apply.

5.8 Consumers can also use their mobile phone or other mobile device to access content freely available on the internet. This is currently regulated by the ACMA, in that they are able to refer online content for classification. Mobile handsets can also be used to view television programs or films that can be legitimately downloaded from websites or accessed via applications specifically created for that purpose by the original broadcasters.

5.9 There is an industry code of practice that regulates access to content via mobile premium rate services. The code and explanatory material can be found on the ACMA's website.

6 Effectively dealing with new technologies and media

6.1 Against this background AMTA suggests some guidelines for policy parameters for effectively dealing with new technologies and media, including mobile phone applications.

6.2 The Classification scheme must be platform neutral in its application. For example, if the content has previously been classified for the purposes of one media or platform, for example, a TV program or computer game, then it should not have to be reclassified before it can be accessed via a different platform such as a website and viewed or played on a mobile. This principle should include content that is modified in

order to allow access via a different technology but where the content itself is not substantially modified.

6.3 Not all content is “submittable” and needs to be classified. Historically, Australia has only sought to classify or censor material that was deemed to be potentially harmful or unacceptable to the community. The vast majority of mobile applications, like the vast majority of printed publications sold in Australia today, consist of content that is quite acceptable to the community and in no way potentially harmful.

6.4 The classification scheme needs to be able to allow industry to identify “submittable” material across various technologies and in various forms, without placing regulatory burdens on the production and delivery of clearly “non-submittable” material.

7. Summary

7.1 Content is at the core of convergence and will attract significant industry investment as a key feature of Australia’s emerging digital economy. While AMTA fully recognises that classification of content is a longstanding and important part of the policy and regulatory environment for the media sector, there is also an important need to support an environment that promotes investment and innovation in content development.

7.2 For the classification scheme to deal effectively with new technologies and media, including mobile phone applications, AMTA is of the strong opinion that the scheme must adopt a platform neutral approach. Further, AMTA maintains that the vast majority of mobile applications are quite clearly and demonstrably “non-submittable” material. The classification scheme needs to allow for industry to identify “submittable” material across various technologies and in various forms, without placing regulatory burdens on the production and delivery of clearly “non-submittable” material.

7.3 AMTA is pleased to be able to provide this submission to the Senate Inquiry and willing to provide further comment as the Inquiry progresses. In the interim, please do not hesitate to contact