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Inquiry into the Classification (Publications, Films and Computer Games) Amendment (Classification Tools and Other Measures) Bill 2014

This submission responds to the invitation by the Legal and Constitutional Affairs Legislation Committee to provide comments on the *Classification (Publications, Films and Computer Games) Amendment (Classification Tools and Other Measures) Bill 2014* (Cth).

The submission is made by Bruce Baer Arnold and Dr Susan Priest. Both are Assistant Professors in the School of Law & Justice at the University of Canberra, and have published in peer-reviewed Australian and international journals on constitutional law, cybercrime, the content industries and communications law. The submission is independent of the University of Canberra.

Overall we endorse the Bill as a positive, responsible and forward-looking response that serves to –

- provide an appropriate balance between the need to provide effective protection for vulnerable people and reduction of regulatory burdens
- assist parents, guardians and other carers of vulnerable people, in particular minors
- recognise cultural and economic benefits associated with generation, dissemination and access to content
- disregard advocacy that confuses what is offensive to one person (or the person who has the loudest voice) with what is illegal or what is necessarily harmful
- respect both individual autonomy and the roles of the Australian, state and territory governments
- avoid regulatory solutions that will be readily subverted by some consumers or that disregard existing mechanisms under crimes, spam, consumer protection and other statutes.

It is axiomatic that Australian adults who are not subject to legal incapacity (for example imprisonment) should be free to consume film, video, music, text, still image and multimedia content that is not illegal. Individual autonomy – including scope for making mistakes and for heterodox tastes – is a fundamental aspect of the liberal democratic state, along with an expectation that people will take responsibility for their actions.

It is also axiomatic that parents, guardians and carers – categories that extend beyond adults who are concerned with children – should guide (and on occasion legitimately restrict) access by vulnerable people to particular content.

Choice is fundamental. Measures that assist informed choice by consumers (including minors, such as teenagers advising younger siblings) and for particular consumers are to be welcomed.

Given the preceding paragraphs we thus endorse a recognition that –

- Australia is a pluralist society in which there is diversity regarding particular values (including sexual expression/affinity, religion, politics and violence)
- a consistent and principled approach to content regulation is imperative (eg that regulation should not privilege commercial broadcasters over ‘new media’ such as stand-alone or networked computer games)
- claims by particular advocacy groups (in particular regarding the impact of particular media or content) are ahistorical or otherwise not substantiated
- the regulation of film, computer games and other media should be construed in conjunction with a principles-based approach to free speech, for example that espoused by the Australian Attorney-General
- the Australian multimedia (including computer games) sector is economically and culturally significant
- consumers exist within a global information infrastructure in which substantial content is accessed online from jurisdictions outside Australia and in which simplistic large-scale filtering mechanisms are ineffective
- the most effective ‘gatekeeper’ is often the consumer (including a consumer who is a minor, guided by a classification ‘advisory’) rather than a telecommunications provider, internet service provider or other content intermediary.

Substantial independent research indicates that as a society we should be wary of the harms associated with ‘cotton wool kids’. In other words, in addressing concerns regarding offensive and potentially harmful content we should be seeking to build both resilience and awareness. Part of growing up strong – and being able to assist peers and siblings – is being encouraged to cope with bruises and skinned knees, and to explore and take risks that are appropriate to that child’s age and support network. It also involves being equipped to recognise informal and formal indications that particular content (a website, video, text, game, etc) or person should be avoided.

Australian governments cannot comprehensively sanitise the internet; they can and should build resilience (which includes funding of the K12 education system rather than merely hotlines) and equip people through a more coherent advisory regime.

On that basis we make the following comments regarding enhancement of the *Classification (Publications, Films and Computer Games) Act 1995* (Cth):

enable certain content (including online and mobile device content) to be classified using classification tools

We endorse the development of a coherent and technologically-progressive regime that enables the principles-based classification of electronic content using classification tools.

We suggest that within three years the Government commission and publish an independent expert report on the use and effectiveness of those tools.

enable the secretary (or their delegate) to notify law enforcement authorities about certain content without first having the content classified

We endorse streamlining of the notification mechanism, noting that classification is contestable.

establish additional exempt film categories for certain films covering natural history and the social sciences

We endorse additional categories for that content, emphasising that in a liberal democratic state people should be free to access ideas and expressions, some of which they may find offensive, wrong-headed or otherwise unpersuasive.

provide that publishers will no longer be able to apply for exemption certificates for unclassified films or computer games

The amendment is consistent with other changes provided by the Bill.

provide for exemptions for unclassified content to be screened at festivals, special events and by cultural institutions

We endorse exemptions for unclassified content, on the expectation that event organisers and institutions will alert potential consumers that particular content is likely to be contentious. Endorsement reflects the emphasis on autonomy and informed choice. It also reflects a recognition of the inappropriateness of some regulatory burdens.

remove the need to have classified content reclassified when certain modifications are made to the content

The amendment is appropriate.

enable the minister to determine display and consumer advice requirements for classified content

It is appropriate for the Executive to determine those requirements, subject to an acknowledgement of the points made above (including burdens that would be imposed on retailers and other intermediaries through inappropriate packaging or display restrictions) and the need for consistency across the Australian jurisdictions. Without disregarding the sharing of responsibilities by the national and state governments, it is highly undesirable that there be cultural quarantining on an opportunistic basis by jurisdiction.

