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Level 6, 100 Pacific Highway
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Committee Secretary
Senate Legal and Constitutional Committees
PO Box 6100
Parliament House

March 4, 2011

Dear Committee Secretary,

Following the Australian Senate's decision to refer the Australian film and literature classification scheme to the Legal and Constitutional Affairs Committees for inquiry and report, Research in Motion (RIM) welcomes the opportunity to make a submission.

Research In Motion, a global leader in wireless innovation, is the designer and manufacturer of the BlackBerry® solution. The BlackBerry product line includes the BlackBerry® PlayBook™ tablet, the award-winning BlackBerry smartphone, software for businesses and accessories.

Our submission relates to a specific term of reference;

(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;

RIM has taken a very keen interest in this issue and specifically, how the law relates to the classification of games and applications (apps) used on hand-held mobile phones. We have engaged with the Classification Board, the Commonwealth Minister for Home Affairs and the relevant Censorship Ministers in each State and Territory of the Commonwealth, to outline our concerns about the current arrangements.

We would be more than happy to provide additional material to the Committee if required.

Sincerely,

Adele Beachley
Managing Director, Australia/New Zealand



Research In Motion Australia Pty Limited

**Submission to the Senate Legal and Constitutional
Affairs Committees**

**Inquiry into the Australian film and
literature classification scheme**

2011



CONTENTS

ABOUT RIM.....	Page 3
EXECUTIVE SUMMARY.....	Page 4
CURRENT REQUIREMENTS FOR CLASSIFICATION.....	Page 5
WHAT'S NOT WORKING WITH THE CURRENT SYSTEM.....	Page 6
THE INTERNATIONAL CONTEXT.....	Page 7
SUGGESTED OPTIONS FOR MODERNISING CLASSIFICATION IN AUSTRALIA.....	Page 9



About RIM

Research In Motion Limited (RIM), a global leader in wireless innovation, introduced the BlackBerry® solution in 1999. The BlackBerry product line includes the BlackBerry® PlayBook™ tablet, the award-winning BlackBerry smartphone, software for businesses and accessories. Through the development of integrated hardware, software, and services that support multiple wireless network standards, RIM provides platforms and solutions for seamless access to time-sensitive information including email, phone, SMS messaging, Internet and intranet-based applications. BlackBerry products and services are used by millions of customers around the world to stay connected to the people and information that matter most throughout their day.

RIM technology also enables a broad array of third-party developers and manufacturers to enhance their products and services with wireless connectivity to data. RIM's portfolio of award-winning products, services, and embedded technologies are used by thousands of organizations around the world and include the BlackBerry® wireless platform, the RIM Wireless Handheld™ product line, software development tools, radio-modems, and software/hardware licensing agreements.

RIM has a strong presence in Australia with a regional office based in Sydney serving both Australia and New Zealand. The office features training facilities, a research and development centre, a strategic partner marketing centre and technical support services. RIM is also active in the mobile communications community as members of the Australian Mobile Telecommunications Association and the Communications Alliance.

Founded in 1984 and based in Waterloo, Ontario, Canada, RIM operates offices in North America, Europe, Asia Pacific and Australia. For more information, please visit www.rim.com or www.blackberry.com.



Executive Summary

Under current Australian law, every game or other application (app) for a mobile phone or smartphone device must be classified before it is offered to consumers, including games like Sudoku. The significant increase in the volume of games and applications available has not corresponded with a commensurate increase in classification decisions by the Australian Classification Board. To provide context, there are now more than 500,000 applications available globally for mobile phones.

The Board's processes are designed to classify content such as films, DVDs and videos rather than games and applications for mobile devices. To our knowledge, only five games for mobile devices have been classified by the Board. These five games were submitted for classification by RIM as they come preinstalled on BlackBerry smartphones.

The current classification arrangements are not adequate to deal with the massive new flow of content. The Board procedures and its small staff are not designed to meet the needs of classifying hundreds of thousands of mobile phone games, many of which are simple in nature. The current system for classifying games creates a practical constraint on the Board's ability to properly classify and monitor material that genuinely concerns the broader community.

In addition, many of the games developers designing for mobile phones in this rapidly growing and emerging market are small enterprises. An expensive registration fee for mobile phone games classification makes it difficult for these developers to bring their products to market in Australia, particularly if competing against larger enterprises.

The *Classification (Publications, Films and Computer Games) Act 1995* (the "Act") was drafted before these technological issues could be considered. We believe that the Committee has an opportunity to examine and recommend an effective and practical solution to this emerging problem. Amending the Act to establish more appropriate classification settings for games on mobile devices will have significant benefits for Australia. Such changes could augment the flow of acceptable games to Australian consumers while more effectively restricting access to age inappropriate games on mobile devices. One solution would be to make changes to the Act to mirror what is already in place for classification requirements for print and literature. In this case, whole groups of publications are exempt as they are not expected to have offensive content. Importantly, such changes would give the government and regulators the chance to prioritise finite resources towards the areas that more accurately reflect the classification concerns of Australian families and the broader community.



Current requirements for the classification of games on mobile devices

The creation and use of games and applications (apps) for mobile devices is a rapidly growing feature of the communications world in which we live. The market for apps will continue to grow and so too will the range of products available. There are now well over 500,000 apps and games available for Australian consumers to download onto their phones. Consumers spent an estimated \$6.2 billion in 2010 in mobile application stores and games remain the number one most popular apps, ahead of mobile shopping, social networking, utilities and productivity tools.¹

Under the current model for classification of computer games contained in the *Classification (Publications, Films and Computer Games) Act 1995* - whether they are locally made or come from overseas – games have to be classified before they can be sold, hired, demonstrated or made available for play in Australia. However, only a handful of mobile phone games apps have been classified in Australia.

The [Classification Board](#) classifies (on application) computer games to determine:

- the age recommendations and restrictions that apply to the sale or hire of computer games;
- the classification markings that must be displayed; and
- the conditions that must be complied with, when advertising computer games.

The classification of games is the responsibility of the developer (creator/producer) or distributor. The fee is applied to each application received for classification and each version of a game requires a separate application. These fees can make it difficult for small enterprises to compete. RIM has an extensive network of game developers and many of these businesses are small enterprises. In some cases these mobile games development companies are Owner Managed Enterprises (OME) with only two to three employees. An overly expensive registration fee makes it difficult for these developers to be cost effective in relation to a larger enterprise.

¹ Industry Analysis, Gartner, January 2010



Fees for Classification - Computer Games

The table below provides the current fee structure applicable to classification services provided by the Classification Board and the Classification Review Board.

<u>Fee Structure</u>		
Product	Sub-product	Fee
Computer Games	Level 1	\$2,040
	Level 2	\$1,150
	Assessed Computer Game - Level 1	\$810
	Assessed Computer Game - Level 2	\$630
	Assessed Computer Game - Level 3	\$470
	Demonstrated Computer Game	\$1,070
	Title change	\$460
Computer Games – exemption certificates	Level 1	\$2,040
	Level 2	\$1,150
	Assessed Computer Game - Level 1	\$810
	Assessed Computer Game - Level 2	\$630
	Assessed Computer Game - Level 3	\$470
	Demonstrated Computer Game	\$1,070
Priority Processing Fee	Film – Other and Computer Games	\$400

What's not working with the current system

In 2008/09, the Censorship Board received 6,799 applications for classification. In 2009/10 the Board received 7,302 applications, including applications to classify 4,820 films, 1,101 computer games and 291 publications (228 single issue and 63 serial publications). Within the same time period, hundreds of thousands of mobile phone apps were created by developers.

Under the current arrangements for classification of mobile phone games, the popular Sudoku numbers puzzle requires an assessment by the Classification Board before it can be released for sale or download on mobile phones. The same Sudoku puzzles appear each day in many of the world's leading newspapers.²

² www.nytimes.com/ref/crosswords/sudoku/easy.html,
www.thetimes.co.uk/tto/puzzles/sudoku/



Although mobile phone games developers are required to seek classification, very few have. In 2010, RIM sought and obtained classification for the five games that come preinstalled on BlackBerry smartphones. However, there are currently thousands of mobile phone games that developers have not submitted for classification.

The Board itself is a small team, with approximately fifteen individuals viewing material on any given day. The Applications Section, which handles all incoming applications, prepares them for the Classification Board and responds to all enquiries, is a team of just ten people.

As stated previously, there are now more than 500,000 apps available for mobile phones. Even if only a quarter of them are games that are submitted for classification, the Board would face more than a 1600% increase in applications. Given the rate of innovation in the mobile development industry, this number is expected to grow exponentially.

The growth of innovation in games and applications presents policy makers with an important consideration for how finite regulatory resources are allocated and deployed to ensure that community standards are reflected in Australia's system of classification and enforcement. Put simply, too many resources would be devoted to classifying material for mobile phone games that by their nature and design are inoffensive. In turn, this would create a practical constraint on the Board's ability to properly classify and monitor material that genuinely concerns the broader community.

The International Context

Many governments have taken different approaches to the classification of games for consumers on mobile devices. In Europe and North America, wireless carriers and mobile device manufacturers have worked together to establish voluntary industry guidelines and best practices for classification. This approach has allowed flexibility for new technologies while creating industry mechanisms to help consumers make informed decisions about mobile games content.

In the United States, pursuant to the 'Wireless Carrier Content Guidelines' developed by CTIA-The Wireless Association®, mobile phone games are divided into two classifications: "Generally Accessible Carrier Content" and "Restricted Carrier Content".³ The latter is only accessible to consumers aged 18 years and older or to a consumer less than 18 years of age when authorized by a parent or guardian. This content is classified using existing criteria to rate computer games.⁴ If a mobile phone game has not been classified as "Restricted Carrier Content", it is generally available to all consumers.

³ CTIA Content Classification Guidelines. Available online at http://files.ctia.org/pdf/CTIA_Content_Classification_Guidelines.pdf

⁴ Ibid.



In Europe, the mobile industry helped to create the European Framework for Safer Mobile Use by Younger Teenagers and Children.⁵ This initiative launched in 2007 has led to the adoption of codes of conduct on safer mobile use in 27 EU Member States. Key components of this approach include classification of commercial mobile phone games that is line with national standards, access control mechanisms for parents to control children's access to games content, education and awareness-raising including a mechanism to allow consumers to report safety concerns.⁶ Under the European approach, the national codes of conduct have allowed for a self-regulatory approach that increases consumer information while allowing for innovation in the development of applications and mobile phone games.

While both Europe and North America have adopted self-regulatory approaches, it is important to recognize there are a number of international approaches to mobile phone games classification. The mobile game industry is now a global marketplace and for small businesses or developers, it can be quite costly to go through a classification process for every country in which the game may be distributed.

⁵ European Framework for Safer Mobile Use by Younger Teens and Children. February 2007. Available online at http://www.gsmeurope.org/documents/safer_children.pdf?safer_children&ns_type=pdf&ns_url=http://www.gsmeurope.org/documents/safer_children.pdf.

⁶ GSM Europe Press Release - http://www.gsmeurope.org/news/press_07/press_07_02.shtml.



Suggested options for modernising classification in Australia

The challenge for mobile games classification lies between the laws as they stand, and the technology as it grows. RIM believes that a practical solution can be developed to deal with the unintended consequences of these laws which have not kept up with technology.

The first option for a solution would be to revise the Act to mirror what is already in place for print and literature. In this case, whole groups of publications are exempt as they are not expected to have offensive content. For example, The Women's Weekly does not require Classification but a publication like Penthouse is expected to and required to be classified.

The key features of such a model include the following:

- 1 The current exemptions from classification of computer games in section 5B of the Act would remain (that is, for games whose subject matter relates to business, accounting, a profession, science or education).
- 2 Similar to the current treatment of classification of publications under the Act, new provisions would be included in the Act which state that computer games for mobile devices do not need to be submitted for classification unless they contain content that:
 - (1) is likely to cause them to be classified as "MA 15+" or higher (that is, the games depict or deal with sex, violence or coarse language in such a manner as to be unsuitable for persons under the age of 15);
 - (2) is likely to cause offence to a reasonable adult to the extent that the computer game should not be sold or displayed as an unrestricted computer game; or
 - (3) are unsuitable for a minor to see or read.
- 3 For all games that do not need to be submitted as per point 1 or 2 above, the onus would be on the developer and/or distributor of the games to self assess, classify and mark the games as either "G", "PG", or "M". Self assessments would be subject to a "calling-in" process for classification by the Board if there was any doubt or controversy about a particular classification.
- 4 To reflect any such changes made at the Federal level, it would also be necessary to make appropriate amendments to the various State and Territory enforcement acts, including amendments to ensure that any offences relating to sale and distribution of computer games do not apply to games that do not need to be submitted as per point 1 or 2.

As an alternative option, the Committee could consider recommending a simplified version of this model, with changes to the Act to generally remove classification



requirements for games on mobile devices. This option should likely be accompanied by a sensible mechanism for consumers to lodge complaints and an obligation on the regulator to investigate and possibly classify the relevant material.

RIM believes that either approach described above would strike an appropriate balance between upholding the basic purpose of the legislation in imposing age appropriate restrictions on access to mobile phone games against the need to have an effective and workable classification scheme for consumers, industry and the regulator.