The Committee Secretary
Senate Legal and Constitutional Committee
PO Box 6100
Parliament House
Canberra ACT 2600
Australia

Via email legcon.sen@aph.gov.au

Dear Secretary,

Re: Senate Inquiry into the Australian film and literature classification scheme

Thank you for providing the opportunity to make a submission to the Senate in relation to Classification.

About EFA

Electronic Frontiers Australia Inc. ("EFA") is a non-profit national organisation representing Internet users concerned with on-line rights and freedoms. EFA was established in January 1994 and incorporated under the *Associations Incorporation Act* (S.A.) in May 1994.

EFA is independent of government and commerce, and is funded by membership subscriptions and donations from individuals and organisations with an altruistic interest in promoting online civil liberties. EFA members and supporters come from all parts of Australia and from diverse backgrounds.

Our major objectives are to protect and promote the civil liberties of users of computer based communications systems (such as the Internet) and of those affected by their use and to educate the community at large about the social, political and civil liberties issues involved in the use of computer based communications systems.

EFA policy formulation, decision making and oversight of organisational activities are the responsibility of the EFA Board of Management. The elected Board Members act in a voluntary capacity; they are not remunerated for time spent on EFA activities.

EFA has presented written and oral testimony to State and Federal Parliamentary Committee and government agency inquiries into regulation of the Internet and online issues.

Classification and online content

We wish to firstly make some remarks regarding the classification of online content, as this represents one of the most contentious yet pressing aspects of the national classification debate.

It has been suggested in various contexts that the Internet is not "special", and that online content should be treated no differently than movies or the magazines in a newsagent. In the most prominent example of this logic, the government is currently pursuing a policy to institute mandatory internet censorship based on a blacklist of content deemed RC under the national classification scheme. In other words: A web page will be banned, if the content on that page would likely be refused classification by the Classification Board if it were treated as regular printed or video content, or has in fact been deemed such by the Classification Board.

EFA has consistently maintained that classification of Internet content as if it were the same as movies, television or magazines is a misapplication of rules intended to regulate the sale of entertainment media. The Internet is not just an entertainment medium, it is also a crucial productivity tool and a private communication system. The Internet works with any device, so mobile phones and other Internet-enabled devices are constantly evolving the way the Internet is accessed and content is used.

The current Scheme pretends consistency by classifying Internet content “as if” a commercial product sold almost exclusively in child-friendly stores, or subject to rules of public propriety. We know that entertainment content is downloaded without any restrictions at all, and much Internet content is not entertainment.

The difficulties with applying commercial media classifications to online content are many and insurmountable. The main problems EFA sees are as follows:

Firstly, it is not possible to classify content before it is published or made available for sale. The act of publishing something online is a pre-requisite for it to be available to a classification officer in Australia, but at that point it is likely already to late to have any effect on its dissemination. Online, there is rarely an Australia point of sale or customs post policing the importation of physical media. There is no feasible entry point into the classification system for online content.

Secondly, the volume of internet content is many orders of magnitude greater than any body of Australian classification officers could ever examine, and thus only a tiny fraction of available content could ever be classified. Internet content is also largely mutable, and could change significantly shortly after it was assessed, let alone finally classified.

Thirdly, with traditional media, the burden of classification is placed on the producers and distributors of media within Australia, but this is not the case online. The overwhelming majority of Internet content is produced outside Australia without regard to our classification code, and in the case of content produced domestically, it is usually published immediately by its creators. The creators of online content are more likely to be ordinary citizens, such as in the case of a personal blog, YouTube video, Twitter post or forum comment. Setting aside issues of volume and timeliness, it is not reasonable to expect ordinary citizens (as opposed to professional media companies such as publishers and movie distributors) to navigate the classification process when they wish to make content available.

It is also apparent that no matter how much Internet content were to be ultimately classified, there is very little that could be effectively done with the classification information. One option is to place certain content on lists that the public could optionally filter out, as is the current case with the Australian Communications and Media Authority (ACMA) blacklist - but this has proven to be neither popular nor effective. Forcing Internet Service Providers to block certain websites entirely is possible, but even if the list of blocked content were to be both exhaustive and current it would fail as an effective measure. Bypassing filters or moving content from one location to another is so simple that using the IP address or “name” of a webpage as the criterion for classification and filtering can be considered of negligible effectiveness.

It may be that there is a very limited role for classification of Internet content in Australia – for the information for users of an Australian content site for example – but truly heinous material is sufficiently identified in State criminal laws to make an entertainment classification superfluous for prosecutions.

EFA also advocates that when classifying material as "refused classification" for reasons of promotion, incitement or instruction in crime, that the Board classifies Internet content in accordance with treatment of publications and other media. Websites providing information on firearms, for example, are reported to have been classified as RC by the OFLC because the use of firearms is subject to licensing. Obviously textbooks and entertainment dealing with firearm use are not classified as "refused classification".

In summary, classification makes no sense in the online environment as it cannot occur prior to publication/distribution, there is no practical way to make the public aware of the classifications, and there is no practical mechanism to restrict content according to its classification.

The future of classification

The understanding of the limits to which governments can restrict the distribution of online content has enormous implications for the future of the classification scheme more generally when one considers that the vast majority of entertainment and other content will eventually be accessed online.

EFA therefore believes that the National Classification Scheme will soon have outlived its usefulness. In the case of traditional media, the classification of DVDs and books for Australian sale is a burden on Australian retailers, given that international purchasing of entertainment media is fast becoming the norm. Amazon.com and iTunes are using the American voluntary consumer classification system, and it is overwhelming the Australian classification categories since the majority of entertainment media is not submitted for Australian classification. If only a minority of movies watched are classified under Australian categories for retail sale in Australia, the system has ceased to be useful for consumers or a reflection of Australian values.

Classification of media is also being swamped by volume, and not only of commercial media. YouTube and similar content platforms will be the primary source of video media and digital e-books will gain market share against paper books not only due to price but also due to variety. Pre-screening and pre-sale classification of media won't happen in the future, and more media will bypass Australian-based retail shops altogether. The 20th Century paradigm of books and videos being imported into Australia by cargo container, and classified by the OFLC before being sold in Australian shops, is passing quickly.

Accordingly, Customs is no longer a plausible barrier to unclassified content nor are import restrictions of more than symbolic effect. While it is not an offence to possess most categories of refused content material in most States, there is a natural result that any controls at the barrier will be bypassed by the Internet. The speed and volume of Internet access has already turned the corner for the availability and easy purchase of material legal in other jurisdictions but proscribed in Australia, and only sentimentality could be advanced as a reason for Australia to assert that control over

shopping in stores for media remains a reason to have an expensive classification system. It imposes costs on consumers and retailers for no useful outcome.

The rise of digital media and online distribution has given rise to exponential growth in the quantity and variety of content available to Australian consumers, but the vast majority of this new content has escaped classification. A future in which almost all content is distributed digitally is not far away. Most of this content will be produced overseas yet be available in Australia the moment it is published. This means that even in the best case scenario, within a few years the majority of content consumed in Australia will be unclassified, or if the content has been classified, the rating information will not be seen or taken into account by the consumer. This means a new approach will need to be taken to fulfil the functions currently provided by classification.

One aim of classification must be to offer relevant information to consumers so that they can make informed choices about content they choose for themselves and their families. To some degree and in some media, this is no longer necessary or feasible, such as in online text-based media. However, there are practical alternatives to classification such as the use of off-the-shelf filtering software that can operate in real time on web content, or the provisioning of online "walled gardens" where children can use only content that has been especially prepared or vetted for their benefit.

It will certainly not be possible to rate all movies, TV shows, games and other multimedia content, especially as the lines between professional and amateur blur and as national borders become irrelevant. However, there may still be a role for classification in these media to inform consumers. EFA feels that this might be better undertaken using a model similar to that in the USA, where movies ratings are prepared by the motion picture industry and computer games are similarly rated by an industry board without government intervention.

Traditionally, our censorship system has served a second function in safeguarding the public from harmful content or (otherwise stated) confirming standards of public morality. EFA questions how feasible or necessary performing this function will prove when all or almost all content is obtained instantly via international digital channels. While the law can still restrict possession of illegal content, age-limitation mechanisms in traditional business models do not translate to the online environment. When no box office, video rental counter or newsagent is present to serve as an enforcer of classification restrictions, the practicality of using classification as a nuanced safeguard for children of various ages becomes problematic.

Conclusion

In a digital world, classification can no longer keep pace with the content available to Australian consumers, and thus cannot function as a useful source of information for consumers or a barrier to the availability of unacceptable content. It is no longer realistic to expect the Australian government to vet each piece of content consumed by the Australian public.

EFA therefore recommends:

• Abolishing the system of classification for Internet content (shared by ACMA and the OFLC);
• The phasing out of the Classification Board entirely;

• Encouraging media industries to develop their own rating systems to inform consumers, similar to the way TV programs are rated now; and
• Review of laws regarding illegal content (such as child pornography) and adequately resource the enforcement of these laws.

EFA would be pleased to expand on the issues above in oral testimony or otherwise.

Yours faithfully,

Colin Jacobs, Chairman,
On behalf of the Board,
Electronic Frontiers Australia Inc