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Ms Rhyan Bloor
Manager Mobile Content Review
Department of Communications, Information Technology and the Arts
PO Box 2154
Canberra ACT 2601

Dear Ms Bloor

Submission by Australian Broadcasting Authority and Australian Communications Authority

In response to the July 2004 call for submissions to the Review of the Regulation of Content Delivered to Mobile Communications Devices, attached is a joint submission by the Australian Broadcasting Authority and Australian Communications Authority.

The submission addresses matters relevant to the jurisdictions of each agency and flags issues that are likely to require consideration as part of the transition to a merged regulatory authority for broadcasting and telecommunications.

The ABA and ACA look forward to working with the Department of Communications, Information Technology and the Arts on ensuring appropriate and effective regulation of mobile telecommunications content. The contact officers for this matter are Andree Wright, Director Industry Performance and Review Branch (ABA) and Vince Humphries, Manager Mobile Content and Credit Management (ACA).

Yours sincerely

Dr Bob Horton
Acting Chair
Australian Communications Authority

Lyn Maddock
Acting Chair
Australian Broadcasting Authority



Australian Government
Australian Communications Authority



Australian
Broadcasting
Authority

Review of the Regulation of Content Delivered Over Mobile Communications Devices

**Submission by the Australian Broadcasting
Authority and Australian Communications
Authority**

4 November 2004

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Executive summary

Recent and imminent developments in broadcasting and telecommunications technologies have clear implications for the regulatory schemes administered by the Australian Broadcasting Authority (ABA) and Australian Communications Authority (ACA), particularly those which potentially apply to content delivered to mobile devices. Mobile devices already provide access to broadcasting, Internet and other content services, and the range and sophistication of services will continue to evolve. Most of the content available is suitable for all users. Some content may not be appropriate for children, and children may be exposed to inappropriate contact from adults. A small proportion of available content may be of a nature that generally offends Australian community standards.

Existing regulatory schemes for broadcasting, Internet and telecommunications apply to some content delivered to mobile devices. It will be important to ensure that regulatory schemes adequately address emerging issues as technology and the range of services evolve.

There are strong arguments for ensuring that content regulation arrangements for the mobile environment are consistent with existing schemes. Co-regulation, which has generally delivered effective outcomes for ‘fixed’ platforms, is considered to be the most effective means of balancing the need to ensure community safeguards with the objective of encouraging development and take-up of a variety of services that respond to the needs of the Australian community. It is highly desirable that the content classification framework applies consistently across fixed and mobile platforms, notwithstanding that administrative arrangements may vary from one platform to another. It will be necessary to take into account the unique characteristics of each platform.

The extent to which content delivered to mobile devices is subject to control by mobile network operators (MNOs¹) and the relationships between MNOs and their customers are key factors in determining the most appropriate arrangements for regulating access to content, and for handling customer complaints that may arise. Further, MNOs must take responsibility for the content that is available to customers via their networks if they derive revenue from that content, irrespective of whether responsibility for the content is taken by a third party or is shared between the third party and the MNO.

The co-regulatory arrangements for broadcasting and Internet content, particularly those applying to subscription services, provide possible models for content classification and complaint handling in an environment largely characterised by commercial relationships between content producers and service providers. Other

¹ The term “mobile network operator” is used throughout this submission to refer to carriage service providers that own or operate network infrastructure required to provide a public mobile telecommunications service, and that may or may not be licensed carriers.

arrangements may be appropriate where MNOs merely provide access to content offered by third parties, including over the Internet.

As with existing entertainment platforms, it will be important to educate the community, particularly families with children, about the potential risks associated with mobile devices, and how they can be managed. Where possible access control technologies should be developed, utilising effective content classification arrangements, and applied to content that is not appropriate for general audiences. Access to such content, could be enabled on request.

Key regulatory considerations

In developing new regulatory arrangements for content delivered over mobile devices, the ABA and ACA consider that the following principles should be taken into account.

MNO control of content

Care should be taken to ensure that legislative arrangements are not premised on the notion that MNOs will directly control all content available through portals. The level of control that MNOs have over portal content is expected to decrease over time, both as the various business models for supply of services via portals evolve, and as customers' knowledge of (potentially free) content available from other sources increases.

Irrespective of the degree of control over content available via MNO portals, MNOs must take responsibility for the content available to customers via their networks if they derive revenue from that content.

Regulatory framework

Adaptation of existing co-regulatory schemes to the mobile environment would help to ensure consistency in content regulation outcomes across media platforms. Regulatory arrangements must deliver effective outcomes for content delivered in closed portal environments, as well as for third-party content accessed in an open environment.

Content classification

The National Classification Code should be used as the basis for establishing categories of content that are prohibited (RC and X), restricted (R and MA) and unrestricted. These categories should be applied consistently across broadcasting, Internet, premium services and MNO portal content, including text and chat services.

Multi-party chat services

Industry and regulatory bodies should work together to ensure that consumers are sufficiently educated on the possible risks associated with children's use of chat and other contact services. Measures to be considered may include access controls that restrict chat services to particular number ranges and requirements for MNOs or

content providers to monitor chat services to ensure that the content is appropriate for the audience using the service.

Access arrangements

It will be important to ensure that consistent outcomes can be achieved regardless of whether content accessed in a closed environment, such as a MNO portal, or an open environment such as the Internet. Existing safeguards for 'fixed' Internet access should also operate effectively in the mobile environment.

In particular, MNOs must ensure that customers who are under 18 are not able to gain access to the Internet via a mobile device, without the consent of a parent or other responsible adult.

In addition, there should be sufficiently robust access controls in place to limit the possibility of children accessing inappropriate content. These access controls should require account holders to make a conscious decision to activate access to restricted content.

Complaints handling

Access by consumers to effective escalated complaints handling procedures is central to achieving a healthy and responsible market. Any complaints body should employ effective and transparent procedures. Complaint handling arrangements will need to take account of the role of MNOs in providing access to content, their role in billing for supply of content, and the level of control that MNOs exercise over the content offered. It will be important to ensure that complaint handling arrangements deliver consistent outcomes for all types of content services.

Key issues include whether content-related complaints should go initially to the MNO in relation to either or both of MNO portal content or premium rate services (the broadcasting model) or whether complaints should go initially to a separate complaints-handling body (the telecommunications and Internet models).

Many customers may feel more comfortable and familiar with making complaints about content to the MNO with whom they have a billing relationship. In terms of a separate body for handling or reviewing complaints about content, there is a choice of possible approaches. Extending the existing telecommunications complaints handling system would ensure that an established complaints body – TISSC or the TIO – could respond effectively to the whole range of potential issues, including content classification, billing and quality of service. On the other hand, extension of the current arrangements that apply for content complaints in relation to the Internet and broadcasting, in which a government agency (currently the ABA) is the ultimate complaints handler, would ensure consistent treatment of common or analogous content issues across platforms.

Introduction

This joint submission by the ABA and ACA has been developed in response to the call for submissions by the Department of Communications, Information Technology and the Arts (DCITA), as part of its review of the regulation of content delivered over mobile communications devices.

Whereas broadcasting and telecommunications have traditionally been regulated as separate matters, these two spheres of activity are rapidly converging. This is particularly evident with the emergence of mobile devices which provide access to a wide range of broadcasting, Internet and other content and services.

The review aims to consider the appropriateness of regulatory arrangements for broadcasting, telecommunications and the Internet, as responses to the regulatory issues associated with content delivered to mobile devices. In light of the Government's announcement on 11 May 2004 that the ABA and ACA would by 1 July 2005 merge to form the Australian Communications and Media Authority (subject to the approval by Parliament of necessary legislation), the ABA and ACA have prepared a joint submission to this review, addressing matters relevant to the respective jurisdictions of each agency and flagging issues that are likely to require consideration as part of the transition to a merged regulatory authority.

ABA role and functions

Under the *Broadcasting Services Act 1992* (BSA), the ABA has responsibility for administering co-regulatory schemes for the broadcasting, datacasting and Internet industries. The ABA's content regulation functions include administration of codes of practice for free-to-air and subscription television and radio services and administration of Australia's co-regulatory scheme for Internet content.

In the BSA's regulatory policy the Parliament intends that:

- different levels of regulatory control be applied across the range of broadcasting, datacasting and Internet services according to the degree of influence each is able to exert in shaping community views in Australia; and
- Internet, broadcasting and datacasting services be regulated in a manner that readily accommodates technological change and encourages the development of Internet technologies and the provision of Internet services to the Australian community (section 4).

Further information about the co-regulatory schemes administered by the ABA and their application to content delivered to mobile devices is provided below.

ACA role and functions

The ACA has regulatory responsibility for radiocommunications and telecommunications matters, exercising powers under the *Telecommunications Act 1997*, the *Radiocommunications Act 1992* and related legislation. The ACA's main functions include:

- managing access to radiofrequency spectrum;
- licensing telecommunications carriers and ensuring compliance with licence conditions and carriage service provider rules;
- regulating industry compliance with mandatory standards and voluntary codes of practice;
- monitoring compliance with consumer safeguards and service guarantees; and
- maintaining and administering the *Telecommunications Numbering Plan 1997*.

In the regulatory policy of the *Telecommunications Act 1997*, Parliament has stated its intention that telecommunications be regulated in a manner that promotes the greatest practicable use of industry self-regulation without either imposing undue financial and administrative burdens on the telecommunications industry or compromising the effectiveness of regulation in promoting the long-term interests of end-users and the efficiency and international competitiveness of the industry. Further information about the co-regulatory schemes administered by the ACA and their application to content delivered to mobile devices is provided below.

New and emerging devices

Mobile telecommunications devices and portable computing devices are facilitating access to a diverse range of text, voice and audiovisual content, in a mobile environment.

With the shift from second generation (2G) mobile telecommunications technology to so-called 2.5G and 3G technologies, mobile telecommunications devices provide audio-visual capabilities, allowing person-to-person exchange of messages containing text and audiovisual content, as well as access to commercial information and entertainment applications. The range of mobile telecommunications devices currently includes:

- Standard phones, providing basic voice and text messaging functionality;
- Feature phones, which add enhanced messaging capabilities and basic calendar, diary and address book functions.
- Smart phones, featuring larger colour screens and handheld computer/personal digital assistant capabilities. Such devices can be used to view streamed audiovisual content.

Portable and mobile computing devices with wireless networking capabilities that provide broadband Internet access are already available to Australian consumers.

While yet to be launched in Australia, digital broadcasting technologies for mobile devices provide a further platform for delivery of content in the mobile environment. These technologies may potentially replace existing 'streaming' technology as a means of delivering audiovisual content to mobile devices. Mobile device manufacturers plan to incorporate digital broadcasting technology into future handset models, and it is likely that a range of new devices based on this platform will emerge in the future.

The defining characteristics of mobile devices, compared to devices that are used to access content in traditional fixed environments, include their relatively low cost, ability to be 'always on', portability and personal nature. These characteristics, together with the ability to access a variety of content from a range of sources, have made mobile devices particularly popular amongst young people.

Services and content

New mobile telecommunications and wireless networking technologies enable access to a range of content and services on mobile and portable devices. Some services are new, while others have migrated from fixed platforms such as television and the Internet. In the mobile telecommunications area, content has become an integral part of the marketing strategies of MNOs. The range of content currently available in the mobile environment includes:

- News, sport and other information, in text and audiovisual formats;
- Handset personalisation and customisation content, such as ring tones, wallpapers, logos and screen savers;
- Entertainment content, including short video clips and music clips;
- Games;
- Gambling; and
- Contact, dating and flirting services.

The platforms for delivering content to mobile devices include:

- Messaging services, including short message service (SMS) and multimedia message service (MMS), many of which are premium rate services;
- MNO portal sites containing content tailored to the target market of each MNO;
- The public Internet, through which users can access content provided by third parties; and
- Digital broadcasting.

The small size and relatively modest technical specifications of currently available mobile devices, in comparison to devices used on fixed platforms, requires that the content be tailored to the mobile environment. Some MNOs have taken steps to limit customers' access to the wider Internet and to other content beyond that which is provided on MNO portal sites and through premium rate messaging services.

MNOs currently control access to content available through portals using contractual arrangements with content providers which specify and enforce limits on acceptable

content for general and restricted access. However, the extent to which MNOs are likely to exert control over content available to customers via portals is likely to decrease in the future because of changes in the business models for supply of content via portals, which are already beginning, and as customers become increasingly aware that there is no technical limitation on free-ranging internet access.

In the longer term third party content which is outside the direct control of MNOs is likely to become increasingly significant. Access to Internet services including email, the World Wide Web, chat and messaging services and via mobile telecommunications carriage services is likely to be widespread. Digital broadcasting technologies will provide access to television and radio programs from mobile and portable devices, on free-to-air and subscription bases. It will therefore be possible for users of such devices to access a range of broadcasting, Internet, messaging and other content from a single device, and the same or similar content is likely to be available on a number of platforms.

As with traditional media and entertainment platforms, much of the content delivered over mobile devices is likely to be aimed at and suitable for a general audience. However, not all of the content available is likely to be suitable for young children. Content that is unsuitable for children is likely to include:

- Audio-visual content with a sexual theme;
- Contact services, particularly dating and flirting services;
- Games that depict sex, violence or other elements to the extent that their availability would be restricted on other gaming platforms; and
- Gambling services.

As the call for submissions notes, some services and applications – including contact services – may incorporate use of handset location information. The implications of this for the safety and privacy of users, particularly children, are considered below.

While there is a legitimate market for adult services and content, the potential for children to access adult content and services would be likely to cause community concern, bearing in mind that children's access to adult content and services on existing platforms is restricted. Possible approaches to developing a regulatory framework for such content are considered below.

Regulatory issues

While developments in mobile telecommunications and wireless networking technologies offer considerable potential benefits, they also raise potential regulatory issues.

Consideration will need to be given to ensuring that community concerns about content that may be considered highly offensive to large sections of the community are addressed in a way that enables users to make informed choices about access to content. In particular children's access to particular types of content and services

should incorporate appropriate protections against predatory behaviour. Addressing these concerns will encourage the legitimate take-up of services.

In overseas markets where audiovisual content has been available on mobile devices for some time, the popularity of such devices among young people has given rise to concerns about the ability of young people to access content that may not be suitable for them. In particular young people may be exposed to contact from adults, raising safety concerns.

Bodies such as Childnet International have argued that while increasingly sophisticated mobile devices provide benefits and opportunities, risks associated with the traditional, fixed Internet environment are exacerbated by the portable, personal and 'always on' nature of these devices, combined with the ability for the location of a device to be tracked.²

Content

As noted above, new telecommunications and networking technologies provide access to a broad range of audio-visual content. As is the case with fixed broadcasting, telecommunications and Internet platforms, not all content available on mobile devices will be suitable for children. Content regulation arrangements for fixed platforms have been relatively effective in responding to community concerns. It will be important to ensure that comparable arrangements are in place for content delivered to mobile devices.

Access to Internet content presents a risk that users will be exposed to illegal or offensive content and that children may be exposed to content that is otherwise unsuitable for them. Where the Internet is accessed from a fixed location in the home or at school, children's access to it can be more easily supervised. Filter software and other technical tools are available to assist in this supervision. In contrast, it is potentially more difficult to supervise children's use of mobile devices. The technical limitations of mobile devices currently constrain the development of filter software that is comparable to that available for personal computers.

Contact

Chat and messaging applications have proved particularly popular amongst young people. However, there is evidence that such environments are used by adults with sexual interest in children to make contact with children and build online relationships with them (a practice known as 'grooming'), with a view to meeting them in person. Recent amendments to the Criminal Code establish offences for grooming activity undertaken via a carriage service. This will provide an effective mechanism for dealing with such activity when it occurs. To complement this, measures are required to ensure that children are able to make use of the benefits of chat and messaging on the mobile platform, without also being exposed to the risks that this environment poses. Chat environments are live and therefore difficult to regulate. It will be

² Presentation by Stephen Carrick-Davies to GSM World Congress 2004, available at www.childnet-int.org.

important to educate users about the risks associated with such environments, and how they can be managed. Responsibility for promoting awareness of these matters should be shared amongst regulatory and industry bodies.

The risks associated with such services can be exacerbated by the ability to track the geographic location of a mobile device, if safeguards are not in place to restrict the availability of this information. While relatively few compelling business models involving the use of location tracking information have emerged, entertainment services which utilise location tracking information – for example, dating and flirting services – exist already in other countries. Consequently, it will be important to ensure that the privacy of this information can be managed in accordance with the requirements for management of personal information generally.

Existing regulatory arrangements

The call for submissions notes that a number of existing regulatory arrangements for broadcasting, telecommunications and the Internet potentially apply to content delivered over mobile devices. The application of existing regulatory arrangements to content on mobile devices is likely to be determined with regard to:

- The type of carriage service used to deliver content, and the manner in which the MNO's network is configured;
- Whether a service is a point-to-point or point-to-multipoint service;
- Whether content is stored and accessed on demand; and
- The relationships between content providers, carriage service providers and customers, including whether content is provided on a subscription basis.

National Classification Code

The National Classification Code (NCC), set out in the Schedule to the *Classification (Publications, Films and Computer Games) Act 1995*, underpins content regulation arrangements on fixed audiovisual platforms. The NCC defines categories of content that are not able to be sold or exhibited (RC), in addition to specifying restricted categories (X, R and MA). The Office of Film and Literature Classification (OFLC) develops guidelines for applying the NCC. The guidelines set out the elements that influence classification, and the level of impact that is allowed at each of the classifications. These are regularly reviewed in consultation with the community to help ensure that classification decisions reflect contemporary community standards.

Primary responsibility for administering the NCC rests with the OFLC, in conjunction with State and Territory law enforcement agencies which enforce classification decisions. In addition, the NCC categories for films, in addition to applying to cinema, video and DVD content, form the basis of the co-regulatory schemes for Internet and television content administered by the ABA under the BSA. Similarly, the NCC categories for computer games also apply to Internet content in the form of a computer game. The NCC also forms the basis for the Service Provider Determination to be developed by the ACA which will set out access arrangements

for content delivered via premium messaging services and MNO portals. Further information about application of the NCC to existing platforms is set out below.

While the administrative arrangements for applying the NCC differ from one platform to another in terms of the requirements for preclassification of content and adjudication on complaints about classification matters, the NCC and guidelines establish a framework for broadly consistent classification of content across all entertainment media. The framework is well understood by the community and accessible to the various sections of the entertainment industry. Recent reviews of the guidelines have aimed to ensure that the NCC framework remains relevant to emerging forms of entertainment content, with the objective of ensuring that content is dealt with consistently across platforms.

Internet content

The co-regulatory scheme for Internet content established under Schedule 5 to the BSA applies to Internet content and services regardless of whether an Internet carriage service operates over wireless or fixed infrastructure. However, ordinary email, chat services and content that is not stored are excluded from the operation of the scheme.

The scheme is comprised of:

- Codes of practice for the Internet industry, registered by the ABA;
- A mechanism for handling complaints about Internet content, including procedures for removing or preventing access to prohibited content;
- Community education about the potential risks associated with Internet content, and how to manage them.

The scheme is premised in part on the principles that individual ISPs and Internet Content Hosts (ICHS) will be largely unaware of the content carried and stored on their services, and that parents, teachers and other responsible adults can supervise children's access to Internet content in fixed locations such as the home or school.

The ABA is undertaking work to ensure that issues relating to Internet access in a mobile environment are effectively dealt with. This includes adapting community education materials to address issues associated with mobile telephones, and developing a mobile telephone compatible interface to the ABA's online hotline for complaints about Internet content. The ABA can investigate complaints about Internet content accessed via a mobile device, and take action in relation to content that is prohibited under the BSA.

The ABA has asked the Internet Industry Association to consider measures that ensure the registered codes of practice for the Internet industry are effective in relation to Internet access on mobile devices, as part of its current review of those codes. The ABA has emphasised the need to ensure that restrictions on children opening Internet access accounts are effective, bearing in mind that many mobile telephone service users are under 18.

The ABA also has asked the IIA to ensure that the designated notification scheme set out in Content Code 2 for Internet content hosted outside Australia operates effectively in relation to Internet access on mobile devices, bearing in mind that the range of filter software products available for the mobile environment is currently limited. The BSA requires that the ABA issue access prevention notices to Internet service providers in respect of overseas hosted prohibited content, directing them to prevent users accessing such content, unless a code of practice containing effective procedures for dealing with such content is registered by the ABA.

Broadcasting content

The BSA also establishes co-regulatory schemes for television and radio content delivered via broadcasting services. The BSA covers television and radio services regardless of whether they use wireless or fixed infrastructure, provided that they are within the BSA definition of broadcasting. Broadcasting services whose reception is limited by specified factors are categorised as narrowcasting and dealt with through provisions that are specific to these services.

Content regulation arrangements for television and radio programs delivered by way of broadcasting and narrowcasting services are set out in the BSA, industry codes of practice registered by the ABA, industry standards determined by the ABA, and licence conditions (some of which are specified in the BSA, while others are determined from time to time by the ABA). A key objective of these schemes is to assist parents with managing children's access to broadcasting content that may be unsuitable for them. For example, industry codes of practice for free-to-air and subscription television specify, amongst other things, the classifications of content that can be broadcast and, in the case of free-to-air television, the times at which such content of different classifications may be broadcast. The BSA requires that codes of practice for broadcasting and narrowcasting apply the NCC to the classification of films broadcast on those services, and the industry has developed codes that apply that framework to films and other program material. In the case of free-to-air television, the NCC framework is supplemented by additional provisions intended to enhance its usability in respect of non-film content. A range of other content regulation issues are also dealt with in the codes.

In most instances, including in relation to content classification matters, viewers' and listeners' complaints about broadcast content must be directed to the service provider in the first instance, in recognition of the fact that licensees are in a position to control the content broadcast on their services and therefore able to respond to complaints about content. Complainants who are unsatisfied with a licensee's response to a complaint can complain to the ABA about the matter, and the ABA must investigate the complaint.

Premium rate telephone services

Premium rate telephone services are telephone, fax, messaging and Internet services that provide information and entertainment content. Such services are accessed by dialling a telephone number with a 190 prefix. The content of such services is predominantly voice or data, and content can be provided by way of a pre-recorded

message, speaking with a live operator, selecting options from a recorded menu, or sending a fax. However, Internet connection is also available on some 190 numbers.

Arrangements for management of the content of premium rate telephone services are specified in the an industry Code of Practice (the Code), developed and administered by the Telephone Information Services Standards Council (TISSC). TISSC is a body formally independent of government and industry but funded by Telstra, as the only carriage service provider offering a platform for such services.³ Compliance with the Code is required through the service agreement between each information service provider and Telstra. The Code's objectives are to establish minimum standards for the supply of domestic premium services while ensuring the content of these services reflects the contemporary attitudes of Australian society. TISSC assesses complaints from the public, service providers and carriers about alleged breaches of the Code in respect of any domestic telecommunications service with the prefix 190.

In addition, Part 9A of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (TCPSS Act) establishes a regulatory regime for premium rate telephone sex services. A telephone sex service is defined as a voice service offered with the purpose of enabling callers to derive sexual gratification from the call.

It is only permissible for a charge for a telephone sex service to appear on a bill issued by a carriage service provider to its customers if the following conditions are met:

- the customer has agreed in writing to the supply of telephone sex services;
- the customer has been issued with a personal identification number (PIN) or some other means of restricting access;
- the customer has used the PIN or other means of restricting access to gain access to the service; and
- the voice call is provided on an approved prefix (1901).

If these conditions are not met, the carriage service provider and the telephone sex service provider have engaged in unacceptable behaviour and are in breach of the TCPSS Act. In the course of investigating such a matter, the ACA may ask the ABA to certify that the service concerned is or is not a telephone sex service.

Application to mobile devices

While some mobile content will be covered under existing regulatory arrangements, the scope of existing schemes is in some cases defined with reference to technologies that predate recent advancements in mobile telecommunications and wireless networking, and the regulatory status of some content delivered to mobile devices is ambiguous. In particular:

- Schedule 5 to the BSA applies to Internet content, Internet service providers and Internet content hosts regardless of whether the Internet carriage service utilises a fixed or mobile network. Internet protocol (IP) based networks appear likely to be a popular mechanism for delivery of content. However, variations in the methods

³ Copies of the code can be obtained from the TISSC web site at <http://www.190complaints.com.au/code.pdf>.

by which multimedia content is delivered over mobile telecommunications networks give rise to uncertainty about whether some content delivered over mobile telecommunications networks is Internet content for the purpose of Schedule 5 to the BSA, and therefore whether the content is subject to that scheme.

- Services that are delivered on demand and/or on a point-to-point basis are not within the BSA definition of broadcasting and therefore outside the scope of the co-regulatory schemes for broadcasting and narrowcasting services.
- While television and radio programs delivered by Internet streaming are not regulated as broadcasting (except if the transmission of the content uses radiofrequency spectrum in the broadcasting services band) programs that are delivered by streaming over a MNO portal may be within the scope of both the co-regulatory scheme for broadcasting and interim regulatory arrangements that apply to MNO portals. Most content would be generally available to all customers. Content likely to be classified MA or R would need to be subject to restricted access mechanisms.
- The only content services that are specifically addressed in the *Telecommunications Act 1997* and the *Telecommunications (Consumer Protection and Service Standards) Act 1999* are voice-based telephone sex services.

Existing regulatory schemes are considered to work well in terms of their application to traditional platforms, and may provide a sound basis for the development of arrangements for content delivered over mobile devices. However, existing arrangements are unlikely to provide enduring solutions to the regulatory issues outlined above, without some modification to take account of the specific characteristics of the mobile environment. The key challenges are outlined below:

- As the technology underpinning the mobile environment continues to mature and content services evolve, mobile devices will enable access to an increasingly diverse range of content on an ‘anything, anywhere, any time’ basis. While some services are likely to be analogous to existing broadcasting services, their accessibility on the same device that’s used to access a range of non-broadcasting voice, text and audiovisual content, may give rise to anomalies and inconsistencies in the way content is treated under existing regulatory frameworks.
- While mobile devices resemble existing Internet, broadcasting and telecommunications devices in some ways, some content delivered to mobile devices is not easily categorised with reference to existing regulatory frameworks.
- Current protection arrangements for the online environment may not be readily transferable to the mobile environment, bearing in mind the difficulties associated with supervising children’s use of devices which are portable, personal and potentially always on.
- It will be important to ensure that access to content can be managed effectively regardless of whether it is accessed in an open or closed environment. To date, limitations on the display and processing capabilities of mobile devices have resulted in MNOs offering access to closed customer environments only, in which the content is tailored to the capabilities of mobile devices. In these circumstances, MNOs have considerable control over the content that their customers can access.

The co-regulatory scheme for Internet content is in part premised on the notion that Internet service providers are largely unaware of the content that is carried on their services. However, this scheme is not well suited to a closed customer environment where MNOs control the content that is available. Given that it is likely that customers will prefer open environments as improved handset capabilities facilitate access to the public Internet, the co-regulatory scheme for Internet content may become more relevant.

It is also unlikely that any one of the existing schemes could adequately accommodate the ability of mobile devices to receive content that is accessible from a range of services and via a range of techniques. For example, existing arrangements for broadcasting (including narrowcasting) may impose undue burdens on providers of non-broadcasting content, and may inhibit the growth of a diverse range of content services if applied in their existing forms to the mobile environment. Regulatory arrangements for the mobile environment will need to draw on elements of a number of existing schemes. Matters that will need to be considered in establishing effective regulatory arrangements for the mobile environment are set out below.

Interim regulatory arrangements

Ministerial direction

As noted in the call for submissions, the Minister has directed the ACA to make a service provider determination that impose safeguards for content delivered to mobile devices by way of SMS, MMS and MNO portal sites (referred to as “proprietary networks” in the direction), to build on the existing industry and regulatory safeguards that apply to premium rate telephone services. The ACA is currently considering the scope of the determination and has been working with the ABA, the Australian Mobile Telecommunications Association (AMTA), MNOs and content providers to develop arrangements that implement these safeguards. In addition to the Minister's requirements, the ACA is considering including a number of additional requirements such as:

- escalated complaints handling procedures;
- content classification;
- moderation of chat services that are not provided on the 'adult' 195 and 196 number ranges; and
- the provision of service information such as cost per message and conditions of entry for competitions.

On 10 June 2004 the ACA wrote to industry outlining the proposed scope of the determination and giving industry an opportunity to develop a robust opt-out model for access to restricted content and propose arrangements for an independent escalated complaints handling body. The ACA received a response from the industry body AMTA in August 2004. The proposal will not be formally considered until comments have been received from stakeholders on a draft instrument.

Industry initiatives

MNOs and content providers have provided undertakings to the ACA that adult content will not be provided on premium rate messaging services until appropriate safeguards are in place. The IIA, representing Australian ISPs, ICHs and MNOs, is understood to be developing a code of practice for content delivered to mobile devices, that aims to respond to the potential concerns outlined in the Minister's direction to the ACA.

Potential regulatory approaches

The objectives and regulatory policy which underpin existing content regulation schemes provide a sound basis for development of content regulation arrangements for mobile devices, to address the content and contact related regulatory issues outlined above. A key consideration will be to ensure that there is a consistent approach across platforms, bearing in mind that actual outcomes may vary in accordance with the specific characteristics of each platform, and the circumstances under which content is accessed. For example, while the regulatory schemes applying to free-to-air television and subscription television both aim to give effect to NCC standards, the arrangements applying to subscription television are less restrictive because of the specific arrangements for accessing such services.

Recent amendments to the Criminal Code will discourage certain types of conduct on mobile devices. However, these measures are necessarily aimed at particularly serious conduct, and there is a need for complementary measures both to address less serious matters which are nonetheless sources of potential community concern, and to minimise opportunities for such conduct to occur.

Co-regulatory approach

It is expected that increasingly diverse and sophisticated content will become available to consumers using mobile devices. While some services are likely to resemble the personal computer-based Internet environment, it is anticipated that some content available on mobile devices will increasingly resemble television and radio programs. Voice and text services are likely to remain popular with consumers for some time. It will be therefore important to ensure that regulatory arrangements address existing regulatory issues and anticipate likely future developments, obviating the need for amendments to regulation as new content services and regulatory issues emerge.

Existing co-regulatory arrangements for telecommunications, broadcasting and the Internet have been reasonably effective in responding to community concerns about content on these platforms. While the detailed provisions of these arrangements currently differ from one platform to another, arrangements of this nature have generally worked well to facilitate development of a diverse range of services, providing flexibility for industry to respond to changes in technology and consumer preferences, while ensuring that appropriate safeguards are in place. In this context,

the ABA and ACA consider that there would be merit in adopting a co-regulatory approach to regulation of all content delivered to mobile devices.

Key elements of any co-regulatory scheme for content delivered to mobile devices may include:

- A legislative framework setting out objectives to be achieved and the matters to be addressed through industry codes of practice or standards, with flexibility for codes to address additional matters as they arise;
- Encouragement for industry to develop codes of practice, in consultation with community stakeholders;
- Scope for compulsory standards to be made in the event that an industry code is not effective in dealing with specified matters;
- Effective complaint handling arrangements, whether managed by individual carriage service providers or content providers, under industry self-regulatory arrangements, or by the merged ABA and ACA;
- Investigative and enforcement powers, including rapid and effective measures to prevent access to content and services that had been found to be in breach of the regulatory scheme, and a mechanism for ensuring that content which breaches criminal legislation is promptly brought to the attention of a law enforcement agency;
- A program of education and awareness raising activities to educate consumers about managing access to the content and services available on the platform; and
- Regular reviews of the operation of the regulatory scheme, including research on community attitudes.

Adaptation of existing co-regulatory frameworks to the mobile environment would help to ensure a consistent approach to regulatory issues across platforms. In contrast, direct regulation may not provide sufficient flexibility to respond to changes in technology and community attitudes, and self-regulation may increase the potential for regulatory outcomes that are anomalous or ineffective.

Scope

Person-to-person communications are typically excluded from existing content regulation schemes, including those which apply to Internet content and premium rate telephone services, and it is proposed that this approach be maintained in the mobile environment. Therefore, person-to-person messaging and voice activity would be subject only to relevant criminal legislation. For content that is accessible to a number of users, an appropriate level of community protection would be provided by a scheme applying to content that is available to Australian customers, and which is provided in the course of carrying on a business. Criminal legislation covers activities such as grooming, other paedophile activity, incitement, and harassing and threatening behaviour using telecommunications carriage services. These measures would apply to person-to-person communications involving mobile devices.

Content regulation

Content regulation schemes for broadcasting, Internet and other entertainment platforms aim to:

- protect children from content that may be unsuitable for or harmful to them;
- restrict access to content that may offend large sections of the community; and
- prohibit content that offends general community standards.

As is the case with existing entertainment platforms, including television, cinema and the Internet, it is likely that some content in the mobile environment will be unsuitable for younger children, while falling below the threshold at which access would be restricted to adults.

The NCC framework delivers broadly consistent classification outcomes across platforms, notwithstanding differences between platforms in the way schemes are administered. The NCC categories and guidelines developed by the OFLC provide guidance on appropriate thresholds for content that should be restricted in its availability (content that is classified MA, R or X), and content that should not be provided because it offends general community standards (content that is refused classification). Existing regulatory schemes based on the NCC already apply to broadcasting and Internet content delivered to mobile devices. There would be significant benefit in ensuring that all content delivered to mobile devices is regulated in a manner consistent with the treatment of content on traditional platforms under existing schemes.

It will be important to ensure that content classification arrangements are able to be applied consistently across voice, text and audiovisual content, delivered in real time and on demand. The OFLC has undertaken work to ensure that the NCC can be applied to convergent media formats and this framework is considered to provide an effective solution for audiovisual content. However, consideration may need to be given to developing guidelines that more easily accommodate content that is predominantly voice- or text-based, enabling services of this nature to be dealt with under the NCC framework, rather than under a separate scheme.

Relevant agencies and industry bodies will need to consult on development of administrative arrangements that deliver consistent classification outcomes and safeguard the integrity of the NCC framework, while also accommodating the business needs of MNOs and content providers. In circumstances where content delivered to mobile devices is less complex and there is frequent turnover of content, it may not be desirable or practical for all content to be preclassified by a regulatory body. Content that is more enduring may be more amenable to preclassification and there may be efficiencies associated with preclassification of games and other third party content, obviating the need for MNOs to individually classify such content. The arrangements for broadcasting services under which service providers interpret and apply the NCC to program content in the first instance, having regard to decisions by the Classification Board in the case of feature films, are considered to provide appropriate protections for broadcasting content. A critical element of this approach is the capacity for review of decisions through a transparent complaint-handling

process, regular reviews of the codes of practice for those sectors to ensure that community concerns are effectively dealt with, and oversight of the schemes by the ABA as broadcasting content regulator. The scope for adapting this model to the mobile environment is considered further below.

Australia-based services

As noted above, content is expected to be a significant component of the business models of Australian MNOs. A priority will be to ensure that effective content classification arrangements are developed for Australia-based services, including:

- Australian MNO portals;
- content provided by Australia-based premium rate messaging services; and
- other content that is subject to commercial agreements between MNOs and content providers.

The ability for Australian MNOs and premium rate service operators to exercise control over the content carried on their services is a key factor in determining the most appropriate means of managing access to content, and also has implications for development of effective complaint handling arrangements. Notwithstanding that content available on MNO portals is delivered on demand and on a point-to-point basis, MNO portal content is considered to be analogous to broadcasting content in that MNOs typically exercise control over content delivered via the portal, either directly or indirectly through contracts with content providers and aggregators. Customers of an MNO are effectively subscribers to the content services offered by the MNO. In this context there is a strong case for extending the NCC framework to MNO portal content to ensure that:

- Content that would be refused classification (RC) is not available, and is prohibited;
- Access to content classified R and MA is restricted; and
- Access to content that is or would be classified G, PG or M is unrestricted.

Bearing in mind the legal restrictions that apply to X-classified content, including that it cannot be broadcast and is subject to take-down arrangements under the co-regulatory scheme for Internet content, it would be appropriate to ensure that such content is not made available in the mobile environment, and is prohibited.

Under the NCC, content that is classified MA, while not restricted to adults, is considered unsuitable for persons under 15 years of age, and the MA category is a legally restricted category. Classification enforcement legislation prohibits persons under 15 from viewing or purchasing film, video, DVD or computer game content that has been classified MA, unless the person is accompanied by an adult. The BSA requires that content on broadcasting services not exceed the MA classifications and there are restrictions on when such material can be broadcast on free-to-air services. The call for submissions notes that the Minister has directed the ACA to develop consumer protection arrangements for premium rate SMS, MMS and portal services, taking into account the restrictions which apply to entertainment content that is

classified MA on existing platforms. One option would be to adopt a classification scheme with separate restricted categories at the MA and R levels, and appropriate age-related access controls. However, a single restricted category encompassing MA and R content would help to ensure that adequate safeguards are in place, while lessening the burden on MNOs in administering access controls. The latter approach differs somewhat from that applying to broadcasting services, but would allow MA content to be provided in a manner that addresses the specific characteristics of mobile devices and their popularity with young people.

In the case of services where most content is of a nature that would not normally place it in a restricted category, but that may from time to time include content at the MA level (but not above), adequate protection may be provided by ensuring that users could disable access to the service (while at the same time providing access to the device's basic telecommunications functionality). This approach may be appropriate for services that more closely resemble existing broadcasting services, including retransmission of broadcasting services over a mobile network, and/or where the content is not easily amenable to pre-classification. Alternatively, content could be provided over a number of channels at different times depending on its classification — one channel for general content and another for restricted content.

Under the co-regulatory schemes for broadcasting and Internet content, Australian broadcasters and Internet content hosts are responsible for initially determining that content is able to be broadcast or hosted, and there is no requirement for content to be preclassified by a regulatory body prior to it being broadcast or hosted. These arrangements, with scope for complaints about content that is considered to exceed the level permitted, are considered to provide appropriate protection for these platforms. Where MNOs exercise control over the content on their portals and it would be appropriate for them to take responsibility for content classification matters within the NCC framework. This may include specifying classification requirements in contracts with content providers and aggregators, and arranging for content to be classified in-house or by a qualified agent. In other circumstances, and particularly where the content provider takes responsibility for the content, it may be more appropriate for the content provider to classify content and therefore have a role in dealing with any subsequent complaints about that classification. Alternative arrangements for managing access to content may need to be considered in the event that the market for content in the mobile environment becomes more open.

To help ensure consistency in the treatment of mobile content, other content that is subject to commercial arrangements between a MNO and content provider, and content delivered through premium rate messaging services should be subject to the same content classification requirements that apply to MNO portal content.

Customer generated content

MNOs and content hosts may need to take steps to ensure that online galleries, diaries and forums containing content generated by users, including audiovisual content produced using mobile devices incorporating cameras, complies with classification arrangements. Supervision or moderation of such online facilities by MNOs or their agents would help to ensure that prohibited material is not available, and restricted

material is not able to be accessed by children. Alternatively, such services could be classified as restricted content, with access to them subject to controls applicable to such content. MNOs and content hosts will need to ensure that they have mechanisms in place that enable them to comply with the *Criminal Code Act 1995*, requiring them to notify content depicting child sexual abuse and suspected online paedophile activity to a law enforcement agency.

Chat and other contact services

Chat services are expected to be the first service offered by many content providers. This is because they require only minor investment and can be used to generate revenue to support the development of more investment-hungry content services and applications.

The call for submissions notes that there are potential child safety issues associated with chat, flirting/dating and other contact services. The content of these services is generated in real time and they are less able to be classified for the purposes of restricting children's access to content that may not be suitable for them, and preventing online grooming activity. It will be important to educate families about the potential risks associated with such services, and how to manage children's access to them. To help ensure that children are not exposed to unsuitable material and potential harmful conduct, chat and other contact services could be categorised as restricted content. If such an approach is adopted, chat and other contact services should be subject to opt-in access controls in line with other restricted content.

As noted earlier, it will be important to manage the risks associated with the linking of capabilities to track the geographic location of mobile devices with chat and other contact services. The European Union adopted requirements in 2002 that processing of location tracking information for value-added services should be permitted only where end users have given their consent, and that end users should be provided with a simple means to temporarily deny the processing of location tracking information. It would be prudent to ensure similar safeguards are in place as services, especially chat and other contact services, using location tracking information are introduced in Australia.

Internet content

While the number of Internet sites designed to be accessed using mobile devices is relatively few at this time, it is anticipated that the number of such sites will increase over time, and that the content available will include content that is not suitable for children. Additionally, the display and processing capabilities of mobile devices are reaching the point that access to general Internet sites will be feasible from these devices.

As noted above, the co-regulatory scheme for Internet content applies to Internet access on mobile devices. Existing measures in the registered codes of practice for ISPs, including the requirement that ISPs take steps to ensure Internet access account holders are aged 18 or over and provide users with filter software, will partly address community concerns associated with children's access to the Internet via mobile devices. However, consideration could be given to additional measures that will

enable users to manage access to Internet content on mobile devices. Such measures might include:

- Requiring MNOs to provide access to the wider Internet on an opt-in basis, ensuring that customers who are under 18 years of age have the consent of a parent or other responsible adult; and
- Requiring MNOs to filter access to the Internet, with users able to access Internet sites that have been determined suitable by the MNO (or its agent). Bearing in mind the limited processing power and storage capacity of existing mobile devices, it is likely to be more feasible to perform blacklist or whitelist filtering at the server/mobile network operator level in the short term.

Such measures would help to ensure the development and legitimate take-up of adult-oriented content tailored for the mobile environment, and provide appropriate safeguards for mobile device users who are under 18.

The code of practice developed by UK MNOs requires them to provide customers with the option of filtering technology that will prevent end users who are under 18 accessing Internet content that is likely to be regarded as adult content. Further information about developments in filtering technology for the mobile environment is provided below.

Access control

In addition to determining categories of content that are prohibited and for which children's access will be restricted, it will be necessary to develop access control arrangements for adult content. A key issue will be whether access to adult content is provided on an opt-in or opt-out basis.

Greater protection would be provided by requiring that mobile telephone service account holders opt in to access to adult content in all cases, with robust procedures to verify the account holder's age. Such arrangements should require:

- An account holder making a conscious decision to activate the service;
- A process to verify the age of the account holder; and
- The MNO notifying the account holder that they have opted to access restricted content, via direct mail, a line on the bill or information on the customer's online bill.

This would help to ensure that only users who actively choose to access adult content are able to view it, and guard against children being exposed to adult content accidentally.

Where there can be reasonable certainty that the account holder for a service is an adult, such as for post-paid mobile telephone services, and where MNOs require account holders to be adults and verify the account holder's age at the time of purchase, it is possible that opt-out procedures may provide adequate protection. It cannot be automatically assumed that the users of all post-paid mobile services are

adults, and it is understood that a significant number of children have regular use of post-paid mobile telephone services for which the accounts are in the name of adults.

This highlights the need for an appropriate and targeted education campaign should an opt-out approach be adopted. A minimum requirement for opt-out access to restricted content should include a moratorium on adult content, while MNOs conduct a public education campaign to communicate the opt-out mechanism and its implications to customers. This education campaign might include media releases, direct marketing such as bill messages, bill inserts and direct mail, website information and targeted newspaper editorials. Prior to the moratorium ending (enabling MNOs to provide access to restricted content) it should be necessary for MNOs to demonstrate that a sufficient level of community awareness had been achieved and that customers were aware of the need to opt out of access to restricted content in order to block access to such content.

Due to the problems inherent in verifying the age of existing pre-paid mobile customers, it is clear that access to adult content for these users should be on an opt-in basis.

Opt-in arrangements will be more effective where they are based on presentation of documents or other physical evidence demonstrating that an account holder is 18 years of age or older. However, an online process would be susceptible to abuse and is unlikely to provide adequate community safeguards.

Complaint handling

It will be important to provide an effective mechanism for dealing with complaints about content delivered to mobile devices, drawing on the schemes which operate for other platforms.

A key consideration in developing complaint handling arrangements will be the nature of relationships between consumers, MNOs and content providers. The co-regulatory schemes for broadcasting content, where service providers have control over content they provide, require customers to complain first to the relevant broadcaster about most matters, including content classification. Unresolved complaints can be referred to the ABA. The intention of these arrangements is to encourage broadcasters to take responsibility for content provided on their services. In contrast, because Internet service providers have little control over Internet content that is accessed by their customers, the co-regulatory scheme for Internet content provides for complaints to be made directly to the ABA. In the case of premium rate telephone services, Telstra exercises little direct control over content and consequently complaints can be made directly to TISSC.

For complaints about matters relating to classification of content on mobile devices, an effective scheme would include:

- Clear specification of categories of content that are not able to be provided, or for which access should be restricted to adults;
- Clear contact points to which consumers can direct complaints;

- Streamlined processes for complaint handling, including provision for content to be removed from a service on an interim basis, pending the outcome of an investigation;
- Scope for complaints to be escalated to a body with effective, formal investigative powers, including appeal and review mechanisms; and
- Regular reviews of complaint trends, with issues of community concern dealt with through the code of practice.

The ART1 and ART2⁴ principles for industry, government and community hotlines which receive reports of illegal Internet content also provide guidance on how effective complaint handling arrangements for content delivered to mobile devices could operate. The principles state that hotlines should be:

- Available – demonstrated by the visibility and accessibility of the hotline;
- Reliable – with reference to the effectiveness of the hotline in managing security, confidentiality, and privacy;
- Transparent – having regard to the organisation administering the hotline, the criteria used to assess material, the investigation process used by the hotline, and the hotline’s relationships with other agencies and stakeholders;
- Accountable – to the public, the Internet industry, the community and other agencies and stakeholders with whom the hotline works;
- Responsible – for educating the industry and Internet users, upholding civil liberties, and for responding to complaints formally and effectively;
- Trustworthy – in operating according to the ART principles, upholding professional standards and ensuring the quality of hotline responses;

A proposed framework for classification of content has been set out above. Consistent with the current approach to complaint handling for content on existing platforms, the body to which complaints about content are directed could be determined with regard to the level of control exercised by the MNO over the content.

MNO portal content

As noted above, it is apparent that MNOs will be able to exercise considerable control over the content they offer, notwithstanding that customers also may have access to content from sources with no relationships with MNOs. In this context, complaint handling arrangements modelled on those which apply to broadcasting, with complaints about content directed to the relevant MNO in the first instance, would encourage MNOs to take responsibility for ensuring that classification arrangements are implemented correctly, and also facilitate prompt resolution of complaints when they arise. For content that is stored and accessed by customers on demand, it will be important that complaint handling arrangements include procedures for removing content that is the subject of a complaint, where there is a substantial likelihood that the content concerned is in breach of classification arrangements, pending a decision

⁴ The ART1 and ART2 principles have been developed by Professor Herbert Burkert and the Bertelsmann Foundation, and implemented by the Internet Hotline Providers in Europe Association (INHOPE).

by the MNO about whether the complaint should be upheld, and the complainant being notified of the outcome of this process. The application of such arrangements to all MNO-controlled content regardless of whether it is provided on a real-time or on-demand basis will help to ensure that similar types of content are dealt with consistently.

It will be important that unresolved complaints can be escalated to an independent and neutral body with relevant expertise and appropriate investigative and enforcement powers. Options for handling unresolved complaints about MNO content are considered below.

Messaging services and other content

Complaints about content may be multifaceted. Offensive or illegal content will generally raise classification issues. Other content-related complaints may also be received, for example, that the content is not correctly formatted for a particular handset.

In the case of premium rate messaging services and content accessed from sites that are independent of individual MNOs (notwithstanding the revenue sharing arrangements that may apply), complaints about the content of such services could be directed to an independent complaint handling body in the first instance, in line with existing arrangements for premium rate telephone services and Internet content, which is accessed on a similar basis. On the other hand, customers may prefer to complain directly to the MNO, with whom they have a billing relationship. Other bodies that might handle complaints, either as first port of call (the existing telecommunications and Internet models) or as a second-tier complaints handler (the broadcasting model) might include:

- the ABA, which currently has responsibility for content classification complaints relating to broadcasting and Internet content;
- the TISSC, which administers existing complaint handling arrangements for premium rate telephone services; and
- the Telecommunications Industry Ombudsman (TIO), which currently has responsibility unresolved complaints about telephone and Internet services.

It may be desirable that the body dealing with complaints about premium-rate messaging services and other ‘third party’ content also be responsible for handling complaints about MNO portal content, which cannot be resolved by the MNO concerned.

It may be preferable that content classification matters and related complaint handling arrangements are overseen by a single regulatory body. Having regard to the nature of the content that is likely to generate community concern, the ABA’s experience in dealing with complaints about broadcasting and Internet content, and the community’s understanding of existing complaint handling arrangements, the regulator may be an appropriate body to which unresolved complaints about MNO content could be escalated. Complaints about the content of premium rate messaging services and other content are likely to raise similar issues, and these also could be directed to the regulator. This approach would ensure that content complaints arising from any

source – broadcasting, Internet, premium rate telecommunications or MNO portal content – could be dealt with consistently by the same regulator.

Existing complaint handling arrangements for premium rate telephone services, which are effectively administered by the TISSC, could also be expanded to cover a broader range of content types. This approach may facilitate a uniform response for all types of complaints, rather than consumers receiving different responses depending on which MNO they have a billing relationship with. Alternatively, the jurisdiction of the Telecommunications Industry Ombudsman (TIO) could be broadened to include complaints about content. The TIO is recognised within the telecommunications industry as an effective and impartial escalated complaints body that is able to make decisions that have tangible benefits for individual consumers (for example, directing a provider to issue the complainant with a refund). Either of these options would have the advantage that consumers have access to a single body that could respond to all telecommunications-related matters, including content issues. Furthermore, the TIO's arrangements for reporting to the ACA enable the ACA to identify and act on systematic problems. Any effective complaints handling arrangements should incorporate the above principles.

To facilitate prompt and effective investigation of complaints, the body assigned the function of resolving and investigating complaints will need appropriate powers to collect evidence upon which decisions could be based. This would include the power to obtain a copy of the content concerned and, in the case of live, interactive services, the ability to become a customer of the service and collect evidence about the content of the service in an appropriate form.

Whichever body is assigned responsibility for dealing with such matters, it will be important to ensure consistent application of the NCC across different media and entertainment platforms. Appropriate measures may include training of complaint handling personnel in content classification issues.

Complaints about other matters

For customer complaints about matters not related to content classification, such as billing and quality of service issues, existing complaint handling arrangements are considered to work well, and such matters could continue to be handled by the TIO and TISSC.

Community education

A core component of existing regulatory schemes is community education to raise awareness of risks associated with certain types of content, and to provide users with information and tools to manage such risks according to their individual needs and circumstances. It will be important to ensure that similar measures are developed for mobile devices. Matters to be addressed in awareness and education activities would include:

- managing children's access to content that may be unsuitable for them, including information about how adults can gain access to adult content and services;
- safeguarding personal information; and

- risks associated with contact services and services that may reveal the location of a mobile device user, including the risk that children may be contacted by adults with a sexual interest in them.

Under the co-regulatory schemes for existing platforms, responsibility for community education is shared between regulatory and industry bodies. While regulatory bodies are well placed to develop key messages in consultation with consumers and other stakeholders, industry participants are well placed to communicate with consumers with whom they have direct relationships. Key opportunities for education of users about managing potential risks include:

- when users purchase mobile handsets, at the point of sale;
- handset packaging;
- bills and other communication, including receipts for pre-paid credit;
- web sites of mobile carriers, device retailers and regulatory bodies; and
- through schools, as part of media literacy education or other appropriate curriculum component and in communication with parents.

Access control technologies

Effective implementation of content regulation objectives for the mobile environment is likely to be assisted by technical measures, in addition to regulatory and community education measures. Bearing in mind likely variations in the way that technology will be deployed by MNOs and ISPs and the considerable pace of technological change, it would be preferable to provide flexibility for industry to develop measures that meet content regulation objectives. Prescribing specific measures that MNOs and ISPs are required to implement may impose undue technical and administrative burdens on those sections of the telecommunications and Internet industries. For example, rather than prescribing a specific access control technology, the *Restricted Access Declaration No. 1 1999*⁵ made by the ABA under Schedule 5 to the BSA specifies the criteria for restricted access systems that may apply to Australia-hosted Internet content that is classified R, for the purpose of ensuring that the content is not regarded as prohibited content.

Options for controlling access to content in the mobile environment include:

- In the case of SMS and MMS content, assignment of specific number ranges for adult services, and requiring customers to make a conscious decision to activate services which use those numbers.
- For content delivered in a browsing environment, labelling and filtering of content that is offered by MNOs under commercial arrangements with content providers. As a minimum, this would need to provide a mechanism for restricting children's

⁵ A copy of the declaration can be viewed at http://www.aba.gov.au/internet/industry/restricted_declarn.htm.

access to content that has been determined suitable for adults only. MNOs and content providers could also consider whether additional categorisation of content would further assist users to manage their access to content. To help ensure consistency with other platforms, it would be desirable that content labelling is based on NCC categories.

- For Internet content, blacklist, whitelist or real-time filtering using keywords and/or algorithms that analyse content characteristics.

As noted above, the co-regulatory scheme for Internet content requires Internet service providers to block access to overseas hosted prohibited content that has been the subject of a complaint to the ABA, and the Internet industry has developed a code of practice which requires ISPs to provide filter software to users for this purpose. While filtering technology is unlikely to provide 100 per cent protection from illegal, harmful or inappropriate content in the short-term, due to the complex nature of some Internet content, its volume, and the frequency with which it can be updated or moved. However, such systems have the potential to protect users from a considerable body of problematic content, while permitting access to popular sites that do not contain such content.

The limited processing capacity of mobile devices relative to desktop computers may require that filtering is undertaken at MNO/ISP level, until such time as the technology can be incorporated in mobile devices. This is the approach being taken by MNOs in the UK in meeting their obligations under the industry code of practice, which requires MNOs to block or restrict children's access to content in accordance with the way it would be dealt with in traditional media formats. Makers of filter software products are working with developers of applications for the mobile environment, adapting existing filtering technologies for deployment on mobile networks. Over time, it is anticipated that content labelling and filtering may be incorporated in technical standards for the mobile environment.