



Australian Government

**Department of Communications,
Information Technology and the Arts**

REVIEW OF THE REGULATION OF CONTENT DELIVERED OVER MOBILE COMMUNICATIONS DEVICES

Call for submissions

INTRODUCTION

1. The rapidly developing capabilities of mobile phones and other mobile communications devices to act as multi-media platforms and, in particular, to deliver audiovisual and other content 'on demand' can be expected to bring substantial benefits. Notably, these include improved services for users and new business opportunities for content and service providers.
2. At the same time, the capabilities offered by these devices raise a range of issues for governments and regulators and for the users of such devices. The Australian Government needs to consider whether existing policy and regulatory arrangements for the management of potentially offensive or harmful content provide adequate community safeguards in view of the new and emerging services delivered to these devices.
3. Mobile telephones offer an increasing range of premium rate services¹, like Short Message Services (SMS) and Multimedia Message Services (MMS), which deliver text based and/or audiovisual content. Some mobile telephone providers also offer other audiovisual content, including access to proprietary network services² or the Internet. Some of the content available on such services is of an adult nature.
4. The Minister for Communications, Information Technology and the Arts (the minister) issued a direction on 13 May 2004 to the Australian Communications Authority (ACA) to make a service provider determination to prohibit the supply of X or RC material, and to develop appropriate measures to restrict access to adult services supplied by way of a premium SMS or MMS service or a proprietary network service. The ACA is further directed to make a service provider determination that requires adult MMS and SMS to be provided only on number ranges specified by the ACA. These arrangements provide consumers with protection against the inappropriate supply of adult content while the Government considers whether additional or alternative measures are required to respond to evolving platform and service delivery arrangements.
5. To facilitate that consideration, the minister has also instructed the Department of Communications, Information Technology and the Arts (the department) to undertake a review of the existing regulations applying to audiovisual and other content, including adult services, provided or likely to be provided on mobile telephones and similar devices.

6. The review seeks to understand how new devices will operate, the features they will contain and the types of services likely to be offered. It will take into account the consumer and economic benefits these developments can bring. The review will also examine whether there are potential user safety issues arising from new and emerging capabilities (or services) of mobile communications devices including, for example, services that facilitate contact, such as geo-locational capabilities or chat services. The review's terms of reference are attached.
7. The sixth term of reference provides a range of issues that should be taken into account in the conduct of the review. It notes that where similar services are also available through other delivery platforms, it would be desirable that any regulation of services is applied in a consistent and technologically neutral manner. This is consistent with existing communications regulatory policy³ which requires services to be regulated in a manner that does not impose unnecessary financial and administrative burdens on service providers and readily accommodates innovation and technological change.
8. While the review will take into account existing regulatory measures, it will examine whether the distinct nature of these new services may influence the effectiveness of existing regulation and/or may contribute to new or increased social risks which would warrant reassessment of existing regulatory measures.
9. The review is also required to consider the implications of any proposed measures for the investment in, and the commercial development of, new communications platforms in Australia and will examine relevant international developments.
10. The minister, together with the Minister for Justice and Customs, announced on 25 June 2004 the introduction to parliament of new provisions under the Criminal Code which, amongst other things, would provide for explicit offences related to the use of the Internet for paedophile grooming and the procurement or attempted procurement of children. While the review will consider the interaction of existing and proposed regulations under state/territory and commonwealth criminal laws aimed at child protection and criminal activity using communications devices, they are not the subject of this review.

EXISTING REGULATORY ARRANGEMENTS

11. The review seeks to take account of the scope of existing frameworks that regulate the manner in which content is delivered to communications platforms. In the context of this review the most relevant are:
 - Schedule 5 to the *Broadcasting Services Act 1992* (BSA) which provides for the Online Content Scheme (the scheme). The scheme establishes a complaints-based regime, using the national classification system established under the *Classification (Publications, Films and Computer Games) Act 1995* (the Classification Act) to regulate the Internet content delivered via an Internet carriage service and seeks to protect end-users, especially children, from inappropriate content online. It has three main components: complaints investigation; Internet industry codes of practice; and non-legislative initiatives such as community education, research and international liaison. As discussed below under the fourth term of reference, the application of Schedule 5 in relation to other audiovisual content, such as content on proprietary network services, is to be considered by this review.

- The *Telecommunications (Consumer Protection and Service Standards) Act 1999* which regulates access to premium rate voice sex services. Voice sex services are identified as a certain ‘genre’ of services with associated restrictions and requirements placed on the operation of those services. This differs from the approach applied under Schedule 5 to the BSA which uses the national classification system established under the Classification Act as the basis for defining prohibited content or potentially prohibited content⁴ under the Online Content Scheme.
- Regulation 3.12 of the *Telecommunications Regulations 2001* gives the ACA powers to make service provider determinations regarding the supply of, and access to, premium rate services (other than voice sex services). On 13 May 2004 the minister directed the ACA to make a service provider determination to require mobile service providers to put in place appropriate restrictions on access to adult content on both the 19x number range and proprietary networks. In particular, these measures will:
 - restrict access to content that is, or would be, classified MA⁵ or R by the Classification Board⁶
 - prohibit supply of content that is, or would be X rated or refused classification by the Classification Board
 - require SMS and MMS adult content to be supplied on designated number ranges.

12. Other relevant measures include:

- the *Classification (Publications, Films and Computer Games) Act 1995* which establishes the classification system for film, computer games and certain publications, including the National Classification Code. As noted above, the national classification system established under the Classification Act is referenced in the Online Content Scheme and in the ministerial direction to the ACA in relation to premium mobile content.
- state and territory laws which impose obligations on producers of content and persons who upload or access content, and the *Commonwealth Crimes Act 1914* which makes it an offence to intentionally use an Internet carriage service with the result that another person is menaced or harassed, or in such a way as would be regarded by reasonable persons as offensive⁷.
- the *Interactive Gambling Act 2001* (IGA) which regulates the delivery of interactive gambling services in Australia. While online casino-style gaming (online poker and casino-types games such roulette) is illegal under the IGA, online wagering on racing and sports events and online lotteries are permitted. The IGA is currently subject to a wide-ranging review. Consideration of the IGA will be restricted to its continued relevance and application in the event interactive gambling services become available on mobile communications devices in Australia.
- the BSA also provides licence conditions that apply to categories of broadcasting services, including subscription narrowcasting services. The review is interested to know whether service providers consider that the services they offer, or are planning to offer, fall within existing licence categories under the BSA.

ISSUES

13. The terms of reference for the review require the Department to:

1. Identify new and emerging communications devices and platforms, capable of receiving and delivering audiovisual services (including text), and related features.

14. Currently, there are a number of devices with multiple communications capabilities, including some 2.5G and 3G mobile telephones, personal digital assistants (PDAs) and laptops with wireless (wifi) connections. Such devices are capable of combining the characteristics of the mobile telephone with still image capture, video playback, Internet access, portal access to subscriber services, email functionality and the features of handheld games consoles.

15. The key feature that appears to distinguish new devices from existing platforms is that they are highly mobile or easily transportable while delivering the content and features that end-users have come to expect in the fixed environment. Often these devices are not stand-alone, but are designed to link with the software on a personal computer (PC) to provide the end-user with maximum mobility.

16. It is also understood that these devices are embedded with features that will enhance existing services, such as chatroom and dating services, or enable the development of new services. Such services are likely to be aimed at specific age cohorts or people with similar interests or may be aimed exclusively at an adult market and contain content unsuitable for children. While similar services may be available online via fixed devices, the added element of mobility combined with enhanced features may add a new dimension to existing services and increase the possible safety risks associated with such services.

Comments are invited on the nature of new and emerging communications devices becoming available in Australia and in particular, what distinguishes these devices from existing technologies in the fixed environment.

2. Report on the type of audiovisual services and related features that are available or are being developed for mobile devices and platforms in Australia and overseas.

17. Mobile carriers in Australia and internationally have invested significantly in 3G network infrastructure and are focused on growing their customer base in order to make that investment worthwhile. For these platforms, content appears to be an important driver of take-up and as a result mobile carriers are increasingly partnering with content providers to develop new and innovative content. New text-based services are also being developed for second generation mobile phones through both premium rate SMS and unstructured supplementary service data (USSD) technology.

18. Such content may not be exclusive to mobile devices and could include content reconfigured or re-purposed from websites, newspapers, radio and television. This content would include interactive and downloadable gaming, horoscopes, news, weather, sports results and other information.

19. Much of this content would be prepared for a general audience and be suitable for a wide age range. However, mobile communications devices may also offer access to content that normally would be restricted to adults. This could include sexual content, violent content on games and legal, interactive gambling content.
20. The provision of adult audiovisual services has proved internationally to be successful in increasing mobile carriers' revenues. Some research indicates that sexual content over mobile devices will generate some \$1.5 billion in revenues in Western Europe next year⁸. In Australia, one mobile telecommunications provider is providing such content under contractual arrangement with Playboy, including both static images and streamed audiovisual content.
21. Other providers have indicated that they may also provide adult content through their premium rate number services (SMS and MMS). Premium rate services enable parties other than the mobile carrier to offer audiovisual content under circumstances where the carrier arranges for payment for delivery of the content. Such content may include ringtones or phone 'wallpapers' or other repurposed audiovisual content as canvassed above. Some of this content may involve a degree of interaction, through chat services and interactive adult services, including services used for sexual gratification.
22. Some features of mobile services are also of interest to the review because of the way they can be packaged with audiovisual content. In the future, it is expected that features will include audio streaming, precise location determination and advanced browsers⁹. For example, it is expected that online gaming will take advantage of such location-based features and that live, multi-player game services using mobile communications devices will be increasingly popular, especially in the youth market¹⁰.
23. Internationally, there is community concern that some of these features—like location determination or video calling features on mobile devices—will lead to inappropriate contact, especially with children. For example, during the development of the UK code of practice for the self-regulation of new forms of content on mobiles¹¹, some parties expressed concern about the use of location determination in conjunction with chat services and game products and the availability of such services to minors. In Japan, attempts are being made to regulate 'dating sites' in response to the sharp rise in crime associated with such sites involving inappropriate contact with children¹².
24. Developments in this area, including those described above, suggest that content providers are seeking to make audiovisual content more interactive thus providing enhanced user experience. These developments may require a different regulatory approach, possibly involving a reassessment of the service provider's role in relation to end-user protection.

Comments are sought on the types of audiovisual services and related features that are available or are being developed for mobile devices and platforms in Australia and overseas.

In particular, the review is interested in the types of services and features aimed at the adult market and/or services that comprise a geo-locational element, such as gaming, that may pose heightened safety risks, especially to children.

25. New mobile communications devices and services have the potential to benefit both individual consumers and the telecommunications sector. In particular, greater competition in the mobile telephony market will benefit consumers as well as providing broader economic benefits. It will be important that any intervention by the Government in relation to services delivered to mobile communications devices does not unduly inhibit the growth of the sector nor the commercial benefits to industry. In seeking to avoid such an outcome the terms of reference require the review to:

3. Report on relevant technical features, marketable characteristics and commercial drivers for take-up of such services and features including but not limited to:

(a) their means of delivery

26. Under current arrangements, the means for delivering content has a role in determining the regulatory framework that applies to that content.

27. For example, under Schedule 5 to the BSA, Internet content is defined as:

‘...information that:

- (a) is kept on a data storage device; and
- (b) is accessed, or is available for access, using an *Internet carriage service*.¹³

28. Similarly, under Telecommunications Regulations, premium services are defined by their means of delivery.¹⁴

29. The review therefore seeks information about the way existing and future services are, or will be, delivered. In addition to understanding the technical means by which different types of audiovisual services are supplied, the review seeks to understand the extent to which those technical methods are common across carriage service providers.

30. More generally, the review seeks information on current and likely future developments in technology that will allow or facilitate the delivery of new services on communications devices with multi-media capability. Like content, technical developments will also play a role in take up, for example through enhanced image quality and resolution or by expanding the variety of features available. Examples of areas of interest include developments in:

- data rates and screen/picture resolution for still images and motion video
- end-user interactivity (e.g. the ability to manipulate images)
- wifi services
- audio and video streaming capabilities
- geo-location technologies
- still and streamed image capture capacities.

Information is sought on the technical means for delivery of content to mobile communications devices. Specifically, comments are sought on whether there is a common delivery platform for audiovisual services and whether these services are technically distinguishable from Internet content accessed through fixed delivery platforms.

More generally, comments are sought on the range of technologies used to deliver audiovisual and other content and the technical features that are available, or will soon be available, on new mobile communications devices.

(b) commercial arrangements established for their supply

31. A factor to be considered in assessing the most appropriate policy and regulatory arrangements for these types of services is the nature of the commercial arrangements, including the extent or level of control over the content by the different parties to that commercial arrangement.
32. A variety of commercial relationships are expected to exist between carriage service providers (CSPs) and content providers. In the case of premium mobile services, CSPs may choose to prepare their own content. More commonly, however, content providers prepare content which is branded and sold by the CSP. Alternatively, the CSP may enter into an arrangement where the content providers market their own branded content but with billing services provided by the CSP. CSPs may also provide access to content without billing services which is the model that usually applies to general Internet access.
33. In the case of mobile telephones and similar devices, consideration will be given to the commercial arrangements, including revenue sharing arrangements, between the CSPs and content service providers. International experience indicates that revenue sharing arrangements are skewed towards the content providers with a 60 per cent to 40 per cent split between the content provider and mobile operator under the current European premium SMS model, with an 84 to 16 per cent split under some arrangements.¹⁵
34. Generally, it is anticipated that where CSPs provide billing services, they will have a contract with the content provider about the type of content to be provided including thresholds on the upper level of the classification of any content offered. There may also be commercial penalties and/or rectification requirements where inappropriate content is provided. Where CSPs do no more than facilitate access to content, there may be no contractual relationship in terms of the type of content to be provided.
35. The UK code of practice for self-regulation of new forms of content on mobiles released on 19 January 2004 places increased requirements on CSPs for the management of 'commercial content' in comparison to Internet content. In this context 'commercial content' relates to content where the CSP derives a direct commercial benefit from its provision to its customers.
36. It may also be useful to understand the commercial relationships between CSPs and vendors of mobile devices.

Comments are sought on the commercial relationships involved in the marketing and supply of content services that are, or will be, delivered via mobile devices.

Comments are sought on the ability of different parties to the supply chain (e.g. CSPs, content providers) to manage/control the content delivered to subscribers.

(c) their importance in contributing to commercial viability of platform investment

37. High value-add services can play an important part in the initial investment decision and early development of new products, especially when consumer take-up is low and the cost of the product relatively high. A product may be targeted at niche markets, or less price sensitive consumers, with mainstream consumers being targeted once manufacturing volumes or service level take-up allow for a lower price and higher volume strategy.
38. The review needs to understand the extent to which devices (e.g. handsets), services (e.g. content) and technical features are integrated into a service provider's brand. For example, in the UK, carrier handsets that carry the Vodafone Live! brand are tightly integrated with the content delivered on that service. This is also the case in other countries such as Japan and more recently Italy, where all aspects of the service are integrated and the brand presented as a package—from the handset to the content delivered.
39. When combined with quality content for which there is an established market, new features present an opportunity for increased revenue. For example, it is estimated that picture messaging services of soccer games delivered via MMS in the UK will bring in revenues greater than £20 million per annum (approx. A\$53 million). The potential revenues for downloading music are even greater. There is also a clear upselling opportunity, to move fans from information, to interaction and browsing on a WAP website, to downloading a wallpaper of a particular picture.¹⁶
40. Further, the review will seek to understand the role of different types of technical features and other marketable characteristics in the business models, competitive position and ongoing commercial viability of content providers and service providers.

Comments are sought on the commercial role of particular services and features and their importance in contributing to the commercial viability of platform investment in Australia.

(d) the commercial availability and performance of filtering technologies for mobile devices

41. The ability and possible future ability of consumers to manage their own experience and that of their children, independently from the service providers, will also be considered by the review. Specifically, the commercial availability and performance of filtering technologies and the business models associated with developing and marketing content access controls and monitoring capabilities are also of interest.

42. In this context, the Government seeks to understand whether access restrictions to particular features—for example on geo-locational features in the interests of child safety—are possible and how such restrictions may affect platform investment and network performance.
43. UK mobile telephone CSPs are currently examining the technical options for offering filtered services on mobile telephones including server-level filtering as part of a self regulatory approach.¹⁷ Australian CSPs and content providers have expressed preparedness to investigate alternative access prevention measures such as opt-in requirements for certain services and/or pin code provisions.

Comments are sought on the advantages and disadvantages of different types of access control technology over such devices and whether such controls could feasibly apply to content or to particular features.

Particular comment is sought on the availability of filtering technologies either at the server level or customer device level and the impacts of such devices on network performance.

4. Report on the extent to which existing regulatory approaches apply to the different new and emerging audiovisual services and features

44. The review seeks submissions on the appropriate measures that could apply to the full range of new and emerging services. In particular, the review is required to understand which services are subject to existing arrangements, which services will not be covered by existing arrangements (i.e. a gap analysis) and whether there are services that could be subject to more than one set of arrangements.
45. There appear to be four broad existing regulatory frameworks which could apply to new and emerging audiovisual services, including:
- Schedule 5 to the BSA, which deals with access to Internet content, provides a complaints system operated by the Australian Broadcasting Authority (ABA) and the obligations that apply to industry Internet Service Providers (ISPs) and Internet Content Hosts (ICHS) in relation to such content. This regime addresses content stored and generally available on the Internet. Internet content does not include information transmitted in the form of a broadcasting service.
 - restrictions placed on telephone sex services via the *Telecommunications (Consumer Protection and Service Standards) Act 1999* which places restrictions on a genre of services, intended for sexual gratification. This regime addresses voice services which are interactive, point to point, where the content is not stored.
 - interim measures which will be imposed by the ACA via the *Telecommunications Regulations 2001* which restrict access to premium mobile services. These regulations address stored content on proprietary network services, including content classified MA and above by the Classification Board and MMS and SMS services which may include both stored and ephemeral content.

- the licence conditions established under the BSA for categories of broadcasting services. It appears that some service providers are of the view that their mobile content service is appropriately a subscription narrowcasting service as defined by the ABA. This would mean that they would be subject to more flexible class licensing arrangements.

46. In considering the appropriateness of existing arrangements, there are specific matters the review will address, including:

(a) whether the content of the service is of a type that is suitable for categorisation under the national classification system established under the Classification Act

47. Content regulation in Australia relies on the national classification system established under the Classification Act. For example, the Online Content Scheme relies on the national classification system to determine prohibited content (content rated X or RC) or content that requires access restrictions (content that is rated R). As noted elsewhere, the minister has announced interim measures that will apply to premium rate mobile services pending the outcome of this review. These measures will require mobile telecommunications carriers that offer premium rate and proprietary network services to restrict access to certain types of audiovisual content rated MA and above by the Classification Board.
48. The review will consider and report on whether it is possible, or practical, to categorise ephemeral (i.e. not stored) audiovisual content offered on mobile communications devices under the national classification system. For example, content that is streamed live to a mobile communications handset may not be easily classifiable (for example content available via ‘webcams’) and it may not be desirable or appropriate to require a service provider to classify content delivered over its service.¹⁸
49. The review also seeks to address the question as to whether the national classification system can be applied to unscripted services and ‘on demand’ content. Telephone sex services are an example of such a service. If such services were to be delivered in a text-based manner it is likely that they would not easily be addressed by a regime based on the classification of content. Another example is the increasingly popular ‘on demand’ mobile picture messaging services. A service known as New Media Stills Production was successfully trialed in the UK and allowed fans to access sports photography (of a soccer game in play, for example) as an MMS picture or via a WAP Push.¹⁹ It is not clear whether such content could, or should, be classified.

(b) whether the content of various service types falls within the definition of Internet content under Schedule 5 of the BSA or any other regulatory framework

50. Proprietary network services appear to use Internet protocols to deliver content to a mobile device, and can only be accessed by subscribers to a particular carriage service. It is understood that this content is stored on servers which also store content generally available on the Internet. Proprietary network services may also ‘mirror’ content that is generally available on the Internet.

51. Whether Schedule 5 applies to this content delivered via proprietary network services appears to turn on whether the carriage service used to deliver it can be described as an 'Internet carriage service' as defined in Schedule 5 of the BSA. It could be argued, however, that premium rate services (MMS and SMS) are clearly outside the coverage of Schedule 5.
52. It also appears possible that essentially the same content could be delivered over more than one platform. In this circumstance, it may be that such content is regulated differently according to the mode of delivery. Views are sought on the likelihood of this scenario and whether different regulation would be an appropriate outcome.

Comments are sought on the application of existing regulatory arrangements to new services, including on whether the content of new services is suitable for categorisation under the national classification system established under the Classification Act and whether the content of these services falls within the definition of Internet Content and other regulatory arrangements.

5. Consider:

(a) what, if any, measures are necessary (e.g. regulation, cooperative arrangements, public awareness and end-user empowerment initiatives) in order that the supply and accessibility of audiovisual services are managed

53. Terms of reference 1–4 seek to understand the features of new devices, the types of services and technical and commercial relationships established for their supply and the coverage of existing regulatory and non-regulatory measures of new device services and features. Taking these issues into account, the review also seeks views on whether additional or alternative measures are required, whether amendments to the current regulatory framework would improve consumer protections or consumer services and what would be the most appropriate framework of measures.
54. The review provides the opportunity to consider the benefits of alternative regulatory approaches ranging from industry self-regulation to direct government intervention or a combination of different regulatory approaches. In considering these approaches, the means for appropriate complaints handling procedures will also be canvassed. If the option of direct regulation is considered, this will be balanced against any potential impacts on market development.
55. Schedule 5 to the BSA imposes requirements on ISPs and ICHs which recognise that they will not always be aware or have control of the content being provided over their service. However, in the case of the content services that are the subject of this review, there is frequently a contractual relationship between the content provider and the carriage service provider, including for billing of the user for the content services. In the case where there is the capacity for much greater control of the content delivered (including by the carriage service provider), the question arises whether Schedule 5 of the BSA provides the most appropriate model for regulation.

56. In addition to regulatory measures, user empowerment through information and awareness programs may also be important. This is a significant feature of the Online Content Scheme.²⁰ Additional measures may be appropriate to ensure consumers are aware of the particular issues associated with the supply and accessibility of new audiovisual services via mobile communications devices.
57. Further, if the content is not easily classifiable under the national classification system established under the Classification Act, the review seeks to identify what types of categorisation can be applied to new services, including, for example, using the ‘genre’ approach applied to telephone sex services, or whether entirely new measures are required.
- (b) whether there are additional measures that carriage service providers, content service providers and content hosts might take to address contact and child safety issues arising from contact type services (eg. chat)**
58. Consideration may need to be given to the implications of certain services already available on PCs and similar devices being offered on mobile devices. For example, unsupervised chat room and dating services might give rise to heightened risks for certain categories of users when delivered in a mobile environment, where adult supervision may not be as practicable as in the fixed environment. Consideration may also need to be given to the provision of services which are specific to mobile devices, for example geo-locational capabilities.
59. As discussed, technical features such as geo-locational capabilities may raise concerns in relation to contact issues and it may be that further measures are required. The role of content and carriage service providers in awareness raising initiatives will also be considered in this context. Examples of such measures include self-regulation which may include developing processes to limit risk through increased cooperation with law enforcement agencies and increased public education.
60. Further, the review will also examine the responsibilities of communications service providers that offer email and other messaging type services that facilitate contact between particular groups based either on shared demography or interests. For example, the responsibilities of service providers in relation to chatroom and other contact facilitating services may be considered. This may include real time oversight or moderation of the content of such services.

Submissions are sought on the nature of potential regulatory approaches that could apply to services delivered to mobile communications devices, including direct regulation, co-regulation and/or self-regulation and the benefits and disbenefits of each. Comments are also sought on how complaints could be handled under each of these regulatory approaches.

Comments are sought on what additional or alternative measures may be necessary (eg. regulation, cooperative arrangements, public awareness and end-user empowerment initiatives) to manage the delivery of new services.

Comments are sought on the roles and responsibilities of communications service providers in advising clients of the potential risks associated with certain services that facilitate online contact through multi-person forums (such as chat rooms) and or other actions which service providers could or should provide.

61. As noted in the introduction, the terms of reference require the review to have regard to a number of matters.
- 6. In conducting the review, regard should be had to:**
- (a) the interaction of existing and proposed regulation with provisions under commonwealth and state/territory criminal laws aimed at child protection and criminal activity using communications devices**
 - (b) the implications of any proposed measures for the investment in and the commercial development of new communications platforms**
 - (c) the desirability of regulatory consistency across different technological platforms**
 - (d) international developments, where applicable.**

While these considerations have informed discussion under each of the previous terms of reference, submitters are welcome to make general comments on their importance.

SUBMISSIONS

62. Submissions are invited from interested parties on matters covered in this paper and any other issues submitters consider relevant to the review. Submissions should be provided by Friday 3 September 2004 and should be addressed to:

Manager
Mobile Content Review
Broadcasting Division
Department of Communications, Information Technology and the Arts
GPO Box 2154
CANBERRA ACT 2601

Submissions should also be provided electronically and emailed to mobilecontentreview@dcita.gov.au

Submissions will be made public unless otherwise specified. If a submission is marked confidential, a version that may be publicly released should also be provided. A report will be provided to the Australian Government.

ATTACHMENT

REVIEW OF THE REGULATION OF CONTENT DELIVERED OVER MOBILE COMMUNICATIONS DEVICES

BACKGROUND

Content regulation in Australia is designed amongst other things to protect members of the public, especially children, from exposure to illegal and highly offensive content. To this end, there are a number of legislative frameworks that regulate the manner in which content is delivered:

- the *Classification (Publications, Films and Computer Games) Act 1995*, that establishes the classification system for film (including videos and DVDs), computer games and certain publications
- the *Broadcasting Services Act 1992* (BSA), that regulates broadcasting and online content
- the *Telecommunications (Consumer Protection and Service Standards) Act 1999* that regulates access to premium rate telephone sex services
- the *Telecommunications Act 1997* that includes broad powers to make service provider determinations to regulate access to premium rate services.

A number of convergent devices, including 2.5G and 3G mobile phones, are becoming available which are capable of receiving and delivering audio-visual services. These include text services and related features such as location tracking services and closed network content services (so called 'walled-gardens'). The developments raise a range of potential issues for government including:

- the nature of the content services being offered over such devices
- the application of existing regulatory frameworks
- whether, given the nature of the new services, existing approaches are adequate to restrict access to unsuitable content and address issues of child safety.

It is anticipated that the review will be informed by consultation including submissions from industry and other stakeholders. The review may also be informed by a consultancy to provide advice on new and emerging services.

TERMS OF REFERENCE

The review will:

1. Identify new and emerging communications devices and platforms, capable of receiving and delivering audio-visual services (including text), and related features.
2. Report on the types of audiovisual services, and related features, that are available or are being developed for mobile devices and platforms in Australia and overseas.

3. Report on relevant technical features, marketable characteristics and commercial drivers for take-up of such services and features including, but not limited to:
 - (a) their means of delivery
 - (b) commercial arrangements established for their supply
 - (c) their importance in contributing to the commercial viability of platform investment
 - (d) the commercial availability and performance of filtering technologies for mobile devices.
4. Report on the extent to which existing regulatory approaches apply to the different new and emerging audiovisual services and features including:
 - (a) whether the content of the service is of a type that is suitable for categorisation under the National Classification Code
 - (b) whether the content of various service types falls within the definition of Internet Content under Schedule 5 to the BSA or any other regulatory framework.
5. Consider:
 - (a) what, if any, measures are necessary (e.g. regulation, cooperative arrangements, public awareness and end-user empowerment initiatives) in order that the supply and accessibility of audiovisual services are managed
 - (b) whether there are additional measures that carriage service providers, content service providers and content hosts might take to address contact and child safety issues arising from contact type services (eg. chat).
6. In conducting the review, regard should be had to:
 - (a) the interaction of existing and proposed regulation with provisions under commonwealth and state criminal laws aimed at child protection and criminal activity using communications devices
 - (b) the implications of any proposed measures for the investment in and the commercial development of new communications platforms
 - (c) the desirability of regulatory consistency across different technological platforms
 - (d) international developments, where applicable.

REFERENCES²¹

- ¹ On 13 April 2004, the Minister determined that such services include a carriage or a content service supplied by way of a call to a number with an eligible prefix and/or a public mobile telecommunications service that enables the end-user to access a propriety network. See paragraph 4 of the *Premium Service Determination 2004 (No.1)* (the Determination).
- ² Under the Determination, a *proprietary network* means a telecommunications network used by a mobile carriage service provider to enable customers of that provider to access a premium content service by way of a mobile device where that service is not otherwise generally available.
- ³ See s. 4 of the *Broadcasting Services Act 1992* and ss. 3 and 4 of the *Telecommunications Act 1997*.
- ⁴ Internet content hosted in Australia is *prohibited content* if classified X or RC or content classified R not subject to a restricted access system. Internet content hosted outside Australia is *prohibited content* if classified X or RC. *Potentially prohibited content* is content that has not been classified, but if it were to be classified, there is a substantial likelihood that the Internet content would be *prohibited content*. Refer to Part 3 of Schedule 5 to the *Broadcasting Services Act 1992*.
- ⁵ The rating “MA” will change to “MA15+” from May 2005.
- ⁶ ‘Classification Board’ means the Classification Board established by the *Classification (Publications, Films and Computer Games) Act 1995*.
- ⁷ On 25 June 2004, the Minister for Justice and Customs and the Minister for Communications, Information Technology and the Arts jointly announced the introduction to Parliament new and updated telecommunications offences under the Crimes Legislation Amendment (Telecommunications Offence and Other Measures) Bill 2004. These offences would update and broaden those under the *Crimes Act 1914* and transfer them to the Criminal Code.
- ⁸ Jennifer L. Schenker, “In Europe, Cellphone Profits Go Up as Clothes Come Off”, *International Herald Tribune*, <http://www.nytimes.com/2004/05/04/technology/techspecial/04SHEN.html>
- ⁹ Greg Palmer, Hutchison Telecommunications, “Third Generation Mobile Reality”, *Telecommunications Journal of Australia*, Spring 2003, Vol. 53, No. 3, p.43.
- ¹⁰ See http://www.thinkers.sa.gov.au/images/press_BT_3G_First.pdf which details a game premiered at the Adelaide Fringe Festival 2004. The game took place simultaneously on the streets of Adelaide and online and made use of the handset’s location based features to track other players.
- ¹¹ See <http://www.t-mobilepressoffice.co.uk/company/content-code.pdf>
- ¹² *Children, Mobile Phones and the Internet: the Mobile Internet and Children*, Proceedings of the Experts’ Meeting in Tokyo, Japan, 6-7 March 2003, ‘Dating sites and the Japanese Experience’.
- ¹³ See clause 3 to Schedule 5 of the BSA. Emphasis added.
- ¹⁴ See Footnote 1.
- ¹⁵ Julian Bright, “Seeing beyond SMS”, *Net Generation Mobile*, 12 March 2004, pp 6-7.
- ¹⁶ See: <http://www.sportandtechnology.com/print.php?pageId=0168&PHPSESSID=9a38da12f31c2b70effbab1c59d93ebc>.
- ¹⁷ The UK Code distinguishes ‘commercial content’ from general Internet content. The former is content either supplied by the carriage service provider or supplied by a content provider with a contractual arrangement with a carriage service provider. The Code establishes a scheme whereby ‘commercial content’ is classified according to its suitability to minors. Content deemed unsuitable to children will be restricted to those customers that have been verified as 18 years of age or over. The Code operates on the premise that, unlike ‘commercial content’, access to content offered over the Internet is unable to be regulated by mobile network operators. In this instance, operators are reliant on community awareness and the projected availability of filtering technologies as an appropriate means of protecting minors from offensive material.
- ¹⁸ With reference to the UK Code, mobile operators appoint an independent classification body to determine criteria for adult content (consistent with other media). The classification body also considers complaints about misclassified content and the body’s determinations are enforced through mobile operators’ contracts with content providers. Under the Code, there are no provisions for penalties for carriage services providers in relation to the delivery of inappropriate content via their service.
- ¹⁹ See footnote 16.
- ²⁰ Refer subclause 1(3) of Schedule 5 to the BSA.