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PROPOSED RESTRICTED ACCESS SYSTEMS DECLARATION.

ACMA is seeking comment on proposed changes to a number of legal instruments ahead of the introduction of a new regulatory framework for internet and mobile content in January 2008.

The Australian Federation Against Copyright Theft (AFACT), welcomes the opportunity to comment on a specific aspect of the proposed changes pertaining to the objectives for a restricted access system and the likely effectiveness of the proposed approach in meeting those objectives in light of other relevant matters – specifically the current unrestricted access in Australia to unclassified, unmarked and illegal copies of copyright film content on-line.

We believe there is a strong public interest in considering the overall landscape into which this regulation would operate and the likely actions of the Australian on-line public following the introduction of the proposed access systems.

The proposed framework as we understand it will not prevent access to infringing copies of copyright films or prohibited material from offshore service providers but only when the prohibited or potentially prohibited content is hosted on an Australian site.

The unintended consequence is consumers and users including children/teenagers will quickly move to access this content from unregulated and illegal sources, moving to illegal downloads, filesharing and accessing of content that may be pirated, which will continue to impact significantly on our members.

This will result in the proposed regulation not realising the intended policy objectives in terms of the public interest.

Who we are

The Australian Federation Against Copyright Theft (AFACT) works closely with industry, government, police and educational institutions to address copyright theft and protect the interests of the Australian film and TV industry as well as consumers.

AFACT works on behalf of its members and the 50,000 Australians who are employed in the film and TV industry and who are adversely affected by copyright theft. These include local independent cinemas, video stores, filmmakers, production houses, broadcasters (free-to-air and subscription)

and distributors. Our members are also key Australian and overseas content providers and on-line content distributors.

AFACT's members include: Village Roadshow; Buena Vista International Inc; Motion Picture Association, Paramount Pictures Corp; Reeltime Media, Sony Pictures Releasing International Corp; Twentieth Century Fox International Corp; Universal International Films Inc; and Warner Bros. Pictures International (a division of Warner Bros. Pictures Inc).

Many cinemas, nearly all Australian filmmakers, & over 85% of video stores are small independent businesses.

75 – 81% of industry jobs are casual or part time and particularly vulnerable to economic loss and production downturn. 94% of cinemas & video stores are located in suburban & regional areas (39% in the country).

The scale of the problem

A global report into piracy was commissioned by the Motion Picture Association (MPA) and conducted by L.E.K. Consulting over 18 months in 22 countries including Australia. The study found that Australian film industry businesses lost an estimated \$233 million to pirates illegally duplicating and downloading movies in 2005, with the number of counterfeited DVDs in circulation almost equalling legitimate copies, and an estimated 11 million illegal downloads of movies. Illegal downloads of television programs or pornographic films were not surveyed in this study.

\$92 million was lost in Australia in 2005 due to internet piracy of mainstream movies alone.

Studies of illegal downloading of television programs have shown extensive piracy of this copyright product with the Envisional Report in February 2006 finding Australia has the highest number per capita of illegal downloader's of TV product out of all countries tested including the UK and the US.

As ACMA would appreciate, the LEK study was conducted at a time of relatively low broadband penetration, and the number of illegal movie downloads is very high in view of the high bandwidth required to download a file of such size. Similarly the extent of this illegal broadband traffic 'clogs the pipes' and burdens Australia's broadband infrastructure, especially our international connections, and increases costs for legitimate consumers and businesses.

As was demonstrated in the recent criminal case concerning the unauthorised cinema recording and uploading of "The Simpsons Movie" to the internet from Australia, the internet can facilitate the distribution of one illegal digital copy hundreds and thousands of times across geographic and jurisdictional boundaries in minutes and hours.

AFACT does not comment on behalf of its members on the detail or appropriateness of the introduction and proposal for a restricted access system outlined by ACMA.

However we submit there are some unintended consequences of the proposed regime in terms of likely consumer behaviour and industry impact which may not be otherwise raised with ACMA.

Protecting children from exposure to content that is unsuitable for children

None of the hundreds and thousands of illegal copies of films and television programs, including pornographic films that are currently freely available on the internet in Australia for illegal filesharing and downloading are subject to any age restricted access system, or indeed any regulated restricted access system.

While some of the films subject of this theft have been submitted for classification by the Classification Office in Australia by their legitimate distributors, no classification guidance or markings are found on material subject of on-line copyright infringement and nothing prevents children under 15 from accessing either pornography or age inappropriate but popular M, MA15+ and R films. A simple Google search of P2P filesharing shows numbers of readily accessible sites providing unrestricted access to illegal copies of film and TV programs in Australia through our broadband networks.

Never-the-less the technology now exists to recognize and exclude such traffic from Australia's broadband networks and to provide a level playing field for legitimate on-line content providers, IPTV services, mobile carriers and content producers.

AFACT and its member companies are concerned that any attempt by ACMA to regulate legitimate sources of content in Australia such as these, *without* regulating against illegal distribution of content must fail in the stated objectives of:

- a. protecting children from exposure to content that is unsuitable for children; and
- b. protecting children who have not yet reached 15 years from exposure to content that is unsuitable for children who have not reached 15 years.

We submit that ACMA have regard to the introduction and regulation of a scheme that addresses illegal on-line distribution of film and television content in Australia prior to the finalization of this proposed legal instrument and look forward to working closely with ACMA and ISPs to achieve ACMA's objectives.

AFACT appreciates the opportunity to present its views on this important package of reforms and would be pleased to provide any further information that would assist ACMA in its considerations.

Yours Faithfully,

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