
SUBMISSION BY HUTCHISON 3G AUSTRALIA

“Restricted Access Systems Declaration”

Australian Communications and Media Authority – 2007

Hutchison welcomes the opportunity to comment on the proposed *Restricted Access Systems Declaration 2007* (“RAS Declaration”).

Hutchison supports the submission made by the Australian Mobile Telecommunications Association and the Internet Industry Association. This submission is intended to be in addition to those submissions.

Hutchison has been involved with the Internet Industry Association in drafting the proposed Content Services Code. However Hutchison notes that work on that Code has ceased pending finalisation of the RAS Declaration.

In this submission Hutchison wishes to highlight key areas of concern to Hutchison and to explain the commercial practices it has already in place which have operated effectively to date in meeting the objectives of the Mobile Premium Services Determination (“MPSD”). Hutchison supports a self-regulatory approach whereby those who operate in the industry can determine the most appropriate model for the operation of services which provide age restricted content.

Hutchison 3G Australia
16 November 2007

“Access Key” requirement

Hutchison is concerned that ACMA has not accurately captured the ‘access-control system’ concept of the Content Services Act in its extrapolation of this concept into an ‘access key’ requirement. The ‘access-control system’ deals with the ability to limit access by *other persons* to the relevant content. The ‘access-key’ requirements proposed by ACMA instead deal with the ability to control the *person seeking access* to the content. In shifting the focus, ACMA has removed the flexibility contained within the definition of ‘access-control system’ and imposed only one method of limiting access to content - an ‘access key’.

Further, the requirements of the RAS Declaration state that access to the relevant content must not be provided unless a person has *entered* the access key. This implies that the access key is required each time the person wishes to access the content. Again, this goes beyond the requirements of an ‘access-control system’. It also goes beyond the requirements under the MPSD and is counter to ACMA’s assurances that existing RASs could be continued to operate.

Hutchison notes that under Schedule 7, only MA15+ content that meets the conditions in subclauses 20(1)(c) and (d) must be subject to a RAS. To avoid any potential extension of the requirements of Schedule 7, Hutchison recommends that the definition of MA15+ content in the RAS Declaration be clarified to make clear what type of MA15+ content is relevant for the purposes of a RAS.

Evidence/application timing issue

Hutchison is concerned that the provisions of sections 7 and 8 the RAS Declaration appear to require that an applicant for age-restricted content may need to provide evidence of age at the same time as making the application – regardless of whether the provider already has this evidence. We understand this is not the intention of ACMA, however the provisions need to be clarified to ensure that there is no confusion in the future.

The current requirements under the MPSD make allowances for a provider who may have carried out age verification at a time prior to the request to access the relevant content.

Risk analysis requirements

The current requirements in relation to age verification in the MPSD are not as onerous as the proposed risk analysis requirements. Under the RAS Declaration providers are required to become investigators, particularly given the assessment relates to whether or not the evidence *could* be held or used in the relevant ways. Providers should be entitled to rely on face value on the evidence that is produced. If the applicant produces a passport, a provider should not have to determine the likelihood that the passport could have been obtained using other false identification or that the passport is a forgery.

To allow applications for access to restricted content to be submitted in writing, or electronically, as the RAS Declaration permits, means there is an inherent risk that customers may be fraudulent. In the same way a person may produce false identification to enter into a cinema showing an MA15+ or R rated movie or to purchase an MA15+ game for sale on a website. However there is no requirement on cinema owners or website providers to undertake a risk analysis of the type of evidence received and the manner in which it is received and whether the evidence is likely to be held by a different or younger person. Similarly, it should not be a requirement for Hutchison to act in the role of police in this arena.

As is the case with the new 'access-key' concept, the new risk analysis requirements would require a review of Hutchison's current procedures which would appear to be unnecessary given these processes have been detailed to ACMA in the past and have operated without complaint since 2004.

“Measures” requirements

During its consultation with industry, ACMA provided industry with assurances that its intention to develop high level outcomes focussed RAS Declaration. Hutchison believes that an age verification plan that deals with the following measures would be sufficient to deal with any concerns around the implementation and monitoring of a provider's RAS:

- The measures to be adopted by the provider to ensure that an application has been received and that the age of the applicant has been verified as at least 15 years for access to MA15+ content and 18 years for access to R18+ content;
- The procedures to be followed by employees and agents of the designated content/hosting service provider to implement the age verification measures;
- The measures that will be taken so that the provider removes, without delay, an applicant's access to age restricted content, if the applicant's access is given in contravention to the requirements for access only via a restricted access system, the receipt of a request for access and verifying the age of the applicant.
- The procedures for conducting periodic internal review of the measures in the above paragraphs.