



# IARBA

THE INDEPENDENT AUSTRALIAN RADIO BROADCASTERS ASSOCIATION

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**RE: Restricted Access Systems Declaration: An ACMA consultation paper relating to the establishment of restricted access arrangements for regulating access to MA15+ and R18+ content with an Australian connection which is accessed via convergent devices.**

## PREAMBLE

In so far as content provided via SMS or MMS is concerned we are not involved in representing either therefore consider that our opinion on the same would be of limited value.

We are however involved in representing content streamed from Australia via the internet (rstp://, mms://, ice cast, shout cast etc.) and streaming content via the public internet using 3G and IADR Digital onto mobile phones. Our organization represents, among others, organizations running internet only radio services in Australia.

Generally the broadcast of internet radio stations tends to organically conform to the codes of practice in place for Commercial and Community Radio. The primary reason for this is that most operators tend to come from quite qualified backgrounds. There is generally a misconception that internet only stations are usually run by amateurs despite this statistically not being the case. This is in our opinion a myth perpetuated by terrestrial broadcasters in their commercial interests. One of our member stations "ZFM Digital" for example is staffed by people with over 70 years of experience throughout all forms of Australian Radio. Its members are also significantly involved in Terrestrial broadcasting. Internet stations generally also conform to M (or even PG) ratings as they are solely music based.

There have been some rare exceptions to this: a good example being the recent exposure on TV's *Media watch* of Sydney web station Net FM. This station it would appear sees deregulated internet radio as an opportunity to be as offensive as possible. We would like to clarify that this station is an exception and not the norm among our industry and that we in no way represent them or support their lack of regard for reasonable broadcasting standards.

Our industry is saddled with the continuing efforts of traditional media to de-value our advertising. This has happened from the most primitive beginnings (Radio Destiny or the earliest form of Real Audio and people using modems) and continues into the present with better than FM Quality broadcasts and radio interactivity for literally years prior to the current proposal of Digital Radio (the average internet station has all the interactivity still only promised on DAB+ and CD quality audio). Internet radio has continued to thrive and grow in markets here and overseas whilst radio transmitted using radio spectrum has met a continuing sharp decline in popularity.

Recently some terrestrial broadcasters have made some concessions to internet based broadcasting, for example Austereo recently asked to have their podcasts included in the Nielson ratings, but these concessions include only themselves; they do not in any way recognize the thriving internet radio industry outside their own commercial monopoly.

Other factors have contributed to the slow commercial success of internet radio in Australia: Australian internet access and speeds (home-based and 3G mobile) have grown at a faltering rate in comparison to most other western countries. Also add to this the fact that the internet backbone in this country is owned by one company who are not generally competitive in terms of bulk bandwidth costs. Also Performance Right's Organizations have demonstrated that they are not willing to support fledgling media forms by relying upon non-competitive, antiquated and arguably quite exploitative royalty collection arrangements.

## BACKGROUND



**IARBA**

The Independent Australian Radio Broadcasters Association exists primarily as a member organization for stations engaged in non-mainstream broadcasting and emerging broadcast technology including IADR Digital and Internet Radio. IARBA provides technical and general advice to members in all aspects of broadcasting and foster skill-sharing and networking between member broadcasters, promotes the acceptance of new Media and Broadcast technologies, promotes the widest possible access to Media creation and delivery by the most individuals or organizations technically possible within any broadcast delivery method and promotes access to all Media Delivery forms, at every level, for all members of Australian Society, regardless of their financial or social circumstances particularly including (but not limited to): people under 21 years of age, people over 55 years of age, persons with a disability, persons from a non-English speaking background and indigenous Australians.



## IADR

IADR is superior to all other methods of digital and AM/FM radio because it provides thousands of stations into every Australian radio market. IADR does not only provide Australian radio stations, listeners have access to thousands of overseas stations also. Mobile phones have superior sound quality, battery life and portability that far outstrips the old-fashioned portable radio. The IADR digital radio listening experience is enhanced with on-screen information such as the artist / song title, pictures of the artists, CD covers, discographies, news and much more. Just like the pocket transistor radio, the mobile phone is small, light and convenient to carry around. IADR Digital broadcast is based on a live OGG stream to Symbian based phones which run a software plug in to receive the broadcast. This is generally simultaneous to an internet broadcast of the same audio.

### SPECIFIC ISSUES

Our members support self regulation in the form of codes of practice, as proposed:

- In order to prevent "cowboy" operators similar to Net FM bringing the hard work of our entire industry into disrepute and exposing us to negative national media attention.
- As an opportunity to have our industry recognized in the hope that this will contribute to overcoming the persistent negative stereotypes perpetuated by commercial terrestrial operators about our industry for many years.
- We have proposed to the government that DAB+ radio will not succeed in the proposed form and that nature of radio delivery itself needs to change; in particular that the DAB+ spectrum be made available as a means of delivering thousands of internet radio stations into every radio area through the establishment of "RSP's". We see the responsible development of a Code of Practice for mobile/internet based streaming as a pre-cursor to this.

We wish to either register our own code of practice with the ACMA which individually takes into account the commercial imperatives of streaming radio operators, or take an equal part without financial detriment in the development of such a code by broader based groups in the industry.

Ideally we would prefer to register our own code but see the development of a code ourselves as a major organizational and financial hurdle and would seek ACMA help in this regard. We see the development and implementation of such a code of practice as a long term process.

We have some concerns with the proposed regulatory framework, in terms of age verification and complaint procedures prior to the registering of a code of practice. The insistence upon age verification is potentially costly and may represent implementation problems for some member stations. The only content that we can reasonably see as ever exceeding an MA 15+ rating would be certain forms of humour and the lyrics of songs. We would propose that warnings indicating this would be sufficient prior to a consumer clicking on a link on a web page or on a 3G mobile internet

page. Further that our members put tags in web pages which alert web-filters such as *net-nanny* to the rating of the audio content.

We are concerned that under the existing framework any person can now maliciously or frivolously affect the income of members of our industry by bringing about the even temporary take-down of a station at the ISP level if for example they personally take offense to something relatively insignificant like for example the lyrics of a song which upon investigation can be established to be consistent with community standards and well within classification. However in the intervening time the Industry member is caused considerable inconvenience and financial hardship. Whilst we realise this enforcement option of the ACMA is more so intended for removing content such as Child pornography and other RC content which we naturally applaud; it could plausibly have unintended consequences for our industry.

Our members are invariably broadcasting audio that, the potential for minors having access to material that realistically exceeds an MA 15+ classification, is considerably limited. If we were bound by a code of practice which was developed in party (for example) with operators offering "download of a sex video onto your mobile", our members would be saddled with restrictions and costly obligations that in realistic terms should never be necessary for our type of media service.

For this reason we feel registration of our own code of practice would be the fairest option. Among other factors, we would like to consider in that code:

- Our code of practice would limit those agreeing to it to not broadcast audio, video or still image content which would be classified in excess of MA 15+ at any time and that under no circumstances would content exceed an M classification prior to 9.30pm at night. Internet stations wishing to exceed an MA 15+ classification (for example to stream R 18+ video, images or audio) would not be covered by our codes of practice.
- Direct complaint handling: A station would have 60 days to respond to any complaint, which would go some way towards giving us the opportunity to identify vexatious or frivolous complaints to the ACMA if they were later taken to it if the complainant was dissatisfied with our response.
- Objectionable language in lyrics: In the event of objectionable language in song lyrics they should be of a non-sexually descriptive nature (and not of such an extreme nature such that they may be classified as R 18+ or RC); excluding reasonable innuendo or "double meaning" consistent with community standards. In the event that a station wishes to broadcast songs which may be objectionable they would be subject to these guidelines and the placing of generalized warnings (and appropriate "tags" for net filters) prominently on station websites would be sufficient - there would be no requirement for an age verification process.

Yours Faithfully,

Sean Ison (President)

Ryan Maguire (Secretary)

The Independent Australian Radio Broadcasters