



Internet Industry Association

16 November 2007

IIA Submission to ACMA on Draft RAS Determination (the “Draft RAS”)

The Internet Industry Association welcomes the opportunity to comment on the Draft RAS.

Having considered the document and consulted with members, we believe the current MA15+ provisions in the Draft RAS are unworkable. Given the disparate nature of content service providers in terms of their size, business model and location, we expect that any implementation of the RAS in its current form will result in low levels of compliance and/or relocation of services offshore.

In addition, the RAS will place Australian online content providers at a comparative disadvantage to their overseas competitors by creating barriers to access that are out of step with global industry norms in relation to the provision of the same category of content. In particular, any requirement for identifiers or PIN access would in our view cripple online business models for content, the provision of which is legal offline.

We observe that the overwhelming majority of MA15+ content available on the internet is located offshore. In spite of the ‘Australian connection’ test as set out in the Act, we consider that compliance with the RAS will be unenforceable against the vast majority of content service providers who are purportedly bound by the Broadcasting Services Act. Accordingly, it will do little to advance the welfare of those for whom the Act is intended to protect.

As you will be aware, the regulatory policy specified by Parliament in Section 4 of the Act requires the ACMA to regulate designated content/hosting services in a manner:

- that enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on the providers of those services,
- that will readily accommodate technological change, and
- that encourages the development of communications technologies and their application.

In the spirit of making the scheme more workable and assisting ACMA in its determination making process, we propose a multilayered approach to addressing access to age restricted content by children aged under 15.

We favour a principles-based approach for the RAS as previously discussed which will allow industry maximum flexibility while delivering on the requirements of the legislation.

However, to inform the principles that ACMA may wish to consider, we propose the following formulation which we believe will be acceptable to a broad range of content and hosting service providers who are subject to the Act.

Specifically, we propose a suite of complementary measures comprising *five* elements which together will constitute an Access Control System for the purposes of the RAS.

A restricted access system in relation to particular MA15+ content that is the subject of a take-down notice would be required to have the following characteristics:

1. an access seeker is required to make a declaration prior to accessing that MA15+ content that the access seeker is over the age of 15 years or over;
2. the site provides a warning notice on entry that content is suitable for persons 15 years or over;
3. the site provides a link to an approved internet content filter (eg a IIA Family Friendly filter or a PAFO approved filter) whereby persons seeking access to the content will be provided with a means of limiting access by other persons to the content;
4. the access provider has conducted a risk assessment as to the likelihood of access by children under the age of 15 to their content (guidelines for which assessment may be set out in relevant industry codes of practice as registered by ACMA); and
5. the access provider has in place measures to takedown covered MA15+ content where ACMA believes that the preceding four measures have not been adequately implemented and no remediation has occurred within a reasonable time following notification by ACMA to the designated content/hosting service provider.

The preceding measures could be given greater form and definition in an industry code of practice which would be complementary to, and supportive of the RAS once declared by ACMA.

We further propose that the RAS so implemented would be subject to a review in 18 months time to determine its effectiveness when weighed against the number of complaints ACMA receives in relation to the category of MA15+ content.

In combination, we consider these measures will form a proportionate response to the problem, and go further than other media (for example, free to air television) in respect of obligations pertaining to the same category of content.

Regarding a RAS for R18+ content, we are giving further consideration to this question in the light of online developments which have occurred since the 1999 Declaration was made. It is our intention to provide you with a response to this aspect of the Draft RAS in the next few days.

We trust you will find this contribution of value and are happy to provide further input and advice should you so require.

Yours sincerely

A handwritten signature in purple ink, appearing to read 'P. Coroneos', is displayed on a light blue rectangular background.

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