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**Friday, 16 November 2007**

**To: Manager**  
**Education & Telephone Content Section**  
**Via email: [NewContentRegulation@acma.gov.au](mailto:NewContentRegulation@acma.gov.au)**

**ISOC-AU SUBMISSION: in response to the Australian Communications and Media Authority consultation paper, *Restricted Access Systems Declaration***

## **1. Introduction**

**The Internet Society of Australia (ISOC-AU) welcomes this opportunity to comment on the Australian Communications and Media's (ACMA) consultation paper on the draft Restricted Access Systems Declaration.**

**ISOC-AU is a non-profit society founded in 1996 which promotes the Internet development in Australia for the whole community – private, academic and business users: the Internet is for everyone! ISOC-AU is a chapter of the worldwide Internet Society and is a peak body organisation that takes a users perspective and draws on the deep technical understanding of our members. We have a longstanding and ongoing commitment to the effective representation of these interests in self-regulatory processes in the telecommunications, domain name and Internet-related services industries.**

**One of ISOC-AU's important principles is that on-line regulation should be no more onerous than the regulation of off-line activities. In ISOC-AU's view, the draft Declaration challenges that principle and raises other significant issues for service providers covered by the draft Declaration.**

## **2. Overview of the Declaration and its Context**

**The draft Declaration is just one part of the changes made by the Communications Legislation Amendment (Content Services) Act 2007. The new framework set up by the Act is to impose obligations on what are called designated content/hosting service providers if they have an 'Australian connection'. Designated content/hosting service providers include providers of:**

- Hosting services (hosts stored content – excluding voice/video/email messages and SMS, MMS messages) that is provided to the public;**
- Live content (not stored content) provided to the public;**
- Links service – that provides links to content provided to the public; and**
- Commercial content service – operated for profit provided to the public.**

**Such service providers must not provide access to content that:**

- is or could be refused classification, or
- is or could be classified with age restrictions such X18+ R18+ or MA15+; and
- is not subject to a 'restricted access system'.

**An acceptable 'restricted access system' must have four components including:**

- Restriction on access to age restricted content;
- Provision of access only to approved applicants;
- Implementation of an age verification plan; and
- Retention of records of the age verification for each applicant for two years.

**To be considered as an acceptable 'restricted access system' the service provider must not only verify an applicant's age, but provide access to age restricted content on an 'opt-in basis'. That is, an individual must have registered with the service provider, (establishing their age to the service provider's satisfaction) prior to seeking that access. The real world equivalent would be to require an individual to register with a book store/video shop etc BEFORE seeking access to restricted material from that venue.**

### **3. Areas of Concern to ISOC-AU**

**The requirement for individuals to have registered with a designated content/hosting service provider prior to accessing age restricted material is of concern to ISOC-AU and should be reconsidered because:**

- it assumes the individual will know in advance what material they will be seeking, and from what provider; and
- 'R' restricted content covers a very broad range of material. The 'adult themes' referred to in the classification is defined as "verbal references to and depictions associated with issues such as suicide, crime, corruption, marital problems, emotional trauma, drug and alcohol dependency, death and serious illness, racism, religious issues". (Source: OFLC Classification Guidelines). An individual should not be required to have been an accepted applicant with a range of providers prior to accessing such a wide range of material.

**Our additional concerns with the draft Declaration are that:**

- it will be very difficult for an individual between the ages of 15 and 18 to establish their age on-line. The likelihood is, therefore, that they will be denied access to material that would otherwise be available to them; and
- it is not clear the extent to which providers of live content or links services can be expected to have knowledge of whether the content that is being accessed would be either refused classification or age restricted.

**Another important concern is with the draft Declaration's requirement that a service provider's records of individuals who have been approved for access to restricted material can be requested by ACMA. One of the basic privacy principles both nationally and internationally is that personal information**

**must only be used and disclosed for the purpose for which it was collected. Because a service provider's records include individuals who may not have accessed any restricted material, ACMA should only be allowed access to personal information in specific cases where there may have been unauthorised access.**

**In summary, ISOC-AU believes that on-line regulation, whether by legislation or other regulatory instrument, should be no more onerous than the regulation of off-line activities. Our primary concern with this draft Declaration is that it will have that effect, both in individual access to information and to the protection of and individual's personal information.**

**We would be happy to discuss any issues raised in this submission.**

**Holly Raiche  
Executive Director  
Internet Society of Australia**