Submission on
ALRC Issues Paper 40

National Classification Scheme Review

Pirate Party Australia

2011

1 In this Inquiry, should the ALRC focus on developing a new framework for classification, or improving key elements of the existing framework?

Pirate Party Australia believes that the current classification system to be fundamentally broken and a remnant of times long past. We therefore propose the implementation of a system akin to the European PEGI model or American ESRB model of voluntary classification for media and the abolition of the Refused Classification category.

As media converges and changes in the digital paradigm of the 21st Century, systems, laws and frameworks must adopt to these changes of environment. The sheer speed that media is being created and distributed makes it extremely difficult, if not impossible, to manage in a proper and timely manner.

The sheer size and architecture of the Internet makes any classification scheme entirely unenforceable and would simply penalise Australian companies attempting to compete in the global digital environment and Australian consumers who are forced to look overseas for their entertainment services.

With Australia being a rather minor market compared to the larger markets such as the United States or Europe, it is unlikely that publishers will continue to play ball with our hidden guidelines and compulsory system, which has already had a noticeable impact on the availability of content in this region.

Many countries already have implemented voluntary schemes, and we believe this is the best way forward for the digital paradigm.

2 What should be the primary objectives of a national classification scheme?

Pirate Party Australia believes that the primary and only objective of a classification scheme is to educate the consumer about content or a product, so they may make an informed decision about the media they wish to access. Clearly labelled content allows consumers to avoid potentially offensive material while not restricting access to others who may not find the same content to be offensive.

We believe the ALRC should consider both the PEGI and ESRB models when researching voluntary classification systems that provide accurate information to consumers without being mandatory.

3 Should the technology or platform used to access content affect whether content should be classified, and, if so, why?

We believe that the voluntary frameworks already in force on various content distribution networks like the Apple App Store and YouTube already provide consumers with both accurate information about content and a means to register complaints about inappropriate content. These distribution networks are managed by single entities who have a commercial interest in providing users with accurate information about content and voluntarily classify their content accordingly.

It would be impossible for Australia to legislate a classification system to be correctly applied to the Internet.

4 Should some content only be required to be classified if the content has been the subject of a complaint?

A complaints mechanism for a voluntary classification system should be implemented to focus on rectifying inaccurate classifications, with a mechanism for issuing fines for malicious or negligent mis-classifications.

5 Should the potential impact of content affect whether it should be classified? Should content designed for children be classified across all media?

Pirate Party Australia is proposing a voluntary classification system, and believes that if a product is unclassified, it does not mean it should be banned from sale, but should be restricted to sale to adults (18) until they so choose to classify their content.

The guidelines for classification must be transparent and available to all persons to access otherwise the classification scheme itself is an illegitimate scheme for the purpose of censorship and not for consumer awareness.

Therefore, given these circumstances, it is entirely reasonable to classify material intended for children, as having content restricted to sale only to adults when intended for children will likely not appeal to many parents, resulting in lower sales. Responsible classification would be a benefit to the publisher and the consumer.

6 Should the size or market position of particular content producers and distributors, or the potential mass market reach of the material, affect whether content should be classified?

Pirate Party Australia believes that smaller markets suffer more from strict classification requirements, as many cannot afford to pay the fees associated with having their content classified, resulting in a loss of potential profit and moving to alternative markets where the restrictions are much more lax such as the US or Europe.

The potential for content to reach the mass market is irrelevant should unclassified material be considered restricted, as for example, it would be counter-productive to release an unclassified product intended for sale to 12-15 year olds when it would be restricted for sale to adults only.

7 Should some artworks be required to be classified before exhibition for the purpose of restricting access or providing consumer advice?

As art is a form of personal expression not unlike free speech, it would be contrary to the free society we live in to attempt to classify it. A system where any public display must meet classification criteria or be banned outright would result in a worse system than we already have.

8 Should music and other sound recordings (such as audio books) be classified or regulated in the same way as other content?

Any attempt to regulate all music would be impossible to enforce. Music is consumed through such a wide variety of means, any classification system would neccessarily only encompass a fraction of the delivery methods. Music broadcast over TV networks (for example) would still have to comply with the relevant standards of the media it is broadcast through.

In terms of live performances, it is another medium that should remain outside of the classification system as it is a form of expression that is part of the fabric of human culture. The realities of musical performance make the concept of classifying the art-form virtually impossible.

- Would buskers need to get their performances classified before they could perform?
- Would classical orchestras need to get their music rated before they could play at the Sydney Opera House?

How could something with no words or images be classified?

9 Should the potential size and composition of the audience affect whether content should be classified?

The composition of an audience should have some impact on whether media is classified under a voluntary system, dependent upon the nature of the delivery platform. As has been continually previously stated in this submission, any unrated content should be restricted to sale to adults only, and not simply banned from sale.

10 Should the fact that content is accessed in public or at home affect whether it should be classified?

Publicly displayed media should be voluntarily classified by the industry to ensure compliance with accepted social standards for public display, as such media can be inadvertently viewed by minors and those of a sensitive disposition.

Media accessed in the home need not be classified as private individuals have control over the content they permit inside their homes.

11 In addition to the factors considered above, what other factors should influence whether content should be classified?

We believe all reasonable factors have been covered in this document.

12 What are the most effective methods of controlling access to online content, access to which would be restricted under the National Classification Scheme?

Pirate Party Australia vehemently opposes the restriction of online content. Free access to information is a fundamental requirement of a free society. There are many services that regulate content through a 'whitelist' of approved sites and a 'blacklist' of unapproved sites which should be promoted so that people concerned about accessing mature content can avoid content they find offensive.

Some filtering systems that are 'crowd-sourced' (such as www.mywot.com) allows society to decide which content they believe is appropriate and accurate, taking the approach that education is better than censorship. This particular software shows a circle in a green colour for links to safe sites, yellow to sites to be weary of, and red for sites to stay away from.

This is but one example of filtering software available to the consumer, and there are many types: hardware-level filters on routers and modems, software filters such as those discussed above and family friendly DNS such as OpenDNS.

13 How can children's access to potentially inappropriate content be better controlled online?

Pirate Party Australia's stance is that education regarding Internet safety is the best way to stop accidentally accessing inappropriate content, for both the parent and child.

Filtering software can only stop so much, so parents must take responsibility in the house through supervision and educating their children in safe Internet use. Taking this approach in conjunction with a personal Internet filtering solution should alleviate the majority of potential issues that a child may face while using the Internet.

14 How can access to restricted offline content, such as sexually explicit magazines, be better controlled?

The current system of sealed magazines and restricted premises is adequate to regulate sexually explicit content offline. Legal, unclassified material should be restricted, not banned.

15 When should content be required to display classification markings, warnings or consumer advice?

When content is intended for sale to an audience younger than 18 years of age, classification markings and consumer advice should be displayed, as this is in the best interests of both the publisher who wants to inform the consumer of what they are buying, and the consumer who wants to know what they're buying when they look at the item.

Unclassified content should not be placed with unrestricted content in the same manner that R18 content is generally not displayed with unrestricted content. It would be reasonable for content with possibly offensive cover material or content to be covered not unlike erotic magazines in newsagents currently are, but Pirate Party Australia does not agree with plain packaging laws similar to those implemented in South Australia.

16 What should be the respective roles of government agencies, industry bodies and users in the regulation of content?

Content that displayed in public or publicly accessible should be required to be classified according to standards negotiated by industry bodies in conjunction with government.

Government should have a role in receiving complaints from consumers and based upon a review of the complaints, have the power to re-classify the material and issue a fine if the material is found to be negligently or deliberately mis-classified.

17 Would co-regulatory models under which industry itself is responsible for classifying content, and government works with industry on a suitable code, be more effective and practical than current arrangements?

Yes, as the financial burden would be removed, allowing much more content to be distributed and consumed, and thus strengthening our economy. A friendly market is a stronger market.

18 What content, if any, should industry classify because the likely classification is obvious and straightforward?

All material requiring classification should be classified by industry, with government providing an appeals and re-classification process. It is in the commercial interests of media distributors to ensure that the audience has detailed and correct information about content.

19 In what circumstances should the Government subsidise the classification of content? For example, should the classification of small independent films be subsidised?

A voluntary, industry based model would remove the need for any subsidies to classification. Using the example in the question, an independent film-maker would be capable of rating their own works, costing the Government and the composer nothing.

As previously stated, in order for a voluntary system to work, the guidelines must be made clear, and must be published in order to best guide those classifying their content to the benefit of society.

20 Are the existing classification categories understood in the community? Which classification categories, if any, cause confusion?

Pirate Party Australia believes the categories M and MA should be merged as they are quite similar and can create confusion among the community. South Australia has intentions to remove MA for games should an R rating be introduced.

21 Is there a need for new classification categories and, if so, what are they? Should any existing classification categories be removed or merged?

Pirate Party Australia proposes that the template below based on the TV ratings would be suitably adapted to most publishable media:

- P [Preschoolers] (0+)
- C [Children] (3-5+)
- G [General] (8+)
- PG [Parental Guidance] (12+)
- M [Mature] (15+)
- R [Restricted] (18+)
- X [Erotic] (18+)

We believe that the listed classifications would standardise the classification scheme across all media in a simple manner, whether restricted to sale for these ages or used as a guideline for parents to best decide which content is appropriate for their children.

The ratings are familiar to any person who watches TV, watched movies or plays video games, meaning there would be minimal confusion when adapting to a system similar to this.

Other systems that could easily be adapted for use in Australia include the PEGI and ESRB systems

22 How can classification markings, criteria and guidelines be made more consistent across different types of content in order to recognise greater convergence between media formats?

There is a basic problem in aiming for convergence in ratings systems. Many platforms are not designed specifically for the Australian market and reach a global audience. They adopt their own voluntary ratings systems which should be incorporated into the Australian model.

Where media is specifically released in Australia, a common model such as the one proposed above could easily be incorporated to cover all classifiable content.

23 Should the classification criteria in the Classification (Publications, Films and Computer Games) Act 1995 (Cth), National Classification Code, Guidelines for the Classification of Publications and Guidelines for the Classification of Films and Computer Games be consolidated?

Pirate Party Australia believes that one standard guideline for classification of all media would lower the burden on the Government, the publishers and the consumer of managing such a cumbersome system.

24 Access to what content, if any, should be entirely prohibited online?

Pirate Party Australia opposes the prohibition of content except in the cases where it is in fact illegal. Where criminal activity is evident, such as child pornography websites, offending websites should be seized and closed down and the perpetrators prosecuted for their crimes.

Blocking content is ineffective as it is easily circumvented, and simply hides the issues from the public eye. Furthermore, it should be kept in mind that the purpose behind classification is to provide information and not to restrict access.

25 Does the current scope of the Refused Classification (RC) category reflect the content that should be prohibited online?

The current scope of RC does not reflect the attitudes and morals of today's society and often bans content that should not be banned, such as certain types of pornography or computer games that don't quite fit into the rigid, opaque guidelines.

The Pirate Party believes that any activity that can be legally undertaken by consenting adults should be legally viewable and distributable. The current scope of the RC category prohibits many such activities that are not illegal.

For example, the ban on bondage (BDSM) pornography, between willing participants, does not match community standards, where there are shops, groups and even night-clubs that cater to people who enjoy BDSM as part of their sex-life.

Refused classification incorporates banning material related to voluntary euthanasia, which is quite literally banning free speech and an attempt to enforce morality and public opinion. The current RC category does not reflect medical fact in its prohibition of female ejaculation. It is the Party's view that the RC category is abused to impose upon the Australian people particular views and agendas, and believes that the only possible solution to the issue is the abolition of the category entirely.

This does not mean that content such as child pornography should not be banned, as this content is already banned almost internationally, and therefore does not need its own category within the classification system to be banned and remain illegal (and indeed should remain illegal).

26 Is consistency of state and territory classification laws important, and, if so, how should it be promoted?

Pirate Party Australia believes the most efficient system would be one implemented on the Federal level that is amicable enough that all the states will adopt it without issue.

27 If the current Commonwealth, state and territory co-operative scheme for classification should be replaced, what legislative scheme should be introduced?

Pirate Party Australia does not have a position on this question.

28 Should the states refer powers to the Commonwealth to enable the introduction of legislation establishing a new framework for the classification of media content in Australia?

Pirate Party Australia does not have a position on this question.

29 In what other ways might the framework for the classificationofmediacontentinAustraliabeimproved?

Parents need to be educated in best Internet practices to allow them to teach their children how to protect themselves online and use the Internet responsibly. Without this bare minimum of household responsibility, not unlike letting your children cross the road without teaching them to look left and right first, they are more likely to get harmed than those who have been educated.