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Foundation**

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In response to the Australian Communications and Media Authority's Consultation Paper on Restricted Access Systems Declaration

Submission by the Australian Privacy Foundation

About the Australian Privacy Foundation

1. The Australian Privacy Foundation is the main non-governmental organisation dedicated to protecting the privacy rights of Australians. Relying entirely on volunteer effort, the Foundation aims to focus public attention on emerging issues which pose a threat to the freedom and privacy of Australians. The Foundation has led the fight to defend the right of individuals to control their personal information and to be free of excessive intrusions. The Foundation uses the Australian Privacy Charter as a benchmark against which laws, regulations and privacy invasive initiatives can be assessed. For information about the Foundation and the Charter, see www.privacy.org.au.

General comments

2. The Australian Privacy Foundation welcomes this opportunity to comment on the issue of Restricted Access Systems Declarations.

3. Our submission will focus only on the privacy aspects of the proposed scheme of Restricted Access Systems Declarations. However, that should not be seen as any indication of us agreeing with the general idea of such a scheme. Indeed, we note that the scheme is utterly out of line with the well established goal of functional equivalence. The proposed scheme would create a register of individuals who view content rated MA15+ and/or R18+ on certain modern forms of media. No similar register is kept of individuals viewing such content in a movie theatre or renting/buying such content in a video store. We cannot see any justification for this difference in treatment, and no such justification is provided in the consultation paper.

Privacy and Restricted Access Systems Declarations

4. The consultation paper reveals a virtually total disregard for the serious privacy issues that are associated with the proposed scheme for Restricted Access Systems Declarations. So to answer the ACMA's question of "whether there are any other relevant matters that ACMA should have regard to in developing the restricted access systems declaration", we point to people's legitimate expectation of privacy as one such matter. To start with, the paper completely overlooks the fact that the collection of data indicating individuals' willingness to receive MA15+ and/or R18+ content, and their age-based right to do so, is a collection (NPP 1) of highly personal information.

5. Furthermore, the consultation paper does not even mention NPP 8 dealing with anonymity. NPP 8 states that: "Wherever it is lawful and practicable, individuals must have the option of not identifying themselves when entering transactions with an organisation." This important principle is completely undermined by the proposed scheme. Indeed, it is not surprising that organisations more often than not overlook this principle, when the ACMA so blatantly ignores it.

6 The part of the consultation paper that at least displays an awareness of the *Privacy Act 1988* (Cth) deals with the keeping of records of the age verification of each person that has opted in to be allowed to access MA15+ and/or R18+ content. The consultation paper makes clear that such records "need to be retained in accordance with the National Privacy Principles". We welcome this initiative. However, the proposal is terribly undeveloped in this regard. It is, for example, not clear whether only organisations falling within the scope of the *Privacy Act 1988* (Cth) will be required to comply with the NPPs in keeping a record as envisaged in the consultation paper. If that is the case, a very large group of "designated content/hosting service providers" may be free to deal with this sensitive information as they see fit. On the other hand, if it is the ACMA's intention that all "designated content/hosting service providers" need to comply with the NPPs regardless of whether they fall within the scope of the *Privacy Act 1988* (Cth), that needs to be made clear.

7 To conclude, we recognise that arguments can be found favouring the restriction of access to MA15+ and/or R18+ content. However, as currently drafted, the proposed scheme of Restricted Access Systems Declarations is an unwarranted and frightening violation of people's legitimate expectation of privacy.

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