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21 November 2007

Manager  
Education & Telephone Content Section  
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PO Box 13112, Law Courts  
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Dear Manager

### **Draft Restricted Access Systems Declaration 2007**

Free TV Australia is the peak industry body representing all of Australia's commercial free-to-air television licensees in Australia.

We thank you for the opportunity to comment on the *Draft Restricted Access Systems Declaration 2007* (**draft Declaration**). Free-to-air broadcasters have a particular interest in the declaration as creators and suppliers of content for a number of internet and mobile telephone services, including news, weather and sport to live streaming of program content on a free and subscription basis.

It is vitally important that the rules set out by the Restricted Access Systems Declaration are workable and clear as to the access controls that content service providers are required to have in place.

Free-to-air broadcasters have concerns about certain aspects of the draft Declaration. We believe that if implemented in its current form the draft Declaration is at real risk of imposing undue burden on content service providers and stifling commercial development at a time when the market for internet and mobile phone content is still emerging.

Our principal concerns with the draft Declaration are summarised below. We would be happy to meet with ACMA to further discuss our concerns.

#### **1. Age verification for people 15-17 years of age**

The Declaration and the new Schedule 7 proceed on the basis that it is possible to verify someone as being between 15 and 17 years of age.

In practice however, there are considerable difficulties associated with this. People aged 15 to 17 years of age are unlikely to have access to major forms of identification and age verification such as driver's licence and credit card.

Free-to-air broadcasters are very concerned that the difficulties associated with verifying someone as being between 15 and 17 years of age may result in a default position where MA15+ content can only be provided to persons over 18 years of age. This would defeat the purpose of creating an MA15+ category in the first place.

We understand that similar concerns are held by numerous stakeholders. Free TV would welcome the opportunity to discuss this issue with ACMA on this issue in the interests of developing a workable method by which people aged between 15 and 17 years of age could be age verified.

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## 2. Risk analysis

The risk analysis and age verification measures set out by the draft Declaration require content service providers to identify and assess the risk that evidence of age produced by an applicant could be held/used by:

- a person other than the person it purports to identify; or
- a person younger than the age that the evidence attributes.

Content service providers are then required to take action to address identified risk to *ensure* compliance. This requires that content service providers take action to exclude 'any' risk involved.

Having regard to the very broad and objective risks that it is proposed content service providers be required to address, there is a concern that this formulation imposes a burden on content service providers which they would be unable to discharge. For example, it would be almost impossible to exclude all risk that a person has provided evidence and information of age fraudulently or dishonestly.

We suggest that a better formulation might be as follows:

1. The declaration is clear as to the obligation on content service providers regarding age verification.
2. Where evidence is obtained by a content service provider in accordance with the requirements set out in paragraph (1) the content service provider is taken to have appropriately verified that someone is of relevant age unless on the face of the material provided by the applicant there is a reason to suspect that the applicant is not of relevant age.
3. Content service providers could also be required to have regard to any subsequent information obtained later in time, for example in the form of complaints, in determining whether or not there is a reason to suspect that a person is not of relevant age.

We would appreciate the opportunity to enter into further discussions with ACMA on this issue to discuss the details of any such alternative formulation.

## 3. Age verification plan and quality assurance measures

The age verification plan and quality assurance measures set out in the draft Declaration effectively require content service providers to set out in very detailed form an explanation as to how they propose to comply with the requirements of the Declaration.

We do not believe it is necessary or warranted for the Declaration to go into this level of detail.

It is not common regulatory policy for an instrument to impose such prescriptive documentary requirements regarding internal practices to be employed in achieving regulatory compliance. It is usually only seen in Court imposed compliance programs against an entity that has been found to have engaged in a breach.

There also appears to be double handling between the documentary requirements imposed by the age verification plan and quality assurance measures on the one hand and the record keeping requirements imposed by section 13 on the other. Both appear to be directed toward creating documentation to evidence compliance by content service providers.

Broadcasters are concerned that the requirement to maintain a proscribed age verification plan together with specified quality assurance measures in addition to the record keeping requirements in section 13 will impose undue burden on content service providers.

We urge ACMA to reconsider the necessity of the age verification plan and quality assurance measures. The record keeping requirements imposed by section 13 will provide adequate evidence of compliance.

If the age verification plan and quality assurance measures are to continue to be considered we would suggest that such measures should only be imposed on content service providers who are found to be in systemic and recurring breach.

#### **4. Use of access key**

Section 6 of the draft Declaration requires that a person enter his/her access key in order to access R18+/MA15+ content. It is not clear whether this requires a person to enter their access key once on entry to a website (or on their first request for access to R18+/MA15+ content within a website) or whether they are subsequently required to re-enter their access key every time they request access to particular content within that site.

We assume it is not the intention of the Declaration to require someone to enter and re-enter their access key multiple times within the one website when requesting access to content of the same classification.

Users with an MA15+ access key should only have to enter their key once on each visit to a website to access all MA15+ content on that website. Similarly, users with an R18+ access key should only have to enter their key once on each visit to a website to access all R18+ and MA15+ content on the website.

We request that the Declaration makes this clarification in Section 6.

Thank you for your consideration of these matters. We would be happy to meet with ACMA to clarify and discuss our concerns.

Yours sincerely



**Julie Flynn**  
**Chief Executive Officer**