

8 July 2014

The Manager
Content Classification Section and ACMA Hotline
Citizen and Community Branch
Australian Communications and Media Authority

By email: rasreview@acma.gov.au

Review of Restricted Access System Declaration 2007

The Australian Subscription Television and Radio Association (ASTRA) is the peak industry body for subscription television (STV) in Australia. ASTRA's membership includes the major STV operators, as well as over 20 independently owned and operated entities that provide programming to these platforms, including Australian-based representatives of international media companies, small domestic channel groups and community-based organisations.

ASTRA welcomes the opportunity to comment on the Australian Communications and Media Authority (ACMA) Review of Restricted Access System (RAS) Declaration Discussion Paper ("the Discussion Paper"). ASTRA members are broadcasters, distributors and producers of audiovisual content made available largely via cable or satellite, but increasingly via other distribution platforms such as online and mobile devices.

Protection measures on STV

Independent of regulation, STV providers have a business interest in taking reasonable steps to ensure children are restricted from accessing material that may be harmful to them. Foxtel, for example, does this across its range of platforms and services using its Parental Control System (which is available for IP-delivered online and mobile services Foxtel Go, Play and Presto, as well as for services delivered by cable and satellite) and by providing the content classification.

As ASTRA noted in our submission to the ACMA's Contemporary Community Safeguards Inquiry, STV subscribers have the security of knowing there are a wide variety of channels on STV specifically dedicated to children's programming available at any time, and that on the Foxtel platform, the Parental Control System can be used to manage access.

Changing technological and consumer environment

As noted in the Discussion Paper, technology, and the way consumers use technology, has changed significantly since 2007. The exponential increase in online and mobile services means there is a need to consider the regulatory burden on Australian commercial services covered by the RAS Declaration in the context of many unregulated services which provide access to explicit content with no restrictions.

The Discussion Paper asks whether there should be different restricted access requirements for user-generated content or for other content models. While ASTRA does not express a view in relation to user-generated content, we note that there is currently regulatory disparity between subscription and free services (including advertiser-funded free services) that provide professionally-produced content.

For example, whereas a subscription provider may be liable to comply with the requirements in the RAS Declaration in relation to programming classified MA 15+, content with the same classification can be provided on internet-delivered free-to-air catch-up services without the RAS Declaration applying. Among other things, this means that while a subscriber will be required to attest to their age to access MA 15+ content on a subscription service, they will not be required to do so on a free catch-up service.¹

We note that this outcome is not logical and is a product of the definition of 'commercial content service' in Schedule 7 of the *Broadcasting Services Act 1992* (BSA), which captures subscription services because it refers to services provided to the public on payment of a fee. We submit that it may be appropriate for the Government to consider removing access restriction requirements for MA 15+ content for subscription services on the grounds that the current rules do not apply fairly across sectors.

However, ASTRA realises that this disparity is not an issue which is within the scope of this ACMA consultation. We address below the issues raised in the Discussion Paper.

Issues raised in this consultation

As the Discussion Paper notes, the Government's deregulation agenda provides an opportunity to reduce unnecessary costs and administrative burdens on industry. While ASTRA recognises that the RAS Declaration is a statutory requirement under Schedule 7 of the BSA, there are ways in which the ACMA might reduce the financial and administrative compliance burden.

Age verification

ASTRA is not aware of particular new ways of verifying age. In this regard the Declaration should avoid prescriptive obligations and retain flexibility in relation to evidence required to prove age for access to R 18+ content. For example, use of credit card remains appropriate, as contemplated in the Explanatory Statement to the 2007 Declaration.

In relation to MA 15+ content, so long as the RAS Declaration is required to set to access restrictions for this content, ASTRA does not see a need for change to existing requirements (that is, attestation of age by the consumer).

Reducing financial and administrative compliance burdens

Section 4 of the BSA states an intention of Australian broadcasting policy is that broadcasting services in Australia be regulated in a manner that enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on providers of broadcasting services, and readily accommodates technological change.

In this context, ASTRA submits the ACMA should look to simplify a number of the compliance requirements under the RAS Declaration, particularly with regards to record-keeping and quality assurance requirements.

¹ For example, see episode 10 of season one of the television program *Fargo*, which is classified MA 15+, available on the advertiser-supported SBS ON DEMAND website at <http://www.sbs.com.au/ondemand/program/1142/Fargo>. When accessed on 7 July 2014 this program commenced without the need to register or attest that the viewer is 15 years or over.

Quality assurance mechanisms

Clauses 9 and 16 of the 2007 Declaration require the implementation of quality assurance measures that provide for the removal of access to MA 15+ or R18+ content, where access is in contravention of the 2007 Declaration, and for periodic review internal review of the effectiveness of such procedures.

ASTRA submits that a regulatory requirement for periodic internal review of access removal procedures is unnecessary. Standard risk mitigation strategies employed within businesses are sufficient to ensure that these processes are in place and remain effective to ensure compliance with the primary obligation. A more practical regulatory approach that would maintain effective community safeguards would be for the ACMA to investigate and assess the quality assurance mechanism where there has been a complaint.

Record-keeping

The 2007 Declaration currently requires the retention of age verification records for a period of two years. ASTRA does not consider there is a need for a regulatory obligation to keep such records for a two-year period. A business will naturally keep a record of the credit card number for the duration of the period of service for billing purposes.

Please feel free to contact myself or Simon Curtis, Policy and Regulatory Affairs Manager, on (02) 9776 2685 if you wish to discuss further anything in the above.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Andrew Maiden', with a stylized flourish at the end.

Andrew Maiden
CEO