



**Australian Government**

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**Department of Broadband,  
Communications and the Digital Economy**

**Mandatory internet service provider (ISP) filtering:  
Measures to increase accountability and transparency  
for Refused Classification material**

**Consultation paper**

**December 2009**

## Part one: Introduction

### ***ISP filtering scheme***

The Australian Government is committed to a comprehensive range of cyber-safety measures including law enforcement, filtering, research, technology and education.

The Minister for Broadband, Communications and the Digital Economy has recently announced measures to require internet service provider (ISP) level filtering of overseas-hosted internet material classified Refused Classification (RC) under the National Classification Scheme. Such material includes child sexual abuse imagery, bestiality, sexual violence, detailed instruction in crime, violence or drug use and/or material that advocates the doing of a terrorist act.

The Minister for Home Affairs has released a discussion paper considering whether there should be an R18+ category for computer games in Australia. The discussion paper is available at [www.ag.gov.au/gamesclassification](http://www.ag.gov.au/gamesclassification). Submissions on this issue should be directed to the Attorney-General's Department. The Government's approach to filtering online games will be developed drawing on this consultation process.

Overseas hosted content that is classified RC will be included on a list maintained by the Australian Communications and Media Authority (ACMA) for the purpose of ISP filtering. This list will be known as the 'RC content list'. It will be compiled in two ways:

- overseas-hosted content that is the subject of a complaint from the public made to the ACMA and
- incorporation of international lists of overseas-hosted child sexual abuse material from highly reputable overseas agencies following a detailed assessment of the processes used by those agencies to compile their lists.

### **Existing situation**

Under the *Broadcasting Services Act 1992*, prohibited content includes content that is:

- (i) classified as MA15+ if commercially available (i.e. for a fee) but not behind an age restriction scheme
- (ii) classified as R18+ content if it is not behind an age restriction scheme
- (iii) classified as X18+ and
- (iv) classified as RC.

Currently, when the ACMA receives a complaint about potentially prohibited content that is hosted in Australia, the content is passed on to the Classification Board for formal classification. If it is classified as prohibited content by the Classification Board, the ACMA will issue the website owner with a take-down notice directing the content provider to remove or restrict access to the content (note that the ACMA may also issue an interim take-down notice pending formal classification by the Classification Board). No changes are proposed to this part of the scheme.

When the ACMA receives a complaint about potential prohibited content that is hosted overseas, trained officers within the ACMA assess the content against the guidelines of the National Classification Scheme. If the ACMA is in any doubt about the classification of the content, it refers that content to the Classification Board.

The Classification Board is comprised of members broadly representative of the Australian community who are trained to classify content against the *Classification*

*(Publications, Films and Computer Games) Act 1995*, the Classification Code and the classification guidelines that comprise the National Classification Scheme. Members of the Board are identified through a national recruitment process and appointed by the Governor-General for an initial period of up to five years. Classification Board members may serve on the Board for a maximum period of seven years.

For more information on the roles and functions of the ACMA and the Classification Board, please see [www.acma.gov.au](http://www.acma.gov.au) and [www.classification.gov.au](http://www.classification.gov.au)

Overseas-hosted prohibited content is added to what is known as the ‘ACMA blacklist’, which is provided to accredited PC filter vendors so that they can filter content against the blacklist. It is estimated that approximately 20 to 35 per cent of Australian households use some form of content filtering.

### ***Creation of the new RC content list***

The Government will introduce legislation which will enable the creation of an RC content list.

This list will contain URLs of RC content that were either the subject of a complaint to the ACMA, or added through arrangements with highly credible overseas agencies to share child sexual abuse content lists.

This list will remain separate from the ACMA blacklist. Filtering of the RC content list will become an additional step beyond the treatment outlined above for prohibited online content.

### ***New process***

Legislation will be introduced to require all ISP’s to filter the RC content list. Existing arrangements for Australian-hosted prohibited content will remain in place. The existing ACMA blacklist of overseas prohibited content that is provided to PC filter vendors will continue.

## **Part two: Measures to increase accountability and transparency**

As part of the introduction of ISP filtering, the Minister for Broadband, Communications and the Digital Economy, Senator Stephen Conroy has made a commitment to consult publicly on the process that leads to the addition of RC material to the RC content list for mandatory ISP filtering and the means for reviewing those decisions. Additional transparency and accountability processes that are adopted would, as far as practicable, also apply to material put on the Australian RC content list from overseas lists of child abuse material obtained from highly reputable agencies.

Public comments are sought on the proposed additional measures to increase transparency and accountability as set out below. The Government may adopt all or a combination of options or selected elements of the options proposed. The Government may also consider additional measures raised in the comments received.

### ***Option one: Refer all material to the Classification Board***

The ACMA would refer all complaints initially assessed as potential RC content to the Classification Board for classification to check that the ACMA assessment is correct. Material assessed by the ACMA as potentially RC content would be placed on the RC content list for filtering whilst the Classification Board undertook its classification decision. The ACMA would be bound by the decision of the Classification Board.

### ***Option two: ACMA notification procedure***

When prohibited content is hosted in Australia and becomes the subject of a complaint, the ACMA notifies the content owner, as under existing laws the owner is required to remove or restrict access to the content for Australian users.

However, there may be some concern that owners of content hosted overseas may not know that their content was added to the RC content list. To address this, it is proposed that in circumstances where the owner of overseas-hosted content that is the subject of a complaint to the ACMA is readily identifiable and contactable, the ACMA will notify the owner that a URL associated with their content (for instance, a specific webpage) was added to the RC content list.

This would give the relevant content owner an opportunity to voluntarily act to remove the content (for example, where the content has arisen as the result of criminal hacking without their knowledge), or to seek a classification from the Classification Board if the owner believes the ACMA decision is not correct. In this case, the ACMA would ask the Classification Board to give priority to its classification of that content. Where the Classification Board has already made its classification decision, the content owner could seek a review by the Classification Review Board and provide arguments or evidence to support the review.

However, no notice would be given where the content owner is not identifiable or contactable, or the content is the subject of a police investigation and the Australian Federal Police requests the ACMA not to notify the owner.

### ***Option three: Blocking notification page and appeal mechanism***

The introduction of a standardised 'block' page would advise end-users that the content they have attempted to access is blocked by the filter because it is on the RC content list. The page could:

- state that the user's internet browser has attempted to access content that is blocked due to the nature of the content, and
- provide information on how to seek a review of this if the user believes that the decision to add the content to the RC content list is wrong.

The block page notification would apply to the entire RC content list regardless of whether the content was included as a result of a complaint to the ACMA or through the incorporation of international lists from highly reputable overseas agencies.

Content owners whom the ACMA cannot readily identify and contact may therefore also be alerted through this process that parts of their website are included on the RC content list. If they consider that the relevant URL does not provide access to RC content, they could then seek review of the decision.

The ACMA would refer any reasonable request for classification to the Classification Board where the ACMA has added content to the RC content list (where the ACMA has made the initial assessment and the Classification Board has not yet made its classification decision under option one above, if that option is also adopted), or to the Classification Review Board (where the Classification Board has made its classification decision under option one above) provided the person requesting the review supplies contact details including their name and address. In these circumstances the ACMA would request that the Classification Board undertake its assessment with priority. The ACMA would be bound by the decision of the Classification Board or Classification Review Board.

The ACMA would advise the person seeking the review of the outcomes of the process.

#### ***Option four: Incorporation of content from international lists***

Material added to the RC content list through incorporation of international lists of overseas-hosted child sexual abuse material provided by highly reputable overseas agencies would occur only following a detailed assessment by the ACMA of the processes used to compile those lists.

This material would be subject to the standardised block page (as per option three above), and classification could be sought from the Classification Board by an interested party at first instance.

Another possible measure is for the ACMA to provide a regular, representative sample of content added from the international lists to the Classification Board for classification, with the ACMA bound by that decision. This may require legislative change and amendment to existing industry codes of practice.

#### ***Option five: Review by an independent expert and report to Minister and Parliament***

An independent expert (most likely a person with extensive experience in classification matters) could undertake an annual review of the outcomes of the process described in option four above as well as the processes used by the ACMA to initially assess content. This would include timeliness in dealing with complaints and requests for review of content added to the list. The independent expert would then report to the Minister with that report tabled in Parliament, possibly for consideration by a Parliamentary Committee.

***Option six: Review by industry group of RC content list classification processes***

Formation of an industry group to consider the administrative arrangements that the ACMA and/or the Classification Board have in place to assess complaints/classify applications relating to online content. This would not involve the group looking at items on the RC content list itself, but reviewing the ACMA processes followed when investigating internet content complaints. The group would provide feedback to the ACMA and an annual report to the Minister that is subsequently tabled in Parliament.

## Part three: Submissions process

Submissions are invited in writing by close of business on 12 February 2010.

The preferred method for the receipt of submissions is via the online form available by following the links at [www.dbcde.gov.au/consultation\\_and\\_submissions](http://www.dbcde.gov.au/consultation_and_submissions) to the 'Measures to increase accountability and transparency for Refused Classification material' page.

Alternative means for making submissions are:

1. by fax to 1800 080 598
2. by post to  
Transparency Measures  
Department of Broadband, Communications and the Digital Economy  
GPO Box 2154  
CANBERRA ACT 2601
3. by email attachment to [TransparencyMeasures@dbcde.gov.au](mailto:TransparencyMeasures@dbcde.gov.au)

Please send a submission only once, using only one of the available options.

### **Submissions cover sheet**

All submissions made via fax, post or email must attach the submission cover sheet that is available on the 'How to make submissions on measures to increase accountability and transparency for Refused Classification material' page, found by following the links at [www.dbcde.gov.au/consultation\\_and\\_submissions](http://www.dbcde.gov.au/consultation_and_submissions)

You can request a hard copy of the cover sheet by calling 1800 073 304 (free call).

### **Email formats**

Please adhere to the following requirements when submitting by email:

1. Please include all submission material—including the coversheet, submission and any appendixes—as attachments, NOT as material in the body of the email. This will aid in publishing submissions and ensure that your submission is published as you provided it.
2. The total combined file size for any email (including the coversheet, submission and any appendixes to a submission) should not exceed 3 MB.
3. All files must be labelled in the following form:  
'Main Submission\_Individual/Organisation Name.(file format)' or  
'Submission Attachment\_#x\_Individual/Organisation Name.(file format)' or  
'Cover Sheet\_Individual/Organisation Name.(file format)'.
4. Please submit attached files in only following file formats:
  - .doc
  - .rtf
  - .gif
  - .tif

- .jpg
- .txt
- .pdf
- .zip

### ***Publication of submissions***

Unless a contributor specifies otherwise, each submission will be published on the Department's website after the public submissions period has closed.

The Department will not acknowledge receipt of submissions. Please note the possibility for delay in publishing submissions if a large number is received.

The Department will not publish submissions that breach applicable laws, promote a product or a service, contain offensive language, or express sentiments that are likely to offend or vilify sections of the community.

Please note that the Department reserves the right not to publish submissions it deems inappropriate for reasons other than those outlined above. For example, the Department may choose to only publish one of a series of duplicate, identical or near-identical 'campaign-type' responses.

### ***Consultation paper—alternative formats***

If you would like to receive a copy of the consultation paper by post, in Braille format or as audio files, please phone the Department of Broadband, Communications and the Digital Economy on 1800 073 304 (freecall).

The Department will publish MP3 format audio files of the consultation paper at the 'Measures to increase accountability and transparency for Refused Classification material' page, found by following the links at [www.dbcde.gov.au/consultation\\_and\\_submissions](http://www.dbcde.gov.au/consultation_and_submissions)

### ***Confidential information***

Any submission that is confidential or sensitive must be clearly indicated as such to ensure that it is not published.

However, you may choose to provide an additional version of that submission for public release.

Submitters of material marked as confidential or sensitive must understand that submissions may be released where authorised or required by law or for the purpose of parliamentary processes.

The Department will strive to consult submitters of confidential information before that information is provided to another body or agency. However, the Department cannot guarantee that confidential information will not be released through these or other legal means.

### ***Privacy***

The Department is subject to the *Privacy Act 1988*. Any personal information you provide to the Department through your response to this consultation paper is used only for the purposes of the Australian Government's consultation on transparency and accountability measures for the RC content list.



## **Contact information**

If you would like a copy of the consultation paper or any other information sent out to you, please call the Department on 1800 073 304 (free call).

If you are deaf or have a hearing or speech impairment, please contact the Department through the National Relay Service:

- TTY users phone 1800 555 677 then ask for 1800 073 304
- Speak and Listen (speech-to-speech relay) users phone 1800 555 727 then ask for 1800 073 304
- internet relay users connect to [www.relayservice.com.au](http://www.relayservice.com.au) and then ask for 1800 073 304.