

# **INTERNET INDUSTRY CODES OF PRACTICE**

## **CODES FOR INDUSTRY CO-REGULATION IN AREAS OF INTERNET AND MOBILE CONTENT (PURSUANT TO THE REQUIREMENTS OF THE BROADCASTING SERVICES ACT 1992)**

**May 2005  
(Includes provisions affecting mobile services)  
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**As Registered  
by the Australian Broadcasting Authority**



**Internet Industry Association**  
[www.iaa.net.au](http://www.iaa.net.au)

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## PART A – PRELIMINARY

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### 1. Preamble

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- 1.1 The IIA recognises the enormous benefits that the internet can bring to all Australians as an information and educational tool.
- 1.2 The IIA also recognises that the Internet can bring with it some content to which end users may not wish to be exposed. Whilst it would be impractical and ineffective to filter all internet content, filtering technologies can be utilised by end users to manage content to some extent. While present filtering technologies have various levels of sophistication depending on the medium to which they are applied the IIA remains committed to monitoring developments in filtering technologies, including those applying to mobile devices, and to keeping its members informed of these developments. Specifically the IIA will liaise with all filter vendors including those who are implementing filtering solutions for mobile devices and mobile operators, with a view to assessing the ability to apply these measures in the Australian environment so Australian mobile customers can have access to these tools at the earliest opportunity.
- 1.3 The IIA endorses and supports effective, practical and appropriate measures that assist Australians to manage their use of the internet. The IIA endorses and supports end user empowerment as one of the most effective strategy to manage content issues. Specifically the IIA endorses, and this Code supports, the provision of information about content issues to end users, including strategies for managing children’s and minor’s use of the Internet as well as the availability of end user filtering products and other tools by which responsible adults can facilitate controls that are appropriate for themselves or their family.
- 1.4 The IIA is aware that this is a dynamic area of regulatory development and as such has developed the Codes with a view to being consistent with all currently known requirements in relation to these Codes’ subject matter. In particular, these Codes do not purport to cover all aspects of online and mobile regulation, but rather are intended to coexist with measures occurring elsewhere, for example the Service Provider Rule that the Australian Communications Authority has under development for mobile carriers. A short review period has been incorporated to ensure these Codes remain consistent with developing regimes. Under the Act the ABA has the power to investigate complaints relating to Prohibited or Potential Prohibited Content and to monitor compliance of the Codes. Non-compliance with the Codes may be subject to a range of penalties under the Act.
- 1.5 As stated in subsection 4(3) of the Act, Parliament intends that internet content hosted in Australia, and internet carriage services supplied to end users in Australia, be regulated in a manner that:
- (a) enables public interest considerations to be addressed in a way that does not impose unnecessary financial and administrative burdens on Content Hosts and Internet service providers (ISPs);
  - (b) will readily accommodate technological change; and
  - (c) encourages:
    - the development of Internet technologies and their application;

- the provision of services made practicable by those technologies to the Australian community; and
- the supply of Internet carriage services at performance standards that reasonably meet the social, industrial and commercial needs of the Australian community.

1.6 To give effect to Parliament's intent as expressed above, all obligations on ISPs, Content Hosts and Mobile Carriers set out in these Codes will be interpreted in a manner that is consistent with that intent.

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## **2. Objectives**

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2.1 The aims of the Codes include:

- (a) providing guidelines for Content Hosts, ISPs and Mobile Carriers to ensure compliance with their legal obligations and promote the adoption of responsible processes and procedures for dealing with Content issues;
- (b) providing a clear, efficient and responsible self-regulatory Content assessment regime in regard to the provision of Mobile Content, in particular to ensure that reasonable steps are taken by Mobile Carriers and Content Providers to protect Minors from viewing Mobile Content that is not suitable for them;
- (c) promoting End User confidence in and encouraging the use of the Internet; and
- (d) providing a transparent mechanism for complaint handling in relation to Content and ensuring that complaints are handled in a fair and efficient manner.

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## **3. Principles**

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3.1 In seeking to achieve its objectives, the Codes apply the following principles:

- (a) as far as practicable, there should be “electronic equivalence” (that is, behaviour and transactions that can take place in the real world should be permissible over the Internet without additional requirements or restrictions);
- (b) the Codes should be technically neutral;
- (c) requirements should be fair to all concerned;
- (d) requirements should not adversely affect the commercial viability of the parties to the Codes and the services they make available;
- (e) the responsibility for Content made available on the Internet rests, unless otherwise agreed between the relevant parties, with Content Providers. In some cases this will also be the End User; and

- (f) the responsibility for Mobile Content made available through a Mobile Carrier Content Service rests with the Mobile Carriers.

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## **4. Terminology and interpretation**

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### 4.1 In the Codes

<b>ABA</b>	means the Australian Broadcasting Authority.
<b>Act</b>	means the Broadcasting Services Act 1992 (as amended).
<b>Assessor</b>	is a person who satisfies the requirements in clause 16.1
<b>Chat Room</b>	<p>means a publicly accessible virtual area created or established by the use of particular computer software where two or more End Users can communicate with each other (whether by means of text, audio, video or otherwise, but not by ordinary electronic mail) in a near-instantaneous or real time manner, and includes:</p> <ul style="list-style-type: none"><li>• such virtual areas where the Content Provider of the virtual area requires End Users to pay or log in for access;</li></ul> <p>but does not include:</p> <ul style="list-style-type: none"><li>• such virtual areas that an End User may access only with the permission of or upon invitation by another End User.</li></ul>
<b>Classification Act</b>	means the Classification (Publications, Films and Computer Games) Act 1995.
<b>Classification Board</b>	means the Classification Board established under the Classification Act.
<b>Classification Guidelines</b>	means guidelines determined and amended from time to time in accordance with the Classification Act.
<b>Code/s</b>	means these Codes of Practice.
<b>Content</b>	means all forms of information and, without limitation, includes text, pictures, animation, video and sound recording, separately or combined, may include computer software, computer games

within the meaning of the Classification Act and includes a “Content Service” within the meaning of the Telecommunications Act, 1997.

**Content Host** refers to an Internet Content Host and has the meaning given by the Act and will include Mobile Carriers to the extent they are a Content Host.

**Content Provider** means a person who, in the course of business, makes available Content for a Mobile Carrier Content Service, Web Site or database on the Internet and includes:

- advertisers;
- information providers;
- “content service providers” within the meaning of the Telecommunications Act, 1997,

but not a person acting merely in its capacity as an ISP, Content Host or Mobile Carrier, or a person who simply provides an automated general-purpose search engine, cache, catalogue or directory service or similar automated service.

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**Filter** means a product or service designed to restrict or deny access to a Web Page or other Internet Content.

**Home Page** means in relation to a subscriber to the Codes, a Web Page or interactive service used by that person as the starting point for users to obtain information regarding their products or services.

**IIA** means the Internet Industry Association (ACN 071 075 575).

**IIA Family Friendly Filter** means a Filter that has met the criteria as set out in the Schedule to this Code and is listed on the IIA’s Safety Page.

**IIA Family Friendly Program** means the program administered by the IIA for ISPs, Content Hosts, Mobile Carriers and Filter Suppliers. Under the Program, the Ladybird Seal is used to show which Australian ISPs, Content Hosts and Mobile Carriers are compliant with the Codes and which Filters are recognised by the IIA as meeting the minimum criteria as set out in the Schedule to the relevant Code.

<b>ISP</b>	stands for Internet Service Provider and has the meaning given by the Act.
<b>Ladybird Seal</b>	means a IIA Family Friendly Seal, as authorised by the IIA from time to time.
<b>Minor</b>	is a person under the age of 18 years.
<b>Mobile Carrier Content Service</b>	is a Content service that: <ul style="list-style-type: none"> <li>a) is controlled by a Mobile Carrier;</li> <li>b) a Mobile Carrier makes available to End Users located in Australia; and</li> <li>c) is hosted on servers within Australia.</li> </ul>
<b>Mobile Carriers</b>	are Australian based IIA members who provide Mobile Content to End Users.
<b>Mobile Content</b>	means Content available through a Mobile Carrier Content Service.
<b>Mobile End User</b>	means a non-corporate, non-wholesale End User with whom a Mobile Carrier has a contractual relationship for the supply of a carriage service where either: <ul style="list-style-type: none"> <li>a) the End User pays for the service after receiving the service, typically via an account issued at regular intervals; or</li> <li>b) the End User pays for the service in advance of receiving the service.</li> </ul>
<b>NetAlert</b>	means the community advisory body currently known by that name within Australia, and refers to the 'designated body' as defined by the Act.
<b>Newsgroups</b>	means collections of related messages on a particular topic that are posted to news servers by users, which then distributes them to other participating servers.
<b>OFLC</b>	means the Office of Film and Literature Classification.

<b>Online Services Schedule</b>	means Schedule 5 to the Act.
<b>Person</b>	includes partnerships, bodies corporate and the Crown.
<b>Potential Prohibited Content</b>	means Content that has not been classified by the Classification Board, but, if it were to be classified, there is a substantial likelihood that it would be Prohibited Content.
<b>Prohibited Content</b>	means that Content classified as RC or X by the Classification Board or is classified R and is not subject to a restricted access system.
<b>Prohibited Mobile Content</b>	is: <ul style="list-style-type: none"> <li>• Mobile Content that is likely to be classified RC or X by the Classification Board; and</li> <li>• Mobile Content that is not subject to a restricted access system and is likely to be classified R or MA.</li> </ul>
<b>Relevant Authority</b>	means a body authorised by statute, ministerial direction or parliamentary intent to adjudicate on matters relevant to the Codes, including questions of fact.
<b>Restricted Content</b>	means Content that: <ol style="list-style-type: none"> <li>(a) is classified by the Classification Board R or R18+ (and in the case of Mobile Content MA, MA(15+), MA15+, R or R18); or</li> <li>(b) that has not been classified but if it were to be classified by the Classification Board there is a substantial likelihood that it would be classified, R or R18+ (and in the case of Mobile Content MA, MA(15+), MA15+, R or R18)</li> </ol> <p>in accordance with the Classification Act, the National Classification Code and relevant Classification Guidelines.</p>
<b>Safety Page</b>	means: <ol style="list-style-type: none"> <li>(a) in respect of the IIA, a web page hosted by the IIA that is accessible from the IIA's Home Page and must contain the information required under clauses 12.3 (a) (i)-(viii) and 6.3 of the Code and a list of one or more IIA Family Friendly Filters with links to effect download and instructions for use, or to obtain delivery via the postal system or otherwise; or</li> <li>(b) in respect of a Mobile Carrier, ISP or Content Host a web page within that party's web site which must contain (as relevant) the information required under clauses 6.5 or 12.3 (a) (i)-(viii) of the Code.</li> </ol>

<b>Suppliers</b>	means persons who develop, import, sell or distribute IIA Family Friendly Filters, but excludes ISPs who merely make available IIA Family Friendly Filters in compliance with clause 19 of the Code and do not control the content or operation of IIA Family Friendly Filters.
<b>URL</b>	is the abbreviation of Uniform Resource Locator, and is the global address of documents and other resources on the World Wide Web.
<b>Web Page</b>	means a file of Content accessible on the World Wide Web by requesting a single URL.
<b>World Wide Web</b>	means the system of Internet servers that support specially formatted documents accessible via the Internet.

- 4.2 In the Codes where examples are provided of the manner in which a Code provision may be satisfied, these examples should not be read as limiting the manner in which the provision may be satisfied.
- 4.3 Where documents are referred to in the Codes by means of URLs, the URLs are intended for reference only and the operation of the Code will not be affected where the document referred to is subsequently relocated to another URL.
- 4.4 The Codes do not apply to the provision of premium SMS or MMS services which involve the sending of Content to or between End Users.

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## **5. IIA Family Friendly Program**

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- 5.1 ISPs, Content Hosts and Mobile Carriers who are compliant with the relevant sections of the Codes are eligible to signify their compliance with the IIA Family Friendly Program by placing the Ladybird Seal on their Safety Page and their products and services or upon such terms and conditions as the IIA shall specify.
- 5.2 Suppliers are eligible to signify the recognition of their products or services as having met the minimum criteria as set out in the Schedule to the relevant Code by displaying the Ladybird Seal, upon such terms and conditions as the IIA shall specify from time to time.
- 5.3 The IIA will maintain a public register of IIA Family Friendly Filters and all ISPs and Mobile Carriers who comply with the IIA's Family Friendly Program, accessible from the IIA's Home Page and/or the IIA's Safety Page.
- 5.4 The ABA and NetAlert are entitled to publish a list of IIA Family Friendly Filters and those ISPs, Content Hosts and Mobile Carriers who comply with the IIA's Family Friendly Program.

## **PART B – CONTENT CODES**

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### **CONTENT CODE 1:**

#### **HOSTING CONTENT WITHIN AUSTRALIA**

### **OBLIGATIONS ON CONTENT HOSTS**

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#### **6. General obligations of Content Hosts**

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- 6.1 To the extent applicable, each Content Host will, upon notification from the ABA that certain Newsgroups are linked with child pornography and paedophile activity, take reasonable steps to ensure that its newsreader server will not accept feeds from such Newsgroups.
- 6.2 To the extent applicable, each Content Host will in addition, take reasonable steps to ensure that Restricted Content hosted by the Content Host is not provided to Minors, which reasonable steps may include one or more of the following:
- (a) requiring the End User to provide evidence of a valid credit card;
  - (b) requiring the End User to provide evidence of some other form of identification by which the age of the End User can be reasonably ascertained as not being a Minor. Examples of identification that would satisfy this clause include a valid driver's licence, passport or birth certificate;
  - (c) placing a prominent notice on the site (or promotional material) on which the Content is marketed that Minors should obtain the consent of a parent, teacher or other responsible adult prior to accessing the Content;
  - (d) including a procedure in the process for accessing the Content through which the person wishing to access the Content confirms that they are not a Minor; or
  - (e) in the case of Mobile Content, following the procedures set out in clauses 15 and 16.
- 6.3 A Content Host must do the following in respect of its customers to whom it is providing hosting services based in Australia:
- (a) encourage them to use appropriate warnings and/or labelling systems in respect of Content which is likely to be considered unsuitable for Minors according to the Classification Act and relevant Classification Guidelines, even though such Content may not be Prohibited or Potential Prohibited Content;

- (b) take reasonable steps to inform them that they must not place on the service Content that is in contravention of any Australian State, Territory or Commonwealth law, including the Act;
  - (c) encourage them to inform End Users about minimising the risks associated with Chat Rooms, including personal safety, security of personal information, and how they might limit access in Chat Rooms to Prohibited Content, Potential Prohibited Content and/or any Content that is likely to cause offence. A Content Host may satisfy its obligations under this subclause by maintaining a hyperlink in an area that is reasonably proximate and prominent to the Chat Rooms to the IIA Safety Page which contains this information.
- 6.4 A Content Host may satisfy clauses 6.2 and 6.3 by placing a contractual obligation on a third party to comply with this Code and/or ensuring that their contracts, acceptable use policies or customer service conditions require Content Providers to comply with applicable Australian laws, including the Act.
- 6.5 In addition to clauses 6.2 and 6.3, a Content Host must, within 4 months of the registration of this Code, take reasonable steps to inform End Users about:
- (i) methods of supervising and managing children's access to Internet Content including, where available, information about the operation of any opt-in or opt-out procedures;
  - (ii) information about the availability of one or more IIA Family Friendly Filters and how they can be obtained;
  - (iii) a list of one or more IIA Family Friendly Filters, with links to effect download and instructions for use;
  - (iv) information that placing Content on the Internet may subject Content Providers or End Users to legal responsibilities under applicable State, Territory or Commonwealth law;
  - (v) information that End Users have a right to make complaints to the ABA about Prohibited Content or Potential Prohibited Content or Prohibited Mobile Content (if relevant);
  - (vi) procedures by which such complaints to the ABA can be made;
  - (vii) information that End Users have a right to make complaints to a Mobile Carrier or a Content provider in relation to restricted Content and procedures by which such complaints can be made;
  - (viii) in response to complaints from subscribers in respect of unsolicited email that promotes or advertises internet sites or parts of internet sites that enable, or purport to enable End Users to access information that is likely to cause offence to a reasonable adult, provide complainants with or direct them to information describing methods by which receipt

of unsolicited email of this nature can be minimised.

- 6.6 A Content Host may fulfil the obligations contained in clause 6.5 by means of an online Safety Page, or by providing a direct hyperlink (an 'Online Safety' button) to the IIA's Safety Page, provided that either page contains information listed in sub-clauses 6.5 (i)-(viii).
- 6.7 Where a Content Host has qualified to become a IIA Family Friendly Content Host, the Ladybird Seal can be used as the Online Safety button to link to the Safety Page.
- 6.8 An End User may make a complaint to a Content Host about Mobile Content. The IIA may prescribe a form for the making of such complaints. In handling complaints about Mobile Content, Content Hosts must act in accordance with the procedures set out in Schedule 2 of this Code.

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## **7. Takedown notice procedures**

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- 7.1 Content Hosts must have in place a procedure for receiving and responding to takedown notices (as defined in the Act) issued by the ABA within the time frame required under the Act.
- 7.2 The procedure must include advising the ABA of a contact person to whom the ABA should send any takedown notices.
- 7.3 Content Hosts must, where practicable and as soon as possible after receiving a takedown notice from the ABA, notify the customer who placed that Content on the Content Host's Web Site or database that the customer's conduct is the subject of a take down notice and may be in breach of their contract, acceptable use policy or customer's service conditions.

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## **8. Direction from a Relevant Authority**

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- 8.1 In addition to the requirements under this section in relation to Prohibited or Potential Prohibited Content, a Content Host will act in accordance with the direction of a Relevant Authority, including an Australian court of law or as mandated under applicable legislation in respect of any other Content that they host within its control and within Australia.
- 8.2 Additionally, subject to applicable law, a Content Host will comply with all reasonable requirements of law enforcement and regulatory agencies in investigating unlawful Content activity including, but not limited to, investigations into child pornography and paedophile activity.

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**9. Notifications regarding Prohibited Content**

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9.1 To the extent applicable, and pursuant to clause 60(m) of the Online Services Schedule, a Content Host, on becoming aware that another Content Host is hosting Prohibited Content in Australia will:

- (a) provided the first Content Host is aware of the identity and email address of the second Content Host, advise the second Content Host about the Prohibited Content; and
- (b) The first Content Host will also advise the ABA.

## **CONTENT CODE 2:**

### **PROVIDING ACCESS TO CONTENT HOSTED WITHIN AUSTRALIA**

#### **OBLIGATIONS ON ISPS**

##### **10. Opening of accounts**

10.1 ISPs must take reasonable steps to ensure that Internet access accounts ('access accounts') are not provided to Minors without the consent of a parent, teacher or other responsible adult.

10.2 For the purposes of this clause, reasonable steps include one or more of the following:

- (a) requiring that access accounts can only be opened using a valid credit card; or
- (b) requiring any application to open an access account to be accompanied by some other form of identification by which the age of the applicant for the access account can be reasonably ascertained. Examples of identification that would satisfy this clause include a valid drivers licence or passport; or
- (c) placing a prominent notice on the packaging in which the access account is marketed that applicants who are Minors should obtain the consent of a parent, teacher or other responsible adult prior to using the access account; and
- (d) offering IIA Family Friendly Filters in association with the access account, or otherwise taking reasonable steps to ensure that the access account does not provide access to Prohibited Content or Potential Prohibited Content, such as by means as a closed content system; or
- (e) including in the access account registration process a requirement that the applicant confirms that he or she is not a Minor, or that the consent of a parent, teacher or other responsible adult has been obtained prior to using the access account.

[Interpretive note: At least one of either (a), (b) or (c) together with either (d) or (e) must be done]

10.3 Where an ISP relies on clauses 10.2(c) or (e), and the account holder is a Minor the ISP must close the account as soon as practicable from the date of being notified by the parent, teacher or other responsible adult who was alleged to have given consent, that their consent was either not provided or has been withdrawn.

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## **11. Provision of information to Content Providers**

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- 11.1 ISPs must do the following in respect of those of their subscribers who are Content Providers:
- (a) encourage them to use appropriate warnings and/or labelling systems in respect of Content which is likely to be considered unsuitable for children according to the Classification Act and relevant Classification Guidelines, even though such Content may not be Prohibited or Potential Prohibited Content; and
  - (b) take reasonable steps to inform them that they must not place on the service Content that is in contravention of any Australian State, Territory or Commonwealth law, including the Act.
- 11.2 ISPs may satisfy clause 11.1(b) by ensuring that their contracts, acceptable use policies or customer service conditions require Content Providers to comply with applicable Australian laws, including the Act.

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## **12. Provision of information to End Users**

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- 12.1 Within four months following the registration of this Code, ISPs must have a prominently displayed and easily accessible button entitled 'Online Safety' ('Online Safety button') on the ISP's Home Page.
- 12.2 Where an ISP has qualified to become a IIA Family Friendly ISP, the Ladybird Seal can be used as the Online Safety button to link to the Safety Page.
- 12.3 The Online Safety button referred to in clauses 12.1 and 12.2 must either:
- (a) hyperlink directly to a Safety Page hosted by the ISP which provides the following:
    - i. methods of supervising and managing children's access to Internet Content including, where available, information about the operation of any opt-in or opt-out procedures;
    - ii. information about the availability of one or more IIA Family Friendly Filters and how they can be obtained;
    - iii. a list of one or more IIA Family Friendly Filters, with links to effect download and instructions for use;
    - iv. information that placing Content on the Internet may subject Content Providers or End Users to legal responsibilities under applicable State, Territory or Commonwealth law;

- v. information that End Users have a right to make complaints to the ABA about Prohibited Content or Potential Prohibited Content or Prohibited Mobile Content (if relevant);
  - vi. procedures by which such complaints to the ABA can be made;
  - vii. information that End Users have a right to make complaints to a Mobile Carrier or a Content provider in relation to restricted Content and procedures by which such complaints can be made;
  - viii. in response to complaints from subscribers in respect of unsolicited email that promotes or advertises internet sites or parts of internet sites that enable, or purport to enable, end users to access information that is likely to cause offence to a reasonable adult, provide complainants with, or directed them to, information describing methods by which receipt of unsolicited email of this nature can be minimised; and/or
- (b) provide a direct hyperlink to the IIA's Safety Page provided that this page contains information listed in sub-clauses (i)-(viii) above.

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### **13. Notifications regarding Prohibited Content**

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- 13.1 To the extent applicable, and pursuant to clause 60(m) of the Online Services Schedule, an ISP on becoming aware that another ISP is hosting Prohibited Content in Australia will:
- (a) provided the first ISP is aware of the identity and email address of the second Content Host, advise the second ISP about the Prohibited Content; and
  - (b) the first ISP will also advise the ABA.

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### **14. Direction from a Relevant Authority**

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- 14.1 In addition to the requirements under this section in relation to Prohibited or Potential Prohibited Content, an ISP or Mobile Carrier will act in accordance with the direction of a Relevant Authority, including an Australian court of law or as mandated under applicable legislation in respect of any other Content that they host within its control and within Australia.
- 14.2 Additionally, subject to applicable law ISPs and Mobile Carriers will comply with all reasonable requirements of law enforcement and regulatory agencies in investigating unlawful Content activity including, but not limited to, investigations into child pornography and paedophile activity.

## OBLIGATIONS ON MOBILE CARRIERS

### 15. 'Opt In' for 'Restricted Content'

- 15.1 Mobile Carriers may only provide Restricted Content on a Mobile Carrier Content Service to Mobile End Users where
- (a) the Mobile End User has requested access to Restricted Content; and
  - (b) the Mobile Carrier has taken reasonable steps to ascertain that the Mobile End User is not a Minor.
- 15.2 If a Mobile Carrier receives a request from a Mobile End User to reverse a request in subclause 15.1 (a) above, it will do so as soon as practicable.
- 15.3 For the purposes of this clause, reasonable steps include requiring the Mobile End User to provide evidence of:
- (a) a valid credit card in the name of the account holder or;
  - (b) evidence of some other form of identification by which the age of the End User can reasonably be ascertained as not being a Minor. Examples of identification that would satisfy this clause include a valid drivers licence, proof-of-age card, passport or birth certificate in the name of the account holder.
- 15.4 Where clause 15.3 (a) applies, the application to 'opt in' may be electronic, verbal or in hard copy and must be accompanied by:
- (a) the name of the account holder;
  - (b) the account number;
  - (c) other information required by Mobile Carrier processes to verify customer identity; and
  - (d) a declaration that the account holder is not a Minor.
- 15.5 Where clause 15.3 (b) applies the application to 'opt in' may be in electronic or hard copy and must be accompanied by:
- (a) the name of the account holder
  - (b) the account number
  - (c) other information required by Mobile Carrier processes to verify customer identity;
  - (d) the identification referred to in clause 15.3 (b); and

- (e) a declaration that the account holder is not a Minor.
- 15.6 The Mobile Carrier may provide information for parents/carers regarding managing the mobile accounts of those persons under their care. Mobile Carriers may also provide information about Restricted Content that the Mobile Carrier provides and the Internet including clear and easy to understand information on how customers can opt-in to or opt-out of the ability to access the Restricted Content.

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## **16. Assessors and Assessment Process**

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- 16.1 An Assessor is a person who has the following qualifications
- (a) is an Australian resident; and
  - (b) has been a member of the Classification Board for at least 12 months within the last 7 years; or
  - (c) has completed an appropriate course with the OFLC, the IIA, or other body designated by the IIA; or
  - (d) is able to prove to the satisfaction of the IIA that they are competent to assess Content under this Code.
- 16.2 An Assessor may be an employee of a Mobile Carrier or Content Provider, or a contractor.
- 16.3 Where a Mobile Carrier Content Service is likely to contain content that depicts or otherwise deals with sex, violence, nudity, drug use, language or themes, or other Content likely to be assessed as Restricted Content, Mobile Carriers must take reasonable steps to ensure that the service has been assessed by an Assessor prior to making that Mobile Carrier Content Service available to End Users.
- 16.4 Where a Mobile Carrier Content Service involves a real time or 'live' component, an Assessor may make an assessment that takes into account the likely or anticipated nature of that Mobile Carrier Content Service. Where the real time or 'live' Mobile Content is likely to contain content that depicts or otherwise deals with sex, violence, nudity, drug use and/or adult themes, the Mobile Carrier must ensure an appropriate warning regarding the nature of the Content is visible to the End User on the mobile device prior to the End User accessing the Content.
- 16.5 For the sake of clarity, a Mobile Carrier Content Service that:
- (a) is not likely to contain sex, violence, nudity, drug use and adult themes or other Content likely to be assessed as Restricted Content; and/or
  - (b) is a news and/or sport service, (whether or not it is a 'live' or real time service or is a direct content feed under a contract with the Mobile Carrier);

and/or

- (c) consists of the supply of mobile phone ring tones or supply of music without images;

does not need to be assessed under this Code.

- 16.6 Mobile Carriers must take reasonable steps to ensure that Prohibited Mobile Content is not provided to End Users. The term 'reasonable steps' referred to in this clause can be satisfied where a Mobile Carrier includes a contractual obligation on a third party to comply with this Code.
- 16.7 The IIA may publish information sheets that assist Assessors in determining whether material is reasonably likely to be Restricted Content and or Prohibited Mobile Content.

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## **17. Provision of Information to Users**

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- 17.1 To the extent applicable, Mobile Carriers and Content Providers will take reasonable steps to provide End Users with information about the following:
  - (a) methods of supervising and controlling children's access to Mobile Content;
  - (b) procedures which users including parents and others responsible for children can implement to control access to Internet Content and Mobile Content including the availability, use and appropriate application of Mobile Content opt-out options;
  - (c) methods of minimising the risks associated with Chat Rooms, including personal safety, security of personal information, and how they might limit access in Chat Rooms to Prohibited Mobile Content and/or Restricted Content;
  - (d) information that End Users have a right to make complaints to the ABA about Prohibited Content or Potential Prohibited Content or Prohibited Mobile Content (if relevant); and
  - (e) procedures by which such complaints to the ABA can be made
  - (f) information to End Users of the avenues of escalation regarding classification of Mobile Content complaints.
- 17.2 The term 'reasonable steps' referred to in clause 17.1 will be satisfied where Mobile Carriers and Content Providers provide information to users through normal communication channels or direct users, by means of a link from their Home Page, Safety Page or otherwise, to resources made available for this purpose from time to time by the IIA, the ABA, NetAlert, or other organisation approved by the IIA.

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**18. Complaints Handling**

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- 18.1 An End User may make a complaint to a Mobile Carrier about Mobile Content. The IIA may prescribe a form for the making of such complaints. In handling complaints about Mobile Content, Mobile Carriers must act in accordance with the procedures set out in Schedule 2 of this Code.

## **CONTENT CODE 3:**

### **PROVIDING ACCESS TO CONTENT HOSTED OUTSIDE AUSTRALIA**

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#### **19. Provisions dealing with overseas based Content**

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19.1 It is noted that the Act requires the ABA to take certain action unless there is a code in place that contains a procedure for dealing with overseas based Content and, to this end, this Clause 19 (Content Code 3) sets out the mechanism by which such content may be dealt with.

#### ***Designated Notification Scheme***

19.2 For the purposes of this Code and in accordance with the requirements of clause 40(1)(b) of the Online Services Schedule, a designated notification scheme comprises:

- (a) direct notification, whether by means of email or otherwise, by the ABA to the Suppliers of IIA Family Friendly Filters of information by which the relevant Prohibited or Potential Prohibited Content can be identified; and
- (b) notification by email from the ABA to ISPs on a regular basis of Prohibited or Potential Prohibited Content.

#### ***The Making Available of IIA Family Friendly Filters***

19.3 In accordance with clause 60(2)(d) of the Online Services Schedule, where an ISP provides Internet access to End Users within Australia, the ISP must make available to those End Users one or more IIA Family Friendly Filters.

19.4 Where an ISP seeks to charge for the provision of a IIA Family Friendly Filter in accordance with sub-clause 19.3, the charge to the End User must not exceed the total cost incurred by the ISP in obtaining, supplying and supporting that IIA Family Friendly Filter.

19.5 For the purposes of sub-clause 19.3, the phrase 'make available to End Users' includes the making available of a IIA Family Friendly Filter in the following ways:

- (a) as part of an online registration process and in the case of user installable Filters, hyperlinks to effect download of the IIA Family Friendly Filter and obtain instructions for use; or
- (b) as part of a disk based registration process which includes procedures that enable End Users to effect immediate download of the IIA Family Friendly Filter and obtain instructions for use; or to obtain delivery of a IIA Family Friendly Filter via the postal service or otherwise; or
- (c) a notification to users as soon as practicable after the registration is complete, with hyperlinks to effect immediate download of a IIA Family

Friendly Filter and obtain instructions for use; or obtain delivery of a IIA Family Friendly Filter via the postal service or otherwise; and

- (d) by means of a process on the ISP's Safety Page which enables End Users to effect immediate download of the IIA Family Friendly Filter and obtain instructions for use, or to obtain delivery of a IIA Family Friendly Filter via the postal service or otherwise; or
- (e) by means of a direct hyperlink from the ISP's Online Safety button to the IIA's Safety Page, provided that the IIA's Safety Page provides a list of one or more IIA Family Friendly Filters with links to effect download and obtain instructions for use.

[Interpretive note: At least one of either (a), (b) or (c) together with either (d) or (e) must be done]

19.6 In addition to clause 19.3, at least once every four months ISPs shall either:

- (a) Send an electronic notification which includes information about the role that Filters may take in managing Content and provide information about the ISP's or the IIA's Safety Page and how to obtain a filter; or
- (b) Include on invoices (including hard copy or electronic billing statements) to End Users a statement advising of the role that Filters may take in managing Content and provide advice on how to access the ISP's or IIA's Safety Page and how to obtain a IIA Family Friendly Filter.

## **PART C - GENERAL**

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### **20. Dates of Implementation**

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20.1 These Codes will come into effect on **26 May 2005**.

### **21. Code Review**

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21.1 These Codes will be formally reviewed within 12 months from the date of implementation.

21.2 In reviewing these Codes and in considering any proposed changes to it, the IIA will consult with the ABA and NetAlert.

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## Schedule 1 – IIA Family Friendly Filters

1. The designation of an Internet filtering product or service as a IIA Family Friendly Filter is subject to the IIA being satisfied that the following criteria have been met:
  - (a) effectiveness (based on independent testing approved by the IIA);
  - (b) ease of installation (where applicable);
  - (c) ease of use;
  - (d) configurability; and
  - (e) availability of local support.
  
2. The suppliers of Filters seeking inclusion or retention of their products as a IIA Family Friendly Filter must submit them to the IIA for testing to determine compliance with the preceding Clause at the following times:
  - (a) on submitting the product or service for initial inclusion on this Schedule; or
  - (b) where there has been a part or whole version upgrade; and
  - (c) in any event, annually,upon such terms and conditions as the IIA determines from time to time.
  
3. In addition to the preceding requirements, a Supplier or their agent who asks the IIA to include an Filter as a IIA Family Friendly Filter, or who requests at any time that Filter remain as a IIA Family Friendly Filter, must supply the following information:
  - (a) the contact point to which the ABA should send notifications about Content;
  - (b) the minimum information to be contained in notifications from the ABA to enable the manufacturer to give effect to notifications by updating their Filter;
  - (c) an outline of the process involved in updating the Filter;
  - (d) the expected maximum time it will take to give effect to the notification from the ABA;
  - (e) the means by which an End User of the Filter may obtain and implement a version updated as a result of the notification, the process and timeframe;
  - (f) the steps to be taken by the manufacturer or their agent to preserve the confidentiality of information contained in notifications they receive from the ABA.
  
4. The IIA will maintain a publicly available register of IIA Family Friendly Filters.

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## Schedule 2 – Mobile Content Complaints Procedure

1. An End User may make a complaint to a Mobile Carrier or Content Host about Mobile Content. The IIA may prescribe a form for the making of such complaints.
2. If a Mobile Carrier or Content Host receives a complaint from an End User alleging that a Content Provider has provided a service containing Mobile Content that:

- (a) has not been assessed as Restricted Content when it should have been so assessed; or
- (b) has been assessed as Restricted Content when it should have been assessed as Prohibited Mobile Content; and
- (c) the Mobile Carrier or Content Host reasonably believes that the complaint has been made in good faith and is not vexatious or frivolous

then the Mobile Carrier or Content Host will re-assess that Content or refer the complaint to the Content Provider for re-assessment where the Content Provider undertook the original assessment.

3. The Mobile Carrier or Content Host will, as soon as practicable and in any event within 24 hours of receipt of a complaint that satisfies clause 2 in this Schedule, remove public access to the particular Mobile Content until the re-assessment process outlined in this clause has been satisfied.

- (d) If, following a reassessment, the Assessor determines that the Mobile Content was inaccurately assessed, it shall advise the Mobile Carrier or Content Host who will inform the End User and the Content Provider in writing of the new determination as soon as practicable. The Content Provider and Mobile Carrier will then deal with the Mobile Content in accordance with the reassessment by the Assessor.

- (e) If, following a reassessment, the Assessor determines that the Mobile Content was accurately assessed, it shall advise the Mobile Carrier or Content Host who will inform the End User and the Content Provider as soon as practicable. The Mobile Content may be treated as it had been previously treated.

4. The reassessment of Mobile Content under this Schedule must take place as soon as practicable.

### Unresolved complaints

5. If a Mobile End User is not satisfied with a reassessment determination conducted in accordance with clause 2 of this Schedule, the Mobile Carrier or Content Host will inform the Mobile End User about the independent process for resolving such matters.

6. Pursuant to the preceding clause, if the Mobile Carrier or Content Host is subsequently advised by an appropriate authority that it has investigated a complaint made in good faith and has reached the view that the Mobile Content has been incorrectly assessed, the Mobile Carrier or Content Host will then deal with the Mobile Content in accordance with that authority's advice.
7. Where a reassessment determination necessitates recourse to the OFLC, the Mobile Carrier will bear the cost of an OFLC determination.