

16 October 2014

The Manager
Online Content Section
Online Safeguards Branch
Australian Communications and Media Authority

By email: rasdreview@acma.gov.au

Dear Sir/Madam

Draft Restricted Access Systems Declaration

The Australian Subscription Television and Radio Association (ASTRA) appreciates the opportunity to comment on the draft revised Restricted Access Systems Declaration (the Revised Declaration) released by the ACMA for comment on 23 September 2014.

This submission builds on the comments ASTRA provided in response to the ACMA's June 2014 discussion paper, where ASTRA noted that independent of regulation subscription television (STV) providers have a business interest in taking reasonable steps to ensure children are restricted from accessing material that may be harmful to them.¹

Taking this interest into consideration, as well as the Government's deregulation agenda, ASTRA argued that there were opportunities to reduce unnecessary costs and administrative burdens on industry imposed by the existing instrument, the *Restricted Access System Declaration 2007*, while still maintaining appropriate protections for children.

Positive developments

ASTRA acknowledges that in developing the Revised Declaration the ACMA has reduced the regulatory burden imposed by the existing instrument in a number of ways.

- **Quality assurance and risk analysis measures:** it is a welcome development that the Revised Declaration no longer requires that the Restricted Access System (RAS) include quality assurance measures (which related to having systems in place to remove access in certain circumstances); and, in relation to access to R 18+ content, no longer requires a risk analysis be undertaken periodically.

ASTRA considers these developments to be appropriate given that standard risk mitigation strategies employed within businesses are sufficient to ensure that processes are in place and remain effective to ensure compliance with the primary access restriction obligations.

- **Record-keeping:** it is a welcome development that the Revised Declaration no longer contains specific requirements to retain age verification records (where taken). As previously noted by ASTRA, such obligations are unnecessary where, for example, there is already a business interest in retaining credit card details for the duration of service.

¹ Submission available at

<http://www.acma.gov.au/~media/Online%20Content/Issue%20for%20comment/June%202014/RAS%20Declaration%20Review%20-%20ASTRA%20submission%20-%208%20July%202014%20pdf.pdf>.

Age verification – further opportunity to promote regulatory parity

In relation to age verification for access to R 18+ content, ASTRA welcomes the general requirement in clause 12 of the Revised Declaration that the RAS incorporate *'reasonable steps to verify that an applicant is at least 18 years of age'*. A *'reasonable steps'* requirement is consistent with ASTRA's view that the instrument should not contain prescriptive obligations in relation to age verification.

However, it is noted that the Revised Declaration also provides examples of what *'reasonable steps'* may include which differentiate between fee-based and non-fee services. Clause 12(2) suggests that:

- where a fee has been paid for content reasonable steps may include requiring provision of evidence that person is at least 18; and
- where no fee has been paid reasonable steps may include requiring a declaration, in writing or electronic form, that the person is at least 18.

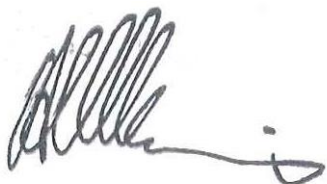
ASTRA submits that the ACMA should aim to promote regulatory parity between fee-based and non-fee services as it settles the final Declaration. There is no logical reason to differentiate between subscription-based and advertiser-supported or other non-fee services when it comes to age verification. A declaration of age should be sufficient for non-fee and fee-based services alike.

ASTRA recommends that clause 12(1) (requiring that reasonable steps be taken) be retained, but that clause 12(2) (setting out the different examples for fee-based and non-fee services) be removed. ASTRA notes that this amendment would not dilute the ACMA's ability to assess what were reasonable steps on a case-by-case basis should there be a complaint.

If the ACMA is still minded to give guidance on how the reasonable steps requirement might be fulfilled, ASTRA submits that this should be set out in explanatory material supporting the Declaration, not the Declaration itself. Such guidance should not differentiate between fee-based and non-fee based services. Rather than give specific examples, ASTRA recommends that the guidance list a number of factors that may be taken into account in determining what steps may be reasonable. These may include the type of service, the type of content offered on the service, the target audience for the service and the availability and features of any parental control systems available.

Please feel free to contact me 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