



Submission to

Department of Communications

Subject

Enhancing Online Safety for Children

Date

7 March 2014

Introduction

The Interactive Games and Entertainment Association (**IGEA**) welcomes the opportunity to respond to the Australian Government Department of Communications' (**AGDC**) consultation paper on enhancing online safety for children (**Consultation Paper**).

Set out below is a brief description of IGEA, a summary of our submission followed by a more detailed response to the issues and relevant questions raised throughout the Consultation Paper.

About IGEA

IGEA is an industry association representing the business and public policy interests of Australian and New Zealand companies in the computer and video game industry. IGEA's members publish, market, develop and/or distribute interactive games and entertainment content and related hardware. The following list represents IGEA's current members:

- Activision Blizzard
- All Interactive Distribution
- Disney Interactive Studios
- Electronic Arts
- Five Star Games
- Fiveight
- Gamewizz Digital Entertainment
- Microsoft
- Mindscape Asia Pacific
- Namco-Bandai Partners
- Nintendo
- Sony Computer Entertainment
- Take 2 Interactive
- Total Interactive
- Ubisoft
- Warner Bros. Interactive Entertainment
- ZeniMax Australia

Summary

IGEA is a strong supporter of programs and initiatives that address cyber safety matters. The IGEA and each of its members go to great lengths to ensure Australian users of all ages have a safe and friendly online environment to enjoy their interactive entertainment content. IGEA continues to be an active participant of the Government's Consultative Working Group on Cyber Safety and will continue to work with Government and various public interest groups to address matters of cyber safety and online content standards.

While IGEA considers cyber safety to be an issue of top priority, IGEA has not been convinced that the proposed Rapid Removal Scheme is an effective mechanism to address cyber safety concerns. Accordingly, IGEA does not support the introduction of the rapid removal scheme for the following reasons:

- The scheme risks providing users and parents with a false promise that guarantees the rapid removal of damaging content. In reality, the proposed scheme will operate too slowly to protect users from damaging material and therefore it will be unable to address the concerns underlying the rapid removal scheme;

- There has been a failure to utilise or examine the efficacy of existing measures to address instances of cyber bullying, including the Cooperative Arrangement for Complaints Handling on Social Networking Sites;
- The Government should focus its attention and resources on the prevention of bullying, both online and offline, and work with social networking sites and other stakeholders to develop programs to address the behavioral issues that cause such instances of online and offline bullying;
- The scheme will not realistically impact problematic sites that are hosted overseas and will unfairly target Australian businesses that are currently operating consistently with Australian community expectations. The scheme will also unnecessarily regulate international businesses that have significant report abuse mechanisms in place;
- The scheme will deter internet businesses from establishing offices in Australia;
- The proposed definition of social networking site is overly broad; and
- The Government should consider alternative methods to address concerns, such as providing further opportunities for consultation and engagement between social networking sites, Government agencies and public interest groups including through regular engagement through the Consultative Working Group on Cyber Safety.

If the rapid removal scheme is ultimately introduced, online games should not form part of the scheme for the following reasons:

- There is no evidence to suggest that online games and game platforms are being used in a way that would warrant regulation such as the rapid removal scheme;
- Game communications are transitory in nature and are not the type of content that would be capable of being addressed by the rapid removal scheme; and
- Online games and game platforms currently enforce codes of conduct and utilise sophisticated reporting technologies as well as enforcement measures such as user suspensions and bans.

If the rapid removal scheme is introduced, the definition of 'social networking site' should avoid being too broad and should only include commercial websites that have the primary purpose of facilitating social interaction on a 'one-to-public' basis. Furthermore, there should be no discretionary power for the Minister for Communications (or any Minister) or the Commissioner to expand the scope of the Rapid Removal Scheme.

IGEA does not support the establishment of a statutory body for the children's e-safety commissioner. The functions of the proposed commissioner are already being addressed through a number of collaborations of industry, Government and public interest groups. IGEA recommends that the proposed functions of the commissioner be explored and addressed by the Consultative Working Group on Cyber Safety.

Rapid removal of material that is harmful to a child from social media sites

The Consultation Paper refers to the introduction of a scheme to enable the rapid removal from a large social media site of material targeted at and likely to cause harm to a specific child (the **Rapid Removal Scheme**). IGEA has a number of comments and concerns about the proposed scheme which are set out below.

Online Games and the Rapid Removal Scheme

The Consultation Paper asks the question, “*should the proposed scheme apply to online games?*”

Online games and game platforms are primarily intended as a medium for playing games – with social interaction often acting as a secondary component that is intended to enhance gameplay. Accordingly, in practical terms, online games and game platforms are not usually used for widely distributing damaging content about a particular person.

As Australia’s peak body representing businesses in the interactive entertainment industry, IGEA works closely with Government agencies, departments and various interest groups to address matters such as cyber safety and content standards. IGEA has not been provided, nor is aware of, any evidence to suggest that online games are being used to distribute material targeted at and likely to cause harm to a particular child and therefore cannot identify a need which would warrant regulation such as the proposed Rapid Removal Scheme.

Both before and after the election, the Government highlighted the need to remove unnecessary red tape and regulation to secure a growth and confidence in the economy and made the point that “*regulation should only be imposed where absolutely necessary and should not be the default position in dealing with public policy issues*”¹. IGEA requests that, before online games are considered to form part of the Rapid Removal Scheme, IGEA be provided with an opportunity to review any evidence that demonstrates a systemic problem with online games being used to distribute damaging material and that the industry be provided with sufficient opportunity to address any problems before further red tape and regulation is introduced.

Game communications are transitory in nature and are not the type of content that would be capable of being addressed by the Rapid Removal Scheme. Online games most commonly provide users with an opportunity to ‘chat’ throughout the game experience with other game users, primarily by using audio chat through the user’s microphone and speakers. IGEA is not aware of any online games that could be used to post and distribute material that is targeted at and likely to cause harm to a particular child in a manner that would warrant intervention by a Rapid Removal Scheme. Due to the transitory nature of the communications on online games, the Rapid Removal Scheme is unlikely to have anything to remove by the time the scheme is engaged.

Existing Measures to Address Online Harassment on Game Platforms and Online Games

Game platforms, such as PlayStation 3, Xbox 360 and Nintendo Wii U currently provide robust mechanisms to deal with instances of harassment and cyber bullying. Online games also provide similar tools and reporting functions.

¹ Coalition’s Policy on Boosting Productivity and Reducing Regulation

² <http://www.communications.gov.au/easyguide>

Sony Computer Entertainment provides extensive grief reporting functionality for the PlayStation 3 and PlayStation 4, encouraging users to report other users that spoil someone's game experience such as through cheating, harassment, intimidation or through offensive behavior. Sony aims to investigate such grief reporting within 48 hours and, depending on the type of offence, can apply measures such as 1 day suspension through to 7 day, 1 month or in some instances apply permanent bans. In addition to grief reporting, users can add other users to a 'Block List' that prevents further communications from such other users. Further information on grief reporting for PlayStation 3 and PlayStation 4 can be found in the 'Help' section of the playstation.com.au website.

Microsoft enforces a code of conduct for Xbox Live that applies to activity on both Xbox 360 and Xbox One. The Xbox Live Policy & Enforcement team remains committed to preserving and promoting a safe, secure and enjoyable experience for all Xbox Live members and if a player behaves poorly on Xbox Live – either on Xbox One or Xbox 360, the enforcement team takes it seriously and will ensure that appropriate enforcement action applies to their account. Enforcement measures include account suspension, communications suspension and account privilege suspension. Xbox Live also allows users to review other player activity and select to either 'Prefer' or 'Avoid' other players. If the user selects to 'Avoid' another player, they will be prompted to select from a range of reasons, such as 'unpleasant language' and 'unsporting conduct'. Once a player has been 'avoided' the Xbox Live system will automatically attempt to keep both players separated in future games. More recently, the Xbox Live team have begun testing a community review initiative that allows mature and responsible Xbox Live users to provide their opinions on whether player conduct violates Xbox Live's code of conduct for further consideration and review by the Xbox Live Policy and Enforcement team. Further information about Xbox Live's code of conduct and reporting functions can be found at the website enforcement.xbox.com.

The Wii U and the Nintendo 3DS family of systems support an online community of gamers, "Miiverse", in which users of the system can post typed or hand-written messages. Nintendo has implemented a simple and robust reporting tool for Miiverse:

- Every user of Miiverse can report an inappropriate post via a reporting button located near each post.
- The reporting button leads the user to a reporting screen, on which several reporting categories are listed. The names of the reporting categories are simple and easy to understand.
- The reports are reviewed on an ongoing basis (24/7) and inappropriate posts are taken down swiftly after the report is made. Nintendo may also block the offending user or console.
- Any user of Miiverse can easily block another user to prevent that person from being able to comment on their posts in the future.
- The Miiverse Code of Conduct prohibits several types of content including content that is abusive, harassing, bullying, discriminatory, etc.
- Nintendo provides Parental Controls settings to give parents and guardians the option to selectively restrict their child's access to various functions when using a Nintendo system, including but not limited to the use of Miiverse.

Further information about the Miiverse Code of Conduct, reporting tools, and Parental Controls for Nintendo systems can be found in the support section of the nintendo.com.au website.

While extensive reporting functions are provided at a platform level, reporting tools are usually also provided within online games themselves. For example World of Warcraft, the hugely successful massive multiplayer online role playing game, provides a number of reporting tools that can be used by players that encounter bad language and harassing behavior. More particularly, World of Warcraft enforces a Harassment Policy and a Warnings, Suspension and Account Closure Policy. In addition to providing players with the ability to block communications from other players and use a 'Mature Content Filter', the World of Warcraft team will also investigate breaches of in game policies and take appropriate measures such as suspension or account bans. Further information can be found on the support section of the worldofwarcraft.com website.

For the above reasons as well as the extensive efforts currently being undertaken by game platforms and within online games themselves, IGEA does not support online games falling within the proposed scheme. Accordingly, the definition of 'social networking site' should not encompass online games either through the form of the definition itself or if necessary by specific exclusion.

The Rapid Removal Scheme will be too slow

By examining the various stages of the proposed Rapid Removal Scheme, it is clear that a regulated approach to rapidly removing content will not be effective. For example, if an Australian user followed the complaints process outlined in the Consultation Paper the proposed Rapid Removal Scheme, at best, could potentially take up to one week before the content is actually removed. The Internet and social media can be used to distribute content of a viral nature throughout the world within seconds, unfortunately having the potential of causing immediate and irrevocable damage to victims of cyber bullying. It is clear that this is an inappropriate regulatory approach to address cyber bullying as the overall sting of the damaging material is likely to have been caused and spread long before the Rapid Removal Scheme is able to have the initial instance of the damaging material removed. Furthermore, the proposed Rapid Removal Scheme risks providing users and parents with a false promise that guarantees the rapid removal of damaging content, a process that in reality will ultimately not protect such users from the damage caused by harmful material. IGEA strongly recommends that alternative mechanisms be considered before introducing further red tape and regulation that will not effectively address community concerns about cyber safety.

Not utilising the Cooperative Arrangement for Complaints Handling on Social Networking Sites

The Cooperative Arrangements for Complaints Handling on Social Networking Sites (the **Protocol**) was developed through close cooperation with industry and has been agreed on by Facebook, Google, Yahoo!7 and Microsoft. The Protocol has ensured that social networking sites make information available about the handling of complaints for material posted online, and that social networking sites educate users on mechanisms to deal with problems which arise on their sites. The Protocol specifically requires that each participating social networking site provides the Australian Government with the contact details of an identified contact person to address issues that require prompt attention.

The Consultation Paper suggests that there has been a failure by social networking sites to address instances of cyber safety, however we understand that since the Protocol's implementation on 16 January 2013 there has been little or no use of the mechanisms in the

Protocol to address unresolved instances of cyber bullying. If there has been a failure of the Protocol, it is incumbent on the Government to specifically highlight these failures. The Consultation Paper has failed in its responsibility to do so which further demonstrates that there is no evidence to substantiate the need for regulatory intervention.

If the Government intends to push ahead with the Rapid Removal Scheme, IGEA would expect that it revisits the Protocol and clearly demonstrates how the Protocol has failed to achieve its purpose before introducing any regulation.

Focus on the prevention of bullying

It is critically important that regulation does not attempt a 'whack-a-mole' approach to address instances of cyber bullying when alternative methods can be used to address the root cause of problematic online conduct. Education about appropriate online conduct, the promotion of available mechanisms to protect against online harassment and accountability mechanisms are successfully used for online games and game platforms to ensure a safe and friendly online environment for enjoying interactive entertainment content. Government should consider focusing on implementing programs that will address the cause of bullying, including online bullying, and aim to prevent it from occurring in the first place rather than introducing burdensome regulation that will fail to prevent the damage caused by cyber bullying.

The Rapid Removal Scheme will not capture problematic sites

Online regulation has an unfortunate habit of attempting to regulate problematic websites and platforms that are inevitably beyond the scope of law enforcement to the detriment of online websites and platforms that currently operate consistently with community expectations and that would otherwise not require regulatory intervention. The Consultation Paper recognises the challenges of introducing a scheme that attempts to regulate the activities of foreign businesses, highlighting that emerging social media sites popular with Australian children do not have any Australian presence. Should the Rapid Removal Scheme be introduced, it is inevitable that damaging material will naturally move to overseas-hosted websites that are outside the scope of Australian law and the scheme will only operate to add further red tape and regulation to businesses that would otherwise be compliant and responsive to community expectations.

The Rapid Removal Scheme will deter Internet businesses from establishing in Australia

The Consultation Paper states that “... *the proposed scheme may be quickly and simply enforceable against social media sites located in Australia*”. This is a particularly worrying statement for online businesses that are planning to start-up or enter the Australian market. Prime Minister, the Hon Tony Abbott, famously stated in his election victory speech that Australia was once again ‘open for business’. This message has continued to be repeated along with the Government emphasis on deregulation and the removal of unnecessary red tape that restricts economic growth. Introducing regulation that will only be effective once a business enters the Australian market is a serious barrier to entry and should only be introduced in the most serious of circumstances.

There is incredible value in having large, successful, foreign businesses establishing offices in Australia. Beyond the economic contributions of such foreign businesses, it is enormously beneficial to have local representatives of popular online platforms engaging in policy discussions and assisting with cyber safety matters in Australia. IGEA wants to secure an

environment where Twitter, Tinder, Snapchat, Whisper and other online platforms will be comfortable entering the Australian market and engage in discussions about cyber safety and cooperate with Government agencies without fear of being targeted by overly burdensome and unnecessary regulation. The Rapid Removal Scheme may well provide an additional barrier to such businesses entering the Australian market.

The definition of social networking site

Should the Rapid Removal Scheme be introduced, the scope of any rapid removal scheme should only apply to large social networking websites that have the explicit primary purpose of facilitating social interaction on a 'one-to-public' basis. The proposed definitions in the Consultation Paper are problematic and could potentially encompass technologies such as email, phone messages and online forums. Rather than introducing a strict, rigid and possibly unworkable definition of social networking sites in legislation, IGEA again recommends that the AGCD focuses on revisiting the Protocol by encouraging any emerging social networking sites that come to the Australian Government's attention to sign on to the Protocol and open a dialogue with Australian Government agencies.

IGEA understand that the AGCD is considering the possibility of providing either the Minister for Communications or the Children's e-Safety Commissioner with a discretionary power to determine that particular platforms should form part of the Rapid Removal Scheme. IGEA strongly rejects the introduction of such discretionary power. The scope of the Rapid Removal Scheme should be clearly identified and determined by the Parliament. Any expansion of the Rapid Removal Scheme's scope should be limited to and based on a significant demonstrated failure to address cyber safety matters and be subject to appropriate and transparent stakeholder consultation as well as ample time for social networking sites to adapt to any expanded scope of the scheme.

Consider Alternative Initiatives

IGEA encourages the AGCD to consider alternative initiatives to address concerns about cyber safety. Such alternative initiatives could include:

- Providing further opportunities for consultation and engagement between social networking sites, Government agencies and public interest groups including through regular engagement through the Consultative Working Group on Cyber Safety.
- Revisiting the Protocol and consider expanding its voluntary list of participating social networking sites.
- Engaging with identified social networking sites to ensure the implementation and enforcement of appropriate standards.
- Focusing on educational programs that will trigger behavioral change to reduce instances of cyber bullying.
- Encourage industry, Government agencies and public interest groups to work together to create and promote educational materials about online conduct, parental controls, and grief reporting mechanisms etc.

Establishment of a Children's e-Safety Commissioner

The Consultation Paper refers to the Government's pre-election commitment to the appointment of a senior Commonwealth official as a Children's e-Safety Commissioner (the **Commissioner**). IGEA did not support the establishment of a Commissioner-led body throughout the Coalition's pre-election consultation on the Coalition's policy to enhance cyber safety for children. IGEA continues to question the overall social and economic benefit that will be obtained through the establishment of the Commissioner.

Functions of the Commissioner

The Consultation Paper outlines a number of functions of the Commissioner, all of which are either currently being addressed or are capable of being addressed without the need for an additional statutory body.

- **Industry engagement for cyber safety** – Industry representatives, interest groups and the AGDC are already engaging in ongoing consultation on cyber safety matters through the Consultative Working Group on Cyber Safety. Examples of what can be achieved through this group include the Cyber Safety Help Button and the Easy Guide to Socialising Online², both developed through extensive contributions from the Consultative Working Group on Cyber Safety. A statutory body is simply not necessary for the development of such materials and initiatives.
- **Advice Platform concerning media content** – The Australian Classification Board, with administrative assistance from the Attorney-General's Department, currently classifies films, publications and computer games as well as online content referred to the Classification Board by the Australian Communications and Media Authority. In 2012 the Australian Law Reform Commission (**ALRC**) recommended significant reforms to the current Australian National Classification Scheme³, with particular reference to online content standards. The ALRC identified deregulation and industry self-classification as a major component of the recommended reformed classification scheme. Given the opportunity, industry would be able and willing to develop and operate a platform for providing classification and consumer advice to users. The establishment of another statutory body to provide advice about online content is not necessary and conflicts with the ALRC's recommendations.
- **Research, certification of online safety programmes and funding** – There are a number of existing bodies that would be more than capable of managing the funding of research on cyber safety and funding the development of online safety education programmes for schools. The Australian Communications and Media Authority (ACMA) would be one example of a Government agency that is well placed to provide these functions, particularly because the ACMA is already heavily involved in the coordination and development of education and research materials on cyber safety. The establishment of separate statutory body for these purposes is not required.
- **Administering the rapid removal scheme** – IGEA has significant concerns about the efficacy of the proposed rapid removal scheme that have been previously explored in this submission.

² <http://www.communications.gov.au/easyguide>

³ <http://www.alrc.gov.au/publications/classification-content-regulation-and-convergent-media-alrc-report-118>

Establishment of the Commissioner

The Consultation Paper provides a range of options for the establishment of the Commissioner. The Consultation Paper also refers to key principles for the establishment of Government bodies that are outlined in the *Governance Arrangements for Australian Government Bodies* published by the Department of Finance, including the following principle:

There should be no unnecessary proliferation of government bodies, therefore a new function, activity or power should be conferred on an existing body, unless there is a persuasive case to form a new body.

IGEA is not aware of any persuasive evidence that warrants the establishment of the Commissioner, particularly as a separate Government body.

IGEA is concerned that the establishment of a separate Government body will introduce an inefficient layer of bureaucracy, red tape and regulation, which does little to achieve the Government and AGDC's underlying aims.

Whilst the IGEA is strongly opposed to the establishment of the Commissioner, if the Government ultimately decides to establish the Commissioner, the following should be considered:

- Appointing a representative from the Australian Communications and Media Authority to provide the anticipated functions of the Commissioner on a trial basis to test the efficacy and success of the program before the Government invests significant resources into the formal establishment and funding of the Commissioner;
- Stakeholder consultation, including industry consultation, must be considered throughout the development of any Commissioner guidelines, processes or initiatives;
- The Commissioner must have a strong understanding of the technology landscape, including how social networking sites and relevant businesses operate;
- The Commissioner should ensure Australia's approach is consistent with international standards to ensure maximum cooperation from international stakeholders; and
- The Commissioner should focus on voluntary approaches to address cyber safety matters, such as the Protocol, in order to maximise the participation of social networking sites.

Conclusion and Recommendations

IGEA has not been convinced that a Rapid Removal Scheme is warranted, effective, or that it is an appropriate mechanism to address the impact of cyber bullying. IGEA strongly recommends that the AGCD revisit the Cooperative Arrangement for Complaints Handling on Social Networking Sites and focus on addressing its concerns through the Consultative Working Group on Cyber Safety. Further, additional government resources should be focussed on addressing the underlying cause of cyber-bullying, rather than its symptoms.

Should the Rapid Removal Scheme be introduced, IGEA recommends that online games not be included within the scope of the scheme. Furthermore, for the purposes of the Rapid Removal

Scheme, the definition of social networking site needs to be clear in scope and incapable of unfairly and unnecessarily regulating other online platforms. Lastly, there should be no discretionary power for the Minister for Communications, any other Minister or the Commissioner to expand the scope of the Rapid Removal Scheme.

IGEA does not support the introduction of a statutory body to act as the Commissioner. IGEA alternatively recommends focusing on utilising the combined efforts of the Consultative Working Group on Cyber Safety and promoting further engagement between social networking sites, online platforms, Government agencies and public interest groups.