

House of Representatives  
Standing Committee on Social Policy and Legal Affairs  
PO Box 6100  
Parliament House  
Canberra ACT 2600

14 October 2019

## **EROS ASSOCIATION SUBMISSION TO INQUIRY INTO AGE VERIFICATION**

The Eros Association is Australia's leading adult industry body, with over 25 years of experience in dealing with industry specific issues. Eros supports a responsible and non-discriminatory legal framework for adults-only businesses. Eros also support positive, healthy, sexual expression.

We welcome the opportunity to provide comment on the Inquiry into age verification for online wagering and online pornography.

Broadly, Eros' position is that:

- Adults should be able to consume, access, sell, exhibit, broadcast and produce adult media ('pornography') depicting consensual sex between adults.
- Law reform regarding age verification requirements for adult media websites should be postponed until Australia's classification guidelines and current adult media laws are reviewed.
- Age verification should follow an 'opt-in' model when it comes to ISP level blocks, rather than a 'default block' approach.
- Australia should not follow the UK model of age verification established by the Digital Economy Act 2017 (UK).
- If law reform is to occur, the focus of the reform should be on websites which provide (often copyright infringing) adult content without requesting payment.

### **Australia's Adult Media Industry**

Adult media production in Australia is currently very limited due to State and Territory criminal laws prohibiting the production, sale and exhibition of X18+ classified or otherwise sexually explicit media.

Broadcasting laws also render sexually explicit media subject to take down notices by the eSafety Commissioner resulting in most Australian adult media being hosted overseas.

It's important that this inquiry does not rely on stereotypes regarding the Australian adult industry.

A survey of Australian adult media producers undertaken by the Eros Association found that most producers in Australia are female and operate as producer/performers. Half of all producers identified as belonging to the LGBTIQ+ community.<sup>1</sup>

Although not covered by our survey, it is estimated that the majority of Australian adult media producers are 'webcammers' broadcasting material online.

Consuming adult media is a healthy and normal part of human sexuality, and does not deserve the moral condemnation it has received from uninformed critics of the industry.

### **Review of Classification Guidelines**

In July 2019, relevant State and Territory Ministers endorsed a motion by the Australian Government to undertake a review into the Guidelines for the Classification of Films and Guidelines for the Classification of Computer Games to ensure they reflect contemporary Australian community values.

This process is still ongoing, with a discussion paper set to be released later this year to gauge community expectations on content classification.

As Australian classification guidelines have a major impact on how content is regulated on the internet, it is suggested that law reform regarding age verification be postponed until the classification guidelines process has been completed.

### **Position On Age Verification**

Eros does not support minors having access to adults-only content.

All Eros members are encouraged to follow the Association of Sites Advocating Child Protection protocol for website labelling - allowing parental blockers to prohibit access to adult content.<sup>2</sup>

Moreover, Eros members who run adult media websites follow a 'pay-for-content' business model allowing for a secondary age verification process prohibiting access by minors.

Eros acknowledges that some websites are not captured by current parental blockers and are able to be circumvented via VPNs and other technical workarounds.

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<sup>1</sup> Eros Adult Media Production Standards 2018, accessible online:

<https://www.eros.org.au/wp-content/uploads/2019/09/Eros-Adult-Standards-combined-1.pdf>

<sup>2</sup> See Association of Sites Advocating Child Protection best practice guidelines for adult sites, accessible online:

[https://www.asacp.org/index.html?content=best\\_practices#adultsites](https://www.asacp.org/index.html?content=best_practices#adultsites)

Internet Service Providers (ISPs) appear ideally positioned to block content, however depending on the form of ‘block’ in place such barriers are also capable of being circumvented by tech-savvy young people.

Eros has no opposition to ISPs providing stronger parental controls for households allowing the filtering on an ‘opt-in’ basis. This is currently a service provided by Telstra.

Eros is also interested in working collaboratively with ISPs and regulators in order to strengthen parental controls.

### **Opposition to UK Model**

Within the terms of reference for this inquiry there is a reference to the United Kingdom's Digital Economy Act 2017 (hereafter ‘the UK Model’).

Under the UK Model, producers of adult content are required by law to implement strict age-verification controls on their websites or risk fines as well as ISP level blocks.

This regime is implemented by the British Board of Film Classification (BBFC) in line with content guidelines.

The implementation of a UK model locally would be an expensive and unnecessary intervention into the personal freedoms of Australians. Eros strongly opposes the implementation of a UK model of age verification, in particular we have concerns regarding:

- **Privacy:** the model creates an ideal ‘honey pot’ for potential hacks and the leaking of personal data with insufficient protections for data privacy.<sup>3</sup> The Act also gives wide powers for data to be requested and shared between ISPs and the regulator, increasing the risk of privacy breaches.
- **Unintended breadth:** under current broadcasting laws and classification guidelines a variety of non-pornographic content would likely fall under content requiring age verification tools including general advertising by adults-only businesses, R18+ films, works of art and educational material.
- **Censorship:** under current classification guidelines many forms of consensual adult sexual expression are ‘refused classification’ and would likely be blocked under the UK model. This includes many queer and diverse expressions of sexuality.<sup>4</sup>
- **Compliance burden:** increasing the red-tape burden on Australia’s small producer/performer adult media industry. This is particularly the case if the law extends to private sex workers and webcam performers. The UN Special Rapporteur

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<sup>3</sup> Open Rights Group. 2018. ‘Age Verification – Risks & Recommendations.’ Accessed September 21, 2018. [https://www.openrightsgroup.org/assets/files/pdfs/Article\\_13\\_briefings/ORG%20AV%20Briefing.pdf](https://www.openrightsgroup.org/assets/files/pdfs/Article_13_briefings/ORG%20AV%20Briefing.pdf)

<sup>4</sup> Stardust, Z ‘Fisting is not permitted: criminal intimacies, queer sexualities and feminist porn in the Australian legal context’ (2014) 1(3) Porn Studies p242-259.

for Freedom of Expression has called web blocking ‘difficult to justify’ in the case of child protection online given the disproportionate penalties incurred.<sup>5</sup>

- **Conflicts of interest amongst age verifiers:** one of the key beneficiaries of the UK model is MindGeek, the Canadian company behind many ‘porn tube’ sites such as Pornhub. MindGeek is currently the most competitive provider of third-party age verification tools through its ‘AgeID’ service something criticised by civil liberties groups as providing a conflict of interest between the privacy interests of the user, and the data-mining and market interests of the company.<sup>6</sup>
- **Civil liberties concerns:** much of the opposition to the UK model has centred on moral objections to empowering regulators to block online content without any judicial oversight.<sup>7</sup>
- **Resourcing:** the regime would result in inefficient use of the resources of the eSafety Commissioner and other online content regulators, whose main focus should be child exploitation material and image based abuse.<sup>8</sup>
- **Ineffectiveness:** most forms of ISP blocking are easily circumvented by VPNs and other solutions, rendering the proposal obsolete.<sup>9</sup>

Please do get in touch if you would like further comment from the Eros Association on these issues. We can be contacted as listed below.

Kind regards,



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<sup>5</sup> Report of the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression, Frank La Rue. May 16, 2011. Accessed September 21, 2018.

[http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27\\_en.pdf](http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf)

<sup>6</sup> Killock, J ‘The government is acting negligently on privacy and porn AV’ (2018) Open Rights Groups

<<https://www.openrightsgroup.org/blog/2018/the-government-is-acting-negligently-on-privacy-and-porn-av>>

<sup>7</sup> Pandora Blake (2019) Age verification for online porn: more harm than good?, Porn Studies, 6:2, 228-237, DOI: 10.1080/23268743.2018.1555054

<sup>8</sup> Pandora Blake (2019) Age verification for online porn: more harm than good?, Porn Studies, 6:2, 228-237, DOI: 10.1080/23268743.2018.1555054

<sup>9</sup> Danaher, Brett and Hersh, Jonathan Samuel and Smith, Michael D. and Telang, Rahul, The Effect of Piracy Website Blocking on Consumer Behavior (August 13, 2019). Available at SSRN: <https://ssrn.com/abstract=2612063> or <http://dx.doi.org/10.2139/ssrn.2612063>