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To whom it may concern,

## **Consolidated Industry Codes of Practice for the Online Industry**

The Eros Association is Australia's industry association for adults-only retail, wholesale, media and entertainment. We write in relation to the *Consolidated Industry Codes of Practice for the Online Industry (Class 1A and Class 1B Material)*.

### **Introduction**

We welcome the designation of "class 1C material" as a subcategory of class 1 material that comprises particular online pornography, including fetish material. This acknowledges the relative severity and potential for harm associated with different types of material.

The definition of "class 1C material", like that of "high impact materials", is, however, reliant on the National Classification Code and Classification Guidelines, which are woefully out of date.

We understand that the Department of Infrastructure, Transport, Regional Development, Communication and the Arts has finalised its report following the review of classification regulation and that the report proposes significant legislative changes. The new Government has not yet been provided with a comprehensive briefing on the report, therefore we recommend that further development of these Codes await the release of the report and any legislative changes.

### **Head Terms**

Again, we welcome the statement that these Codes do not apply to class 1C material. We are concerned, however, by the statement in clause 3(e) of the Head Terms that "industry participants may use different terminology to describe... class 1C material for different audiences." In our view, consistent terminology should be used across the Codes to avoid scope creep and confusion. We recommend that this clause be deleted.

### **Designated Internet Services Online Safety Code**

Under the Designated Internet Services Online Safety Code, pornography websites would be classed as Tier 1 or high impact designated internet services. We are concerned that the compliance measures set out in the Code (and included in the Appendix) may be too onerous for what are small businesses and therefore

recommend that some of the 37 compliance measures be consolidated to reduce repetition and duplication.

We also recommend that in the table of compliance measures, at clause 18(d), the Association of Sites Advocating Child Protection be included as an example.

## **Conclusion**

The Eros Association welcomes the opportunity to discuss with you further our views on these issues. If there is any way we can assist, please don't hesitate to contact us.



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## Appendix: Mandatory Compliance measures for pornography websites regarding child exploitation material

Under the Designated Internet Services Online Safety Code, pornography websites must:

- report any child exploitation material that poses a serious and immediate threat to the life or physical safety of an Australian to law enforcement (clause 2);
- implement systems and process that enable appropriate enforcement action for breach of terms and conditions, community standards, and/or acceptable use policies prohibiting child sexual exploitation material (clause 3);
- remove instances of child sexual exploitation material as soon as practicable (clause 3(a));
- terminate an Australian end-user's account as soon as practicable if they are distributing child sexual exploitation material to other users with the intention to cause harm (clause 3(b)(i));
- terminate an Australian end-user's account as soon as practicable if they are an Australian child (clause 3(b)(ii));
- terminate an Australian end-user's account as soon as practicable if they have repeatedly breached terms and conditions, community standards, and/or acceptable use policies prohibiting child sexual exploitation material (clause 3(b)(iii));
- take reasonable steps to prevent end-users who have had their user account terminated on **this ground** from creating a new account (clause 3(c));
- take appropriate action in response to a breach of the relevant terms and conditions, community standards, and/or acceptable use policies that is reasonably proportionate to the level of the harm associated with the breach (clause 5);
- be resourced with with reasonably adequate personnel to oversee the safety of the website (clause 6);
- implement systems, processes, and technologies designed to automatically detect and flag known child sexual abuse material such as hash-matching technologies (clause 8(a));
- implement systems, processes, and technologies designed to prevent end-users from distributing known child sexual abuse material (clause 8(b));
- implement systems, processes, and technologies designed to identify phrases and words commonly linked to child sexual abuse material and linked activity (clause 8(c));
- implement systems, processes, and technologies designed to remove known child sexual abuse material (clause 8);
- make ongoing investments in systems, processes and/or technologies, and personnel that support the capacity to detect and take appropriate action concerning child sexual abuse material, proportionate to the incidence of such materials on the website and the extent to which such materials are accessible to Australian end-users (clause 9);
- adopt appropriate features and settings that are designed to mitigate the risks to Australian end-users of **this material** (clause 13);

- implement measures that ensure that material can only be posted to or distributed by a registered account holder (clause 13(a));
- make clear in its terms and conditions, community standards, and/or acceptable use policies that an Australian child is not permitted to hold an account (clause 13(b));
- take reasonable steps to prevent an Australian child from holding an account and to remove them (clause 13(c));
- where unable a complaint from the public concerning non-compliance with these measures within a reasonable timeframe, refer the complaint to eSafety (clause 19);
- share information with eSafety about significant new features or functions that are likely to have a significant effect on the access to, exposure to or distribution of prohibited material (clause 20);
- provide online safety resources that include clear and accessible information for Australian end-users regarding the role and function of eSafety, including how to make a complaint to eSafety (clause 22(a));
- provide a mechanism which enables Australian end-users to provide feedback, including for the purpose of reporting, flagging or complaining about material that breaches the terms and conditions, community standards, and/or acceptable use policies (clause 23);
- provide online safety resources that include clear and accessible information for Australian end-users regarding **the reporting mechanism** (clause 22(b));
- provide clear and accessible information on how an Australian end-user can contact eSafety regarding compliance with the Code (clause 24);
- take appropriate steps to promptly respond to reports made by Australian end-users of materials that violate the the terms and conditions, community standards, and/or acceptable use policies (clause 25(a));
- ensure an Australian end-user who reports material is informed in a reasonably timely manner of the outcome of the report (clause 25(b)(i));
- ensure an Australian end-user who reports material can seek a review of **the response** if dissatisfied (clause 25(b)(ii));
- ensure an Australian end-user who reports material is notified of the outcome of **a review** (clause 25(b)(iii));
- implement and document policies and procedures for dealing with reports (clause 26);
- ensure that personnel responding to reports are trained in the policies and procedures for dealing with reports (clause 27);
- annually review the effectiveness of its reporting systems and processes to ensure that reports are assessed and material removed or otherwise actioned within reasonably expeditious timeframes (clause 28);
- publish appropriate terms and conditions, community standards, and/or acceptable use policies regarding material which is not permitted (clause 32);
- publish clear and accessible information regarding the actions taken to reduce the risk of harm to Australian end-users caused by the distribution of prohibited material (clause 33);
- submit an annual report on the steps taken to comply with these measures (clause 34(b));

- submit an annual report that explains why these measures are appropriate (clause 34(d)); and
- submit an annual report on the volume of child sexual exploitation material removed (clause 34(c))