

Online Safety Act 2021 (Cth)

Section 141(1)

REQUEST TO DEVELOP AN INDUSTRY CODE

To: Victoria A. Espinel, President and CEO; John Stanton, Chief Executive Officer

By email: [REDACTED]

This notice is issued on 11 April 2022 under section 141(1) of the *Online Safety Act 2021* (the Act).

As eSafety Commissioner, I am satisfied that BSA | the Software Alliance and Communications Alliance together represent the group consisting of providers of hosting services, so far as those services host material in Australia (s 135(2)(f)).

Under section 141(1) of the Act, I request that you:

- develop an industry code that applies to participants in the group consisting of providers of hosting services, so far as those services host material in Australia and deals with the matters listed in Schedule A to this notice, which relate to the online activities of those participants, and
- provide me with a copy of the code by COB Friday 9 September 2022.

Consequences of non-compliance

Under section 145(1)(a) of the Act, the eSafety Commissioner may, by legislative instrument, be permitted to determine an industry standard that applies to participants in the group consisting of providers of hosting services, so far as those services host material in Australia (s 135(2)(f)) if:

- the request in this notice is not complied with
- a draft code developed in response to this notice does not contain appropriate community safeguards to deal with one or more of the matters specified in Schedule A to this notice, or
- the request in this notice is complied with, but the eSafety Commissioner subsequently refuses to register the code.

SCHEDULE A

Specific matters

Definitions for the below matters are contained in Schedule B.

Matter 1

Measures directed towards achieving the objective of ensuring that industry participants have scalable and effective policies, procedures, systems and technologies in place to take reasonable and proactive steps to detect and prevent:

- access or exposure to,
- distribution of, and
- online storage of

class 1A material.

Matter 2

Measures directed towards achieving the objective of ensuring that industry participants have scalable and effective policies, procedures, systems and technologies in place to take reasonable and proactive steps to prevent or limit:

- access or exposure to, and
- distribution of

class 1B material.

Matter 4

Measures directed towards achieving the objective of ensuring that industry participants have scalable and effective policies, procedures, systems and technologies in place to take reasonable and proactive steps to limit the hosting of class 1A material and class 1B material in Australia.

Matter 5

Measures directed towards achieving the objective of ensuring that industry participants have effective and scalable policies and procedures in place to facilitate consultation, cooperation and collaboration with other industry participants in respect of the removal, disruption and/or restriction of class 1A material and class 1B material, as well as accounts associated with this material.

Matter 6

Measures directed towards achieving the objective of ensuring that industry participants have effective and scalable policies and procedures in place which ensure communication and cooperation with the eSafety Commissioner with respect to matters about class 1A material and class 1B material, including complaints.

Matter 7

Measures directed towards achieving the objective of providing people with a range of technical tools and/or information to limit their access and exposure, and the access and exposure of children in their care, to class 1A material and class 1B material.

Matter 8

Measures directed towards achieving the objective of providing people with clear, easily accessible and effective:

- reporting mechanisms for class 1A material and class 1B material, as well as associated user accounts, and
- complaints mechanisms to address complaints about the handling of reports about class 1A material and class 1B material and codes compliance.

Matter 9

Measures directed towards achieving the objective of ensuring that industry participants have scalable and effective policies, procedures, systems and technologies in place to effectively respond to:

- reports about class 1A material and class 1B material, as well as associated user accounts, and
- complaints about the handling of reports about class 1A material and class 1B material and codes compliance.

Matter 10

Measures directed towards achieving the objective of ensuring that industry participants publish easily accessible and plain language policies, procedures and guidelines that set out how they handle class 1A material and class 1B material.

Measures directed towards achieving the objective of ensuring that industry participants provide end-users with information about the safety issues associated with class 1A material and class 1B material.

Matter 11

Measures directed towards achieving the objective of ensuring that industry participants publish annual reports about class 1A material and class 1B material, and their compliance with industry codes.

Schedule B

In this notice:

class 1 material has the same meaning as in s 106 of the *Online Safety Act 2021*

class 1A material means covered material that is class 1 material because it contains CSEM, pro-terror material, or extreme crime and violence material

class 1B material means covered material, other than class 1A material

class 1C material means material that is class 1 material only because it:

- (a) describes or depicts specific fetish practices or fantasies, or
- (b) is a computer game which has not been classified and:
 - a. includes or contains depictions of actual sexual activity
 - b. includes or contains depictions of simulated sexual activity that are explicit and realistic

Note: Material which describes or depicts specific fetish practices or fantasies will only be considered class 1C material where the material describes or depicts specific fetish practices or fantasies which are consensual. Material that describes or depicts specific fetish practices or fantasies which also, for example, contains sexual violence, will be considered class 1A or class 1B material as appropriate.

classified means classified by the Classification Board under the *Classification (Publications, Films and Computer Games) Act 1995*

covered material means class 1 material, other than:

- (a) class 1C material, and
- (b) classified computer games.

CSEM means child sexual exploitation material, being material that includes or contains:

- (a) the promotion or provision of instruction in paedophile activity; and
- (b) descriptions or depictions of child sexual abuse or any other exploitative or offensive descriptions involving a person who is, or appears to be, a child under 18 years.

extreme crime and violence material means:

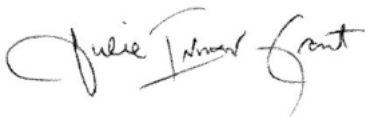
- (a) material that describes, depicts, expresses or otherwise deals with matters of extreme crime, cruelty or violence (including sexual violence);
- (b) material that promotes, incites or instructs in matters of extreme crime or violence; and
- (c) material providing instruction in, or which depicts, suicide or self-harm.

industry participant means a person who is a member of a group that constitutes the group consisting of providers of hosting services, so far as those services host material in Australia (s 135(2)(f)).

pro-terror material means material that advocates the doing of a terrorist act.

Note: See s 9A of the Classification Act for guidance on the meaning of 'terrorist act' and on when material ***advocates*** the doing of a terrorist act. This includes material which directly counsels, promotes, encourages or urges the doing of a terrorist act; or which directly or indirectly provides instruction on the doing of a terrorist act. Material does not advocate the doing of a terrorist act if it depicts or describes a terrorist act, but the depiction or description could reasonably be considered to be done merely as part of public discussion or debate or as entertainment or satire.

Signed:



Name: Julie Inman Grant

eSafety Commissioner

Dated 11 April 2022