

via submissions@esafety.gov.au

4 January 2024

To whom it may concern,

Draft Online Safety (Designated Internet Services - Class 1A and Class 1B Material) Industry Standard 2024

The Eros Association is Australia's industry association for adults-only retail, wholesale, media and entertainment. We write in relation to the *Draft Online Safety (Designated Internet Services - Class 1A and Class 1B Material) Industry Standard 2024* ("the Standard").

Class 1C material

We welcome the designation of "class 1C material" in the *eSafety Industry Codes Position Paper* ("the Position Paper") 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. However, this designation is not incorporated in the Standard, which could lead to an assumption that class 1A and class 1B material incorporates all class 1 material. Furthermore, the draft Designated Internet Services Code stated that "industry participants may use different terminology to describe... class 1C material for different audiences." Whilst this has not been included in the Standard, we are concerned that the lack of definition of class 1C material in the Standard could cause scope creep and confusion.

Therefore, we recommend that a provision be added to the Standard to stipulate that it does not apply to class 1C material, with a definition of class 1C material mirroring that in the Position Paper.

The definition of "class 1C material" in the Position Paper, like that of "high impact materials" in the Standard, is, however, reliant on the National Classification Code and Classification Guidelines, which are woefully out of date. The Review of Australian Classification Regulation ("the Stevens Review") recommended that legal fetishes be removed from the X18+ classification.

Therefore, we recommend that commencement of the Standard await implementation of the Stevens Review recommendation concerning X18+ classification and changes to classification regulations.

Compliance measures

Under the Standard, pornography websites would only be classed as "high impact designated internet services" if they enable end-users to post "high impact materials"

as opposed to posting that themselves. Nevertheless, we are concerned that the compliance measures set out in the Standard may be too onerous for what are predominantly small businesses and therefore suggest that some of the at least 38 compliance measures could be consolidated to reduce repetition and duplication. In this regard, we recommend that:

- sections 16-17 and 18-19 be consolidated;
- section 20 be removed, as resourcing requirements should be left to business themselves and the Commissioner should be focussed on compliance of businesses not their resourcing;
- section 24 be amended, such that the investment requirements do not apply to tier 1 designated internet services but the collaboration requirements do (essentially, switching the requirement in section 24(2)(b)) and that the Association of Sites Advocating Child Protection be included as an example in the note accompanying section 24(6)(c); and
- section 33 be removed, as this information is already required to be reported to the Commissioner and the Commission can report publicly on this without adding further compliance burden on businesses.

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.



Graeme Dunne
General Manager
Eros Association

E: [REDACTED] | www.eros.org.au