InternetNZ

Submission on *Content Regulation in a Converged World*

16 October 2015

# 1. Introduction

1.1. We welcome the Government's Convergence programme and we appreciate the opportunity to submit on the *Content Regulation in a Converged World* discussion document.

We are committed to an open and uncaptureable Internet

1.2. Our Mission at InternetNZ is to *promote the Internet's benefits and uses and protect its potential*. We care passionately about Internet-based communications and the opportunities that the Internet brings to New Zealand's economy and society.

1.3. Our Vision is *a better world through a better Internet* and our comments in this submission reflect our policy principles (set out below).

Figure one: our policy principles
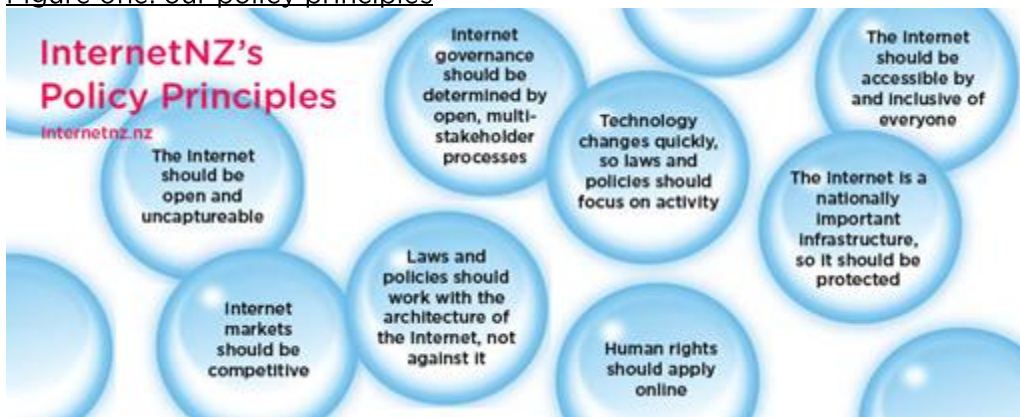
1.4. Of particular relevance to this Convergence process are the following of these principles:
   a) laws and policies should work with the architecture of the Internet, not against it
   b) technology changes quickly so laws and policies should focus on activity.

1.5. As a membership-based organisation we will not be attempting to directly answer the questions or provide opinions of any one individual. We have focussed our submission on the issues relating to classification and content regulation and do not offer a view on advertising or election advertising.

1.6. Instead, this submission is structured to set out our views on:
   a) the need for consistent classification across different mediums
   b) the State's reduced ability to enforce age restrictions
   c) reducing the economic dead loss of re-classification
   d) establishing new, technology neutral law for today
   e) a safe harbour for ISPs.

1.7. In this submission we will be using the term classification to collectively refer to ratings, guidance and restrictions that exist across New Zealand's content regulation laws.

1.8. We recognise that there is a challenge in how to promote and protect New Zealand's creative sector both as creators of cultural artefacts and in light of the need to maintain a robust and accurate historical record of our nation. However, we have not commented on the Government's policy tools for supporting local content. We recognise the value of local content and support the Internet as vehicle for the creation and distribution of local content. However, our expertise and interest is in

supporting the open Internet and as such this submission is focussed on the Internet related implications of converged content regulation.

1.9.   We welcome the opportunity to discuss our submission with you. Please contact Ben Creet, Senior Issues Advisor at ben@internetnz.nz or on 04 495 2339 for further information.

Jordan Carter
**Chief Executive**

2. Why do we have classification?

2.1. We think that there is a need to clearly establish why New Zealand has content regulation. Why do we have classifications? The discussion document references to the importance of classification ratings in enabling New Zealanders to make informed choices. We agree, but classification regimes also exist to:
   a) protect children and young people from content that society considers harmful or dangerous
   b) ban content that is truly objectionable and unacceptable to New Zealand and New Zealanders (e.g. child sex abuse material).

2.2. Simply put, classification regimes exists to deny access to a small amount of socially harmful things and then provide information to the public so that they can make informed decisions for themselves, or their families about what content they wish to consume.

3. Consistency of classification across mediums

3.1. Currently, the classification processes within our laws tie the classification of a content to the medium that it is consumed on. This made sense in the past, when there was a limited number of content distributors. However, the Internet, and convergence, has made these historical differences irrelevant in many ways. Cinema distributors, TV broadcasters and book importers do not have the same level of control and influence that they once had. This means that, today, when we look at the different free-to-air, pay-to-view, and publication classification ratings we see unnecessary complexity that makes ratings and informed choice harder than it needs to be.

3.2. We consider that the question of whether SVOD should be required to be classified misses the more important question:
   Why is the medium that content is consumed on relevant to its classification?

3.3. We consider that, in order to enable technology neutral policy and law, the government should be seeking to introduce a single classification method that is used across different content types and mediums. In practice this would mean replacing the multiple existing systems (free-to-air video, pay-to-view video, publications classification) with a single classification system which could underpin either a:
   a) number of different classification regimes (e.g. broadcasting and publication could continue to be governed by separate laws, just with a consistent classification regime); or
   b) single, converged content regulatory system.

3.4. We consider that this consistent underlying classification regime is a more important, and needed, regulatory response to convergence than consolidation through a single regulatory regime. It can be argued that there are still differences between push and pull regimes. However, one of the friction points between the different content regimes is the need to re-classify (costing money and time).

3.5. A single, consistent classification system that underpins either different, or converged regimes would ensure an easy to understand, broad approach to helping New Zealanders make informed choices about what to read, watch or listen to.

Figure two: a single classification system for all mediums
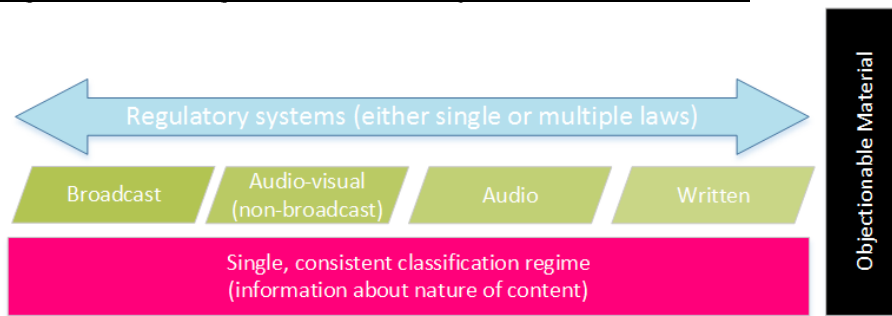
3.6. When building a new, uniform, classification regime, New Zealand should look to continue the existing ability to recognise and adopt international classifications. We would also encourage you to monitor initiatives such as the International Age Rating Coalition[1] to see how we can make classifying content easy and informative for consumers.

3.7. A consistent classification regime would also ease future convergence issues, helping ensure that content could easily and frictionlessly transfer between mediums.

> *We recommend that the government create a single, consistent classification system to underpin all content classification and rating systems.*

4. Restricting by age is getting harder

4.1. We consider that the implications of user generated content, online availability, instant access, ephemeral content (e.g. periscope or snapchat), the difficulty of identity and access management at device level and increased use of VPNs and encryption tools make age restrictions on content more and more difficult to implement. In fact, some of our members question whether any hard full-restriction censorship system based on age can work at all anymore.

4.2. New Zealanders who want to seek out content can and will. They often do this ignoring age-restriction classifications in the process. Individuals are no longer reliant on distributors of physical products and will seek out the content that they want.

4.3. One way to still provide information to New Zealanders could be to use the Internet to facilitate information on publications. Online information would give people a reasonable opportunity to make informed choices for themselves and their dependants. One recent example of this was when Slingshot, through GlobalMode, enabled the import of non NZ classified content. Slingshot provided a warning to check age appropriateness of content to its customers and a link to the Internet Movie Database (imdb).

4.4. Outside of banning objectionable material, we consider that the days of implementing age restrictions are coming to an end. We suggest that you eliminate restricted ratings, or minimise the number of restricted ratings to a bare minimum (e.g. keeping a R18 only).

> *We recommend that you reduce, or eliminate, restricted ratings within classification system(s).*

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[1] https://www.globalratings.com/

5. Reduce the economic dead loss of re-classification

5.1. The current system focuses on the responsibilities of importers, broadcasters and distributors to ensure that content is classified. However, if there is one consistent classification regime then content should only be required to be inspected and/or classified once.

5.2. One of the implications of convergence is the need to recognise that content, once classified, is content. The content doesn't change when the medium does. One of the benefits that the Internet can bring is enabling the classification of content to be made open (and machine readable) to enable others who want to publish or provide access to content already classified to pull down the classification rating and use it to enable their customers to make informed decisions.

5.3. This approach would recognise the public benefit and purpose of why content is classified. It would also reduce barriers to competition, innovation and eliminate what is effectively an economic dead loss in the current system.

> *We recommend that content regulation should enable re-use of classification to reduce the economic dead loss from multiple organisations classifying the same content across multiple mediums.*

6. Build new and technology neutral law for today

6.1. We think that the options presented in the discussion document that involve modifying either the Broadcasting Act or Film, Video, and Publication Classification Act should be dismissed. Rather than amending existing laws, we recommend that you replace the old Broadcasting and Film, Video & Classification Acts with new law(s) built in a technology neutral, activity focussed manner.

6.2. The decision on whether to have a single regulatory regime for all content, or continue with separate regulatory regimes for different mediums is (to us), neither here nor there. What is important is that any statute and tertiary law is technology neutral (which the existing laws are not) and is built to accommodate emerging technologies and innovations. We can think of three options implementing new content regulation that would be technology neutral:
    a)   create a single content regulatory regime
    b)   replace the current laws with a central Act focussed on principles and establishing a single classification regime with regulatory powers to create medium or industry specific regulatory regimes
    c)   implement a modified status quo where existing laws are repealed and replaced with modernised versions (e.g. the Telecommunications Interception Capability and Security Act repealed and replaced the Telecommunication Interception Capability Act).

6.3. We encourage you to dispassionately put aside old laws designed to deal with spectrum dedicated to radio and television and the physical importation and distribution of books, films and VCRs and replace them with technology neutral law(s) for distributing, selling and showing content.

![InternetNZ logo]

7.   A safe harbour for Internet service providers

7.1.   We recommend that, when reviewing content regulation and convergence issues the Government should create a safe harbour for Internet Service Providers (ISPs) and hosting providers protecting them from liability in respect of transmission or display of user sourced material which should have a classification but does not and in respect of the user sourced restricted or illegal material itself.

7.2.   As set out in figure three below (from the *Convergence Green Paper*), content distribution is moving from separate legacy industries to a consolidated, IP-reliant distribution model. Therefore, ISPs will become involved in more and more areas of content distribution.

Figure three: moving to an IP-based content distribution

Source: http://convergencediscussion.nz
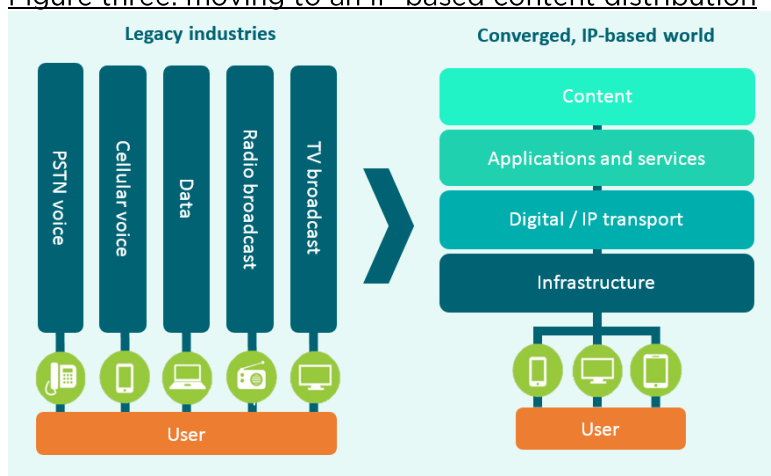
7.3.   We consider that, building off ISPs protection from liability for copyright infringement in the Copyright Act, you should work with ISPs to design an appropriate safe harbour that will ensure they are not exposed to undue risk due to the actions of their customers.

7.4.   We have had some feedback that the safe harbour in s24 Harmful Digital Communications Act 2015 (the HDC Act) might not be fit for purpose. It should be checked to ensure that it does provide the protection to online content hosts that was intended. We also consider that a safe harbour for ISPs would need to provide protection to transmitters of information (moving packets to/from customers being the core job of an ISP) with the increasing move to streaming. We think it is unclear whether the s24 safe harbour in the HDC Act applies to transmitters as opposed to hosts and would caution against assuming it would serve the purpose of the type of safe harbour we are suggesting.

7.5.   Another example of this type of safe harbour suggested to us by a member is section 230 of the US Communications Decency Act.[2]

> *We recommend that you create a safe harbour for ISPs to protect them from liability for content that users or applications and service providers move across their networks*

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[2] This Wikipedia article (while not definitive) is quite useful and contains references to case law as well as statute: https://en.wikipedia.org/wiki/Section_230_of_the_Communications_Decency_Act

8. Answers to consultation questions

8.1. The *Content Regulation in a Converged World* discussion document poses the following questions as a means of stimulating responses. For ease of understanding this submission, we have cross referenced these questions with where we have responded to them.

8.2. *Do you think on-demand content should be classified in some way?*

Yes, on-demand content should be classified consistently with other content. See our comments above in 3.1 – 3.7.

8.3. *If so, should similar content across different platforms be regulated in the same way?*

We consider that content should be classified consistently. See our comments above in 3.1 – 3.7.

8.4. *Do you have a preferred option or concerns with any of the options presented?*

We prefer new laws, built for today. See our comments above in 6.1 – 6.3.

8.5. *Are there any overseas models you think we should look at? Which ones?*

As per our comment in 3.6 we think that New Zealand should look to leverage international ratings as much as possible and monitor initiatives such as IARC to enable Internet-based innovation and content creation to be delivered and shared easily.

About InternetNZ

A better world through a better Internet

InternetNZ is a voice, a helping hand and a guide to the Internet for all New Zealanders. It provides a voice for the Internet, to the government and the public; it gives a helping hand to the Internet community; and it provides a guide to those who seek knowledge, support or any other method of benefiting the Internet and its users.

InternetNZ's vision is for a better world through a better Internet. To achieve that, we promote the Internet's benefits and uses and protect its potential. We are founded on the principle of advancing an open and uncaptureable Internet.

The growing importance of the Internet in people's everyday lives means that over the last twelve months we have significantly reoriented our strategic direction. The Internet is everywhere. We are a voice for the Internet's users and its potential to make life better.

InternetNZ helps foster an Internet where New Zealanders can freely express themselves online – where they can feel secure in their use of the Internet. We foster an Internet where a start-up can use the web to develop a presence and customer base for a new product, and we foster an Internet where gamers can get online and battle it out.

We work to ensure this Internet is safe, accessible and open.

The work we do is as varied as what you can find on the Internet.

We enable partner organisations to work in line with our objects – for example, supporting Internet access for groups who may miss out. We provide community funding to promote research and the discovery of ways to improve the Internet. We inform people about the Internet and explain it, to ensure it is well understood by those making decisions that help shape it.

We provide technical knowledge that you may not find in many places, and every year we bring the Internet community together at NetHui to share wisdom, talk about ideas and have discussions on the state of the Internet.

InternetNZ is the designated manager for the .nz country code top-level domain and represents New Zealand at a global level through that role.

InternetNZ is a non-profit open membership incorporated society, overseen by a council elected by members. We have two wholly owned subsidiaries that ensure that .nz is run effectively and fairly – the Domain Name Commission (DNC) develops and enforces policies for the .nz domain name space, and .nz Registry Services (NZRS) maintains and publishes the register of .nz names and operates the Domain Name System for .nz

For more information visit: https://internetnz.nz/about-us/internetnz-group