

Summary of Reasons – App Distribution Services Code

31 May 2023

eSafety decision

The eSafety Commissioner (**eSafety**) has decided to register the *App Distribution Services Online Safety Code (Class 1A and Class 1B Material)* (**App Distribution Code**). The App Distribution Code meets the statutory requirements set out in section 140 of the *Online Safety Act 2021* (Cth) (the **Act**).

Background

The Act permits eSafety to register an industry code that has been developed and submitted by a body or association that represents a particular section of the online industry. To register an industry code, eSafety must be satisfied that it meets the requirements under section 140 of the Act, including that it provides appropriate community safeguards for any matters of substantial relevance to the community.

On 11 April 2022, eSafety gave a notice to the Communications Alliance, Digital Industry Group Inc and the Interactive Games & Entertainment Association (the **Applicants**) under section 141 of the Act requesting that they develop an industry code dealing with certain matters (the **Notice**).

On 18 November 2022, the Applicants submitted a draft of the App Distribution Code to eSafety pursuant to the Notice. In February 2023, eSafety gave a statement of preliminary views on that draft to the Applicants and invited the Applicants to submit a final version addressing the feedback in eSafety's statement.

On 31 March 2023, the Applicants submitted the App Distribution Code to eSafety for registration, with a covering document entitled 'Request for Registration of Online Safety Codes' (the **Request**).

Scope of the App Distribution Code

The App Distribution Code applies to providers of app distribution service providers (**App Distributors**). App Distributors are defined in the Act to include services where the sole or primary purpose is enabling end-users to download apps, and where the apps are downloaded by means of a carriage service.

The App Distribution Code contains measures to address, minimise and prevent harms associated with access and exposure to the most harmful forms of online material on social media services. Material covered by the App Distribution Code includes:

- **class 1A material**, which is comprised of child sexual exploitation material, pro-terror material, and extreme crime and violence material, and
- **class 1B material**, which is comprised of crime and violence material and drug-related material,

in each case as described in Annexure A to the App Distribution Code Head Terms, which reflects the *Classification (Publications, Films and Computer Games) Act 1995 (Cth)* (**Classification Act**) and related instruments.¹

These types of material are subcategories of class 1 material under the Act, which is material that has been or would be refused classification under the Classification Act. Serious harms are associated with these kinds of material whenever it is produced, distributed or consumed.

A future industry code or industry standard will be developed to address class 2 material under the Act, which includes material that has been or would be classified X 18+, R 18+, Category 1 Restricted or Category 2 Restricted under the Classification Act.

eSafety assessment of the App Distribution Code

The App Distribution Code sets out a range of minimum compliance measures for App Distributors that the Applicants submit provides appropriate community safeguards in relation to the matters identified in the Request.

eSafety agrees that the matters identified by the Applicants in their Request, which are materially the same as those matters identified by eSafety in the Notice requesting a code, are matters of substantial relevance to the community.

The App Distribution Code will provide appropriate community safeguards by requiring App Distributors to:

1. take reasonable and proactive steps to create and maintain a safe online environment for Australian end-users²
2. empower people to manage access and exposure to class 1A and class 1B material, and
3. strengthen transparency of, and accountability for, class 1A and class 1B material.

Creating and maintaining a safe online environment for Australian end-users

Specific obligations relating to the first of these objectives require App Distributors to:

- have agreements in place with third party app providers requiring them to comply with applicable Australian content laws and to take appropriate action when there is a breach of such agreements concerning class 1A content
- have systems, policies and/or procedures in place that enable them to review all apps

¹ Importantly, the nature of the material, including its literary, artistic or educational merit, and whether it serves a medical, legal, social or scientific purpose, is relevant to the assessment of class 1B material – see section 11 of the Classification Act. Material only falls within class 1B if there is no justification for the material.

² ‘Australian end-user’ is used throughout the industry codes but is defined in clause 2 of the Head Terms as an end-user in Australia to align with the language and scope of the Act. The two terms are used interchangeably in this document.

prior to their publication to reduce the risk of access or exposure to, distribution of or online storage of class 1A material via an app

- ensure it is reasonably resourced with personnel to oversee the safety of the app distribution service
- provide age or content ratings to assist Australian end-users in their decision making
- take part in industry forums to discuss the effectiveness of the App Distribution Code, best practices in implementing this code and online safety in general
- advise eSafety when apps have been removed due to a breach of a third-party agreement in connection with class 1A content, and
- share information with eSafety about significant new features or functions likely to have a significant effect on the access or exposure to, distribution of, or online storage of class 1A or class 1B materials.

Empowering people to manage access and exposure to class 1A and class 1B material

Specific obligations relating to the second of these objectives require App Distributors to:

- provide clear and accessible information about online safety for Australian end-users, including steps that parents and guardians may take to supervise children's use of apps and information about reporting or complaint pathways, and
- provide a mechanism which allows Australian end-users to report or complain about a failure by a third-party app provider to resolve a complaint concerning class 1A or class 1B material or a breach of the App Distribution Code by an App Distributor.

Strengthening transparency of, and accountability for, class 1A and class 1B material

The specific obligation relating to the third of these objectives requires App Distributors to provide an annual report to eSafety on code compliance, setting out steps taken to achieve compliance with the App Distribution Code and the reasons why those steps are appropriate.

eSafety considers that these obligations will, together, create effective and meaningful obligations on App Distributors, commensurate with the role of App Distributors in the online service supply chain, in addressing the risk of class 1A and class 1B content.

While these obligations principally require steps to be taken by App Distributors in relation to *third-party apps*, other industry codes or industry standards will apply to the apps themselves (both first-party and third-party apps) that appear on the app distribution service. Accordingly, an App Distributor that separately makes its own first-party apps available will have obligations in relation to those apps under other industry codes or industry standards.

Next steps

The App Distribution Code will shortly be published on the eSafety Commissioner's Register of industry codes and industry standards. The App Distribution Code will come into effect six months after registration.