



## Submission to ACC Inquiry into digital platforms February 2019

Thank you for the opportunity to make a submission on this important topic.

The Australian Council on Children and the Media (ACCM) is a peak not-for-profit national community organisation whose mission is to support families, industry and decision makers in building and maintaining a media environment that fosters the health, safety and wellbeing of Australian children.

ACCM membership includes Early Childhood Australia, the Australian Council of State Schools Organisations, the Australian Primary School Principals Association, the Association of Heads of Independent Schools Australia, the Australian Education Union, the Parenting Research Centre, the Council of Mothers' Union in Australia, the NSW Parents Council, the South Australian Primary Principals Association, and other state-based organisations and individuals.

ACCM's core activities include the collection and review of research and information about the impact of media on children's development, and advocacy for the needs and interests of children in relation to the media.

ACCM welcomes this Inquiry and broadly supports the Preliminary Recommendations (PRs). The subject matter is of particular significance to children for two reasons: first, because they spend considerable time online, including on digital platforms; and second, because they have special needs as consumers. This is due in particular to their restricted capacity to identify and think critically about advertising; and to fully appreciate the implications of giving consent to the use of personal information. Moreover the products advertised online are not necessarily appropriate to children; and there is evidence that children's apps frequently violate apparent protections such as the US *Children's Online Privacy Protection Act* by failing to make appropriate use of options to disable prohibited covert tracking and behavioural advertising.<sup>1</sup>

We are particularly pleased to see the issue of digital platform regulation addressed from a consumer protection perspective, because this gives clear recognition to the power imbalance between platform and consumer. Such recognition is more important than ever, considering that some of the platforms in question have unprecedented power for private corporations. Consumer protection can give recognition to the special vulnerability of some groups of consumers, which is a useful way of framing the needs of children, especially in relation to advertising and marketing and to the protection of personal information.

ACCM is a signatory to the attached detailed letter that has been organised by the Foundation for Alcohol Research and Education (FARE). Please treat the points raised in that letter as incorporated by reference into this submission. We wish also to make the following specific comments.

PR4 and PR5: As a general principle, ACCM supports independent regulation, rather than self-regulation, for the protection of children's rights and interests as media users. In our experience self-regulation invariably results in codes that fail to restrict companies in doing what they want to do; that are interpreted in the manner most favourable to the companies' interests; and that operate more as a public relations exercise than as a vehicle for corporate social responsibility.

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<sup>1</sup> Reyes et al, "Won't Somebody Think of the Children?" Privacy Analysis at Scale: A Case Study With COPPA' (2018) *International Computer Science Institute Proceedings on Privacy Enhancing Technologies*  
<https://www.icsi.berkeley.edu/icsi/node/6013>.

We note an additional advantage to these PRs: as well as providing protection directly, they have the potential to make for a more informed consumer base, thereby empowering parents and others to protect children and educate them in safe and appropriate use of digital platforms.

On the question of regulatory imbalance, ACCM is generally not convinced that uniformity across platforms is necessary. Each platform has different regulatory challenges and the quest for uniformity often translates into a race to the bottom. If it is possible to regulate some platforms more effectively than others, such regulation should be retained. This way, relatively safe spaces can be provided for families and children to enjoy media content.

PR6 – creation of a content classification scheme: Close consideration should be given to how this would fit with the National Classification Scheme (NCS). The ACCC would no doubt be aware of the Australian Law Reform Commission’s 2012 Report on this matter and developments since then, including the fact that very few of the recommendations have been implemented. ACCM has been advocating a major overhaul of the NCS for some time, but not along the lines recommended by the ALRC. Rather we argue for a scheme that includes age-based categories, as these would be the most useful and informative for families and others when selecting content for young people. A statement of our position on these matters can be found at <https://childrenandmedia.org.au/taking-action/current-campaigns/classification> and we would be very happy to expand on that statement at any time.

PR6 – single agency: ACCM is generally in favour of ‘one-stop shops’ as these ease the burden consumers would otherwise face in finding the appropriate body to contact. They also make for a more coordinated approach, and less risk that issues will fall ‘between the cracks’.

PR 8(a) – ‘particularly if addressed to a child’: Regulation for the protection of children’s interests should focus on whether children are likely to see content, rather than whether it is addressed to them. In our experience regulations that revolve around the target audience are too easily manipulated by companies that have ways of packaging content so as to support a claim it is not addressed to children, when in fact it is highly appealing to them and likely to engage their attention. The likely audience, as distinct from the target audience, is easier to ascertain objectively, and therefore a clearer basis for regulation.

PR8(c) – capacity of guardians to consent on behalf of children: ACCM has reservations about this, and would suggest more direct protections from policy and legislation. As we know, some adults are themselves vulnerable consumers and have limited ability to protect their own interests, let alone those of the children for whom they are responsible. We submit that all children deserve the same level of protection, and this can be provided only by the government.

PR9: ACCM submits that other groups should be involved in development of the Code of Conduct – not just digital platforms themselves. Once again we have long experience of industry bodies drafting hollow and self-serving codes for themselves. The interests to be protected should also be at the table.

Area for further analysis and assessment 8 (opt-in targeted advertising): ACCM submits that there should be a different approach for users under 18. For example, ‘targeted’ advertising could be used to protect such users from ads for products that should not be advertised to them, such as alcohol and gambling services. In such cases, users arguably should not be able to opt out of targeted advertising.

Thank you once again for the opportunity to make this submission. If you would like to discuss any of these matters further you are most welcome to contact our President, Elizabeth Handsley, on 0448 898 185 or at [handsley.elizabeth@gmail.com](mailto:handsley.elizabeth@gmail.com).

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