



SUBMISSION TO

Senate Legal and Constitutional Affairs Committee

Inquiry into the Australian film and literature classification scheme.

March 2011

The Australian Council on Children and the Media (ACCM) welcomes the opportunity to provide comment to this Senate Inquiry.

This submission has been prepared for the Australian Council on Children and the Media by Prof. Elizabeth Handsley (a specialist in media law as it relates to children), and Barbara Biggins OAM, CEO (and former Convenor of the Classification Review Board).

The ACCM would welcome the opportunity to expand on the issues raised, at a later date.

For further information, please contact Barbara Biggins at above address.

1. INTRODUCTION

The ACCM is a 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 has a national Board representing the states and territories of Australia, and a comprehensive membership of organisations and individuals who support its mission.

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.

More about the ACCM can be found at Appendix 1.

2. THIS SUBMISSION REFLECTS THE FOLLOWING PRINCIPLES

2.1 The International Convention on the Rights of the Child Article 17, viz

"States Parties recognise the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health. To this end, States Parties shall:

(a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

(b) Encourage international co-operation in the production of, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority groups or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of Article 13 and 18.”

2.2 The Code under the Classification (Publications, films and computer games) Act 2005:

“Classification decisions are required to give effect to the following principles which are set out in the Code:

(a) adults should be able to read, hear and see what they want

(b) minors should be protected from material likely to harm or disturb them

(c) everyone should be protected from exposure to unsolicited material that they find offensive, and

(d) the need to take account of community concerns about:

(i) depictions that condone or incite violence, particularly sexual violence, and

(ii) the portrayal of persons in a demeaning manner.”

2.3 Objectives h) and j) of the *Broadcasting Services Act* at para 3.of The Act.

(h) to encourage providers of broadcasting services to respect community standards in the provision of program material; and

(j) to ensure that providers of broadcasting services place a high priority on the protection of children from exposure to program material which may be harmful to them;

2.4 The Policy Guidelines on Children’s Media of the Australian Council on Children and the Media.

3. IN THE PREPARATION OF THIS SUBMISSION, ACCM HAS

- relied on its experience and active involvement in issues related to healthy and safe use of all media
- listened to community concerns about the content of films, publications and games
- Drawn on its ongoing activity of reviewing the current research literature as it relates to the impact of media on children.

4. INTRODUCTORY COMMENT

ACCM welcomes the opportunity to comment on the Australian film and literature classification scheme. We generally support the scheme as a source of information for all consumers about the content of films, magazines and computer games. We note also the use to which the scheme is put in supporting the online content regulation scheme under the *Broadcasting Services Act* and the influence it has on the classification of television content.

It would be desirable for this Inquiry to keep in mind all of these applications of the scheme during its deliberations.

ACCM supports the broad approach of the classification scheme in seeking to strike a balance between the protection of children and young people from harmful material and the right of adults to see, read and play whatever they wish. This balance is not always an easy one to strike, and the ultimate decision will rarely command universal assent. But ACCM believes that in a mature democracy it is possible to achieve a broad consensus over time. This is especially the case if the system and the decision making under it are appropriately evidence-based.

5. COMMENT ON THE TERMS OF REFERENCE FOR THIS INQUIRY

a) the use of serial classifications for publications;

These serial classifications are mostly given for a two year period. With few if any checks on content within this period, standards can and do slip. ACCM has observed this in content found in some R Cat 1 publications containing depictions of women seemingly under the age of 18 years. A shorter period of one year, or more frequent enforcement checks of content, may be more effective.

b) the desirability of national standards for the display of restricted publications and films;

The display of Restricted magazines in places where children often go has been a problem. A national review of the conditions for the display of R Cat 1 magazines and development of effective local systems of content checks and enforcement would assist in this issue. In addition parents need to be better supported with information about complaints mechanisms, when children are confronted by such material.

SA is to be commended for its legislation to separate the display areas, within sale and hire outlets, for R18+ videos, DVDs and games from those of a lower classification. This approach could also with profit be extended to the display of the legally restricted MA15+ category. Such separation has an educative effect and promotes the idea that this material is stronger and potentially harmful, and restrictions on access to it have legal force.

c) the enforcement system, including call-in notices, referrals to state and territory law enforcement agencies and follow-up of such referrals;

The application of the enforcement provisions in each state seems very lax. ACCM has knowledge of Restricted magazines having content not appropriate to the category sticker placed on its cover. The complaints process is not well known or understood, the call-in process seems very slow, and effective outcomes to remove the offending titles are rare.

d) the interaction between the National Classification Scheme and customs regulations;

No Comment

e) the application of the National Classification Scheme to works of art and the role of artistic merit in classification decisions;

While it is important to recognize and support material with artistic merit, this should not outweigh the importance of the classification criteria. Artistic merit will always have a subjective element to it, whereas the potential for harm to children that underlies the criteria is a matter of clear scientific evidence.

As recent events show, issues arise particularly where the material involves the use of children as live models. Either the classification guidelines or some other law should clarify the duties of the makers and distributors of such material towards the children concerned.

Perhaps a more objective alternative to the concept of “artistic merit” might be a concept of “responsible social commentary”. This concept would be broader but easier to ascertain the content of.

Neither “artistic merit”, nor “responsible social commentary” should, however, be allowed to override clear prohibitions against specified content in the guidelines.

f) the impact of X18+ films, including their role in the sexual abuse of children;

No comment

g) the classification of films, including explicit sex or scenes of torture and degradation, sexual violence and nudity as R18+;

The present national scheme for the classification of cinema films and DVDs (NCS) provides useful consumer information about the content of films.

The application of the scheme and assessment using the classification criteria (as agreed by the Ministers responsible) by the Classification Board has a commendable degree of consistency, and a number of checks and balances. The formal review process by the Classification Review Board is a necessary and valued part of the system.

The self-regulatory system for the classification of films shown on TV is much less satisfactory.

However, the present national scheme, guidelines and classification criteria could be improved.

In relation to children:

Certainly, so far as the guidelines are intended to protect children, they could do a much better job, if they were evidence-based. The categories, as presently constituted, centre around the age of 15 years which is not useful for parents of children in the range of developmental stages under 15 years.

They are also based on the moralistic, subjective and unscientific concepts of what is offensive or disturbing. The overall system could be vastly improved by greater

application of research evidence, for example about content which contributes to children's unnecessary fears and anxieties, and which increases the risks that children will choose to use aggression to solve conflicts.

A shift away from offence and disturbance towards actual harm to children and their development would probably entail de-emphasising matters such as nudity and coarse language, and paying more attention to violence, scary material and exploitative and commodified depictions of sexuality.

In relation to consumer advice lines

Further, the consumer advice lines provided with most films could be improved in usefulness if they were more specific, and also research-based. Lines which said "scary monsters" are more useful to parents than "some material may disturb young children". The line "moderate action violence" is not of much use if the parent is not aware that "moderate" comes in a hierarchy starting from "very mild" to "mild" to "moderate".

In relation to the criteria in use since 2003

ACCM has observed changes in overall standards since the introduction of the revised and combined Guidelines in 2003.

The current Guidelines (2003, rev. 2005) place great emphasis on tests of context and impact. The criteria are much less detailed about the types of content allowable at each level.

ACCM expressed concerns to the Minister in 2003 and 2004 about these basic changes. It was our view then, and still is, that by comparison with the 2000 guidelines the current ones allow a more subjective range of judgements to be made eg whether material has strong impact or high impact. Our prediction then was that standards would slip, and they have done so. Judgements based on contexts of fantasy and/ or horror genres as lessening impact have lowered the classification of some materials. Judgements based on whether the impact of violence was very mild, mild, moderate, strong or high can be less stringent than whether violence with high impact was frequent or infrequent, detailed or not (see Guidelines 2000: tests for M/ MA15+). [See Appendix 2 and 3 for our correspondence at the time the guidelines were introduced, and at the time of the one year review.]

ACCM is particularly concerned about the amounts of violence now permitted at the M and MA15+ levels, via the application of these revised guidelines.

This has become a major concern given the joint criteria now used for films and for games.

h) the possibility of including outdoor advertising, such as billboards, in the National Classification Scheme;

It is ironic that billboard and outdoor advertising is one of the least regulated forms of advertising under our legal system, considering that it is the hardest form for consumers to avoid if they object. (Compare television, radio, magazines and newspapers, direct mail.) Another form of advertising that is subject to very little regulation – in fact even less than outdoor advertising – is packaging, which even the industry codes do not cover.

The present system has shown a failure to come to terms with the grounds for community objections about sexualised advertising. Using the Advanced Medical Institute billboards

as an example, it is not that parents do not wish their children to see the word 'sex' on billboards. It is that parents want to be able to choose which aspects of adult sexuality they discuss with their children, and at which stage of their children's development. In particular, parents of young children probably do not want to discuss with them why some sex might last longer than other sex, and why one might see that as a bad thing.

Nor do the current arrangements address concerns about the sheer volume of certain kinds of advertising. It tends to treat each billboard as an isolated instance, whereas the effect is cumulative. One woman-objectifying campaign would probably not be a problem; the problem is that there are so many campaigns, and have been for so long.

The criteria to be used in regulating this content should go to the root of community concerns about sexism, sexual objectification and sex-obsession, rather than merely depictions of sexual activity or nudity. The NCS could play a valuable role here.

The Committee should take into account the fact that advertising is often designed to shock – to push the limits so that people will talk about it. Billboards seem to be a particularly strong example of this, probably precisely because they are so unregulated.

The current self-regulatory scheme for advertising is not effective in meeting community concerns. A system is needed that includes legislative regulations with sanctions attached, administered by an independent government body that is unconnected with the advertising industry. These regulations should be focussed on matters which are shown to have the potential to cause harm.

i) the application of the National Classification Scheme to music videos;

One of the problems encountered by the community when considering lodging complaints about the music videos shown on TV in G or PG time has been that the classification criteria do not "catch" the depictions that cause concern.

Such depictions include partially clad females dancing erotically, some sadism, violence and degradation, and have an outcome of involving children in the trappings not just of adult sexuality but of destructive and exploitative adult sexuality. On the other hand, the present classification criteria revolve around depictions of nudity, sexual activity and sexual references. These fail to prevent widespread screening of sexualized images.

The criteria in the National Classification Code should be revised to incorporate wording which remedies this shortcoming. We understand that the NCC is applied to music videos when sold on DVD. If the NCC were changed, then additionally, this would provide useful pressure for the Commercial Television Code of Practice and other broadcasting codes to follow suit.

j) the effectiveness of the 'ARIA/AMRA Labelling Code of Practice for Recorded Music Product Containing Potentially Offensive Lyrics and/or Themes';

No comment

k) the effectiveness of the National Classification Scheme in preventing the sexualisation of children and the objectification of women in all media, including advertising;

ACCM believes that children should not be exposed to exploitative and superficial representations of teen and adult sexuality in the media at times and in environments where they have every right to be - for example day time TV music video shows, outdoor billboards, the Internet.

The NCC is not effective in preventing either the sexualisation of children or the objectification of women. There are no laws that directly confront the dissemination of material that encourages children to see sexiness as a measure of success, nor as important for their self concept.

See our concerns and recommendations listed under i) above.

l) the interaction between the National Classification Scheme and the role of the Australian Communications and Media Authority in supervising broadcast standards for television and Internet content;

While the NCS applies principally to cinema films, DVDs and games, Free-TV Australia uses the NCS for the classification of films screened on TV, SBS uses the NCS, and the ABC claims to use the NCS as the basis for its system (but in practice there are significant differences).

Commercial free-to-air television networks, the SBS and the ABC all use their own classifiers. The ACMA arbitrates when complaints are laid about such classification (if not resolved with the broadcaster).

Such a mixed system is less than optimal for viewers.

- There are in effect several variations of the classification systems to be grappled with. These include the Commercial Television Industry Code of Practice for the classification of programs that are not films and the National Classification Code for films previously classified by the Classification Board; the SBS Code, and the ABC Code, and Pay TV Codes.
- There are several differences in the classification symbols used by TV and by the system for cinema films and games. And differences in the criteria used by each TV system to classify their programs for broadcast.
- The ACMA takes only a co-regulatory role in supervising broadcasting standards. It does very little by way of active supervision of broadcast standards in the current system.

ACCM recommends that where possible, the same classification symbols and same criteria as used for the NCS be used to classify all films and programs in cinemas and on TV.

However, ACCM believes that the classification criteria for films and DVDs should be separated from those for games. Different criteria should be devised within the NCS for the classification of games. The joining up of the systems for games and films from 2003, combined with the "simplification" of that joint system, has led to games with "strong" content being legitimately classified MA15+. Under the previous (2000) classification criteria only medium intensity violence was permitted in MA15+. And the criteria for games

that would fall into RC included “excessive or serious violence, such as realistic depictions of dismemberment ...”. Far greater note was taken of the interactivity element of games in increasing the impact.

Games on the internet should also be classified.

ACCM supports the principle that what is illegal offline should also be illegal online.

m) the effectiveness of the National Classification Scheme in dealing with new technologies and new media, including mobile phone applications, which have the capacity to deliver content to children, young people and adults;

ACCM, as above at **g.**, believes that the NCS should be revised to be evidence-based.

Further ACCM believes that the protections offered by classification should not be abandoned simply because it might be more difficult. There is no case for lowering the classification requirements on traditional media, simply because the newer media may be more difficult to tackle.

In some areas of new media, it may be more effective to consider restrictions on the supply of the hardware; and providing more education for parents in the use of and hazards for the young in the use of some devices.

n) the Government’s reviews of the Refused Classification (RC) category; and

The criteria for placing material in the RC category have long been agreed, with their emphasis on that material which is considered illegal, or which promotes illegal acts, or which would be so abhorrent to most people that they would not consider that it should be available to anyone.

It should be promoted that the intent of this classification is to protect the general population, not just the young. Those who classify such material are performing a valuable public service, and are regularly rotated out of the Classification Board to avoid desensitization.

o) any other matter, with the exception of the introduction of a R18+ classification for computer games which has been the subject of a current consultation by the Attorney-General’s Department.

It is important that the principles on which the NCS is based be given wider publicity. It’s important that the general public appreciate that the 4 principles are equally important and are inter-related. The principle of adult freedom to read, hear and see what they want is not an over-riding principle, and should not be seen as such.

The NCS would benefit from an evidence-based review, which included a greater emphasis on providing detailed content information, and additionally, age recommendations that fit the commonly accepted stages of children’s development eg G (appropriate for all), G8+ (appropriate for those 8 and over), G13+ (appropriate for those 13 and over), followed by the legally enforceable categories of M15+ (not suitable for those under 15 years), and R18+ (not permitted for those under 18 yrs).

APPENDIX 1

ABOUT US: THE AUSTRALIAN COUNCIL ON CHILDREN AND THE MEDIA

The 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.

Its patrons are Baroness Susan Greenfield and Steve Biddulph.

ACCM has a national Board representing the states and territories of Australia, and a comprehensive membership of organisations and individuals who support its mission

ACCM membership includes ECA (Early Childhood Australia), ACSSO (Australian Council of State Schools Organisations), AHISA (Association of Heads of Independent Schools of Australia), AEU (Australian Education Union), APPA (Australian Primary school Principals Association), Infant Mental Health Association of Australia, Parenting Research Centre, Enough is Enough: anti-violence movement, SAPPA (South Australian Primary Principals Association), Federation of NSW P&C (Parents & Citizens), and the Council of Mothers' Union in Australia.

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's core services include:

- the national freecall 24/7 Children and Media Helpline (1800 700 357);
- the ACCM website www.childrenandmedia.org.au containing evidence based information about media and children (attracting over 1000 visits per day);
- the award-winning, popular *Know before you go* child-friendly movie review service (now with more than 580 movie reviews);
- the development of parent media awareness materials,
- making submissions and participating in media interviews related to media regulation.

ACCM's current issues include the early s*xualisation of children in and by the media; the impacts of media violence; the marketing of violent entertainment and junk foods to the young; management of screen time and content by the very young.

ACCM's programs are lead by a team of expert volunteers, supported by a small paid staff. Its programs are supported by project grants and much volunteer input.

ACCM's awards include National Community Crime Prevention awards 2009, 2006; 2001; National Child Protection 2005.

The ACCM is a structured as a company limited by guarantee. Its ABN is 16 005 214 531. The organisation is registered for GST, has DGR and ITEC status.

APPENDIX 2 Letter sent to AG 2003, and Commentary on AG response

Hon. Daryl Williams AM QC MP
Attorney General
Parliament House
Canberra ACT 2600

28 February 2003

Dear Mr Williams,

Thank you for your letter of 9 January 2003, with reference to the **Review of the Guidelines for the Classification of Films and Computer Games**.

Young Media Australia has now been able to study the 2003 version of the Guidelines as approved by the participating Ministers, and wishes to convey to you its strong concerns about these.

In the view of YMA, the Guidelines have been considerably weakened in the "G" and "PG" classifications, and provide less protections to the child audience than those in present use. A detailed commentary on these Guidelines is attached.

One issue of particular concern is the change to the criteria for "violence" in the G category. Presently, "violence" in "G" must be "infrequent". The new Guidelines have dropped this requirement. In future, "violence" will be permitted in "G" provided only that it has a "very low sense of threat or menace", and that the impact is very mild. In strange contrast, the requirement that violence be "infrequent" remains in the "PG" category.

There are very many cartoon series, for example, which contain many acts of "glamorised" violence performed by heroes. These depictions would not necessarily have threat or menace. Several such series have been given "PG" by the OFLC in the past, on the grounds that the violence was not infrequent. Such films may well be deemed to meet the new guidelines for "G". Many parents would wish to avoid such material on the grounds that, while not threatening to children, it provides a message that "violence works and violence wins".

Such a change represents a change of policy, which should have been debated in the public arena.

Some months back, Young Media Australia expressed to you, and other participating Ministers, our concerns that the public was being denied the opportunity to comment on the post March 2002 "simplified guidelines". These concerns were met with the reassurances that the new draft did not alter the standards set in the October 2001 draft. It plainly has in a number of areas.

Our question is this. What were the grounds upon which the decision was made to remove, for example, the requirement that "violence" be "infrequent", and how can this be shown to be of benefit to the child audience?

Young Media Australia has long supported the OFLC Guidelines criteria for "G" believing that they offered considerable benefits over those for television. We are dismayed to have to abandon this support.

Yours sincerely

Barbara Biggins OAM
Hon. Executive Director
Young Media Australia

YOUNG MEDIA AUSTRALIA

RESPONSE TO LETTER FROM ATTORNEY-GENERAL DARYL WILLIAMS TO COLLEAGUES, 12 MARCH 2003

RE: CONCERNS ABOUT COMBINED CLASSIFICATION GUIDELINES FOR FILMS AND COMPUTER GAMES

This document responds to the comments made by Hon Daryl Williams about the draft critique of the new (Combined) Guidelines, prepared by Young Media Australia.

1. "The standards haven't changed"

YMA response:

The "standards" against which films and computer games are classified, are embodied in the Classification Guidelines. Against the backdrop of the Act, and The National Classification Code, it is the wording of the Guidelines, in force at any one time, that determine what the standards are. Therefore, it is vital that the wording of the Guidelines is clear, and able to be interpreted consistently by classifiers, the industry and the public.

If in fact "the standards haven't changed" then the community should be able to see from the clear meaning of the new Guidelines that they haven't. This is not the case. A range of community groups is concerned about a perceived loss of protections in the G, PG, and M classifications of the Combined Guidelines. The AG's claim that this provides a "demonstration that the level of clarity and transparency of the current guidelines needed improvement", and that "...the Combined Guidelines deliver those improvements" (comment at 1(e),4 & 5), is not well supported.

The community's perceptions may strongly indicate a lack of transparency of the Combined Guidelines, and further, a serious lack of necessary detail in the criteria under each classifiable element.

Too much reliance is placed on the concept of "impact" at each level of the Combined Guidelines, at the expense of transparency.

2. **"The impact test will cover "missing" detail"**

YMA response:

The preamble to the current guidelines does indeed require the consideration of impact of individual elements and their cumulative effect, and context.

However, the criteria under each classifiable element contain sufficient detail to clearly indicate which types of content is allowed in this classification category.

The community's concerns, that the Combined Guidelines have omitted previous requirements (for eg that violence in G be "infrequent"), has been met with the assurance that this doesn't matter, as the "impact test" will take in the issue of "frequency".

However, the judgement of "impact" will take in a number of factors including intensity, tone, treatment, realism vs stylisation, amount of detail etc. The community will not know what relative importance is to be placed on all these factors. The current standards make it clear that violence that is not "infrequent" is excluded from G.

The reliance on the "impact test" as the reason for the dropping of previously specifically included factors is puzzling, given the AG's statement, at para 2 of the AG's letter, under the section "The G guidelines", that

"The format of the Combined Guidelines lists each classifiable element under each classification category, *with a statement limiting the content of each element as it pertains to each category* [our italics] and highlighting the importance of context. This approach relieves the need to cross-reference back to the introductory material and makes it clear that the Board is considering all of the elements in respect of each category. "

If this is the principle behind the construction of the wording, then the community has a right to expect that limitations on content that were clearly stated in the current Guidelines, will continue to be clearly stated, not subsumed under a combination of factors which determine "impact".

In relation to a child audience, the judgement of "impact" requires either the use of persons experienced in child development, or alternatively, the spelling out of criteria under each classifiable element in sufficient detail to include those elements known to be impactful on children.

In addition to the above concern about reliance on **"impact"**, there are examples of **inconsistency**, in relation to when factors are spelled out and when they are left to "impact". For eg, in PG, violence is required to be "mild in impact and infrequent". If "frequency" is part of impact, why is it separately mentioned here in PG, but not in G. Why is "frequency" specifically mentioned in relation to the element of language, in G and PG and M, but not in relation to violence in G and in relation to "sex" in both G and PG ?

The approach to "impact" in the Combined Guidelines is both inconsistent and unsatisfactory, and weakens the Guidelines.

3. "Context is only one of three important principles"

The AG's response here does not answer the community concern that the "justified by context" test may be used to allow material which, if "realistic" would be placed in a higher category, but if it fits a particular genre (ie horror, science fiction, animation) will be allowed at a lower level, thus making it more accessible to a younger audience. The justification for this could well be that the "impact" is seen to be (by classifiers) as lower than if realistic.

4. "Additions" to classifiable elements of "drug use", "themes" etc.

The preamble to the current guidelines does require consideration of all 6 classifiable elements across all classification categories, ie the elements of "drug use", "nudity", and "adult themes" were required to be considered in relation to the G and PG categories, in addition to those specifically listed. (violence, sex, and coarse language).

However, their treatment was required to be "careful and discreet". The definition of "discreet" in the current guidelines is "with little or no detail and generally brief".

Community concern around the "apparent addition" of the elements of "drug use", "themes", and "nudity" reflects the perception that the criteria established for these in the Combined guidelines spell out what's permitted, but have lost the important factor of "discreet".

"Drug use" was a classifiable element at PG level. It could be expected that "drug use" allowed in G should clearly be at a much lower level than that.

However, the element of "drug use" at PG level in the combined guidelines seems to have been relaxed. Whereas in the current guidelines, this must be discreet, or incidental and may not be promoted or encouraged, the test in the Combined Guidelines is specified only as "mild in impact" and "justified by context".

In relation to "**themes**" in G, it is claimed that it is not necessary to specifically include the requirement that "themes" not confuse or upset children, as a consideration of "impact" will cover that. The community is left wondering why it is seen as so important to specifically exclude from G, only "themes that have a very low sense of threat or menace", and to leave other themes to "impact".

Additionally, the loss of the preamble to G that "parents should feel confident that children can watch this material without supervision" makes it doubly important that the detail in classifiable elements be clear, and ensure a careful approach to classification. The preamble for G was a good contrast to PG: "for PG parents need to be there."

5. "PG is much more recognisable than G8+"

Many community groups argued that G8 and G13 were more useful concepts for parents than the present PG and M.

The AG has argued that PG has a much higher recognition in the community. This may be so, but recognition of the meaning of PG does not equate to usefulness. Further, the G8 category for computer games has hardly had the length of existence nor the degree of promotion via film ads, that PG has had.

Parents have long held that PG is not particularly useful as it only indicates that there may be some element that may upset children under the age of 15 years.

As the AG's letter agrees, there are many different ages and stages of children under 15 years, but there is strong agreement that around the age of 8 there are distinct developmental changes common to all children, if not at precisely the age of 8.

6.. "There is always the appeal process"; "there will be Community Assessment Panels"

These assurances do not help the public who are dissatisfied now with the Combined Guidelines.

The review process, for the community, has some limited uses.

However, usually when the community sees a movie that appears to have the wrong classification, it has started its cinema season, and it's much too late to request a review. (within 30 days of classification).

Community Assessment Panels only see films on a very occasional basis, and have only an advisory role. Their feedback is useful, but is not seen as any sort of remedy to an unsatisfactory set of Guidelines.

7. "The guidelines review process was adequate"

As stated by the community, the guidelines review process was not adequate, as it did not include an opportunity to :

- a) see the submissions made by other parties
- b) argue their case in a public forum
- c) provide comment on the revised draft guidelines before acceptance by the participating Ministers.

This review process, and the guidelines which were the outcome, would have been greatly improved and have much better public acceptance and support if a better process had been used.

END

APPENDIX 3 ACCM submission on the one-year review of the 2003 guidelines

SUBMISSION TO THE OFLC REVIEW OF THE OPERATION OF THE REVISED GUIDELINES FOR FILM AND COMPUTER GAME CLASSIFICATION JUNE 2004

The Australian Council on Children and the Media (trading as Young Media Australia, or YMA) is a national community organisation devoted to the creation and maintenance of a quality media environment for children. We directly represent the interests of children in relation to the media and support parents in making sound media choices for their children. Our comments are based on extensive experience in the classification system and expertise derived from the latest research on child development.

We thank the OFLC for giving us the opportunity to make this submission, and for extending the deadline for us.

Procedural matters

This review seeks to determine whether the newly-worded classifications operate differently from the previous ones. The ability of a person or body to comment on this matter depends on a detailed knowledge of the material that has been classified, and of the classifications that have been received. In spite of a high level of interest and expertise in the field of film and computer game classification, YMA does not have this knowledge. Nor do we have the resources to seek out the relevant information.

If we had the resources, we would have reviewed all those films and games classified G or PG since the end of March 2003, to see if the use of the new wording had resulted in products being given a lower classification than they would have received under the old wording. We doubt whether any body would have the necessary resources to undertake this work, unless it were the kind of body (for example one in the production industry) that would benefit from a loosening of the guidelines, and therefore be expected to submit that all is well.

Therefore, our **first submission** is that in this review, the OFLC should pay special attention to the interests of the people and bodies that make submissions. In particular, the review should treat with great caution a submission by any part of the production or distribution industry for either type of product to the effect that the changes to the guidelines have made no difference. Our **second submission** is that this review should not reach any firm conclusions until the OFLC releases for public comment, in easily digestible form, all information relating to the classification of P and PG material since the changes to the guidelines, with particular attention paid to reliance on those parts of the wording that have been changed.

The substance of the guidelines

In our view the most significant changes to the guidelines are those relating to how violence is handled. In particular, the new guidelines rely on impact and context, and remove any requirement in the G classification that violence be 'infrequent'. Rather, the test is that violence has to be very mild in impact. The impact test does refer to frequency, but specifies frequent repetition of a scene, rather than the cumulative effect of a number of different scenes containing the same classifiable element.

There is strong pressure in the film and computer game industries to increase elements such as violence in order to expand their market base. One of the key purposes of the classification system is to give producers and distributors an incentive to resist these pressures, in the

interests of young children. Therefore it is imperative to close any loopholes which could allow greater levels of violence to seep in to G classified material.

YMA regards the replacement of 'infrequency' by 'mildness' as a move with the potential to open up such a loophole because it opens the way for consideration of 'contextual' factors such as animation or 'fantasy'. Such factors might lessen the 'impact' of the violence in the view of adults, but children – especially the young children whom the G classification exists to protect – cannot necessarily tell the difference.

In the past there were instances of cartoon or animated series/films classified PG because the violence was not infrequent, for example *Might Morphin Power Rangers*, *Gargoyles*, *Pokemon*. The reference to frequency rather than impact prevented the animated nature of the material from taking precedence over the actual level of violence and ensured continued focus on children's interests.

Therefore our **third submission** is that the review should pay special attention to the question of whether material is receiving a G classification in spite of frequent violence, particularly on the ground that the impact of the violence is apparently lessened by contextual factors such as animation or fantasy themes. Can the OFLC assure the Australian community that this has not happened?

YMA notes further that the new guidelines have an infrequency requirement for violence in the PG classification, but not in the G classification. We have always found this mystifying, particularly in view of our position that requirements relating to frequency are a stronger protector of children than those relating to impact. It might be said that any sensible reading of the guidelines would incorporate the infrequency requirement for G by reference to this same logic. In our view there is no substitute for guidelines that say what they mean and mean what they say. A stakeholder could quite justifiably be aggrieved at having a G classification turned down on the basis of frequent violence when infrequency is not mentioned in the guidelines. Realistically, this is unlikely to happen for the very reason that natural justice demands adherence to the guidelines as they are written.

Therefore our **fourth submission** is that the guidelines should be further revised to reinstate the infrequency requirement for violence in G material, if only for the avoidance of doubt, but also to enhance the protection of young children.

Application of the guidelines

The information we have been able to gather about classification decisions since March 2003 suggests to us that these decisions have provided a lower level of protection than would have applied under the previous guidelines. YMA runs a movie review service and in the course of preparing this submission we have consulted the published reviews with a view to determining whether the classifications were, in our view, appropriate. We have identified 2 films classified G that we believe would have classified PG under the previous guidelines; 6 at PG where M would have been applied (2 for violence, 4 for adult themes); and one M film that would have been classified MA.

G films

The principal difference between the two sets of guidelines for G classification is that the previous ones require that violence be 'very discreetly implied', infrequent and non-gratuitous, whereas the new guidelines require that violence 'have a very low sense of threat or menace, and be justified by the context.' (We take the view that 'justified by the context' is not quite the same thing as non-gratuitous and is likely to be easier to satisfy. This is because 'the context' can be read to refer to broader matters beyond the story line, for example the genre of the film or stylistic elements.)

Brother Bear would previously have been classified PG on account of frequent violence that is not 'very discreetly implied'. We refer in particular to the scenes where: Denahi spits on Kenai;

the shaman hits Kenai across the head for wanting to trade his totem; Sitka hits Kenai for being insolent; Kenai throws rocks at the bear; the bear throws Kenai over the cliff; Sitka fights the bear off with a spear; Kenai and the bear fight, with the bear falling dead on top of Kenai; Denahi attacks Kenai with a spear and a dagger; and Denahi nearly kills Kenai. While these scenes might be ‘justified by the context’ in accordance with the 2003 Guidelines, we believe the violence in the movie is frequent and therefore would have precluded a G classification under the previous guidelines.

Looney Tunes: Back in Action would have been classified PG under the previous guidelines on account of the amount of punching, kicking, karate chopping, strangulation, gun blasting, dynamite blowing etc. No doubt the comic context of the violence was taken into account in the decision under the new guidelines to classify the film G. This would not necessarily have been the case under the previous guidelines where, once again, violence had to be ‘very discreetly implied’ and ‘infrequent’ to justify a G classification.

PG films

To be classified PG under the previous guidelines, material had to be limited to violence that was ‘discreetly implied or stylised, mild in impact and not shown in detail’. Now, PG material can contain violence that is mild, infrequent and justified by context.

Agent Cody Banks contains scenes of detailed violence, for example the scenes where: Cody grabs his younger brother around the throat and throws him out of his bedroom; in his imagination Cody karate kicks and punches a boy to impress Natalie; Ronica teaches Cody to kickbox; Cody attacks the group of boys that pick him up; Cody hits men with saucepans in the kitchen; Cody gets knocked out and is left bruised and bloodied; Cody sets fire to a man’s pants on the ski slopes and later the other man’s motorbike explodes; Natalie rescues Cody from the mountain hideaway with explosives, fighting, kicking, punching etc. We believe that this film would have received an M rating under the old guidelines, for this reason.

Similar comments apply to ***Harry Potter and the Prisoner of Azkaban*** which was obviously considered to be at the high end of the PG range even under the new guidelines. We believe that under the previous guidelines the M rating would have remained.

The four films we believe would have been rated M under the previous guidelines on account of adult themes are ***How to Lose a Guy in Ten Days***, ***Lost in Translation***, ***Welcome to Mooseport*** and ***Serving Sara***. This is because the themes, while possibly mild in impact, are not discreet. For example there is no discretion to the scene in ***How to Lose a Guy*** where Andie calls gives a nickname Ben’s penis and asks if it wants to come out to play.

M film

We believe that ***Ned Kelly*** would have been classified MA under the previous guidelines, on account of frequent detailed depictions of violence. The new guidelines require only contextual justification.

<p>The above all supports our fifth submission, which is that there is evidence that the new guidelines are providing lower levels of protection to children than the previous guidelines did.</p>

Computer games

As we do not run our own computer game review service, we do not have ready access to information on the content of games. However, a glance down the list of games classified G8+ does make us wonder how ‘infrequent’ in the violence requirements for this classification has been defined. It is difficult to imagine that the violence would be truly infrequent in games with titles like ‘Pacific Theatre of Operation IV’, ‘Deadly Skies 3’, or ‘Naval Ops Warship Gunner’. We wonder whether these would have fit under the previous guidelines where even low intensity realistic violence placed a game in the M category.

We believe that the industry’s heightened role in the classification of games, compared to that of the film industry in classification of its products, warrants special attention to the practical application of the guidelines and the decisions that are reached.

Our **sixth submission** is that it would be highly desirable for the OFLC to arrange for a detailed independent review of the application of the guidelines by industry members in classifying computer games.

Conclusion

YMA remains unconvinced that the changes to the classification guidelines improved the system, and moreover we believe that there is evidence the new guidelines provide less protection to children's interests than the previous guidelines did. It is counter-intuitive to say that changes to the wording of the guidelines would not lead to any changes in the decisions that are made under them.

At the very least the guidelines should be revised to incorporate a requirement of infrequency for violence in the G classification for films.

We should be pleased to expand on matters raised in this submission. Queries should be directed to its principal author, Elizabeth Handsley, on (08) 8201 5256.

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