



SUBMISSION TO

The Senate Legal and Constitutional Affairs Committee Inquiry

into the

Classification (Publications, Films and Computer Games) Amendment (Online Games) Bill 2011

January 2012

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

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

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 broad membership of organisations and individuals who support its mission.

The 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 A.

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* (Cth):

“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 1992* (Cth), s 3.

(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, THE 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 TV, films, publications, games and the internet
- drawn on its ongoing activity of reviewing the current research literature as it relates to the impact of media on children.

4. COMMENT

The Australian Council on Children and the Media (ACCM) has a long history of engagement with the classification of content, and recognises that the system has its limitations.

However we are also of the view that the system plays an important role in raising the community's consciousness of the power of media experiences, and in guiding parents and others in selecting appropriate material for children and young people.

Therefore ACCM is gravely concerned at the current raft of proposals to deregulate the classification of content.

There is sufficient evidence of media content having an influence on children's thoughts, attitudes and behaviour to justify a comprehensive classification system. The evidence can never be conclusive, but in this as in many fields involving the healthy development of children, a precautionary approach is justified.

Our understanding is that the Bill is being proposed because of the practical difficulties associated with enforcing classification rules against online games.

From a child development perspective, such difficulties are not sufficient reason to give up on the rules entirely. No law is 100% effective, but laws remain nevertheless an important tool for reducing risks, encouraging appropriate behaviour and educating the community.

On broader philosophical questions relating to regulation of online content, ACCM endorses the views and analysis put forward by Professor Sonia Livingstone in "Positioning Children's Interests within Debates over Internet Governance" (in Cecilia con Feilitzten et al (eds), *New Questions, New Insights, New Approaches: Contributions to the Research Forum at the World Summit on Media for Children and Youth* (University of Gothenburg, 2011)). It is important to separate the practical from the philosophical reasons for not regulating online content (see esp p 165). Livingstone concludes that there are cases where 'the online environment should be designed so that little or no reliance is placed on the individual's competence' to protect themselves and their children (with such "remedies" as media education and the use of filters) (p 169) and advocates 'a strategy of "safety by design"' (p 170). Pending the implementation of such a strategy, traditional regulatory structures have their place.

In any case, there is no ground to believe that effective regulation of online material is impossible. A recent report in the Brisbane Times describes the breakthroughs being predicted by a high-profile Australian technologist <http://www.brisbanetimes.com.au/technology/technology-news/australian-technologist-predicts-cleaner-internet-20120201-1qrzk.html>.

However, it will be very difficult politically to re-regulate anything that has been deregulated. Therefore the most prudent course is to continue with regulation and see what the future holds.

The same goes for the stated intention of awaiting the outcomes of the current review being conducted by the Australian Law Reform Commission (ALRC). The Committee would be aware that the ALRC's recent Discussion Paper proposes a major shift towards self-regulation in the classification field; ACCM has prepared a detailed submission explaining our grave reservations about these proposals (see Appendix B). Naturally it does not go without saying that the ALRC's final proposals will be adopted by the government(s) of the day; but once

again the wisest course, if these matters are to be kept in a holding pattern, is to hold to a higher level of regulation, and then to drop it later if that appears necessary or desirable in the context of any overall restructuring.

One chief ground for our reservations about the ALRC's proposals is the reliance on industry judgments as to the 'likely' classification of a piece of material to form the basis for the regulatory requirements affecting that material. ACCM has the same concerns about the Bill's reliance on such judgments. It is clear that all members of the community do not necessarily agree with a Refused Classification by the Classification Board; by logical extension this also means that there is no clearly correct answer to the question of what a classification is 'likely to be'. The classification system should minimise reliance on such predictions, and ideally not use them at all.

APPENDIX A

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.

The ACCM has a national Board representing the states and territories of Australia, and a broad 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), Parenting Research Centre, SAPPA (South Australian Primary Principals Association), Federation of NSW P&C (Parents & Citizens), and the Council of Mothers' Union in Australia.

The 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.

The ACCM's core services include:

- the national freecall 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 650 movie reviews);
- the development of parent media awareness materials,
- making submissions and participating in media interviews related to media regulation.

The ACCM's current issues include the early sexualisation of children in and by the media; the impacts of media violence; the effectiveness of classification systems; the marketing of violent entertainment and junk foods to the young; management of screen time and content by the very young, quality of programs for children.

The 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.

The ACCM's awards include National Community Crime Prevention awards 2009, 2006; 2001; National Child Protection 2005; Children's Week award 2011.

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

APPENDIX B

ACCM Submission to ALRC Inquiry Nov 2011 see separate attachment.