



COMMONWEALTH OF AUSTRALIA

SENATE

Official Committee Hansard

INFORMATION TECHNOLOGIES COMMITTEE

Reference: Self-regulation in the information and communications industries

THURSDAY, 11 JUNE 1998

CANBERRA

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CANBERRA 1997

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SENATE

SELECT COMMITTEE ON INFORMATION TECHNOLOGIES

Thursday, 11 June 1998

Members: Senator Ferris (*Chair*), Senator Quirke (*Deputy Chair*), Senators Calvert, Harradine, McGauran, Tierney, Reynolds and Stott Despoja

Senators in attendance: Senators Ferris, Harradine, McGauran, Quirke and Tierney

Terms of reference for the inquiry:

Evaluate the appropriateness, effectiveness and privacy implications of the existing self-regulatory framework in relation to the information and communications industries and, in particular, the adequacy of the complaints regime.

WITNESSES

BRANIGAN, Mr Anthony Michael, General Manager, Federation of Australian Commercial Television Stations, 44 Avenue Road, Mosman, New South Wales 2088	512
CARROLL, Mr Graeme Austin, Manager, Public Affairs, Federation of Australian Radio Broadcasters, 10/82-86 Pacific Highway, St Leonards, NSW 2065	540
O'CONNOR, Ms Catherine, General Manager, 2DayFM and Triple M, Sydney, 180 St Kilda Road, Victoria 3182	540

Committee met at 4.07 p.m.

CHAIR—I call the committee to order and declare open this public hearing of the Senate Select Committee on Information Technologies. The committee was appointed on 27 August 1997 to receive and consider the outstanding government responses to the reports of the Senate Select Committee on Community Standards Relevant to the Supply of Services Utilising Telecommunications Technologies, to evaluate the development of self-regulatory codes in the information industries and to monitor the personal, social and economic impact of continuing technological change created by industries and services utilising information technologies.

The committee's current inquiry is being undertaken under part (b) of its terms of appointment—that is, to evaluate the appropriateness, effectiveness and privacy implications of the existing self-regulatory framework in relation to the information and communications industries, and, in particular, the adequacy of the complaints regime.

The committee is undertaking its inquiry into these matters to provide an opportunity for individual citizens and relevant organisations to contribute to the public policy discussion on these matters and to suggest improvements.

[4.08 p.m.]

BRANIGAN, Mr Anthony Michael, General Manager, Federation of Australian Commercial Television Stations, 44 Avenue Road, Mosman, New South Wales 2088

CHAIR—Welcome. The committee prefers all evidence to be given in public but you may at any time request that your evidence, part of your evidence or answers to specific questions be given in camera—that is, in private—and the committee will consider any such request.

The committee has before it submission No. 29, dated 28 January 1998. We have heard an opening statement from you on that submission and also we have subsequently had you before us with some members of your organisation. That submission is now public. I understand that you would like to make a short opening statement. In the interests of time, we would appreciate brevity.

Mr Branigan—I would simply like to say a few words to the committee about developments since we last appeared, which I think was in early March. Committee members would be aware that the minister has written to FACTS raising some issues of concern about the classification criteria contained in the current code of practice and in the proposed code of practice which FACTS lodged with the Australian Broadcasting Authority last year.

In response to the minister's communications, FACTS has had a close look at the classification criteria in the proposed code of practice. We concluded that, broadly speaking, the classification criteria appear to be satisfactory. However, we did also conclude that in some respects they were not sufficiently clearly drafted, particularly to someone unfamiliar with the classification process which, of course, includes most members of the public. It would perhaps not be clear what was meant by some of the terms and what was particularly meant by terms such as 'contextual justification'.

With that in mind, we have done some redrafting of a couple of clauses in the draft code of practice. One of these is a clause which is headed 'Classification Considerations', which deals with this vexed issue of context. The second is in relation to the MA classification, which is currently the highest classification permitted on television. The point that was put to us in relation to the MA classification was that it appeared not to be sufficiently clear what, if any, upper limits there were on, for example, nudity, regarding both the amount and the extent of nudity that was permissible.

With those particular comments in mind, we have made some clarifying additions to that particular clause. I might pass up some copies of the changes that we have made. If the committee wishes, I am happy to explain those changes in a little more detail, otherwise I am happy to take any questions the committee wishes to put to me.

CHAIR—Mr Branigan, given that the committee will want to question you on this material, it might be wise if we incorporate it into *Hansard*. Is it the wish of the committee that the document be incorporated in the transcript of evidence? There being no objection, it is so ordered.

The document read as follows—

Mr Branigan—Perhaps I can add that these are not final words; it is really drafting in progress, but they reflect pretty accurately our current view of what is needed to make the code sufficiently clear, both to the people who operate the code and to a casual reader of the code—also, to underline very clearly the upper limits of acceptability in the MA classification.

CHAIR—Thank you, Mr Branigan.

Senator TIERNEY—I am glad you finished on that point, because I would just like you to comment on those upper limits in light of the very clear intention of the legislation that the MA classification not exceed in any way the old AO classification. I would have thought on that basis you did have limits in all these areas.

Mr Branigan—I agree, Senator. We accept that there are limits. The point I was making was that the limits were perhaps not self-evidently clear on a simple reading of the code. Perhaps I can expand that point a little further.

As regards sex and nudity, for instance, the way you work out the upper limit of what is permitted is to look at the MA classification in clause 2.17. Subclause 2.17.2, which is on the second page of the document I have handed to you, sets out the MA requirement. In conjunction with the parallel requirement setting out what is unacceptable for television, that should indicate very clearly what the upper limit of acceptability for television is.

We drafted the MA requirement and the ‘unsuitable for television’ requirement with the old AO standard very much in mind. Our intention was to ensure that the upper limit did not exceed the former AO classification.

Senator TIERNEY—Which draft of the new code are you referring to there when you talk about not wanting to exceed the old AO limit? Are you talking about the one you have just done, or the one which was done about January?

Mr Branigan—The one which we submitted to the Australian Broadcasting Authority last year. On the piece of paper you have, that is described as the current draft. The words below it are headed ‘Proposed Words’, and they represent the amendments which we have made in the course of the last week or two.

Senator TIERNEY—Why have you felt it necessary, in the last week or two, to make amendments? What was there about your previous first draft that was a problem?

Mr Branigan—I guess it comes down to the point that the minister raised, which could be summed up as saying that on his reading it appeared that there was no limit to either the amount or the extent of violence which could be shown on television in the MA classification. I do not believe that that is an entirely accurate reading of the code but it is an understandable reading of the code. We decided, having reviewed what we had drafted, that it would obviously be open to an intelligent reader of the code to come to that conclusion, even though that was certainly not the intention of the code.

That is why we have expanded section 2.5 which deals with classification considerations. We have spelt out in that, for the first time, that the suitability of material in terms of the various classifications ‘will depend on the frequency and intensity of key elements such as violence, sexual behaviour, nudity and coarse language.’ In other words, we are making it perfectly clear that one of the things that a classifier must look at is the frequency and the intensity of nudity, for example.

Senator TIERNEY—That is pretty important, isn’t it, frequency and intensity? If you want to stay in the old AO envelope, I would have thought frequency and intensity would have been self-evident as things that you should have included.

Mr Branigan—Absolutely. I guess, because it was self-evident, we had not spelt it out. It was certainly something that classifiers, as a matter of course, took into account. Going through many drafts of the current code, and the proposed code, through oversight we had never actually spelt it out specifically. We have done so now, and the confusion that the minister felt—understandably I think—should be no more, one would hope.

Senator TIERNEY—I take it that if the minister had not intervened your organisation would have just kept puddling on with the old code.

Mr Branigan—That is probably true but, as I said, what we have largely done is simply to spell out some of the elements that, as we saw it, were well and truly implicit in the code as it stood. But there are obviously very good reasons for making explicit what was implicit.

Senator TIERNEY—Doesn’t this point to a systemic problem in the whole approach that it seems to need some sort of public outrage—prime ministerial in the case of the ones on violence on TV or, in this case, the minister making a strong statement in the parliament—to get any action? Isn’t it a systemic problem with voluntary codes of practice that the only way we can get them to work is if there is some external intervention?

Mr Branigan—I am not sure that that is really an accurate observation. It is certainly the case that no-one made that precise point in the extensive public consultations which we held on the code 18 months ago. Had they done so, we would, I am sure, have looked more closely at these two sections, but the fact remains that over a number of rounds of public consultation—five years back and 18 months back—no-one made that point. Now the minister has made it. Fortunately, the code is not yet finalised, and so we are able to take that into account.

Senator TIERNEY—We have had the FACTS code, with a lot of other voluntary codes that are in place, for four or five years now. Could you point out the strongest penalty that has been applied to any group or organisation or individual as a result of complaints under that code, presumably through the ABA?

Mr Branigan—I believe that the strongest penalty is an ABA reprimand.

Senator TIERNEY—A slap on the wrist. We have a toothless system, in other words.

Mr Branigan—I guess it is a question of whether you think that anything that has been done deserves more severe penalties. Does it deserve chunks to be taken out of the body corporate of the offending station?

Senator TIERNEY—What incentive is there for people to stop pushing the envelope, particularly if it is highly profitable, if the only penalty is a slap on the wrist?

Mr Branigan—The fact of the matter is that stations do not like being found to be in breach of the code of practice. They do all have mechanisms in place that are intended to ensure that they do not breach the code of practice. In the case of programs that come close to the line, they normally have quite elaborate procedures in place to ensure that they stay within that line.

Senator TIERNEY—How would anyone know outside the station? I take it that a note goes from the ABA to the station and probably appears on page 165 of an annual report somewhere.

Mr Branigan—No. The ABA publicises the results of its complaint hearings in its monthly publication, which has quite a wide circulation, and those results are not infrequently picked up in the national press.

Senator TIERNEY—If the national press does not pick up anything, then the general public would be totally unaware of it, I take it.

Mr Branigan—It has quite a wide circulation—I gather it is many thousands of copies—so it is not exactly hidden away.

Senator TIERNEY—How many thousands?

Mr Branigan—I believe the publication has a circulation of some thousands—I do not know the exact figures—and it goes to most libraries and most public interest groups. It is widely circulated among those who are interested in such matters.

CHAIR—Just before we go to Senator Harradine, can I draw to your attention a comment that you made when you appeared before us on 22 April in response to a question from Senator Harradine? This is, I imagine, contextual to that date. You said that, in every respect, you believed that the television stations were ‘still operating within the boundaries of the former AO classification’. Is that still your view?

Mr Branigan—Yes, it is.

CHAIR—Despite the decision since then to release these updated codes?

Mr Branigan—What we have attempted to do in these revisions to the code is to draw the line more clearly. I guess the only respect in which we may have drawn the line more sharply is where we have added a sentence relating to full frontal nudity, and it reads:

Full frontal nudity which is exploitative or demeaning is not permitted, regardless of the program context.

That was intended to deal with the particular situation which gave rise to Senator Harradine's questions back in March, which was a complaint heard by the ABA about a program called *Playboy's Really Naked Truth*, or some such title.

Two issues arose from that particular complaint, which was dismissed by the ABA. One was the issue of program context. I must say, on my subsequent reading of the report—and I had not actually read it when the senator had brought it up—it seemed to me that the station had misunderstood what contextual justification properly meant. The second point, the one that the minister subsequently raised with us, was that there appeared to be no upper limit with regard to the amount of nudity which could be shown in the MA classification. We thought that it was worth adding this sentence, just to make the point abundantly clear that there was indeed an upper limit, and that, to the extent that it was not already clear from the MA classification and from the 'not suitable for television' classification, we should add that sentence. I suspect that that sentence may well mean that that program would not be suitable for television, once this revised code comes into being.

CHAIR—To pick up your point, you say, 'in no instance may a program go beyond the limits of its classification.' Just to clarify things, with regard to the old AO classification—which is now 2.17.2 of the MA classification,—I would just like to quote this for the purpose of asking the question. It says:

Intimate sexual behaviour may only be discreetly implied or simulated. Must be relevant to the storyline or program context. Portrayal of nudity where relevant to the storyline or program context.

That is the old AO classification. The other one says:

Exploitative or non-consenting sexual relations must not be depicted as desirable. No explicit simulation of intimate sexual behaviour. Visual depiction of intimate sexual behaviour or nudity only where relevant to the storyline or program context.

I am not a viewer of the *Sex/Life* program but, in order to inform myself in preparation for this, I did look at the most recent edition of that program for this week, and I fail to see how that program could fall within the bounds of this MA classification that you have given. There will always be this question of, 'where relevant to the storyline'. As Senator Tierney has said, even if a complaint is upheld, there is really no more than a simple smack on the hand given. It seems to me that, if you are going to try to bring about a situation where these rules are truly respected in relation to these programs, there is going to need to be, surely, a system whereby these television stations can be reminded that you mean business and that the community means business when they support these classifications.

Mr Branigan—I did not watch the latest episode of *Sex/Life*, so I am not quite sure of the respect in which you believe that it did not comply with the MA classification.

CHAIR—There was no question of there being 'no explicit simulation of intimate sexual behaviour'. There was no question that it was very clear that that is what it was. As I say, I am not a regular viewer of it, but I understand the program that I looked at was no different from other programs that are similar. In fact, it has been suggested to me it was more conservative than some of them are, but there was no doubt. It would be an argument about program context, and it will always be an argument about program context, because that is a

very personal view—and clearly, the television station has every reason to suggest it is part of the program context. I get back to the point that, accepting that that is always going to be a personal view, how will you ever get these television stations to bring about a circumstance where they take these classifications seriously, if all you are able to do is smack them on the hand when the ABA might uphold some sort of complaint?

Mr Branigan—It is not our penalty; it is the ABA's penalty.

CHAIR—I know that, but you have put up a review of the code here which you say clears it up, and we have got evidence previously where you talked about it being cloudy and unclear. I think that was again in response to a question from Senator Harradine back in April. Accepting that, this is your opportunity to clear it up once and for all, so that we do not have this pushing of the envelope, either on radio or on television, of acceptable community standards. But, yet again, we see a situation where you have talked about 'visual depiction of intimate sexual behaviour or nudity only where relevant to the story line or program context,' which leaves the door open every time for an escape by the television channel to argue that it is in the context of a program.

Mr Branigan—If you take those words in isolation, I guess. To understand what those words mean, you need to go back to clause 2.5, which is on the previous page. That now spells out, in considerably more detail, that contextual factors do not permit the inclusion of material which exceeds a program's classification. We say before that, in a particular context, certain material may be satisfactory and acceptable but that, in another program, it may require a higher classification or be unsuitable for television. What we have tried to underline there is that context normally forces classifications up rather than forcing the material up. In other words, the whole question of context normally works to exclude material and to increase the classification, rather than to include material.

CHAIR—Would you see the program *Sex/Life*—and I accept that you have not seen the latest one—as still being able to go to air in its current form under these suggested changes?

Mr Branigan—Certainly, if there are any segments in *Sex/Life* which involve full frontal nudity that is exploitative or demeaning, then clearly not. Again, if there is any explicit simulation of intimate sexual behaviour, then no, clearly not. As I say, we believe that this equates to the upper limit of the AO classification.

Senator HARRADINE—Do you?

Mr Branigan—Yes, we do.

CHAIR—I was going to make one further point. We heard evidence previously which indicates that, in New Zealand, both radio and television, under certain circumstances, have penalties that involve either payments of compensation to aggrieved parties or, more importantly, for breaches of various codes, a radio or TV station being taken off air for up to 24 hours. Would you like to see that sort of penalty come in here? If you wouldn't, are you confident that these updated codes are going to be accepted by the members of FACTS, to the extent that programs are going to be cleaned up?

Mr Branigan—I believe that, if a station blatantly breaches codes of practice, it should be subject to the full penalties of the act.

CHAIR—What are they?

Mr Branigan—They provide, ultimately, for fines of up to \$2 million.

Senator TIERNEY—When has that ever applied?

Mr Branigan—It has not.

Senator TIERNEY—Has there been any station that has lost \$1 as a fine?

Mr Branigan—No, there has not.

Senator TIERNEY—Exactly. It is pointless, isn't it?

Senator McGAURAN—There are no fines in relation to the classification system at all. In fact, I wish there were, and that is where we are leading. I do not know of \$2 million fines.

CHAIR—Could we go to Senator Harradine?

Senator HARRADINE—I was interested in the remark by Mr Branigan that he feels that the codes and the actions of the stations fall within the requirements of section 123.3(b). The old AO provisions say that 'intimate sexual behaviour may only be discreetly implied or simulated.' What is your definition of 'implied'? What is the FACTS definition of 'implied'?

Mr Branigan—It is 'not shown', not directly shown.

Senator HARRADINE—You would say 'not directly' shown.

Mr Branigan—Yes.

Senator HARRADINE—What does that mean? Have you seen the program that the Chair mentioned?

Mr Branigan—Not that particular episode.

Senator HARRADINE—It is a pity we do not have the video. We would like to show it to you and see whether it is 'directly shown' or not. Could I suggest that the *New Shorter Oxford English Dictionary* says of the word 'imply', 'hinted at, insinuated, suggested'.

Mr Branigan—That is right.

Senator HARRADINE—Are you saying that there is nothing in MA that offends against that, other than sexual activity that is 'hinted at'? Go on, be real!

Mr Branigan—Yes: in other words, there are no full body depictions of simulated sexual behaviour.

Senator HARRADINE—No; it says ‘implied’, which you have agreed means ‘hinted at’.

Mr Branigan—In other words, depictions which involve people under sheets, or depictions which involve head and shoulder shots might well be acceptable; but depictions which involve full body shots would not be acceptable. That would not be discreet or implied.

Senator HARRADINE—Why then is the program that was mentioned accepted?

Mr Branigan—If it showed fully naked people simulating sexual intercourse—

Senator HARRADINE—I see; you did not say ‘fully naked’. This gets back to an interesting subject. What does ‘explicit’ mean? What does FACTS mean by ‘explicit’?

Mr Branigan—In that context, it would mean fully naked people simulating sexual intercourse.

Senator HARRADINE—So anything, barring fully naked—

Mr Branigan—No. I do not know that I would draw the line quite as sharply as that. There may well be circumstances short of fully naked that would fall within the ‘explicit’ description.

Senator HARRADINE—And the AO classification says ‘discreetly’. What does ‘discreetly’ mean? I cannot see anything relative to that in your codes of practice.

Mr Branigan—‘Not explicitly’.

Senator HARRADINE—What do you mean by ‘explicit’: fully naked?

Mr Branigan—That would be a typical example of ‘explicit’.

Senator HARRADINE—To quote the *New Shorter Oxford English Dictionary* again, ‘discreetly’ means ‘intentionally unobtrusive’. Do you agree?

Mr Branigan—That is certainly one definition of it.

Senator TIERNEY—Do those scenes on *Sex/Life* fall into the category of Senator Harradine’s *New Shorter Oxford English Dictionary* description of ‘discreet’ as ‘hinted at’ or ‘implied’? It is a pretty strong hint, from the programs I have seen.

Mr Branigan—I would say they are implied, they are simulated and they should also be discreet.

Senator HARRADINE—Do you believe that these would have been permitted under the old AO classification just prior to the legislation going through the parliament in December 1992?

Mr Branigan—I find it a little difficult, simply because I am not really all that familiar with the program. From the assurances I have received from the people involved in clearing the *Sex/Life* program at the 10 network, I would have to say yes.

Senator HARRADINE—Why?

Mr Branigan—Simply because they have—I am assured—applied the current classification requirements very carefully, and those classification requirements reflect the old AO requirements.

Senator HARRADINE—Do they? Can I just mention to you—if you are interested in it—the Australian Broadcasting Tribunal? I remember that particular debate in parliament very well. Indeed, it was Senator Shirley Walters who was supporting the provision of 123.3(b). I think she probably had slightly different views from those that the classifiers in the stations have.

The report of the inquiry into the classification of programs and material on television, IP91/46, in a paragraph about children, says:

Program classification categories are advisory only and parents may, in fact, choose to allow their children to watch television during that time.

That is from the 8.30 time slot.

This is possible given that the strongest AO programs in television are likely to be more restrictive in content than all but the mildest material of the cinema/video M classification, which is for the M+ years.

How do you square what you have been saying with what was clearly the intention of the parliament?

Mr Branigan—I think that is correct, Senator. The television AO classification and, by extension, the television M and MA classifications, broadly equate to what is currently cinema M. You are describing the situation before cinema M was divided into M and MA.

Senator HARRADINE—There is no simulation, for example, in cinema M.

Mr Branigan—I think you will find that there is nothing on television which is likely to go beyond—

Senator HARRADINE—The lowest part of the M category—is that what you are saying? I will get to the next point very shortly, and it is about violence.

Mr Branigan—Can we perhaps clarify? When the ABA talked about the cinema M category, it was talking about a category which now includes cinema MA. It was a single category in those days.

Senator HARRADINE—I understand that. But we are talking about the lower end.

Mr Branigan—In other words, what now is the entire cinema M.

Senator HARRADINE—Yes.

Mr Branigan—My belief is that television basically equates to cinema M or below. Perhaps I can show the committee some examples of recent television classifications of movies—in other words, product which has already been classified for cinema and which has been reclassified for television. In every instance, even with editing, the classification has gone up for television. In other words, an M has become a MA, a PG has become an M and so on.

Senator HARRADINE—Is that right? Mr Branigan, I refer you to the letter by Barbara Biggins, the Chair of the OFLC review board, and from Young Media Australia, in the *Australian* of yesterday. She talks about *The Professional*, which was shown on the Seven network on 31 May. That is given what classification by the OFLC?

Mr Branigan—I couldn't say.

Senator HARRADINE—It is given an R+ classification. It tells the story of a 12-year-old girl taken in by a hit man after her family is murdered by corrupt police. The hit man trains her in the use of guns, including the techniques of tracking people through telescopic sites. She then seeks her own revenge against the drug crazed policeman, who was responsible for the massacre of her family. The M classified version shown on TV—that is R+ in cinema; you have got it as an M because you want it at 8.30—appeared to retain the thrust of those themes. Much of the graphic violence, which includes scenes of the bloody massacre of the girl's family involving the pursuit and killing of her four-year-old brother, the final shoot-out with a squad of heavily armed police, and the bombing of the hit man's flat and his final suicide by explosion, is retained. What do you say about that?

Mr Branigan—Senator, it either complied with the code of practice or it did not. I didn't see the movie, and I am not familiar with the cinema version, either.

Senator HARRADINE—Well, can we have somebody who comes from FACTS who is familiar with these things? It is extremely important to us. We have had evidence from other people before this committee that suggests that self-regulation does not work. How many films are classified MA? Aren't you trying to get most of them classified in the M category so you can kick 'em off at 8.30, particularly the violence films? And why in your proposed codes of practice do you change very little in the M violence code of practice? It is just for that reason, I suggest to you.

Mr Branigan—I do not know that that is accurate, Senator.

Senator HARRADINE—I will read your letter of 5 May to the Chairman of the Australian Broadcasting Authority in which you say:

M classification—violence criteria in the current code have been redrafted slightly.

Mr Branigan—Yes.

Senator HARRADINE—Why? Did you not have regard to what our committee said on violence and what the ministerial committee said?

Mr Branigan—We certainly did.

Senator HARRADINE—I am talking about the M category.

Mr Branigan—The main focus of the redrafting of the classification criteria was in relation to violence. The major change, of course, is in relation to violence.

Senator HARRADINE—There is no redraft; there is nothing virtually in here—no difference, except very slightly, in your words.

Mr Branigan—I must confess that I do not have the words before me.

Senator HARRADINE—When you came before us last time I asked you whether you had taken account of the national television survey on violence—that ongoing survey in the United States—and you said that you had not, you had only had that for perhaps seven days. Have you taken account of what is in that? Have you read it since?

Mr Branigan—What I said, I think, was that I had read the previous year's one and I have since read the latest one, yes.

Senator HARRADINE—Have members of FACTS discussed amongst themselves the competition of pay TV as against commercial television and your possible need to have as many uncut movies as possible on commercial television?

Mr Branigan—No, we have not.

Senator HARRADINE—You have not?

Mr Branigan—Collectively, no. It is not a point that has been put to me by any individual station either.

Senator HARRADINE—Last time you said that it was not legal to have porn on commercial television. That is what you said, is it?

Mr Branigan—That is broadly what I said, yes, Senator.

Senator HARRADINE—Where in your code of practice is porn not allowed?

Mr Branigan—It is not put in those terms. What I meant to say—and it was probably an unjustified shorthand—was that the limits imposed on us by the Broadcasting Services Act are those of the former AO classification, and they are so drawn as not to permit what would normally be regarded as pornography on commercial television.

Senator HARRADINE—In the *Age* of 10 June the minister himself indicated that in areas of TV there is virtual soft porn. Do you not agree with that? What is your definition of porn?

Mr Branigan—I think pornography includes precisely the sorts of things that are described as not suitable for television in our code of practice.

Senator HARRADINE—It is not mentioned.

Mr Branigan—No, it is not.

Senator HARRADINE—You are talking about explicit as though clothes make a difference. You can have explicit material on television which is not pornographic.

Mr Branigan—I think the sorts of things that we understand by explicit depiction of sex would normally be regarded as synonymous with pornography.

Senator HARRADINE—It is all to do with whether clothes are on or clothes are off.

Mr Branigan—That is a significant element. It is not the only element, obviously.

Senator HARRADINE—I am interested in your definition of porn.

Mr Branigan—I do not know that I have a particularly useful definition of pornography, but I certainly believe that the sorts of things we describe as being not suitable for television, such as explicit depiction of sexual acts or depiction of exploitative or non-consensual sexual relations as being desirable, would fall—

Senator HARRADINE—What about depictions of persons as objects or occasions of sexual pleasure? What about that which is depicted for the purpose of arousing the sexual desires of its target audience? Would you regard that as porn?

Mr Branigan—Depending on the way it was portrayed, that could well be pornography.

CHAIR—We have set up the video of *Sex/Life*. For the purposes of defining what your interpretation of pornography might be and Senator Harradine's, it may be worthwhile considering whether we show the particular scenes from the Monday night program, which I was referring to and which Senator Harradine is referring to and which you have not seen. I am in the hands of the committee because I realise time is of the essence, but for the purposes of assisting in this discussion it may well be worth considering showing that particular section. I just mention that to Senator Harradine.

Senator HARRADINE—I am happy to, but unfortunately we only have a short time and no doubt we will need to have Mr Branigan or FACTS back again at some particular stage. I wanted to ask a number of questions about advertising. You seem to have given the quick flick to that particular aspect as well; you are leaving it up to some other organisation and wiping your hands of what the content of advertising is that is going over your members' stations. That is a big subject, Mr Branigan.

Mr Branigan—As regards the classification criteria applied to advertising?

Senator HARRADINE—Yes.

Mr Branigan—Certainly, as regards most of the advertisements that are referred to FACTS, that is the responsibility of the FACTS organisation itself. We are responsible where a commercial is referred to us for checking that it does comply with the television classifications.

Senator HARRADINE—I would like to ask you questions about the advertisers code of practice and the AANA at some stage.

CHAIR—Mr Branigan, could I draw to your attention that, when you appeared before the committee in April, you agreed to supply the committee with an assessment of the selection of material that was previously AO compared to material that is now rated MA and also the number and frequency of times that stations have advertised their codes of practice during the last year. The committee does not appear to have received that material at this stage.

Mr Branigan—You are quite right. We hope to have that material with the committee next week. Apologies for not getting it to you earlier.

CHAIR—Thank you.

Senator QUIRKE—I appreciate the fact that you are carrying the can here largely for Channel 10 today, which I understand puts this particular program on. I must say that I have only seen the recent episode which has circulated during the course of the day in this building. It was difficult to actually get to some of the offending items because I had to go through at least 20 minutes of stuff that I would not normally watch. It was not a case of it being in bad taste—

Senator HARRADINE—You could fast forward.

Senator QUIRKE—In fact, that is what happened in the end. The fast forward button was used because it was a fairly vacuous program. It is not going to be on my agenda to watch in the future. But, as I understand it, this program is on at 9.30 at night.

Mr Branigan—That is correct.

Senator QUIRKE—I did some arithmetic and, by about 20 minutes into it, I got to one bit that I would be a bit worried about kids seeing. That particular section was probably about six or seven minutes in duration. I am assured by my colleagues that there are a few other bits further in that I would probably have the same, if not more, objection to.

That meant that by about 10 to 10 at night this stuff was on. I do not have any enormous problems, leastwise with what I saw, with it being on, but I think it should have been on later. This is more in the form of me just making a statement of my view on this. You are probably going to come back to me and tell me that anything after a certain time is

reasonably fair game. But I think the bits that I did see in this episode really should have been on probably three-quarters of an hour or an hour later than when, in fact, they did appear. I would not be comfortable really, I do not think, with my kids seeing that.

I have a 16-year-old who is still up at that time, whereas he would not be at 10.30 at night. I think there is a big difference between kids who are 13 through to 16 from kids who are 16-plus. If someone is 17 or 18, we would confer on them progressively the rights of adults, as it goes along. We give them the right of choice and we give them a whole range of other things. We give them the choice of when they go to bed and largely, if they have their own television, of what they watch on TV, et cetera. But I think there would be a number of kids aged 13 to 16 still watching TV at that time. So if you would pass on to Channel 10 my comments where it is concerned. I think their program probably will not have the Quirke household watching it. But for those other households out there that have kids of that age, I really think they are bringing a lot of problems on themselves, because I suspect that if people want to watch that sort of stuff and are interested in that kind of program they will watch it later at night.

I have looked through your suggested change to the draft code here and I see nothing about timing. Times, to me—if you have not already got the impression—are actually more important than maybe some of the content because I think that is one way of overcoming a number of the problems. We have been here for about an hour so far and *Sex/Life* and Channel 10 have been the subject. I never saw the *Playboy* program. I do not know what time that was on—maybe I should have watched it. But, at the end of the day, I suspect that your organisation is copping flak here, and probably in other quarters, because Channel 10 has just put this program on, in my view, at an unsuitable time.

I accept the fact that progressively as the program went on it got into material that maybe I would suggest either should not be on or should be on very much later, but I still think it was on far too early. If you could pass those comments on to Channel 10 and to some of your other members, I think they would actually overcome a lot of the problems themselves.

Mr Branigan—I understand the point you are making and it is one I have some sympathy for.

Senator QUIRKE—Ultimately, at the end of the day, governments of either persuasion will be forced into bringing in much more draconian legislation if these things are not, as you know, self-regulated. I just think it is a lot easier if the thing is fixed at your end rather than our end. I know some of my colleagues here will probably make other points about it. I just wanted to make it clear where I stood on this stuff. Basically, I really think if this material is suitable for broadcast at all—and I have not seen all of it, so some of it may not have been suitable in my view, and I am fairly liberal about these sorts of things—I certainly think it should have been on very much later at night. I think that gives parents more of an opportunity to keep some control over these things.

I also know that when I put on cable TV, as I do for my kids, I have to be vigilant and I have to watch that as well. But there is a much greater access out there to free to air television. That is all I wanted to say.

Senator HARRADINE—Mr Branigan, what have you done about our recommendation that MA start no earlier than 10.30? You have ignored that, haven't you?

Mr Branigan—It is not a recommendation we have accepted.

Senator HARRADINE—No. You have ignored it.

Mr Branigan—It was really an endorsement of the original ABA recommendation which was that cinema MA should be permitted from 10.30 p.m. That was certainly not something that we supported.

Senator HARRADINE—You have never supported it because of the money, have you?

Mr Branigan—I do not think it is because of the money, I think we took the view that we would not run unedited cinema MA.

Senator HARRADINE—I'm sorry, but in that very same paper by the ABA that I quoted from previously it talked about the fact that the new categories would not exceed the lowest of cinema M. That is what it said.

Mr Branigan—Meaning the top of current cinema M.

Senator HARRADINE—No, it does not say that at all, it was the lower end of the M category.

Mr Branigan—The then M category,—

Senator HARRADINE—That's right.

Mr Branigan—which included MA.

Senator HARRADINE—Yes, but it was the lowest of cinema M, and if I can repeat what it said, it said:

. . . the strongest AO programs in television are likely to be more restrictive in content than all but the mildest material of the cinema/video M classification.

At some stage I would like to hear your comments about what Mrs Biggins said of *The Professional*. You can give them now. You have not seen the film, apparently.

Mr Branigan—I have not, but I will certainly get back to you. If I could make a general point on the section of the ABA report you have quoted to me, I think we had this discussion five or six years ago, on transcript, and I think you were making the point then that there was material which you considered to go well beyond the mildest end of cinema M on televisions. I think I disagreed at the time and I am not sure that I would agree now.

Senator HARRADINE—You have presented no proof of that, and since you say that self-regulation is the way to go it is for you to prove that that is working. But you have not done it, have you?

Mr Branigan—At the time that we discussed that, self-regulation was only a gleam in the eye. It did not exist. What I am suggesting is that nothing has changed.

Senator HARRADINE—Self-regulation has existed since 1993.

Mr Branigan—The end of 1993, yes.

Senator HARRADINE—That's right.

Mr Branigan—At the time we discussed that it was, I think, before the legislation. I do not believe there has been any significant change at all in the approach to classification over that period.

CHAIR—Mr Branigan, I am interested in the comments that you make about recognising community views in relation to codes of practice. When you put your submission into us—it is dated 28 January 1998—you talked about FACTS having completed a detailed review of the code, extensive consultation and so on. You then went on to say:

As a result of this consultation, we believe we have a Code of Practice which more closely reflects community standards, and one which is both readily understandable and workable.

That was only four months ago and we now see another change. How confident can we be, therefore, that you have got it right this time?

Mr Branigan—I guess it is a big ask to get a long and detailed document like this absolutely right. I suspect that we will continually be identifying areas where we can improve the code of practice. It seems to us to be an ongoing business. What we do every three years is try to incorporate all the changes that have been put to us as desirable, and which we have realised are desirable through experience in operating the code. It is not a process that then ends and resumes three years later, it is an ongoing business.

CHAIR—Forgive my cynicism, Mr Branigan, but isn't it a case of act-react—that there is community outrage as the envelope is pushed? I am not just referring to television; I am also referring to radio. We have a situation where, back in January, you believed that you had got it about right. What you said was, 'We believe we have a code of practice that reflects community standards.' Now, four months later, we find that you actually have another code amendment that you say reflects community standards. If this one does not work and we get some more outrage as a result of some programs that get onto television, are we going to see another round of it? Isn't this just an admission that the code doesn't work? It is not controlling the content of the programs in the way that self-regulation suggests it should.

Mr Branigan—The first point I would make, Senator, is that I do not accept that there is community outrage on this. All the evidence is that community attitudes towards sex, nudity

and violence on television are not significantly different from what they were a year, two years or three years ago.

Senator HARRADINE—Why do you say that?

Mr Branigan—Simply on the basis of complaints that stations receive.

Senator HARRADINE—We asked you last time how many times you had broadcast information to the viewing public about telephoning. I have asked people in my travels what telephone number you ring, and they do not know. They are concerned; they complain to me about it. Some single mothers who have been out working and come home and cook the tea, and others, are very concerned not only about the MA stuff but about some of the stuff that is going to the kids—the violent programs that are on, even in the so-called PG and G time. They are concerned also about young teenagers. You have not told us how many times you have broadcast that information, have you? I believe it is a very small number of times.

Mr Branigan—I have some of the figures, Senator, and I will provide all of them to the committee next week.

Senator HARRADINE—I am talking about over the last 12 months.

Mr Branigan—I understand that.

Senator HARRADINE—Have you any idea how many times?

Mr Branigan—I think for one Sydney station, which is the figure I looked at this morning, it was around the 200 mark. In other words, the spot which informs people about complaints procedures and classification procedures went to air something like 200 times in the course of the year. That is considerably less than they will be required to show under the new code.

Senator HARRADINE—As we have recommended, there ought to be a hotline which people anywhere can use.

Mr Branigan—The only point I would make there is that, regardless of the arguments for or against a hotline, several hundred thousand people ring commercial television stations every year. It is clearly not difficult for people to find out the right number to ring.

Senator HARRADINE—I am talking about battlers.

Mr Branigan—My understanding of the ABA's hotline, which was in place for many years, was that it was not extensively used—certainly used far less extensively than local station numbers.

Senator HARRADINE—And not advertised.

Mr Branigan—The second point I was about to make, Senator, was that my assessment of the level of concern is also based on the research which the ABA does every year.

Certainly, the latest research does not show any increase in concern about nudity, or sex, in particular, on television. It is very much at the same level that it was 12 months ago and 24 months ago.

Senator QUIRKE—That is not so with violence, though.

Senator HARRADINE—I challenge what you are saying, Mr Branigan. I have had a look at what was said and in fact, even in your own words, there is considerable concern being exhibited by the public. I cannot find the figures at the present moment, but no doubt we will be able to—

Mr Branigan—I do not dispute that at any time there is a level of concern.

CHAIR—I think it would be useful—because we are focusing on that program and you have not seen it—if we could perhaps set up for that particular section to be shown. While we are doing that, let me go back to this question I asked you before about involving community attitudes and pushing of envelopes. I will just refer to somebody who is involved in one of these programs who was quoted in the *Australian* article, ‘The full monty’, which was published last month. Dr Feelgood, a medical practitioner who has been broadcasting a radio program for five years said that on *Good Morning Australia* the other day she was talking about impotence and she pulled out a plastic penis to demonstrate it, and that two years ago she would not have been able to do that.

Very clearly, everybody is pushing at the envelope. In the same article a radio person, a Triple M producer, Simon Mumford, said that there were no rules except that the station liked to ‘keep the expletives down.’ If we are talking about very powerful communication agencies in this country that argue for self-regulation, then this sort of evidence of people saying, ‘We push the rules. Two years ago we could not have done it’, is surely an indication that self-regulation and the codes that are currently in place are not preventing people going outside the bounds of what they know the codes actually are suggesting they work within, that they constrain themselves to.

Mr Branigan—If that were the case, Senator, that would certainly be a matter for concern. It may well be the case that the Nine Network would not have permitted Dr Feelgood to—

CHAIR—Dr Feelgood says that herself.

Mr Branigan—That is what I am saying. It may well be the case that the Nine Network would not have permitted that. Nevertheless, it would arguably have been totally permissible within the context of the code of practice. Most stations have house rules, if you like, which are more conservative than the code set down by the code of practice. If there is any evidence that people are pushing the boundaries of the code of practice, rather than simply becoming a little more adventurous within the line, then I agree that it is a matter of concern. I think the industry as a whole accepts that it has heavy responsibilities, that self-regulation is not a one-way track, that stations have to be responsible. They have to be answerable not just to the public but ultimately to the ABA and also parliament.

CHAIR—But to just carry on this contextual issue a little further, many of the people quoted in this article use words such as, ‘The public is crying out for information; we are educating the public; it is an educational story visually illustrated.’ Surely this proves the difficulty of being able to use these codes to override the contextual argument. You can see it being used here to suggest that these programs are educational, that they are simply illustrating a community desire for more information. But where is the evidence that the community does desire this? Are there any facts around? Have you ever surveyed these sorts of programs to see whether people these days cannot pick up a telephone if they want family planning information or, in the case of this program that we are about to see in a moment, if they want to put dog collars around their necks, that they cannot go and find that information if they want to, that it does not have to be broadcast and called public education responding to community need? Where is the evidence that there is a community desire for this?

Mr Branigan—I do not know, Senator. Certainly, FACTS as an organisation has not researched this. I assume individual stations must have if they have spent money on developing programs to put to air. The acid test is, as it is with every program: does the content of the program comply with the code of practice?

Senator HARRADINE—I will ask you after you see it.

Senator McGAURAN—Senator Tierney asked me to ask this question. It may be relevant before we watch this show and ask questions on it. You said that you were not familiar with this particular show. I recall you even said that you had taken Channel 10’s in-house censor’s assurances that it would be within the classification, which is very interesting. Yet the ABA have conducted seven investigations into this show. So what have you been doing?

Mr Branigan—What have I been doing?

Senator McGAURAN—Yes. There have been seven investigations by the ABA into this show and you say you are unfamiliar with it.

Mr Branigan—I know of the show. I do not watch it. I have watched it, I think, once. My understanding is that—

Senator McGAURAN—So the investigation has gone straight to the ABA and bypassed you?

Mr Branigan—FACTS does not have any operational role.

Senator McGAURAN—But complaints go to you.

Mr Branigan—No, they do not. The complaints procedure is that the complaints go first to the station. The stations then deal with the complaints if—

Senator McGAURAN—Then to you.

Mr Branigan—No, if the complainant is unhappy with the response they then go to the ABA. Our role is simply to collect statistics about the complaints; it is not an operational role.

Senator McGAURAN—Therein lies your problem; I do not think you know your role.

Senator QUIRKE—As I was offering some advice before, the one thing I forgot about was violence on TV. I think in the last 20 years there has been a shift in attitude, or certainly there has been a shift in material that is broadcast at night in respect of violence. It has nothing to do with you and I do not think it has a lot to do with your members. Some of your members make some programs, although generally those that I have seen are nowhere near as violent as some of the American movies that predominate through there.

I would also suggest—Senator Harradine was talking about one particular film—that there are a number of films on TV that are of a particularly violent nature, where the value of human life and particularly that for kids and so on is shown to be very low indeed. Certainly 20 or 30 years ago these programs would not have gone to air because they would not have been made in the United States. I think one of the things that your members are going to have to have a very close look at is the close editing, particularly of these Sunday night films that go to air, because some of them are really excessively violent. They are the sorts of things that I would not want my children to see. I have a group of boys around the ages of three to eight, and I would not let them watch these sorts of things. I have some trepidation about putting the TV on at all at that time of night because of some of the violent scenes that are in some of these films.

CHAIR—Can I contextualise what we are about to see here. This is a segment of the program that went to air about three-quarters of an hour into the program, so I imagine it would have been about a quarter past 10 when it went to air. This is a segment which deals with what I think was called dressing up for sex.

A video was then shown—

CHAIR—Mr Branigan, under the new draft code changes, would you see that program still going to air in that form?

Mr Branigan—I guess it comes down to the interpretation. Certainly, in terms of the MA requirements on sex and nudity, there is nothing which immediately rules it out. It is really a question of whether it would properly be judged, in terms of our words on classification considerations, to be unsuitable for television. I would have thought that it would probably scrape in, frankly.

Senator HARRADINE—‘Discreetly implied’, ‘hinted at’. Only hinted at? In the words of AO, intimate sexual behaviour may only be discreetly implied or simulated.

Mr Branigan—That is correct.

Senator HARRADINE—You agreed with the *Shorter Oxford English Dictionary* that the word ‘discreet’ means intentionally unobtrusive. Was that an intentionally unobtrusive program?

Mr Branigan—I think those words are perhaps understood best by looking at what the AO classification says is not suitable for television.

Senator HARRADINE—I am saying what it does say quite directly.

Mr Branigan—It is not an explicit depiction of sexual acts.

Senator HARRADINE—Ah, the word ‘explicit’. Mr Haines—

Mr Branigan—I am simply quoting the AO classification, Senator, and that says, ‘Explicit depiction of sexual acts are not suitable for television.’

Senator HARRADINE—I know, but the definition that they had of explicit was not the definition that was developed by Mr Haines and others. I might remind you that he has gone into the business of porn movie production.

Mr Branigan—It is a slippery slope.

Senator HARRADINE—He had a great deal to do, did he not, with the redefinition of the word ‘explicit’?

Mr Branigan—I simply do not know, Senator.

Senator HARRADINE—So you are saying that ‘explicit’ means that if they had their clothes off that would have been out. Is that right?

Mr Branigan—Yes, if they had been simulating sexual intercourse with their clothes off, or perhaps even slightly short of being fully unclad, that clearly would have been unsuitable for television.

Senator HARRADINE—Let me go back to what the AO says. You are saying that that program was depicting intimate sexual behaviour in an intentionally unobtrusive manner and it was only ‘hinting’ at—that is the word implied.

Mr Branigan—It was inexplicit, yes.

Senator HARRADINE—No, that is not what I said, Mr Branigan. You say that that excerpt was only hinting at intimate sexual behaviour.

Mr Branigan—Yes.

Senator HARRADINE—You do?

Mr Branigan—Yes. I do not believe that it was explicit. It was inexplicit.

Senator HARRADINE—I did not say ‘explicit’. The wording of the AO is ‘intimate sexual behaviour may only be discreetly implied or simulated’.

Mr Branigan—Sure.

Senator HARRADINE—We know what the words mean.

Mr Branigan—Indeed, if only by working backwards from what is not suitable for television, which is explicit depiction of sexual acts.

Senator HARRADINE—That is right, and in those days the word meant more than what you are saying. Are you saying that that would have been allowed under what the ABT said then—that the strongest AO programs on television were likely to be more restrictive in content than all but the mildest material of cinema-video M classification? Do you say that all but the mildest cinema M material would have been allowed?

Mr Branigan—That would have been allowed under the old—

Senator HARRADINE—Show me an example.

Mr Branigan—This program was not on air.

Senator HARRADINE—Of course it was not. It would not have been allowed on air.

Mr Branigan—It may well be that no network would have chosen to show that program at the time, but I believe that it would have been permissible under the old AO classification—whether a network chose to show it or not.

Senator HARRADINE—I want to get it clear. You are saying that that intimate sexual behaviour was only hinted at there.

Mr Branigan—I do not believe it was explicit so, yes, I have to agree.

Senator HARRADINE—Please answer the question. Was it only hinted at, or not?

Mr Branigan—It was only hinted at, yes.

Senator HARRADINE—So much for self-regulation.

CHAIR—Can I just clarify something? You said that program, you believed with the new rules, would just scrape in. Can I read you the words from the current draft:

No explicit simulation of intimate sexual behaviour. Visual depiction of intimate sexual behaviour or nudity only where relevant to the story line or program context.

I ask you again: do you believe that that program did not explicitly simulate intimate sexual behaviour?

Mr Branigan—No, I do not believe it explicitly simulated it. It certainly simulated it or, at least, I believe it simulated it.

CHAIR—What more would it have needed to do for it to have been explicit? I do not want to go into the biology of this program, but would it have been explicit if the blankets had been off?

Mr Branigan—Yes.

CHAIR—I see. Can we just clarify the second section of your new draft, which says:

Visual depiction of intimate sexual behaviour or nudity only where relevant to the story line or program context.

Do you think that segment of that program fitted within those guidelines—that, having dressed up in that clothing, it was then necessary to the story-line to have shown that inexplicit, in your words, simulated sexual behaviour?

Mr Branigan—I guess it is arguable that either a station dealing with a complaint or the ABA might come to a different conclusion and might conclude that the story-line or program context was not strong enough to justify that level of code.

CHAIR—But doesn't that get back to the point I made to you, I think right at the start of this hearing, that it will always be able to be argued contextually because that is very much in the eye of the beholder? We have seen an example of it here today, where I would have thought that that was pretty explicit simulated intimate sexual behaviour but you did not believe it was. I would not have thought it was necessary to the story-line or to the program context. It could have ended with the woman dressed in those clothes, which would still have given the example that the story-line wanted to give. So we are always going to come back to a situation, under self-regulation and these codes of practice, where there is going to be, every time, a gateway based on my perception or yours or anybody else's.

Mr Branigan—At the end of the day, it is pretty much the same as it was 10 years ago.

CHAIR—Except that a great deal more is being shown, as admitted by Dr Feelgood.

Mr Branigan—More is being shown, there is no doubt about that. Community attitudes towards sex, nudity and discussion of sexual matters in the media have changed over the past 10 years, there is not much doubt about that. Whether they have changed as much as this program assumes is perhaps another matter. Certainly, as I have said, I do not watch it and I do not find it particularly pleasant television, but that is simply my view. It is another matter as to whether or not it complies with the standards, which are essentially unchanged over the past decade.

Senator McGAURAN—You said before that the ABA have available to them the ability to fine up to \$2 million. Could you tell me where they could place those fines? Could you explain that to me?

Mr Branigan—There is provision in the legislation. It involves a chain of circumstances, as I think you are aware. First of all, the ABA must find that a station has a consistent pattern of breaches of the code of practice. It then, if it sees fit, imposes the code of practice on the station as a condition of its licence. If the station then breaches the code of practice, that is a breach of a condition of its licence. If the ABA regards that as sufficiently serious, it can then recommend to the Director of Public Prosecutions that an action be launched against the station. The penalty is up to \$2 million.

Senator McGAURAN—For the breach of these classifications?

Mr Branigan—For the breach of a condition of licence. As I said, we are not yet at the point where the ABA has imposed the code on any station as a condition of its licence. You may say that is because the ABA is slack. It may also be because the ABA does not believe that the circumstances have arisen yet where that has been required.

Senator McGAURAN—I think that that sort of fine is not directly related to this classification system.

Mr Branigan—No, but it is an outcome anticipated by the legislation if stations flout the code of practice.

Senator McGAURAN—The second point I need clarified is that, when I asked how could you not be familiar with this show, given that the ABA has had seven investigations into it, and what had you been doing, you said, to paraphrase you, ‘I’m just a statistic collector.’ Could you tell me what you think the charter is for FACTS?

Mr Branigan—FACTS is basically an industry association. We represent the commercial and other interests of the commercial television industry. One of our functions is to coordinate preparation of a self-regulatory code of practice. We have played an active role in coordinating the development of codes of practice. We do not have any operational role in the code of practice other than collecting and publishing statistics about complaint levels.

Senator McGAURAN—What is he doing here then?

CHAIR—You said earlier today that you had a list of films where classification had been modified. If you have it available there, it might be useful for the committee if it could be tabled.

Mr Branigan—I have.

CHAIR—Is it the wish of the committee that that material be tabled? There being no objection, thank you.

Senator HARRADINE—I would like to ask certain questions of them. Obviously we do not have time now, but I wonder whether you would be able to let the committee know the number of reclassifications that you make from a higher to a lower category; for example, into the MA as distinct from what you are doing to the M. I would like to hear your comments about the violent film that Channel 7 showed.

Mr Branigan—I am happy to get back to you. Could you remind me of the name of it?

Senator HARRADINE—*The Professional* was the name, and also *Pulp Fiction*. Why were they put into the 8.30 slot? I think Senator Quirke mentioned that it was Sunday at 8.30.

Mr Branigan—I will check on those and I will attempt to get back with full details in the course of the next week.

CHAIR—Thank you, Mr Branigan. I do appreciate you coming here today. Your evidence has been very useful. Could I flag with you the possibility that the committee may wish to ask you to come back again and perhaps bring with you representatives of one or two of the television channels?

Mr Branigan—Certainly.

[5.38 p.m.]

CARROLL, Mr Graeme Austin, Manager, Public Affairs, Federation of Australian Radio Broadcasters, 10/82-86 Pacific Highway, St Leonards, NSW 2065

O'CONNOR, Ms Catherine, General Manager, 2DayFM and Triple M, Sydney, 180 St Kilda Road, Victoria 3182

CHAIR—The committee prefers all evidence to be given in public but you may at any time request that your evidence, part of your evidence, or answers to specific questions be given in camera, which means in private, and the committee will consider any such request.

We have before us submission No. 43 dated 14 April 1998. Of course, you have already appeared before this committee and we have questioned you on that submission. But if you have any additional information that you would like to make today as part of an introductory statement before we ask questions, either Ms O'Connor, since she has not appeared before us before, or Mr Carroll, perhaps you could make those now.

Mr Carroll—Not at this stage, thank you.

Senator HARRADINE—I refer to our previous discussions on this matter. Mr Carroll, do you recall our previous meeting?

Mr Carroll—Yes, I do.

Senator HARRADINE—I asked on 22 April—I think it was in respect of what Senator Calvert raised—about your codes of practice on language and sexual connotations.

Mr Carroll—That is correct.

Senator HARRADINE—You said:

As I say, I cannot speak directly for the stations as to what type of music they are playing, but I would expect that they would adhere to the codes in doing that anyway.

I asked:

What code covers that?

You replied:

Code 1.2 relating to language.

I said:

No, I am not only talking about language. The senator mentioned sexual connotations and so on involved. If you have parents that are concerned about that, what is the code? Where do they complain and under what code?

You said:

Under code 1.2. That covers all language broadcast by the station.

Then I asked:

That gets back, I suppose, to the sort of question I asked initially. Code 1.2 then covers not only the swear-type language but also sexual connotations?

You said:

Yes, it does.

I then thanked you. Do you believe that the Triple M broadcasts that have been referred to by the minister, Senator Alston, were within FARB codes of practice?

Mr Carroll—As I mentioned at the earlier hearing, radio is far more targeted than, say, television, and it will focus on a core demographic of perhaps 18- to 39s, 40s-plus, or 55s-plus. What may be acceptable to a younger audience may not be acceptable to an older demographic.

When the codes were introduced five years ago, the types of lifestyle programs that we are hearing now were not entirely envisaged in the codes. But the test of code 1.2 is listener reaction. Obviously, if a station oversteps those boundaries of decency which are held by an audience, listener reaction and research will soon lead to a change in the programming of that station.

Senator HARRADINE—I asked you a question. Please answer: yes or no.

Mr Carroll—As far as the current codes are concerned, yes, they do.

Senator HARRADINE—They do?

Mr Carroll—I need to elaborate on that to allow you to understand how the codes operate. The codes aim to strike a balance between the public's interest in maintaining prevailing community standards and other relevant legislation, and also the need to be competitive.

In order to survive, a broadcaster needs to provide advertising clients with the largest audience that it possibly can. But they clearly will not persist with programming that offends the listeners because in offending listeners you are not delivering the audience that the advertisers on your station seek. But in terms of the codes, the program, as I understand, has not elicited complaints to the station from listeners and the ABA itself. On that basis, the listener reaction is such that the program is acceptable to the target audience of that station.

Senator HARRADINE—Irrespective of whether parents know what their children or teenage sons or daughters are listening to? You could not care less about that?

Mr Carroll—No, that is not—

Senator HARRADINE—You could not care less about that.

Mr Carroll—No, that is not—

Senator HARRADINE—That is what you have just said. You have said that your response is only what the listeners might tell you; that is virtually what you said, is it not?

Mr Carroll—No, that is not the case.

Senator HARRADINE—Well, what is it?

Mr Carroll—I think adults do have the right to listen to adult-type programming on radio, as they do on TV.

Senator HARRADINE—On broadcast?

Mr Carroll—On broadcast radio, providing those programs are within acceptable community standards. If it is acceptable to the listening audience of that particular station, as the code currently stands, it is acceptable. This program—

Senator HARRADINE—Oh, I see. It would help us if we could ask you questions when you make a statement like that. You are virtually saying that the community standards depend—which is your obligation under the act, by the way—upon the response of listeners. Is that what you are saying, that the response of listeners to that particular program determines what community standards are?

Mr Carroll—No, it is also the standards of the code and the stations. I cannot speak for the stations who program the material. I can only tell you the reactions and the information that I have in relation to the codes. In relation to this particular program, it has not elicited complaints.

Senator HARRADINE—So you are saying that in this case what community standards are is determined by whether or not you get a complaint?

Mr Carroll—The code says, ‘Standards of decency held by the audience of the station.’

Senator HARRADINE—So you could have—and you do not know, do you, how many young people, teenagers, are listening to that program? It would be quite a substantial number.

Mr Carroll—I do not know if anybody could tell exactly.

Senator HARRADINE—No, and you really do not care, do you?

Mr Carroll—Yes, I do, but the program is aired late at night when it would not be expected that young children would be listening. The audience at that time of the night I would expect would be an adult audience.

Senator HARRADINE—What, 10 to 10, or quarter to 10?

Mr Carroll—It is from 10 until 12 of a night.

Senator HARRADINE—Yes. Secondary students, hard at study, who have got their own small radio with earpieces would be listening. The parents would not know.

Mr Carroll—That is quite possible.

Senator HARRADINE—And from anecdotal material that I have, people are talking about it at secondary schools. You could not care less about that?

Mr Carroll—No, that is not the case.

Senator HARRADINE—What is it then? Not you, but Triple M. Let me say that I have listened to what was quoted and, of course, Senator Alston expressed in the parliament his concern about the matter. But I have listened to it and it is called a ‘rated R.’ I do not know who rated it. What is this ‘rated R?’

Ms O’Connor—It is just a descriptive term that is used at the top of each program.

Senator HARRADINE—Yes, as an advertising—

Ms O’Connor—No, not as an advertisement. It is a descriptive term to alert listeners to the fact that the material may be sensitive.

Senator HARRADINE—You would expect teenagers with ear pieces, doing their study or whatever, to immediately turn off because it is rated R?

Ms O’Connor—There is no specific code that suggests or determines that a radio station should have disclaimers at the beginning of the programs, but we have done that because we think it is a reasonable thing to do given that the material does have the potential to offend some sectors of the community. Therefore, we put the disclaimer to air as a way of perhaps alerting listeners that that is the case.

Senator HARRADINE—You have not done any survey as to what your audience is or how many young people in that particular age group are listening to it? You would not know. It is a broadcast medium, I remind you.

Ms O’Connor—Yes. The majority of listeners to that program are over the age of 18.

Senator HARRADINE—How do you know?

Ms O’Connor—Because we have ratings figures that clearly indicate that.

Senator HARRADINE—How many are under the age of 18?

Ms O’Connor—I do not have the specific figures.

Senator HARRADINE—How many 18 and 20-year-olds who are university students and so on?

Ms O'Connor—I do not have those specific figures with me.

Senator HARRADINE—You do not. You feel that broadcast television should advertise places such as where to get vibrators and so on, and you feel that broadcast radio should be used to put over the remarks and other expressions of persons copulating?

Ms O'Connor—I would say that that is a fairly narrow representation of the content of the program.

Senator HARRADINE—I heard the program. I know what was on it.

Ms O'Connor—The program has been on air since 30 March this year, so we are about 10 weeks into the formulation of what we believe is a worthwhile concept, given that the program material is dealt with in a sensitive manner for our target audience. We are bound by a code that says that we shall not broadcast language which would offend to a substantial degree the contemporary standards of decency held by the audience of our station.

Senator HARRADINE—Ah, getting back to the contemporary standards! So you do define community standards by what complaints you get, namely, if your supposed audience does not complain then that is okay; what you put over is consistent with community standards. Is that what you are saying?

Ms O'Connor—If you are suggesting that we have a disregard for the content of the material that we are putting in the program, nothing could be further from the truth.

Senator HARRADINE—How many are under age?

Ms O'Connor—I do not have those specific numbers but they are easily obtainable.

Senator HARRADINE—Why not?

Ms O'Connor—Because I do not have those figures from the Nielsen surveys, but I can easily obtain them.

Senator HARRADINE—You knew you would be coming along here?

Ms O'Connor—It was not something that I—

Senator HARRADINE—How many of the people would have responded? If they are teenagers, for example, and away from their parents, listening to the material, how many would have responded to the questionnaire?

Ms O'Connor—What questionnaire? The Nielsen questionnaire?

Senator HARRADINE—Yes.

Ms O'Connor—That is a statistical method of measuring audiences that is industry standard across Australia.

Senator HARRADINE—Yes, but this is a particular case where you could have a large number of teenagers, students, listening to that material, and you expect them to say that they were listening to it?

Ms O'Connor—The actual way that the ratings diaries are structured has the hours mentioned down the side of the page. It is really just a method of ticking a diary to say when you are or are not listening to a certain radio station. Therefore, there is no audience survey as such that specifically deals with the programs. It is really, 'From 5.30 to 12 midnight, tick which radio station you're listening to.' That is how the surveys are conducted.

An interesting point though is that the type of people we have calling into the program are certainly a lot older than the age you are suggesting. On record, the presenters tell me they can remember one phone call that came from an 18-year-old. But the majority of calls and the people participating in the program, which I believe is a fairly good representation of the kind of audience it has, are certainly older than that.

CHAIR—Are you suggesting that a teenager, listening to it in their bedroom, would hop out and get onto the telephone in the hallway where mum and dad are watching TV and have a talkback conversation with the station? Let us be realistic. Unless the child is sitting in the room with the door shut and a mobile phone in their hand, it would be pretty difficult for them to go out and make a phone call to the station discussing the issues that they have been listening to without attracting the attention of their parents, surely. I hardly think that is an indication.

Ms O'Connor—I am making the point that we have structured the program as an adult program, and that is reflected in the kinds of people that are participating in it. It is easy—

CHAIR—They may be participating but it does not mean they are not listening.

Ms O'Connor—By far and away the majority of the audience—and we can supply those figures—are over the age of 18. That statistically can be proven very easily, so we will just get those ratings figures.

Senator QUIRKE—It can be what?

Ms O'Connor—It can be proven very easily by just looking at the ratings figures, pulling the ratings figures for the particular timeslot that the program runs and assessing—

Senator QUIRKE—You can tell the age of the listeners, can you?

Ms O'Connor—Yes, absolutely.

CHAIR—How do you do that—

Senator QUIRKE—Have you done that?

Ms O'Connor—No, we can—

Senator QUIRKE—This program has been to air now for three or four months—is that right?

Ms O'Connor—It has been on air for 10 weeks.

Senator QUIRKE—Have you done any of that sort of research?

Ms O'Connor—We are in the process of looking at it now.

CHAIR—How do you determine that? Does Nielsen's ring a number and mum and dad answer the phone and they say, 'Oh, no, we're not listening to it?' They do not know that 17-year-old son or daughter might be listening to it in their bedroom. How could you possibly know whether the person who answers the phone and says yes or no is in fact the only person in the household that might be listening?

Ms O'Connor—We only have to go by our ratings system. We use AC Nielsen McNair to monitor the whole listenership of the radio industry across the Australia. They are also the company that does the TV ratings. It is a diary system. It is, I believe, world class in terms of its accuracy. I actually sit on the research committee of FARB, so I am fairly across the methodology of the survey. There is no specific survey in the marketplace that surveys this one program. When I talk about the ratings of the program I am really talking about the audience listenership figures that we have for any timeslot across the seven-day week period. So you can pick out any program on radio and assess its listenership by age group, from 10 through to death, basically.

CHAIR—Just looking at your code of practice here, really, the area that this program falls into is an area which is not specifically covered in any of the codes of practice as they currently appear, suffice to refer to acceptable community standards. Given how important this area is, I do find it interesting that there are four pages in your guidelines on the portrayal of indigenous Australians on commercial radio and there is really nothing that covers this particularly important, and obviously emerging, area of radio.

Suffice to say, interestingly enough, that in an area covering the guidelines and explanatory notes on the portrayal of women on commercial radio I see point 2 says:

Ensuring that reporting and "on-air" discussions respect the dignity of women and are non-exploitive.

I just go back to this article, 'The full monty' and I would like to quote to you what it says about Ruth Ostrow:

Ostrow is thrilled she has finally been given the freedom to "go all the way" and believes she is at the forefront of creating a new society in which sex is no longer taboo. She is "very proud" of the live broadcast she did from a brothel: "We narrated it like it was a sports event . . . We knew we were really pushing the boundaries that time but everyone wants to know what really goes on inside a brothel."

Can I ask you, as a woman, whether you think that that satisfied that particular guideline in relation to women—that is, ‘respect the dignity of women and are non-exploitive’?

Ms O’Connor—The objectives of that broadcast were to give a very objective view of what the presenter and the program director believed was quite a high level of fear and anxiety about the sex industry and brothels that simply needed to be given perspective.

On the comment that Ruth makes about narrating it like a sports event, she was really referring to the fact that she thought she gave a very objective overview of what actually went on inside a brothel, dispelling some of the myths and some of perhaps the more negative perceptions of the sex industry that exist within the community. Having said that, I think that in terms of her style as an investigative journalist she has a probing style of presentation. I am actually not here to defend a couple of the incidents that resulted from that broadcast because I am of the view that they were unsuitable for broadcast, and we have taken steps to rectify that and to—

CHAIR—Can I get you back to the question I asked you: looking at the FARB guideline and explanatory notes on the portrayal of women, are you, as a woman and a participant of FARB and as the manager of that radio station, of the view that it did not exploit the dignity of women?

Ms O’Connor—Have you heard the particular broadcast?

CHAIR—Yes, I have.

Ms O’Connor—I felt that the kinds of things that were in that broadcast were not specifically related to the exploitation of women at all. I felt the issue of couples inside of brothels was addressed and I thought that, in a very informative way, Ruth was able to give further information—albeit perhaps of a slightly more controversial nature than has been heard on radio before—about what went on inside that brothel. I am not of the view that it was particularly intentionally, or as a result of what was said, an overt exploitation of women at all.

CHAIR—The producer of the program, Simon Mumford, is one of your employees?

Ms O’Connor—Yes, he is.

CHAIR—The article says:

So what are the rules? Well, there are none except the station likes to "keep the expletives down", Mumford says. "We would rather it was suggestive than in your face. We don't want to offend people with the language, we want to be about content and not about language."

Before this program goes to air, do you, as the station manager, sit down with the producer and the presenter and go through the program? Or do you leave it to somebody who says that there aren't any rules, we just don't want to swear too much? How does the program get put together and what involvement do you, as the manager of the station, have in the program's content?

Ms O'Connor—Could I first say that Simon Mumford is not a decision maker in terms of the content of what goes to air. The ultimate decision maker is the program director of the radio station, in consultation with me. My role is to ensure that we are complying with the codes. The program director is more involved with dealing with Ruth on the kinds of things that will go to air within the program. He is very aware of what is required under the codes.

Where do we source topics from? Ruth is a journalist of some repute with the News Limited organisation. She has written numerous columns across some major publications. She has three books published to her name. The kinds of topics that are discussed in this program are the ones that she has had the most response to, for example, in her newspaper columns and in the extensive research that she has done over the last five years into issues of sex and relationships. They are generally brainstormed and put to air.

I would like to say in relation to Simon's comments that in the absence of myself, who was not in the radio station that week, and the program director, who was overseas, Simon made a comment to a newspaper. Unfortunately, only half of what he said was published. He went on to say, 'However, we do have a regard for the content of the program. It is relatively new territory for us and we are trying to find a balance about what is acceptable, and obviously we are doing a lot of work with our audience to find what is the right mix.'

Regardless of what Ruth may have said to any publication, I can assure you, as manager of the radio station, that the kinds of events that went on in that broadcast from the brothel I believe were not suitable. Specifically, that relates to the broadcasting of a sexual act.

CHAIR—But where you have a live program—accepting that you may have sat down with the producer and the presenter and gone through what you expect will be in that program—is it not the case that it is pretty difficult to absolutely control what goes onto a program when it is live? In fact, particularly in relation to talkback radio, it is very difficult to be sure that you are monitoring calls, particularly on a program like this, that are not going to put your station outside the code. It is pretty difficult, unless you are sitting there with the delay button, to be absolutely sure that you are controlling the content of that program.

Ms O'Connor—Yes, that is correct. I guess that is the reality of live radio—not just in the FM area but in the AM area as well. I would only suggest that, looking at the context of the program at these very early stages, I am sufficiently satisfied that the quality of caller we are getting is consenting adults that are genuinely interested in the issues. Most of them talk about their marriages, their partners, their relationships. I do not think there is a safeguard against it, but I am sufficiently satisfied—it something we will keep monitoring—that there is certainly a consenting audience out there that is quite willing and interested in participating in discussion on sex and relationships. The longevity of the program probably lies more with that social issues angle on things than perhaps some of the incidents we have had in the formative weeks of the program.

CHAIR—Can you tell us what the ratings of the program are?

Ms O'Connor—I can only give you a roundabout figure in terms of overall listeners, and I do not have a breakdown across age groups. There are 35,000 people tuning into the

program over a two-hour period in Sydney. I do not have the Melbourne figures—the program is heard in Melbourne as well—but I could supply those. The cumulative audience, which is the number of people tuning in and out of the program, is 35,000 people. If you are looking at a breakfast audience, for example, it is approximately one-tenth to one-fifteenth of the audience you would hear from 6 a.m. to 9 a.m. After 10 p.m., in radio terms, it is not large numbers of people.

CHAIR—I think you said earlier that in that ratings analysis you can indicate the age of the person who is part of the audience. What proportion or percentage would you be concerned about if the program statistics revealed that you were, in fact, being listened by a significant number of young people?

Ms O'Connor—How would you define young?

CHAIR—Let us say 16 to 20.

Ms O'Connor—I do not necessarily have a view on that, short of sitting down and thinking about the numbers. Adults over the age of 16, if they are females, and 18, if they are males, are consenting adults in the area of sex and sexual relationships.

CHAIR—Yes, but you have said that the program is specifically designed for mature adults, and that most of the people who phone in are mature adults. If you were to find through a ratings analysis that, for example, 30 or 40 per cent of your audience was aged—I do not know what the Nielsen breakdown ages are—16 to 20, would you be concerned then that the program was, in fact, not reaching what you considered to be your target audience of mature adults?

Ms O'Connor—Yes, I would. I would be concerned and I would be very surprised if the figure is anywhere near 30 per cent of listeners that are under 18—very surprised.

CHAIR—I am just—

Ms O'Connor—Yes, certainly. I can supply those figures, though, because it is a valid question. I would be very concerned. Also, I would like to stress that our organisation has been quite supportive of a review of the codes in this area. We have absolutely no objection to reviewing the codes to incorporate, perhaps, guidelines on material broadcast in this area. As I said, we are attempting to devise a program for consenting adults about sex and relationships, and social issues. I think that, long term, that is the path it will steer down through its natural life cycle. That being said, we do have the highest regard for community standards. We have quite a role to play, I think, being such a large network, in actually putting forward some views to that area.

CHAIR—It might be useful if you were able to give us a sample copy of a Nielsen sheet that people tick, so that we can see the age breakdown. I have never seen one, but I would be interested to know, for example—

Ms O'Connor—Is this the diary you are talking of?

CHAIR—I have never seen anything of it. In fact, I have never known anyone who has taken part in any radio or television diary such as you say. But I would be interested to know, for example, whether somebody who might be 13 could indicate that they watched the program or what the age brackets are as they break down. If it were possible sometime for either you or Mr Carroll to send us a photocopy of that, it would be very helpful.

Mr Carroll—Okay, we can do that.

Ms O'Connor—People over the age of 10 are surveyed.

Mr Carroll—Just to add to the earlier comment, we are well down the track on a revision of the codes, as you are aware, and we had in fact been contemplating some further clarifications to 1.2 on the language issue. In view of the minister's comments, and a subsequent letter that he has written to us, we are certainly looking further at that area to put clearer definitions on the parameters. In fact, we are holding discussions next week with the ABA to go through those very issues.

CHAIR—Mr Carroll, how do you monitor the compliance with codes, given the large number now of FM and community radio stations? Presumably they all subscribe to the FARB code of practice so how do you monitor them? What do you do if you notice that somebody is consistently breaking the code as you see it?

Mr Carroll—We do not look at whether the station is breaching the code. Each quarter, stations send to us an extract of the complaints they have received across the various sectors of the code, whether it be a taste or decency matter, an offensive matter, an advertising or miscellaneous matter or whether it might be a prohibited matter. We tally those reports and send a copy of those to the ABA. Under the way the code operates, a complainant will make a complaint to the station and then, if they are not satisfied, they will make a complaint to the ABA. It is the ABA which then carries out an investigation.

CHAIR—So it is the community itself that actually polices the code of practice?

Mr Carroll—In a sense, yes. I was able to ascertain the latest figures. Over the five-year period of the code there have been about 7,500 complaints, in total, made to the stations. During that time, the number of stations has increased from 155 to 217. Given that radio is about 98 per cent live programming, we think the record, in terms of meeting the codes, is pretty well exceptional.

CHAIR—Only because the number of complaints is relatively low, I agree. But you are saying to me that, and I find it quite astonishing, unless somebody sits down and makes a formal complaint to a radio station about something they have just heard—let us face it, in this fairly busy life that we now all lead it is probably less likely than it ever was that somebody is going to do that—the evidence suggests that radio stations are complying with the code. Yet there is no evidence that anybody is doing any spot checks at all. It is a community response, so it is another case of act and react.

Mr Carroll—Yes, it relies on the listener making the actual complaint to the station. The ABA has investigated 64 complaints in the five years. Of those, there have only been 15

breaches from 12 complaints, and none of those have been in the area of offensive matter, to my understanding.

CHAIR—But, until fairly recently, radio stations were not really working at promoting programs in this area.

Mr Carroll—I mentioned earlier that these lifestyle type programs were not around when these codes were drafted. There has now been an evolution of those programs, and we will certainly be looking at that in the new parameters which we draft.

CHAIR—Is your organisation happy with the parameters of the existing codes in relation to programs such as are on Ms O'Connor's station, Triple M?

Mr Carroll—It is an area where we have only spoken with the station itself; we have not canvassed the entire membership at this stage. They are the members' codes. They are not the FARB secretariat's codes; they are codes which are developed and accepted by the membership. It puts me in a difficult place to answer as to what their general feeling is, but—

CHAIR—But it must surely be the case that, if your organisation is promoting self-regulation as a satisfactory means of regulating radio stations, you are able to demonstrate that the members are complying with the codes and not simply relying on whether or not members of the community have picked up a pencil and popped a letter in the mail. I am interested to know how it could possibly be that you could argue that the codes work, when the only way that you are able to produce evidence to say they work is the number of people who have penned off a letter of complaint.

Mr Carroll—That is really the only method by which we can measure the acceptance—

CHAIR—Have you ever considered, for example, undertaking a consultancy where somebody may be engaged for a period of time to monitor radio stations and advise you of how they would see that operating? You would then be able to present to committees such as this one—and to any other critic of the standards on radio stations—very clear and arms-length evidence, not just community response evidence, that spot checks or analysis or whatever you like to call it indicates that radio stations are aware of the codes and comply with them?

Mr Carroll—To the best of our knowledge, we are pretty sure at this stage that the stations do comply with the codes.

CHAIR—I will ask you again: would you consider doing that? Now that it is very clear that the community is looking more at these areas and committees such as this one and others are interested in the degree to which self-regulation does operate and the degree to which the codes are effective, would FARB consider undertaking an analysis such as that, so that they could supply to this committee arms-length evidence that spot checks across all commercial radio stations indicate that they do adhere to the codes? Would your organisation consider doing that?

Mr Carroll—It is something we could consider doing, yes. I think it would be difficult for an outside, independent person to actually make the judgment on whether or not the stations themselves are complying. The ABA is probably in a better situation to determine whether or not the stations are complying with the codes.

CHAIR—Perhaps so, but you represent the commercial radio stations of this country. You would have to concede, surely, that that kind of story in the *Australian* is pretty damaging. Even picking up Ms O'Connor's point about one of her staff being quoted out of context, that does not do a lot for the image of commercial radio stations in this country. I put it to you again: is the image of your broadcasting structure not something that your organisation would be concerned about?

Mr Carroll—Certainly, and it is something we would want to address if it were shown that there was a problem. Through this code revision that we are undertaking, we will certainly take those sorts of things into account, with any recommendations or suggestions that the committee may have. They will certainly be taken into full consideration.

Senator QUIRKE—Mr Carroll, have you actually listened to this program that is on between 10 and 12—what is it, two days a week?

Ms O'Connor—That is right, two days a week, Monday and Thursday.

Senator QUIRKE—Have you actually listened to it?

Mr Carroll—No, I have not.

Senator QUIRKE—I think you ought to do that. In the same way as the last gentleman who was here before us saw part of the *Sex/Life* program, you ought to listen to this program. I have only heard it once and I can tell you that it seemed to me that the material itself was definitely inappropriate for broadcast. I would like to know where the line is drawn, Ms O'Connor, with your organisation. You said a moment ago that, in fact, on one of the programs that you found one act which was described on air as 'inappropriate for broadcast'. Are there any others?

Ms O'Connor—Gratuitous coverage of a sex act on air would be something that we would deem as not suitable. It is very difficult to start to pick out themes, where talkback issues are concerned. But I would say that we have looked significantly at the content of the program in its very early formative stages and toned it down quite a bit from perhaps where the original objectives and ideas that were brainstormed were thrown up. I would also reinforce what I said before. The longevity of the program lies in its dealing with the social issues side of relationships and sex, and that perhaps steers it away more from some of the graphic detail we have had in the past. In particular, I allude to that one broadcast. I would like to reinforce the fact that it is a working concept, and we are very mindful of community standards and making sure that the kinds of things we are putting to air are relevant and in context.

Having said that, though, I am also very mindful of the contemporary standards of decency relating to our own audience. I do not for a minute think that everyone is in our

audience. We are selective, and radio tends to be targeted, and will be more so in the future. Our principal concern must be our audience, as that is whom we cater to. If we do not deliver their tastes in broadcasting, we will not be successful as a radio station. Having said that, I am mindful that the codes state, and our objectives will be, the standards that apply to our audience. It is a working concept, and it is one that we are very mindful of, particularly in the area of some of this more gratuitous coverage of sex and the like. We are certainly looking at toning it down, if not modifying the kinds and style of topic we are introducing to the show.

Senator QUIRKE—Somebody passed a tape to me today, together with a tape of the *Sex/Life* program. I listened to about half an hour of it, as that was as much time as I had. I did that in preparation for coming here today. Mr Carroll, I cannot understand why you have not listened to this program, if you knew that you were coming here today and that this was going to be the meat of this particular discussion. You are trying to tell us that your organisation is going to make sure that there is a decent self-regulatory framework out there, yet you rock up here today having not even listened to this stuff.

I must say that I found that, with the half-hour that I listened to—and I do not know what night it was broadcast on—if that was able to be put to air, then almost anything could have been put to air. If it is indeed within the guidelines of your organisation, I have to tell you that, as a libertarian—and I am a libertarian—I find it absolutely incomprehensible that you can show your face here this afternoon and say that self-regulation is going to work. I believe in self-regulation but, after listening to half an hour or 40 minutes of this particular program today, I have to tell you that there are no rules at all.

I find it stunning that you have rolled up here and that you are prepared to defend this. There is no program that I am aware of anywhere that is broadcast like this. There were comments made before about it being trendsetting, new and this, that and the other. I have to tell you that that is absolutely correct. I can tell you that there are a number of teenage children who do listen to this particular radio station. Whether they do at 10 o'clock at night, I do not know. I know my own 16-year-old son does. In fact, it just dawned on me while the discussion has been going on here this afternoon that he changes the car radio channels to Triple M. I know that, because every time I get in the car I have to change it back to what I prefer to listen to—no offence to Triple M, but that is the way it goes: I have a passive sense of what I want to listen to in music and all the rest of it. But I am stunned by your organisation and the way you have presented here today, when you have not even listened to this program.

Mr Carroll—Can I say this? I do not know what familiarity you have had with them, but FARB and a previous industry association that I have worked for do not take a role in overseeing the commercial activities of their members.

CHAIR—Even when they are pushing the envelope to this extent and admitting that they have got no rules?

Senator QUIRKE—You developed a code of practice.

Ms O'Connor—We do not admit that there are no rules, Senator.

CHAIR—Did you write to the *Australian* and ask for a letter to be published, clarifying it?

Ms O'Connor—No, but I—

Mr Carroll—The secretariat of the organisation does not administer the code, as such. We collect the data and supply it to the ABA. The members themselves set the codes. There is a subcommittee of members that sets the codes, and then it is accepted by the full body of the membership and then registered by the ABA. We made a conscious decision that the secretariat would not sit in judgment on its own members.

Senator QUIRKE—I am not asking you to do that. What I am asking you is this. You are here today selling us self-regulation: is that right?

Mr Carroll—Yes.

Senator QUIRKE—You are telling us that. That implies that you have got to have some at least passive, if not active, monitoring of what is going on in your area, in order to sell that to us and to the rest of the community—or is that wrong?

Mr Carroll—That is right, yes.

Senator QUIRKE—Quite frankly, I think you should take yourself away from here. I think you should go and listen to a few of these programs—and I am sure the secretary of the committee here will let you have the tape that I had. It may well be that the next 80 minutes are different from the first 40 minutes. You take that away and listen and then come back here and try to tell me that self-regulation works. I have got to tell you that it absolutely does not.

That program has elements in it which are really the sort of thing that, if I had my way, adults who wanted that sort of stuff could go down to the local video or audio shop and buy it and do what they like. But, as for having it on free to air radio, if you are successful in selling self-regulation in this environment, you could defend Satan before the Spanish Inquisition. It is simply inappropriate, and your organisation ought to take a pretty close look at what is going on, because I for one, who am a self-regulator, cannot accept that self-regulation is working on the basis of what I have seen here today—not at all.

Senator TIERNEY—I think Senator Quirke raises a point. If your organisation does not do this responsibly, what follows is what we would perceive as a failure of deregulation, and that is reregulation.

Mr Carroll—I can assure you that we are treating it very seriously.

Senator TIERNEY—You say that you are treating it seriously, but the program that Senator Quirke referred to was on 28 May, and you were coming to this hearing but you did not even bother even to listen to it. How can you say you are taking it seriously?

Mr Carroll—I was not aware of this. We were only invited to attend, late last week.

Senator TIERNEY—You did not have any inkling of what we might be asking questions about?

Mr Carroll—I thought you might well be asking about these very issues, yes.

Senator TIERNEY—And Triple M, and the programs on Triple M—seeing it got full coverage in the press? You did not have an inkling that maybe we might ask some questions about that and that it might be a good idea to perhaps go and listen to it?

Mr Carroll—Yes, but that is precisely why I also brought along my colleague, who is more intimately involved in the programming of the station than I am, and who can enunciate the position.

Senator TIERNEY—It was suggested by Senator Reynolds two years ago that this committee should have a full Senate inquiry into your area, but we actually did not do it, which I think was a great pity. I might put it to the committee that perhaps we should do, particularly after what we have heard today. In relation to how you define community standards, I found your definition curious in terms of what you saw as your target audience. But you are not narrowcasters but actually broadcasters. Any eight-year-old can tune in to your station, so I am rather curious as to why you define community standards in terms of one target group, when your people are broadcasters.

Mr Carroll—You must excuse me, I am not a broadcaster, I am a person in a secretariat. I do not have the intimate knowledge of programming a radio station, so I will defer to my colleague.

Senator TIERNEY—Wait a minute, you are responsible for the code of practice. What we are talking about is what is permissible under codes. It is a fairly straightforward question to someone in your position. Are you looking at the whole community or are you looking at a very narrow group?

Mr Carroll—In broad terms, a radio station focuses on a particular demographic which they can offer to advertisers.

Senator TIERNEY—We understand that, but because it is broadcast then obviously it is not just that group who listens, is it?

Mr Carroll—No, you will pick up listeners at either end of that demographic, but the core target audience that they focus on will be perhaps be the 18- to 39-year-olds.

Senator TIERNEY—And you see that your radio station would not have responsibility for what younger children hear, who might tune in, or parents who might have some passing interest in the values their children pick up. You say you do not have any responsibility to them either. That is what you are saying, isn't it?

Mr Carroll—No. I am sure the stations take every effort to ensure that the listeners who are focusing in on the station are not offended by the material that is presented.

Senator TIERNEY—In relation to parents, they would not know, unless they are listening as well, which they probably aren't. It is probably not their favourite program.

Mr Carroll—No.

Senator TIERNEY—Kids can listen on car radios and things and parents would be totally unaware of it. I am curious that you say you have no ethical responsibility at all beyond a target group. You believe you have no wider social responsibility, though you are broadcasters. If you were narrowcasters I could understand it, you would have a fixed class audience.

Mr Carroll—I do not think I said that, there is a core audience, but the station has a responsibility to its entire audience and they take that into account. I cannot speak, first hand, for the stations.

Senator TIERNEY—If they take that into account, why are programs like the one Senator Quirke referred to allowed to proceed, and why aren't there any sanctions?

Ms O'Connor—I talked on a couple of occasions about the fact that this program is 10 weeks old. The fact that we have had very few complaints is one point—

Senator TIERNEY—Of course you will not get any complaints.

Ms O'Connor—However, we are taking steps to review on a very regular basis the content of the program. I think that shows our ultimate concern for broader community standards. It is not being driven by our target audience that we are actually doing that.

CHAIR—How are you doing that review?

Ms O'Connor—That review is conducted between the program director, the presenter of the show and me. Because it is only 10 weeks old we have not used our extensive research facilities to start to weave the show into the way we research through our focus groups, through our call-out research—which is done extensively each week—and through what we call listener advisory boards where we take heavy users of our product into rooms and talk to them at length about the kinds of things we are broadcasting.

CHAIR—What would be the critical criteria of that research that you would be carrying out?

Ms O'Connor—We would be looking at assessing attitudes toward that kind of content being broadcast on air. It would be most unsound to say that we do not respond to the kind of feedback we get through research. If there was an overwhelming sentiment amongst our audience that this kind of thing was not acceptable, then it simply would not be on air, and that is what being listener driven is all about.

CHAIR—With these listener audience panels, are they randomly selected or do you select people who you know listen to the program?

Ms O'Connor—It varies. We do call-out research, which is random selection from the phone book. That involves surveying people in specific age groups, and with the Triple M product it is people aged between 18 and 39, and predominantly males. We also do focus groups, which are more specifically the age groups that are the core listeners of the station. With listener advisory boards we take the heavy listeners, people who are registered as listeners or fans of the station, to get the heavy user perspective on the product.

CHAIR—So you are actually quite concerned about the way the program is proceeding, and yet you allowed to go unchallenged a statement in the national newspaper of this country that said that the program has no rules?

Ms O'Connor—I am saying that we are taking into consideration community standards in how we review the content of the program. However, there is nothing in our research to suggest that there is a strong resistance to this program by our core audience. While the program is only 10 weeks old, I think over time, once the program has a longer tenure on the station, we will be able to gauge that kind of response. Certainly from the level of complaints, there is no resistance to it.

Senator TIERNEY—Mr Carroll indicated earlier that you did have a wider responsibility than your target audience, so in your research—which I assume is qualitative research—do you have on these panels a representative group of the community, and not just your target audience?

Ms O'Connor—We do what we call 'perceptual studies'. We do two major studies—and this is throughout all the metropolitan markets—per annum, assessing the lifestyle, attitudes, et cetera of our listeners. They are conducted on people between the ages of 18 and 44, male and female. That is one of the major qualitative initiatives. We do that via telephone. The way we do our research is by sorting numbers randomly from the telephone book. You would have to say that with a sample of 200 calls per week, there was a fairly accurate database of the community at large in terms of attitudes.

Senator TIERNEY—So if you rang me—and I am 52—you would not include me because I am over 40; is that right?

Ms O'Connor—With the perceptual study, that is right.

Senator TIERNEY—Why? Why have you got an age limit on the top?

Ms O'Connor—Because we are a targeted medium and, feasibly, in terms of successful commercial radio stations, the broader you target your audience, the less you superserve any one audience, the less you rate, the less profitable you are.

Senator TIERNEY—So you are saying that people over 40-odd do not listen to commercial radio?

Ms O'Connor—No, I am not. I am certainly not saying that at all.

Senator TIERNEY—If you are representing all radio stations, why do you not sample across the population, 18 up?

Ms O'Connor—Because we are talking about FM radio which tends to have a younger skew. A lot of the radio listened to in that 45-plus area is talk radio. I am not saying that that is an absolute truth, but certainly a lot of FM listenership—FM being 18 years old—tends to be a younger audience that listens to the FM band.

Senator TIERNEY—On the phone polling, have you got some examples of the questions?

Ms O'Connor—I do not have that with me.

Senator TIERNEY—Could you take it on notice and perhaps provide to me later the questions that you ask, the way in which you sample, and the general way in which you have gone about the methodology.

Ms O'Connor—Yes, I could do that. It is highly competitive information, but I am sure that we could provide that to you. As I said, there is no specific perceptual study on record that deals with this particular program because, as I said, it is a new program, but we will be looking at ways that we can assess attitudes towards this kind of programming amongst our core target over time. I am happy to talk further about the ways we will be doing that.

Senator TIERNEY—Mr Carroll, Triple M has worked out its target group, and of course you are dealing with radio stations right across-the-board; do you carry out any research, particularly in terms of developing your code, on what audience perceptions of community standards are?

Mr Carroll—No, we do not.

Senator TIERNEY—None at all? So how do you work out—

Mr Carroll—We have not at this point in time but, as was suggested earlier, it may be an area which we should look into.

Senator TIERNEY—You have got a code; how did you work that out without getting any community input at all?

Mr Carroll—We have a subcommittee that is representative of the major networks—

Senator TIERNEY—People in the club?

Mr Carroll—I will explain the full program. After we have drafted a code from the subcommittee, we then put that to the entire membership, after which it is circulated to the public in a consultation phase. We advertise that quite extensively over a two-week period, and then allow a considerable time for comments to come in from the public. After considering those responses, we submit it to the ABA for registration and have to satisfy the

ABA that we have met the public concerns that have been expressed in the code review process.

Senator TIERNEY—When you did it last time, how many public responses did you get?

Mr Carroll—Just to explain how extensive the consultation was, we put a series of advertisements over the stations in a two-week period which had a rate card value of about \$500,000, so that was a fairly extensive campaign of advertising the existence of the draft codes. It was estimated that about 11½ million Australians aged 10-plus would have heard the announcement that the code was being developed. Some 276 people sought copies and 20 responded.

Senator TIERNEY—Twenty responded?

Mr Carroll—And 19 of those were individuals and one was an organisation.

Senator TIERNEY—So after 11 million people listening to it, only 20 responded. Do you have any information on those 20 in terms of where those responses came from? Was it a reasonable spread across Australia or age range?

Mr Carroll—It was done before I joined the organisation. But there is actually a copy of the submission. All the responses were actually included in the submission that was put to the ABA for the registration of the codes. So it is available in a document form.

Senator TIERNEY—Do you feel that out of a population of 19 million, 19 responses is an adequate sample to determine anything?

Mr Carroll—Given the extensive circulation that was offered to the public to comment, we can only go by the responses that were received.

Senator TIERNEY—Which was one-millionth of the population.

Mr Carroll—But on our estimates, 11½ million people had the opportunity to provide comment to us. Of those, as I say, 276 people actually sought copies of the codes from stations, but of those only 20 bothered to respond and thought fit to respond. Those responses were taken into account and then the codes were registered by the ABA.

Senator TIERNEY—You would get a pretty skewed sample with such a small number. For example, an organisation which wanted to influence an outcome could have a pretty heavy impact if even a dozen of them wrote in. What I am saying—and it should be blindingly obvious from your figures—is that the response you got to your code was not representative in any way, shape or form of the community because it was such a small sample. Would you not agree with that?

Mr Carroll—That may well be so, but they were the people who bothered to respond. We cannot go out and physically ask everybody to make a response.

Senator TIERNEY—No-one is asking you to ask 19 million people, but there are other methodologies and, if you have spent that much on advertising, I would claim a lot more economic methodologies for doing what you want. For example, just doing a sample of the population and going out face to face with people would have given you a much better result than that.

Mr Carroll—On the subject of surveys, I am aware that the ABA has some recent material which they have done. They are independent of us and certainly they have offered to supply that information to us in terms of looking at the review. That is one of the aspects I imagine we will discuss with them when we meet with them next week. They continually do research which we have access to and we can utilise that information.

Senator TIERNEY—I missed the first half of this because I was in another meeting. I will perhaps make a suggestion to the committee, based on what I have heard in the last half, which I have found quite alarming: this is a matter that this Senate committee should inquire a lot further into.

CHAIR—There being no further questions, thank you, Mr Carroll and Ms O'Connor, for making yourselves available. I apologise for the late hour we are finishing.

Committee adjourned at 6.44 p.m.