

Meeting	Senate Legal and Constitutional References Committee for its inquiry into the Australian Film and Literature Classification Scheme – the ACMA gave evidence on 27 April 2011
Date	13 May 2011
Title of brief	Responses to questions taken on notice

## BACKGROUND

On Thursday 27 April 2011, the Australian Communications and Media Authority (the ACMA) appeared before the Senate Legal and Constitutional Affairs Committee in relation to an inquiry into the Australian Film and Literature Classification Scheme. The Acting Executive Manager of the ACMA's Citizen and Community Branch, Phyllis Fong, attended the hearing, along with the Manager of the Content Classification Section, Jeremy Fenton.

## QUESTIONS ON NOTICE

The ACMA took five questions on notice and responses to each are provided below.

### Question 1 (Senator Furner, p. 34 of Hansard) – Comment on the Australian Home Entertainment Distributors Association submission (submission no. 31 to the inquiry)

**Senator FURNER:** Going back to that initial question in regard to the Australian Home Entertainment Distributors Association, they suggested in their submission a new model of complaints handling where complaints would be referred directly to [the] ACMA. I understand their proposal was to weed out vexatious complaints. I am wondering whether you are able to provide a consideration of the review of that [proposal] and provide the committee with some feedback on that.

**Ms Fong:** I will take that on notice.

## Answer

There is legislative provision for complaints relating to offences against the *Broadcasting Services Act 1992* (the BSA), regulations or licence conditions to be made directly to the ACMA. Complaints about matters that are covered by a code of practice must be made to the relevant broadcaster in the first instance. If a person does not receive a response within 60 days, or receives a response but considers it to be inadequate, the person may then make a complaint about that code matter to the ACMA.

The ACMA must investigate a complaint, unless it is satisfied that a complaint is frivolous, vexatious or not made in good faith. It is unusual for the ACMA to decide not to investigate a complaint on these grounds and determining whether a matter is frivolous, vexatious or not made in good faith can be resource-intensive in itself. The ACMA does not have any other discretion not to investigate a valid complaint.

Requiring all complaints to be made directly to the ACMA would not be in keeping with the BSA's co-regulatory model, which envisages that licensees take primary responsibility for the material they broadcast. Further, such a change would significantly increase the ACMA's work load.

## Contact officers

Name Jonquil Ritter / Jeremy Fenton

## **Question 2 (Senator Barnett, p. 37 of Hansard) – International forums**

**Ms Fong:** [The] ACMA participates in an international association of [internet] hotlines. It is called 'INHOPE' and we generally attend two meetings per year. [Jeremy,] you will be attending one later.

**Mr Fenton:** [Yes,] it is essentially an international forum for ensuring referral of illegal content - offensive depictions of children - across international boundaries and ensuring that it gets to the correct law enforcement jurisdictions as fast as possible. I have to say that it is remarkably effective.

**CHAIR:** Again, could you provide further and better particulars regarding those forums?

**Mr Fenton:** Certainly.

### **Answer**

The ACMA is an active member of the International Association of Internet Hotlines (INHOPE), a formal association of 39 organisations which facilitate the timely reporting of online child abuse material across international borders. In addition to Australia, INHOPE membership includes hotlines from the United States of America, the United Kingdom, Canada, Russia, France and Germany.

The INHOPE reporting mechanism works in the following way: When Country A with a member hotline receives a complaint about – or otherwise becomes aware of – online content that consists of child abuse material hosted in Country B with a member hotline, Country A is able to report the content to Country B through a secure centralised database reporting mechanism. Country B's member hotline is then able to refer the content to appropriate law enforcement within its jurisdiction through established internal arrangements.

INHOPE best practice guidelines specify a two-day turnaround from complaint to reporting through the INHOPE database. This, in turn, is then actioned within a similar timeframe within the host country. This ensures that online child abuse material, wherever it may be reported, is referred to the appropriate law enforcement agency in the host country within a matter of days.

Under the BSA, the ACMA refers online content containing child abuse material that is hosted in a country that does not have INHOPE membership to enforcement agencies within Australia, which then forward the content through their established channels to appropriate overseas law enforcement agencies.

## **Question 3 (Senator Barnett, p. 37 of Hansard) – Comparative research material on classification schemes**

**CHAIR:** Just a global question again to each witness here: I have referred to the Bond University comparative analysis of ratings, classification and censorship in selected countries around the world—2003, unfortunately. Can you alert the committee to more recent research and evidence that provides that comparative analysis of ratings classification and censorship around the world that would help us in our deliberations? Could you take that on notice, please? Thank you.

### **Answer**

The ACMA is not aware of any more recent comparative analyses of ratings, classification or censorship systems within other jurisdictions. However, while not directly relating to classification issues, the following two studies may be of interest to the Committee:

- *Trends in media use by children and young people: Generation M2 2009 (USA), and MCAF 2007 and CPCLA 2009 (Australia)* - [http://www.acma.gov.au/WEB/STANDARD/pc=PC\\_312210](http://www.acma.gov.au/WEB/STANDARD/pc=PC_312210)

This report provides insights from the Kaiser Family Foundation's *Generation M2 2009 (USA)* (Generation M2 2009), alongside results from the ACMA's *Media and Communications in Australian*



*Families 2007* (MCAF 2007), with relevant findings from the ABS 2009 research, *Children's Participation in Cultural and Leisure Activities* (CPCLA 2009).

While the three studies cannot be directly compared, due to differences in methodologies, trends and patterns of media use can be usefully presented together. Information covered in the report includes: overall media use, watching television content, mobile phone use, listening to music, playing video and computer games, computers and the internet.

- *Media and communications in Australian Families 2007* - [http://www.acma.gov.au/WEB/STANDARD/pc=PC\\_310893](http://www.acma.gov.au/WEB/STANDARD/pc=PC_310893)

This report includes a review of the research literature which considered 'high quality research' conducted in Australia and internationally on benefits for and harms to children, families and society of media content and use. It contains an extensive list of references which could have some useful material for the Committee.

#### **Question 4 (Senator Barnett, p. 39 of Hansard) – Parental locks on set top boxes**

**CHAIR:** ... ACMA: in relation to parental locks on TV set top boxes, is [the] ACMA aware of any instances where the parental locks have been circumvented? Can you provide details? That would be appreciated.

#### **Answer**

The *Broadcasting and Datacasting Services (Parental Lock) Technical Standard 2010* makes parental lock mandatory for equipment first supplied to the Australian market after the date of effect of the standard on 4 February 2011. The ACMA is not aware of any reported instances of deliberate circumvention of the parental lock function. Parental lock works by broadcasters sending program data, including program classifications, as part of the digital signal. Set-top boxes and digital televisions interpret this material and, if the parental lock is activated, exclude any programs above the classification selected.

The ACMA has, from June 2009 through March 2011, continually monitored and produced quarterly performance reports on broadcaster EPG performance, including the presence of parental guidance information which enables the parental lock function. During that time, there were no recorded instances of broadcasters providing content that did not have appropriate classification information. The reports also include information on all reported complaints regarding EPG information. Only one complaint was received on 4 April 2010 that related to parental lock function. This complaint concerned the classification (or absence of classification) of news, sport and like programs. These programs are exempt from classification. No other complaints have been noted regarding the absence or circumvention of parental lock functionality in consumer receivers.

#### **Question 5 (Senator Barnett, p. 39 of Hansard) – Case study from Media Standards Australia (this is on the Committee's submissions webpage for this inquiry, under the heading 'Answers to questions on notice')**

**CHAIR:** ...Finally, Media Standards Australia has made some supplementary submissions, one of which is a formal complaint regarding a pornographic music video at a Busselton rural store. It is a McDonald's. They have made a complaint to McDonald's. McDonald's has written back in a thoughtful way with an apology. They have also written to ASTRA. ASTRA writes back and recommends that any concerns regarding the classification of material broadcast by a subscription television broadcaster be sent to the relevant broadcaster. They write to the broadcaster. They get a letter back and they say, 'You should be writing to [the] ACMA.' Then [the] ACMA writes back and refers them to Ron Robinson at the Classification Board. Ron Robinson writes back and says, 'You should refer it to [the] ACMA.'

Frankly, there is a case study for you. I am happy to receive feedback from any of the relevant agencies on that case study. Frankly, it highlights a system that is not working. We hear from various witnesses that they do not receive many complaints. If complaints are dealt with in that way, I am not

surprised, and perhaps others should not be surprised either. I am happy to get any feedback on that particular case study. It is not on the website yet but it has just been made public, so it will be in the next 24 hours or so.

#### **Answer**

The ACMA received an email complaint from Media Standards Australia (MSA) on 27 January 2011 that a McDonald's restaurant in Western Australia was making available MA15+ classified material that could be viewed by its customers, particularly persons under the age of 15 years. MSA cited a specific music video as an example of the type of MA15+ classified material that was available for viewing by children of customers to the restaurant.

From the ACMA's reading of the complaint, it appeared that MSA was not so much concerned by the classification of the material that was being made available in the restaurant as by the availability of the material for viewing at a venue that is likely to be frequented by children. This is not a matter that is within the ACMA's jurisdiction for investigation. As a result, the ACMA sent an email response to MSA on 8 February 2011, advising MSA of this.

The ACMA's response included information on the limits of the ACMA's powers and the process for making a complaint about programs that have been broadcast. In addition, contact details of an officer in the Classification Operations Branch at the Attorney-General's Department (AGD) were provided. This was to enable MSA to contact the person to discuss any potential breaches relating to the public exhibition of films if MSA so wished (this could be relevant if the restaurant was publicly exhibiting broadcast content recorded on a device). To date, the ACMA has not received further correspondence from MSA about this or any other matter.