

AUSTRALIA'S RIGHT TO KNOW

Friday 18 March 2011

The Committee Secretary
Senate Legal and Constitutional Affairs Committee
P.O. Box 6100
Parliament House
Canberra ACT 2600
Australia

Inquiry into the Australian film and literature scheme

Dear Secretary,

Australia's Right to Know welcomes the opportunity to make a submission to this inquiry. Australia's Right to Know (RTK) is a coalition of 12 major media organisations which was formed in 2007 to address the increasing restriction on freedom of speech in Australia.

At the heart of our endeavour is our belief that freedom of speech and of expression is the key to a healthy democracy and nourishes Australian culture. While RTK accepts that classification plays a vital role in enabling members of the public to make informed judgments on the media content they consume, including protecting children from material deemed "unsafe", the overarching principle of Australia's classification code is that adults "should be able to read, hear and see what they want".¹

We note that it has been 20 years since the last review of classification and that over this time there has been rapid technological change in media platforms and delivery systems available to, and consumed by, the Australian community. It is therefore timely that the Senate should be considering the mechanisms by which media content, especially publications, films and video games, are classified for consumption by the Australian public.

We are aware that various individual members of the RTK coalition are making their own submissions on various aspects of this inquiry, so we will limit the scope of our submission to a discussion of the principle of industry-based regulation and non-classification of news and current affairs content, which we believe must continue to be quarantined from government interference in the public interest.

By "industry-based regulation" we mean a system of self- or co-regulation such as is the current norm in the sector, which is developed by and in conjunction with the industry and minimises direct government influence or control over news content.

At present, the *Classification (Publications, Film and Computer Games) Act 1995* empowers the Classification Board and Classification Review Board to regulate

¹ National Classification Code 2005

classification of publications (including books and pictorial matter), films and computer games.

News and current affairs content, however, remains separate from this system and is instead governed by a number of self-regulatory, co-regulatory and complaints based schemes across varying news carrying media platforms.

Co-regulation exists in the commercial television sector with the Australian Commercial Television Industry Code of Practice for Commercial Television. This Code is developed by Free TV Australia and registered with the ACMA. The Code operates alongside the requirements of the *Broadcasting Services Act* and the ACMA Standards which regulate the content of children's programs and advertisements directed to children.

Codes of practice enforced by the ACMA also exist for the ABC, SBS, subscription broadcast television, subscription narrowcast television, commercial radio, community radio as well as subscription and narrowcast radio.

Self regulation exists for print media. Individual print organisations deal with complaints at first instance with the Press Council overseeing a complaint-based regime. Here complaints can be heard against a newspaper or periodical or the news reporting on a website of a Council member, if it appears to have breached the Council's Statement of Principles or its Code of Privacy.

With respect to material that is on the internet and accessed via mobile phones, the ACMA administers a regulatory scheme that investigates complaints concerning offensive and illegal material.

Central to all of these industry code based systems is the principle that news and current affairs content must comply with acceptable community standards, but otherwise should remain free from classification, censorship or any other governmental influence or control.

A free and independent news media in a pluralistic democracy must be unencumbered by government interference through regulatory or statutory schemes. Industry-based regulatory schemes have long been the standard form of media guardianship across the western world. Such industry-based regulation maintains a free news media by opposing any restrictions on the ability of the sector to inform the public of matters of public interest and concern, while at the same time ensuring that news media upholds both community standards and ethical behaviour.

RTK strongly believes that an industry regulated news media sector works well in Australia and that this general principle of no external government control or classification of news content must be maintained and supported in an environment where digital technology and convergence impacts upon the delivery of, distribution of and access to news services.

Convergence involves the coming together of media platforms through development of digital technology so that their once separate functions begin to meld into one another. For news media, this is taking place in a number of ways.

Where once news services were available through a small number of outlets including print newspapers and magazines, radio broadcasts and television news and current affairs services, they are now available over the internet, on mobile phones and mobile devices such as iPads, and via social media tools such as Twitter and Facebook. News may be delivered across these platforms by any number of different services, from online-only news services to soft copy versions of hard copy publications to companion online services for traditional media platforms.

The changes taking place mean that, for example, the newspapers *The Australian* or *The Age* exist in hard copy form, have their own websites with video and other interactive content, have mobile apps for iPads and iPhones, and have Facebook sites and Twitter feeds.

This blurring of boundaries between “traditional media” and “new media” has also led to a blurring of the regulatory ambit of the extant schemes. This is clearly seen in the case of a *Sydney Morning Herald* news piece from last year.

An article titled “A martyr emerges from the bloodshed” published by the *Sydney Morning Herald* on its website smh.com.au,² detailed the death of a woman during the anti-government protests in Iran in June 2010. Accompanying the article on the newspapers website was an embedded video clip with graphic footage of the incident. The video provided a warning to readers that the clip included footage of a distressing nature.

This video was referred by the ACMA to the Classification Board. The Classification Board ruled that: “the use of brief low resolution footage and warnings to viewers as well as the context of genuine news reportage mitigate the impact of violence to the extent that it does not exceed mild. Within this context, the Board considered that the content warranted a PG classification.”³

It is RTK’s view that, while the outcome of this episode did not involve the newspaper being forced to censor its material, the intervention by the ACMA and the Classification Board is of concern as it moves alarmingly close to government classification of news and current affairs content.

RTK believes that news and current affairs content, comprising information that is published in the public interest, must continue to be exempt from classification.

Similarly there has been a call for mobile applications, such as those released for mobile phones or tablet computers, to be subject to classification. The director of the Classification Board, Mr Donald McDonald, told a Senate Estimates committee hearing in October 2009 of his concern that material produced for mobile applications, especially computer games, should be submitted for classification.⁴

² <http://www.smh.com.au/world/a-martyr-emerges-from-the-bloodshed-20090623-cvcd.html>

³ http://www.ag.gov.au/www/cob/classification.nsf/Page/InformationCentre_AnnualReports_ClassificationBoardAnnualReport2009-10

⁴ <http://www.smartcompany.com.au/legal/20091022-iphone-apps-should-be-subject-to-classification-board-says.html>

While there may be a strong argument for computer game content to be subject to classification, RTK is concerned that news applications must be free of classification as equivalent content is in all other fora.

This principle should also apply to those exclusively online news services (for example Crikey or New Matilda). These new services must be subject to the same principle of non-classification and must not fall within the remit of government classification or censorship schemes. If such news services were subject to government control this would have a serious chilling effect upon the news media in this space.

In summary, RTK believes that Australia has been well served by the principle of industry regulation and non-classification for news and current affairs content, which should be maintained regardless of the media platform or delivery system through which the public accesses such content.

We thank you for the opportunity to submit our opinion in this important matter.

Christopher Warren
On behalf of
Australia's Right to Know

