

20 April 2011

Committee Secretary  
Senate Legal and Constitutional Committees  
PO Box 6100  
Parliament House  
Canberra ACT 2600

***Re: Inquiry into the Australian film and literature classification scheme – questions on notice***

Thank you for the opportunity to provide additional comments to the Committee in relation to the Inquiry into the Australian film and literature classification scheme. This short submission addresses three questions raised by the Committee at public hearings in relation to a UK pornography report, legislative changes in response to Bill Henson photographs, and the merits of the principles in the National Classification Code.

1. UK pornography report

In my opening statement to the Committee, I cited research which reveals that one in three 10-year-olds in the United Kingdom have viewed pornography on the internet. The source of that statistic is research conducted by *Psychologies* magazine UK, which “canvass[ed] the views of 14- to 16-year-olds at a north London secondary school”. In addition to finding that “Almost one-third first looked at sexual images online when they were aged 10 or younger”, it also discovered that 81 per cent view online pornography at home, and 75 per cent said their parents had never discussed online pornography with them.<sup>1</sup>

Although the exact nature of the pornography viewed by UK children is not revealed in the reporting of the research, *Psychologies* reports that psychologists and therapists have “began telling us how concerned they were becoming by the rise online of increasingly harder, darker pornography and the effect it was having on our children”.<sup>2</sup>

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<sup>1</sup> Psychologies, ‘Put porn in its place’, <http://www.psychologies.co.uk/put-porn-in-its-place/>, viewed 2011, April 13

<sup>2</sup> Ibid

These figures have been cited extensively throughout the UK media as the government seeks to have internet service providers implement a policy to have internet users opt-in to be able to view online pornography.<sup>3</sup> The policy to improve the protection of children whilst online is being promoted by the Conservative Party in the UK. ACL encourages the Federal Opposition to support the cyber-safety initiatives of the Australian Government, including the mandatory filtering at the ISP level of overseas-hosted Refused Classification content.

## 2. Legislative changes in response to Bill Henson photographs

As ACL outlined in its submission to the inquiry, the New South Wales Parliament removed the defence of artistic merit from amongst the child pornography offences from the *Crimes Act* on the advice of a working party established in response to the Bill Henson naked child photography controversy. NSW law now reflects the 'Commonwealth model', which "ensures the court specifically considers considerations of artistic merit when determining whether or not reasonable persons would regard particular material as being, in all the circumstances, offensive".<sup>4</sup>

ACL has recommended that commonwealth classification law should be further clarified to ensure that any depiction or description of a minor under the age of 18, including the promotion or instruction in the creation of child abuse material, that is considered offensive and would receive a Refused Classification rating, cannot receive a different rating because of artistic merit. Artistic merit should never excuse content in breach of the classification law.

## 3. Merits of the principles in the National Classification Code

The current classification principles spelled out in the National Classification Code are a fair statement of the factors that should guide classification decision-making in Australia, although some modification is required. The major problem with the principles is that even though each principle appears to be given an equal weighting, inevitably it is the desire of adults to "be able to read, hear and see what they want" that seems to take precedence over the right of minors to "be protected from material likely to harm or disturb them".

The classification power imbalance between the protection of children and the libertarian demands of adults is evident in the recent comments of Home Affairs Minister Brendan O'Connor, who has "urge[d] State and Territory governments to consider the value of the computer gaming industry to Australia's economy" when deciding upon the legalisation of an R18+ classification rating for

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<sup>3</sup> See for example: Livsey, G. (2010, December 20), 'Government wants internet service providers to bar porn at source', *The Mirror*, <http://www.mirror.co.uk/news/top-stories/2010/12/20/government-wants-internet-service-providers-to-bar-porn-at-source-115875-22795132/>

(2010, December 19), 'Porn, keep out! Parents to be allowed to block computers from receiving sexual imagery', *The Daily Mail*, <http://www.dailymail.co.uk/news/article-1339926/Internet-pornography-Parents-allowed-block-sexual-imagery.html>

<sup>4</sup> Collier, B. (2010, March 10), Crimes Amendment (Child Pornography and Abuse Material) Bill 2010 (NSW), second reading speech, p. 1, [http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/d2117e6bba4ab3ebca256e68000a0ae2/cc98f582145ae06aca2576e1001394e5/\\$FILE/LA%200910.pdfU](http://www.parliament.nsw.gov.au/prod/parlment/nswbills.nsf/d2117e6bba4ab3ebca256e68000a0ae2/cc98f582145ae06aca2576e1001394e5/$FILE/LA%200910.pdfU)

computer games.<sup>5</sup> Especially given the fact that such a proposal could potentially open up the sale and hire market in Australia to a higher level of graphically violent and sexually explicit interactive computer games, which will have a detrimental impact on children, the classification principles must be amended to take greater account of the particular needs of children.

As articulated by ACL at public hearings, “the key principle has got to be the protection of children from inadvertent exposure to material that is clearly not appropriate for them”. Although the existence of a Refused Classification category confines what appears to be an absolute principle that “adults should be able to read, hear and see what they want”, there needs to be additional limits applied to its application. ACL recommends the adoption of a further principle that sees refused classification any material that is considered “injurious to the public good”, similar to section 3 of *Films, Videos, and Publications Classification Act 1993* (NZ).<sup>6</sup>

In addition to the current community concerns addressed in the National Classification Code in principles regarding incitement to violence and demeaning portrayals, there now needs to be formal recognition in the Code for community concerns about the sexualisation of society, in particular of women and children, and the objectification of women. This would give proper weight to what is becoming an increasingly troublesome issue for parents, and give effect to the concerns raised in the Senate’s Inquiry into the sexualisation of children in the contemporary media environment.

Thank you for your consideration of our views.

Yours sincerely,

**Lyle Shelton**

**Chief of Staff**

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<sup>5</sup> O’Connor, B. (2011, April 12), ‘R18+ video game category will secure jobs for the future’ [press release], [http://www.ministerhomeaffairs.gov.au/www/ministers/oconnor.nsf/Page/MediaReleases\\_2011\\_SecondQuarter\\_12April\\_2011-R18+videogamecategorywillsecurejobsforthefuture](http://www.ministerhomeaffairs.gov.au/www/ministers/oconnor.nsf/Page/MediaReleases_2011_SecondQuarter_12April_2011-R18+videogamecategorywillsecurejobsforthefuture)

<sup>6</sup> [http://www.legislation.govt.nz/act/public/1993/0094/latest/DLM313407.html?search=ts\\_act\\_films%2c+videos\\_resel](http://www.legislation.govt.nz/act/public/1993/0094/latest/DLM313407.html?search=ts_act_films%2c+videos_resel)