

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

Dear Madam, Sir,

Submission to the Senate Committee regarding the Australian film and literature classification scheme

On behalf of The Communications Council, the peak body for Australia's \$30 billion marketing communications sector, please find enclosed our submission regarding the Australian film and literature classification.

The Council thanks the Committee for the opportunity to comment and we look forward to discussing this submission with the Committee in further detail.

Yours sincerely,

Daniel Leesong
Chief Executive Officer
The Communications Council

The industry self-regulatory system

The Communications Council¹ has always been a strong supporter of the principle of self-regulation as an effective mechanism to market brands responsibly across all channels.

The Council recognises that the advertising sector carries an above-average expectation on it for social responsibility, and must be aware of existing community concerns and standards when creating marketing communications campaigns.

As a supporter of the self-regulatory system, when members join our industry body, they are made aware of those responsibilities under the self-regulatory system.

There are a variety of voluntary and self regulatory codes of application to agencies.

Among these are:

- The Therapeutic Goods Advertising Code regulating advertising of non-prescription drugs, regulated by the Therapeutic Goods Advertising Code Council (TGACC). The Communications Council's, formerly represented by the Advertising Federation Australia (AFA), is represented on the TGACC Committee, with a view to informing the Communications Council's Healthcare committee of developments in this particular area of marketing communications.
- The Alcohol Beverages Advertising Code (ABAC) regulating Alcohol advertising, administered by a Management Committee which includes industry, advertising and government representatives, including our CEO, Daniel Leesong. Complaints are handled by the Advertising Standards Bureau (ASB). Alcohol advertising is prevetted by the Alcohol Advertising Pre-Vetting System (AAPS).
- The AANA Code of Ethics stipulating that advertisements are legal, decent, honest and truthful administered by the Australian Association of National Advertisers (AANA) and adjudicated by the ASB.
- The AANA Code on Advertising and Marketing to Children, aimed at ensuring that advertisers and marketers develop and maintain a high sense of social responsibility in advertising and marketing to children in Australia.
- The AANA Food and Beverages Code, aimed at ensuring social responsibility in advertising and marketing food and beverage products in Australia, as well as the Environmental Claims in Advertising Code, dealing with misleading and deceptive claims in areas of 'green marketing'.
- The Motor Vehicle Code, the Voluntary Code of Practice for Motor Vehicle Advertising instituted by the Federal Chamber of Automotive Industries (FCAI) as a means of industry self-regulation of motor vehicle advertising in Australia in regards to appropriate standards for the portrayal of images, themes and messages relating to road safety.
- Other codes around Weight Management and Financial Advertising.

¹ For more information about our organisation, see appendix 1

In addition:

- The Competition and Consumer Act 2010 (formerly the Trade Practices Act 1974) prohibiting misleading or deceiving advertising, packaging, logos, endorsements or sales pitches applies to agencies
- Television commercials and infomercials must be classified before they can be broadcast on free to Air TV. Commercial Advice (CAD) provides classification and information services to advertisers, agencies and production houses in relation to television commercials and infomercials.

The Communications Council's role in the industry Self-regulatory System

- The Communications Council in its former guises has been educating agencies on the AANA Code of Ethics, administered by the Advertising Standards Bureau (ASB), since 2001. The Communications Council regularly conducts workshops with members on the different acts, codes and guidelines that may impact on marketing communications agencies with the intention to promote compliance and reduce legal and commercial risks to advertisers and their agencies.
- It closely monitors ASB determinations to inform agencies of changing interpretations and/or community standards as they apply to the Code
- It provides non-legal advice to agencies where questions arise around the taste, decency and/or risks associated by communications campaigns, prior to their appearance in various channels, including outdoor media.
- It refers agencies to a solicitor specialising in this area of legislation where legal advice is requested or required.
- It monitors and distributes research reports by the ASB, such as the recent report published in 2010, regarding community perceptions on sex, sexuality, nudity in advertising, with a view to informing members of changing community perceptions and standards.
- It facilitates annual ASB workshops with our members with a view to educating them on the ASB system.

The Communications Council maintains a working relationship with the Advertising Standards Bureau in order to inform members accurately about the ASB complaint handling structures.

In addition, we provide input on the ASB system where requested, such as on the occasion of the recent Review into the independent reviewer system, conducted in November 2010.

Advertising agencies comply with the system by:

- Ensuring key staff are aware of relevant codes and their application by training or up-skilling them in the areas of codes and regulations.
- Discussing the application of Codes with their clients, and informing them of risks associated with the content of the ad where necessary or appropriate.

- Where necessary, responding to requests by the ASB on information relating to complaints lodged, ie detail about the advertisement, its wording and statements about how the advertisement complies with sections of the relevant Codes.

Agencies and consumers

The Communications Council's members share a commitment to provide consumers with appropriate advertisements that are in line with community standards, with a view to promoting consumer confidence and confidence in the self-regulatory system more broadly.

Advertisers and their agencies are committed to the system which is informed by an understanding that a failure to meet community expectation will result in ineffective marketing messages, and may result in reputational damage to the brand.

Adverse implications relating to ASB findings

The publication of ASB reports and the publicity they attract can result in negative exposure for advertisers and their agencies.

In the case of the agency, The Communications Council is aware of instances in which accounts have been lost because advertising content was deemed in breach of the AANA Code of Ethics. In such instances a breach of compliance results in a direct financial loss for the agency.

In addition, for the advertiser, there are substantial costs associated with the removal of marketing campaigns in case of a breach, and in case modification of an advertisement is required.

Scope of the Review

The Communications Council is aware that the committee's inquiry covers the full extent of the nation's classification scheme.

Given our membership and area of expertise, we will only respond with reference to issues relating to the marketing communications sector and particularly its creative contribution to society.

These are:

h) the possibility of including outdoor advertising, such as billboards, in the National Classification Scheme, and

k) the effectiveness of the National Classification Scheme in preventing the sexualisation of children and the objectification of women in all media, including advertising.

Our position

The Communications Council supports the community's right to be protected from offensive outdoor and billboard advertising. Especially since outdoor advertising can be considered particularly contentious given its high visibility and propensity to be located near areas of high public thoroughfare, like freeways and busy street corners.

We believe this should be balanced with:

- A view to the high overall compliance levels of the sector and ensuring that debate is grounded in the facts: the limited amount of outdoor complaints that were upheld in 2010;
- The significant rigour of the ASB's existing self-regulatory arrangements
- Existing legislation, including the Competition and Consumer Act 2010 (formerly the Trade Practices Act 1974) that prohibits misleading or deceiving advertising, packaging, logos, endorsements or sales pitches applies to agencies;
- The cultural and economic contribution of the \$30 billion marketing communications industry; and
- The significant commercial disadvantage that inclusion under a national classification scheme would place on the Australian advertising and marketing communication sectors.

The Communications Council works closely with the Advertising Standards Board (ASB) to uphold the highest standards of advertisements that enter the public domain, and as such should be well-placed to offer an informed view of this process.

The advertising and marketing communications sector - like any - only operates with the consent of the community. Therefore, we have an interest in ensuring the efficacy of existing regulation.

In summary, we submit that given the effectiveness of existing regulation, advertising - outdoor or otherwise - should not be included under the National Classification Scheme.

Term of reference h): The possibility of including outdoor advertising, such as billboards, in the National Classification Scheme

The Communications Council strongly believes that the existing self-regulation system is an efficient means of providing appropriate protections and safeguards for the community. We consider that including outdoor advertising within the National Classification Scheme is neither appropriate, nor necessary.

The current system is an effective and transparent mechanism for consumers to raise concerns about the content of particular advertisements and provides a robust, independent and fair system for assessing whether or not an advertisement meets the broader community's standards.

Critical to the examination of the existing scheme are the following facts:

- The ASB reports that the vast majority of marketing communications do not attract complaints
- The ASB reports that the majority of complaints are rigorously assessed, and are dismissed
- The ASB system has resulted in upheld complaints being actioned and addressed in an effective and timely manner, achieving a compliance of nearly 100%²
- In respect to outdoor complaints specifically, the ASB only considered 90 cases about outdoor advertisements in 2010, at least 23 of which were not third-party advertisements³ (for example, they were on-premise signs, or mobile phone advertisements).
- 15 of these were found to be in breach of the AANA Code of Ethics, of which 7 were not third-party advertisements. That is, 46.6% of upheld cases were not about third-party advertisements.
- The 8 third-party advertisements that *were* the subject of an adverse finding by the ASB represent 0.026% of all outdoor industry advertisements in 2010.
- A determination that an advertisement breaches community standards means the immediate removal of the advertisement and prohibits use of the advertisement in the future.
- In the 0.07 per cent of cases of non-compliance, over 12 years of operation of the system, the ASB already works with government bodies to address the gaps.

In addition, The Communications Council would urge the Committee to consider closely the financial impact of potential changes to the existing system by bringing outdoor advertising under the classification system.

This position is informed by the fact that:

- The self-regulatory system is industry funded and supported, and operated at no cost to government;
- The classification system is operated at a cost to the tax payer; and
- The self-regulatory system costs are borne by those responsible for the communications, rather than the consumer.

Further regulation of the scheme will also significantly impact upon the commercial viability of the sector in Australia by greatly delaying the lead time required for advertising approval. This will ultimately impact upon the time it will take to bring all campaigns to market, and each aspect of the communications planning process up the line.

Given the small number of complaints that have been upheld by the Advertising Standards Board, in addition to ASB research that in consideration of cases relating to sex, sexuality and nudity, ASB findings are generally in line with the attitudes of the broader community, we submit that there is no justification for this loss of advantage.

² Advertising Standards Board Statistics relating to complaint determinations with emphasis on outdoor advertisements.

³ Third-party advertising is advertising in which the advertisement is not associated with the premises on which it is displayed. Third Party advertising is regulated under the AANA Code of Ethics, administered by the ASB.

The Communications Council also notes that classification may hamper government advertising efforts significantly, including in critical time-sensitive areas such as public health and safety and in election advertising.

Finally, we would ask the Committee to note that the advertising and marketing sectors is a key employer for creatives, which includes artists, writers, musicians and others, and the fact that the invariable loss of industry revenue will affect this employment adversely.

Term of reference k): the effectiveness of the National Classification Scheme in preventing the sexualisation of children and the objectification of women in all media, including advertising

The Communications Council notes that advertisers, and their agencies take community concerns about the sexualisation of children and objectification of women seriously.

We submit that self-regulation is an effective mechanism in ensuring that concerns about sexualisation and objectification are addressed.

Self-regulation meets community standards on these topics in the following ways:

- the operation of key provisions in the AANA Codes relating specifically to the issue of sexualisation of children and the treatment of sex, sexuality and nudity more generally, ie Section 2.3 of the Code of Ethics or Section 2.4 of the Children's Code.
- the operation of key provisions in the AANA Codes relating specifically to the issue of sexuality, ie Section 2.3 of the Code of Ethics, or Section 2.1 of the Code of Ethics, which includes discrimination and vilification on the basis of sex.
- the voluntary commitment of advertisers- and their agencies- to comply with these provisions along with other provisions of the Codes
- the efforts of other industry stakeholders such as the ASB, AANA or The Communications Council in ensuring compliance and supporting enforcement when required;
- the operation of the complaint resolution process through which the Standards Board considers complaints raising concerns about these topics
- the fact that a breach of the code comes at significant reputational and financial loss to the advertiser- and agency.

In addition we note the earlier cited ASB research into the area of sex, sexualisation and nudity in which it found that decisions of the ASB, in consideration of cases relating to sexuality, sex and nudity, are generally in line with the attitudes of the broader community.

We have welcomed the report publically as an important guide in informing our members of prevailing attitudes and standards and as essential in the advertising self-regulation system.

We encourage members to adhere to best practice principles in business and campaign development, and taking into account research such as this is an essential part of that practice.

Gender portrayal/ Objectification

The AANA, The Communications Council and the OMA have previously developed an Advisory Paper which provides agencies with a checklist to guide their creative process around outdoor advertising.

The paper advises to:

- Check intended content against all provisions of The AANA Advertiser Code of Ethics;
- If the content is likely to prove contentious or is otherwise anticipated to prompt public complaint, check against previous decisions by the Advertising Standards Board based on prevailing community standards;
- Check the provisions of relevant industry codes: the Alcohol Beverages Advertising Code; the Therapeutic Goods Code; and the Weight Management Industry Code of Practice.
- Check content within the context of intended outdoor location(s), giving consideration to potential audiences and possible sensitivities;
- Check with relevant supplier to establish whether there is any government authority which may have specific requirements;
- Particularly where locations are likely to attract the attention of children, check against the AANA Principles and Advisory Notes on Advertising to Children;

This paper is available for members online, and staff will point them to the material at appropriate junctures.

Body Image

On our site there is a voluntary Industry Code of Conduct to provide national guidance for fashion, media and advertising industries to adopt more body image friendly practices. It encourages more diversity in the selection of models, a wider range of clothing sizes in retail fashion, the use of realistic and natural images of people, and disclosure when images have been digitally manipulated.

Staff will recommend the material at appropriate junctures.

Appendix 1.

About The Communications Council

The Communications Council was formed on 1 January 2010, merging the former Advertising Federation of Australia (AFA) with the Account Planning Group (APG) and Australasian Writers and Art Directors Association (AWARD) and more recently the Australasian Promotional Marketing Association (APMA). The Communications Council is the peak body representing agencies in the marketing and communications industry to government, industry, media and the public.

We help grow member businesses and develop individual careers through the provision of professional development services, advocacy and support.

The Communications Council represents businesses in marketing communications sector which contributes in excess of \$30 billion towards Australia's GDP.

Billboard and Outdoor Advertising

The Council incorporates members from a wide spectrum of creative disciplines, including traditional advertising agencies, through to healthcare advertising agencies, design agencies and production companies.

None of the Communications Council's members specialises in outdoor advertising only, but the majority of its members include outdoor advertising as an important channel of communication to consumers.

In 2010, there were approximately 14,500 outdoor campaigns that ran, comprising some 30,000 advertisement across 73,000 advertising display panels.⁴

⁴ Statistics provided to The Communications Council by the Outdoor Media Association (OMA).