CHAPTER 9

Television, radio and recorded music

9.1 A number of important media do not fall within the National Classification Scheme applying to publications, films and computer games. The content of media such as television, radio, recorded music and advertising (including outdoor advertising) are subject to co-regulatory and self-regulatory arrangements.

9.2 This chapter briefly discusses, at a general level, the advantages and disadvantages of these types of regulatory mechanisms.

9.3 The chapter addresses term of reference (l), which refers to the interaction between the National Classification Scheme and the role of the ACMA in supervising broadcast standards for television. In the context of television content, the application of the National Classification Scheme to music videos (term of reference (i)) is also examined.

9.4 There is also discussion of term of reference (j), the effectiveness of the ARIA/AMRA Labelling Code of Practice for Recorded Music Product Containing Potentially Offensive Lyrics and/ or Themes' (ARIA/AMRA Labelling Code).

Effectiveness of self-regulation

9.5 The committee received a range of evidence regarding the effectiveness of industry self-regulation. In general, the industries themselves were in favour of self-regulation. Broadly, industry groups noted that self-regulatory schemes provide a degree of flexibility to the industry, while minimising the burden on government (since most schemes are industry-funded).[1]

9.6 Additionally, industry groups tended to maintain that the standards applied under their codes of practice reflect community standards and are often drawn from the two sets of guidelines for classification established by the National Classification Scheme.[2]

9.7 A number of witnesses, however, questioned the ability of industries to adequately reflect community standards, particularly noting the proliferation of sexualised content.[3]

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1 See, for example, Advertising Standards Bureau, *Submission 41*, p. 7.

2 See, for example, Australian Recording Industry Association (ARIA) and Australian Music Retailers Association (AMRA), *Submission 52*, p. 2.

3 See, for example, Ms Melinda Tankard Reist, Collective Shout, *Committee Hansard*, 27 April 2011, p. 21. The sexualisation of children and objectification of women are discussed further in Chapter 11.

Complaints-based systems

9.8 Most forms of industry self-regulation feature a complaints system whereby members of the public can make complaints if they feel material has been inappropriately classified. In the case of industries covered by the *Broadcasting Services Act 1992*, the ACMA is able to examine complaints if the industry itself is not able to provide a remedy that is satisfactory to the complainant.

9.9 The complaints system provides a mechanism by which consumers, and potentially the ACMA, can have input into classification decisions and providing feedback to the industry.

9.10 Nevertheless, the committee received substantial evidence of community dissatisfaction with the various complaints systems. The committee heard that many consumers are unaware of the existence of a complaints process, or how to go about making a complaint.[4] Additionally, as complaints can only be made once material has been placed in the public domain, objectionable material may remain in public for some time before any action is taken.[5]

Television

9.11 Under its broadcasting power,[6] the Commonwealth regulates content on television and radio broadcasts through the *Broadcasting Services Act 1992*.

9.12 Television and radio content is co-regulated by each industry and the ACMA. The *Broadcasting Services Act 1992* provides that radio and television industry groups are to develop codes of conduct governing the content they can broadcast, in consultation with the ACMA.[7] The *Broadcasting Services Act 1992* specifies that, in developing these codes, community attitudes to the following matters are to be taken into account:

a) the portrayal in programs of physical and psychological violence;

b) the portrayal in programs of sexual conduct and nudity;

c) the use in programs of offensive language;

d) the portrayal in programs of the use of drugs, including alcohol and tobacco;

e) the portrayal in programs of matter that is likely to incite or perpetuate hatred against, or vilifies, any person or group on the basis of ethnicity,

4 See, for example, Media Standards Australia, *Submission 21*, p. 30.

5 See, for example, Professor Elizabeth Handsley, Australian Council on Children and the Media, *Committee Hansard*, 25 March 2011, p. 64.

6 Section 51(v) of the Constitution.

7 *Broadcasting Services Act 1992* (Cth), ss. 123(1).

nationality, race, gender, sexual preference, age, religion or physical or mental disability;

f) such other matters relating to program content as are of concern to the community.[8]

9.13 The *Broadcasting Services Act 1992* requires that industry groups apply the classification system developed under the *Classification Act 1995* in classifying films for broadcast. Additional requirements include the restriction of the broadcasting of certain classifications to particular times and the provision of consumer advice.[9] These codes of practice are then registered with the ACMA.[10]

9.14 The Commercial Television Code of Practice, developed under the provisions of the *Broadcasting Services Act 1992* by the industry, regulates content on commercial free-to-air television.[11] Subscription television is subject to codes of practice developed by the Australian Subscription Television and Radio Association (ASTRA).[12] The Australian Broadcasting Corporation (ABC) and Special Broadcasting Service (SBS) each have a code of practice as provided for in their respective establishing legislation.[13] The ACMA is notified of the ABC and SBS codes of practice.

9.15 Under the code of practice system, complaints about content are first made to the broadcaster. If a complainant is dissatisfied with the broadcaster's response, or the broadcaster fails to respond within 60 days, the complaint may be referred to the ACMA.[14]

9.16 Table 9.1 sets out the classifications adopted by the television industry participants under their respective codes of practice. Each code of practice specifies times when particular content can be shown. For example, MA and MA15+ material can typically only be shown after 9:00 pm or 9:30 pm, depending on the broadcaster.

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8 *Broadcasting Services Act 1992*, ss. 123(3).

9 *Broadcasting Services Act 1992*, s. 123.

10 Attorney-General's Department, *Submission 46*, p. 12.

11 Free TV Australia, *Submission 50*, p. 3.

12 Australian Subscription Television and Radio Association (ASTRA), *ASTRA Overview*, http://astra.org.au/pages/astra-overview, (accessed 26 May 2011).

13 See the *Australian Broadcasting Corporation Act 1983*, ss. 8(1); *Special Broadcasting Service Act 1991*, ss. 10(1). The codes of practice registered with or notified to the ACMA are available from http://www.acma.gov.au/WEB/STANDARD/pc=PC_300080, (accessed 20 December 2010).

14 The Australian Communications and Media Authority, *Complaints that need to be made to the broadcaster first*, http://www.acma.gov.au/WEB/STANDARD/pc=PC_90139, (accessed 10 May 2011).

Table 9.1: Television classifications

ABC	G, PG, M, MA15+[15]
SBS	G, PG, M, MA15+, MAV15+ [strong violence][16]
Commercial TV	P [Preschool], C [Children], G, PG, M, MA, AV [Adult Violence][17]
Community TV	G, PG, M, MA
Pay TV and Open Narrowcast TV	G, PG, M, MA15+, R18+[18]

9.17 In addition to the codes of practice, the *Broadcasting Services Act 1992* requires the ACMA to determine standards for programs for children for commercial television broadcasters.[19]

9.18 The Children's Television Standards (CTS) requires networks to broadcast 390 hours of programming per year specifically for school-aged children and preschoolers, denoted by the P (Preschool) and C (Children) classification (as shown

15 ABC Code of Practice 2004, http://www.abc.net.au/corp/pubs/codeprac04.htm, (accessed 26 May 2011); ABC television program classifications are based on the *Guidelines for the Classification of Films and Computer Games*.

16 The SBS classifications are 'based on the *Guidelines for the Classification of Films and Computer Games*'. SBS schedules programs, or modifies them, to ensure that they are suitable for broadcast, or broadcast at particular times: SBS, *Codes of Practice 2006*, http://media.sbs.com.au/home/upload_media/site_20_rand_2138311027_sbscodesofpractice2010.pdf, (accessed 20 December 2010), p. 13.

17 Films are classified according to *Guidelines for the Classification of Films and Computer Games*, while most other programs are classified according to Television Classification Guidelines included in the Code of Practice. Films that would be classified MA15+ because of violence under the *Guidelines for the Classification of Films and Computer Games* must be classified AV or modified to M level violence or lower: *Commercial TV Code of Practice*, January 2010, http://www.freetv.com.au/media/Code_of_Practice/2010_Commercial_Television_Industry_Code_of_Practice.pdf, (accessed 20 December 2010), p. 8.

18 R18+ movies must be able to be restricted by a disabling device: ASTRA, *Codes of Practice 2007*, http://www.acma.gov.au/webwr/aba/contentreg/codes/television/documents/stbcodesofpractice2007.pdf, (accessed 20 December 2010), pp 6–10.

19 *Broadcasting Services Act 1992*, s. 122.

in the table above). This programming must be provided at certain times of the day as prescribed by the CTS.[20]

9.19 Only programming which has been cleared and certified by the ACMA can be 'counted' toward the CTS quota. The programming must be suitable for viewing by children and must be specifically designed with their educational and emotional needs in mind. It must also comply with prescriptions with respect to depictions of gender, race and unsafe behaviour.[21]

9.20 Television broadcasters generally need to include consumer advice with their broadcasts. For example, stations operating under the Commercial Television Industry Code of Practice must provide consumer advice for all MA-rated and AV-rated programs, M-rated films and short series, and all PG-rated films. In addition, PG-rated programs broadcast within certain times may be required to be accompanied by consumer advice.[22]

9.21 The Subscription Broadcast Television and Subscription Narrowcast Television codes of practice outline the requirements for classification of content broadcast by those services.[23] Unlike the free-to-air broadcast codes, there are no requirements for the limitation of content to certain time zones, although classification symbols and consumer advice must be clearly displayed at the commencement of each program.[24] Material rated R18+ can only be broadcast by a subscription narrowcast service, and only where access to that material is restricted.[25]

Effectiveness of television codes of practice

9.22 The committee received a number of submissions criticising the ACMA's role in the supervision of television standards (term of reference (l)). For example, FamilyVoice Australia cautioned that, even where the ACMA investigates breaches of the code under present arrangements, there are no significant penalties imposed:

> We feel that when there has been a breach of the guidelines, for example, with TV stations, nothing is done to the TV station as a result. There is no punishment. For example, only the other week, after six months, a complaint of mine was upheld by the Australian Communications and Media Authority about the wrong classification of an ABC program. I believed that it was wrongly classified M and [the] ACMA agreed with me,

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20 Free TV Australia, *Submission 50*, p. 4.

21 Free TV Australia, *Submission 50*, p. 4.

22 Commercial Television Code of Practice, http://www.freetv.com.au/media/Code_of_Practice/2010_Commercial_Television_Industry_Code_of_Practice.pdf, (accessed 13 June 2011), para. 2.20.

23 ASTRA, *Submission 24*, p. 2.

24 ASTRA, *Submission 24*, pp 2-3.

25 ASTRA, *Submission 24*, p. 3.

> but nothing has happened as a result. There has been no apology to me from the ABC, and there has been no reprimand by [the] ACMA. There was not even a media release. If there is no punishment, why have the guidelines?[26]

9.23 In answer to a question on notice, however, the ABC acknowledged that the particular program had been incorrectly classified by the ABC:

> The ABC has reclassified this episode...as MA15+ for future broadcasts. [The] ACMA's report on the breach decision has been circulated to ABC TV Management and to Classifiers.[27]

9.24 Broadcast industry television participants were of the view that co-regulation is effective. Free TV Australia submitted:

> Compliance with both the Code and the [Children's Television Standard (CTS)] are licence conditions of the commercial broadcast networks which are enforced by the ACMA. The ACMA has extensive powers to investigate complaints regarding non-compliance and apply penalties for breaches as appropriate. The Code is regularly reviewed to ensure it accords with prevailing community standards.[28]

9.25 Free TV Australia also noted that, relative to the amount of content broadcast each year, the industry receives very few complaints:

> This system of regulation, which is underpinned by a robust complaints handling process which applies across the Code of Practice, the CTS and the AANA Codes, is working well. This is evidenced by the fact that there is a very low level of complaint about programming content (including advertisements), even though commercial free-to-air broadcasters are transmitting content twenty-four hours a day, three hundred and sixty five days a year across nine channels.[29]

9.26 SBS also noted that it receives few complaints. By way of example, SBS informed the committee that, since 2005, it had received 246 complaints, of which 15 were appealed to the ACMA. Only two of these were upheld.[30]

9.27 However, the Australian Christian Lobby (ACL) objected to the use of complaint statistics as evidence of the underlying community sentiment:

> ACL believes that it is problematic to measure community standards by the number of complaints generated by a particular broadcast or telecast. It would come as news to a great number of people within the community to learn that their view of the contemporary media environment was judged

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26 Mrs Roslyn Phillips, FamilyVoice Australia, *Committee Hansard*, 25 March 2011, p. 78.

27 ABC, answer to question on notice, received 13 May 2011.

28 Free TV Australia, *Submission 50*, p. 2.

29 Free TV Australia, *Submission 50*, pp 2–3.

30 SBS, answer to question on notice, received on 21 April 2011.

> solely on their formally complaining to the relevant authorities. With so many complaints in the largely co-regulatory and self-regulated media environment being rejected, the centrality of complaint processes in the regulation of content is a frustration for viewers and listeners, who come to feel the system is weighted against them.[31]

9.28 The potential for inconsistency in classification decision-making between the co-regulatory scheme for television, as supervised by the ACMA, and the Classification Board, was also an issue raised with the committee.

9.29 In this context, the committee received a substantial submission from Mr David Tennant, which focussed on the ABC's classification procedures, and a 'history of classification standards which are inconsistent with the...Classification Board'.[32]

9.30 The ABC defended its ability to effectively classify broadcast television in line with community standards, noting the professionalism of its assessors. Mr Michael Brealey from the ABC asserted:

> For the ABC we spend a lot of time and effort in getting it right. We have over 120 pages of editorial policy, a code, guidelines and in-house classification. With the actual practical implication...we look at programs quite differently. So we do not look at the whole set. We will look at individual programs in a series and we need to be able to assess each of those programs to decide what its classification should be. If it needs to change, we have the ability to edit and that is quite important. We are not looking at the whole set; we are looking at individual—and aside from that, we have in-house classifiers and that is their job, their bread and butter. They are professional people and they do it as their job. They have the corporate knowledge and the expertise to do it as well as anyone else.[33]

Digital television and online delivery of broadcast television

9.31 As noted in the previous chapter, the digitisation of media has resulted in a convergence of content accessible from multiple platforms. This includes the rise of internet-based television channels, many of which are run by traditional television broadcasters to supplement free-to-air services. Internet services such as the ABC's iView, as well as others maintained by commercial free-to-air broadcasters, allow consumers to access programs on demand, and as such do not adhere to time zones for particular ratings agreed to under the various television codes of practice.

9.32 Additionally, new digital television sets are capable of connecting directly to the internet, allowing certain online services to be viewed in a manner which mimics traditional broadcast television. It is unclear how existing television codes of practice

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31 Australian Christian Lobby, *Submission 25*, p. 10.

32 Mr David Tennant, *Submission 70*, p. 1.

33 *Committee Hansard*, 7 April 2011, p. 21.

relate to these new forms of content delivery. In its submission, Free TV Australia drew attention to this issue:

> Free TV strongly endorses the application of equal regulation to all players. Due largely to the time zone system set out above, there is currently a significant gap between the regulations that apply to content provided on commercial free-to-air television and that on comparable platforms, such as pay television and IPTV [Internet Protocol Television], with far more restriction applied to free-to-air television. This creates a complex and confusing system for viewers, most of whom will be unaware that different standards apply to different platforms. Free TV therefore urges standardisation of classification regulation across all platforms.[34]

9.33 Ms Julie Flynn of Free TV Australia elaborated on this further:

> Increasingly now TVs are connected TVs. That means they have an Ethernet port...There is any variety of TVs and, in the future, you will be getting content across multiple platforms and on multiple devices and increasingly, unless we come up with a more consistent approach to working out what we want to regulate and how we want to regulate it, we will find that people will be accessing different forms of content in different ways, and the same piece of content will be regulated differently depending on which platform or device it occurs on.[35]

9.34 The committee notes that these new developments undermine existing methods by which television content is regulated.

Different treatment for recorded and broadcast music videos

9.35 Term of reference (i) refers to the application of the National Classification Scheme to music videos. For this reason, the committee focussed on the treatment of music videos in the context of television regulation.

9.36 Music videos are subject to different forms of classification depending upon the means by which they are distributed. If released on DVD or similar recorded form, a music video is technically a film and is subject to classification under the National Classification Scheme. Music videos broadcast on television, however, are instead subject to industry codes of practice under the *Broadcasting Services Act 1992*.

9.37 The majority of evidence about music videos related to their broadcast on free-to-air television and, to a lesser extent, subscription television.

9.38 The committee questioned the Attorney-General's Department (Department) about the different mechanisms used to classify a music video released on DVD versus the same content broadcast on television, noting the apparent inconsistent treatment. In response, an officer from the Department stated:

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34 Free TV Australia, *Submission 50*, p. 7.

35 *Committee Hansard*, 7 April 2011, p. 24.

> In relation to something that is not sold through a store but broadcast on television, the decision about what is appropriate still refers back to the [National Classification Scheme]. The timing of when there might be some regulatory intervention might change, in the sense that, as my colleagues from [the] ACMA were saying, the first classification assessment would have been done by the industry regulators under their code. But that is not something they do stand-alone. There is interaction between the [Classification] [B]oard and industry regulators in terms of training and consistency of decision making. Then there is the capacity for complaints. As I understand it, if [the] ACMA receives a complaint, it is obliged to act on it and follow it through.
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> There are different entities, but that is because there are different media through which the material is being viewed, but all are trying to achieve consistency under the one national scheme or arrangement...[I]n terms of the scheme and the decisions that are made under it, there is a consistency of approach.[36]

9.39 The officer described the classification mechanism for television as a 'two step arrangement with the industry', featuring self-classification by the industry, with the recourse to complaints and a formal assessment by the ACMA.[37]

Music videos and community standards

9.40 The committee received a range of evidence highlighting community concern about music videos on television. As ACL noted, a substantial number of music videos are broadcast on weekend mornings.[38]

9.41 Mr Gavin Rosser expressed to the committee his dismay that overtly sexual music clips are played during prime viewing times for children:

> Twice recently I have been appalled by the overtly sexual nature of music video clips. The first time was watching TV on Saturday morning with my kids (the oldest was about six at this time). We don't usually watch music video clips, but thought it would be fun to boogie around the lounge to some good upbeat music. Unfortunately the first clip was too explicit for my young children to watch, so I turned it off and turned it on a bit later. Over a period of about five songs only one or two were appropriate for that age group. The remainder were drenched in aural and visual sexual references, innuendo, sexual dancing, sexual thrusting etc. We haven't tried to watch video clips since.[39]

9.42 Media Standards Australia (MSA) shared Mr Rosser's concerns:

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36 *Committee Hansard*, 27 April 2011, p. 31.

37 *Committee Hansard*, 27 April 2011, p. 32.

38 Australian Christian Lobby, *Submission 25*, p. 10.

39 Mr Gavin Rosser, *Submission 62*, p. 1.

> Increasing numbers of parents have expressed their grave concerns to MSA, with regard to the sexual content, explicit lyrics, (particularly with regard to the dancing – including sexually-provocative gyrations), and sometimes even the violence contained in many music videos. This is particularly worrying in regard to Saturday and Sunday morning video clips programmes on television (Rage on ABC and Video Hits on Ten), since these are largely unsupervised timeslots in most households.[40]

9.43 ACL referred to the findings of the Senate Environment, Communications and the Arts Committee's (ECA Committee) 2008 inquiry into the sexualisation of children in the contemporary media environment. That committee's report recommended that 'broadcasters review their classification of music videos specifically with regard to sexualising imagery'.[41] ACL noted that since that inquiry:

> [O]ne of Kylie Minogue's former producers declared publicly that, "The music industry has gone too far" in its sexualised content, and "Ninety-nine per cent of the charts is R 'n B and 99 per cent of that is soft pornography".[42]

9.44 Professor Elizabeth Handsley of the Australian Council on Children and the Media was of the opinion that the government response to the recommendations of the ECA Committee was lacking:

> When the government came out with its statement in response to the Senate committee's report, it came out on that particular recommendation with pretty much the same words that the industry had started with, that is, that there had not been any complaints and therefore there was no community concern about it. We were deeply concerned by that response from the government, I am sorry to say. We thought that showed a lack of engagement with that particular issue and a lack of engagement with the Senate process that had concluded there was community concern, something did need to be done, and they just basically overlooked that, which was very disappointing. The postscript to that is that the television industry has subsequently reviewed its code, made a number of changes, but has not changed one word in relation to the classification of video clips. So, we were very disappointed about that.[43]

9.45 The sexual nature of many music videos played in G and PG viewing times may contribute to the sexualisation of children. The level of sexual content in music videos also led ACL to conclude that current self–classification system for television broadcasters has failed. ACL called for the ACMA to conduct a review of the classification of music videos:

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40 Media Standards Australia, *Submission 21*, p. 23.

41 Senate Standing Committee on Environment, Communications and the Arts, *Report on the Sexualisation of children in the contemporary media*, June 2008, p. 42.

42 Australian Christian Lobby, *Submission 25*, p. 10.

43 *Committee Hansard*, 25 March 2011, p. 71.

> Obviously music videos are a particular class of media for which several people have identified an issue involved with the sexualisation of society. ACL's recommendation is not as strong as getting those music videos classified externally beyond the broadcasters; it is for the ACMA to conduct a specific investigation into the classification of music videos to ensure that the television industry is actually applying industry standards appropriately. Unless the television industry itself is willing to self-regulate the content that it is willing to broadcast in often PG-rated music video programs, then there is obviously a need for additional red tape, if that is what it is to be called.[44]

9.46 In contrast, Free TV Australia supported the ability of the commercial broadcasters to effectively self-classify broadcast content, noting that, in the case of music videos, all are viewed by the network's classifiers to ensure that they are appropriate for the relevant classification time zone (usually G or PG). Any video found to be unsuitable is either edited before broadcast or not included in the program.[45] In addition, Free TV Australia submitted:

> For G classified programs networks take extra steps to ensure the videos are very mild in impact and safe for children to watch without adult supervision, as required by the Code of Practice. For a PG program, the networks apply the Code at the lower end of the PG classification requirements as they are mindful that younger viewers could be watching these programs.[46]

9.47 Free TV Australia noted that the ACMA has never upheld any complaints about music videos being broadcast in inappropriate time zones:

> [O]f the more than 1500 submissions that Free TV received as part of its most recent review of the Commercial Television Code, only 5 argued for additional classification laws with respect to music videos.[47]

9.48 Free TV Australia also noted that the introduction of digital television would further improve the ability of parents to control access to inappropriate content:

> As of 4 February 2011, a Parental Lock mechanism must be embedded in all equipment designed to receive digital television, allowing parents to limit the content their children can access based on the classification information provided by the broadcaster. Parents are able to use these locks to definitively control what television their children may view.[48]

9.49 While subscription television is not limited to certain time zones in the same manner as free-to-air television, the technology used also allows parents to exercise

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44 Mr Benjamin Williams, Australian Christian Lobby, *Committee Hansard*, 25 March 2011, p. 7.

45 Free TV Australia, *Submission 50*, p. 8.

46 Free TV Australia, *Submission 50*, p. 8.

47 Free TV Australia, *Submission 50*, p. 8.

48 Free TV Australia, *Submission 50*, p. 6.

control over access by other members of the household. As Ms Petra Buchanan of ASTRA explained:

> We strongly believe in information, so ensuring that classification comes up at the commencement of any program, that there is detail about that on the electronic program guides as well as in printed guides, so information to make sure that every consumer is the most savvy in terms of monitoring and managing that. Then there is the technology overlay so that they can put that into practice to protect members of the household or however they would like to manage the viewing.[49]

9.50 In addition, Ms Buchanan noted that subscription television services involve a direct reciprocal relationship with a subscriber, as opposed to the unrestricted audience of a free-to-air broadcaster:

> [I]n a sense they are very different business models in terms of how and why they exist. We obviously have a very direct reciprocal relationship with a subscriber who, in some instances, may be purchasing it because they want to get those music channels and they want to know that they can have them on all day long whenever they want to see that content and product. Whereas, obviously, more generalised services like the commercial and the national broadcasters have the whole of the viewing audience to account for.[50]

Classification of music videos under the National Classification Scheme

9.51 The committee heard that, even in cases where music videos are classified in accordance with the *Guidelines for the Classification of Films and Computer Games*, as is generally the case under broadcasting codes of practice, there remains a risk of overly sexual content within the G and PG ratings. Speaking about the classification of music videos by the Classification Board, FamilyVoice Australia noted:

> Classification guidelines for films, in dealing with the element of sex, perhaps fail to take into account fully the issue of 'sexualised imagery' and action. Dancers in a music video do not normally engage in or even explicitly simulate sexual acts. However, the overall nature of the video can be highly sexualised. Because music is such a powerful influence on children parents are rightly concerned about the overall impact of repeated viewing of such material by younger children.[51]

9.52 The Australian Council on Children in the Media also argued that the current classification of film clips using guidelines similar to the National Classification Scheme does not 'catch' the depictions that cause concern:

> Such depictions include partially clad females dancing erotically, some sadism, violence and degradation, and have an outcome of involving

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49 *Committee Hansard*, 7 April 2011, p. 25.

50 *Committee Hansard*, 7 April 2011, p. 25.

51 FamilyVoice Australia, *Submission 15*, p. 19.

> children in the trappings not just of adult sexuality but of destructive and exploitative adult sexuality. On the other hand, the present classification criteria revolve around depictions of nudity, sexual activity and sexual references. These fail to prevent widespread screening of sexualized images.[52]

9.53 As a result, submissions and witnesses argued for a significant tightening of the guidelines used to classify music videos to combat the sexualisation of children and objectification of women. This subject is addressed further in Chapter 11.

Case study

9.54 MSA provided the committee with an example of the difficulties in making a complaint about an objectionable music video.

9.55 The example relates to the screening of the uncut video of the song 'Girls on Film' by Duran Duran, which features some nudity and eroticised content. Mr Paul Hotchkin from MSA observed the music video playing at a McDonalds restaurant in Western Australia, apparently as part of the restaurant's use of the MAX channel, available on subscription television.[53] Mr Hotchkin described his experience upon attempting to make a complaint:

> I immediately sent a letter of complaint by registered express mail direct to McDonald's head office, with no reply. When we complained to the store directly, we were told it was company policy to screen the MAX music video channel.
>
> I then emailed the ACMA, who suggested I contact ASTRA or the Classification Branch of the Attorney-General's Department. ASTRA said I should complain to Foxtel, which I did, but I have still had no reply. Someone from the Classification Branch actually phoned me and said they had no record of any Duran Duran Girls on Film video that had a rating of higher than PG, which to me meant they only had a record of the censored version.[54]

9.56 The committee believes that Mr Hotchkin's experience highlights the frustration held by many members of the public with respect to complaint mechanisms. As Mr Hotchkin stated:

> When we explain to people that there is a complaints process and explain what steps to take, we never hear from them again—even after we have asked them to keep us informed of their progress. Even I have personally experienced the futility of it firsthand. We believe the complaints process is

52 Australian Council on Children and the Media, *Submission 44*, p. 6.

53 Media Standards Australia, answer to question on notice, received 21 April 2011.

54 *Committee Hansard*, 7 April 2011, p. 36.

> generally too hard for the public and a lot of complaints are flying under the radar.[55]

9.57 This led Mr Hotchkin to suggest the establishment of special 'one-stop' independent complaints department to cover a range of media, in order to simplify the complaints process.[56]

9.58 The ACMA explained its handling of MSA's complaint:

> 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...advising MSA of this.[57]

Recorded music

9.59 The Australian Recorded Industry Association (ARIA) and the Australian Music Retailers Association (AMRA) are jointly responsible for the ARIA/AMRA Recorded Music Labelling Code of Practice (ARIA/AMRA Labelling Code), which applies to audio-only recordings in various formats.[58]

9.60 The ARIA/AMRA Labelling Code adopts a three-tiered labelling regime:

- Level 1: 'Warning: Moderate impact—coarse language and/or themes': for material that contains infrequent aggressive or strong coarse language; or moderate-impact references to drug use, violence, sexual activity or themes;
- Level 2: 'Warning: Strong impact—coarse language and/or themes': for material that contains frequent aggressive or strong coarse language or strong-impact references to, or detailed description of, drug use, violence, sexual activity or themes; and
- Level 3: 'Restricted: High impact themes—not to be sold to persons under 18 years': for material that contains graphic description of drug use, violence, sexual activity or very strong themes, which have a very high degree of intensity and which are high in impact.[59]

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55 *Committee Hansard*, 7 April 2011, p. 36.

56 *Committee Hansard*, 7 April 2011, p. 36.

57 The Australian Communication and Media Authority, answer to question on notice, received 13 May 2011.

58 ARIA and AMRA, *Submission 52*, p. 1. The formats specifically mentioned in the code include CDs, cassettes and records. The ARIA/AMRA Recorded Music Labelling Code of Practice (ARIA/AMRA Labelling Code) does not include music videos.

59 ARIA, *Labelling Code*, http://aria.com.au/pages/labelling-code.htm, (accessed 21 December 2010).

9.61 The ARIA/AMRA Labelling Code requires all products released or sold by ARIA or AMRA members—whether imported or local—to be labelled if it is appropriate to do so.[60]

9.62 Recorded material exceeding Level 3 is not permitted to be released and/or distributed by ARIA members or sold by AMRA members. This includes recordings containing lyrics which promote, incite, instruct or exploitatively or gratuitously depict drug abuse, cruelty, suicide, criminal or sexual violence, child abuse, incest, bestiality or any other revolting or abhorrent activity in a way that causes outrage or extreme disgust.[61] The committee was informed that, under the current ARIA/AMRA Labelling Code, no recordings have ever been included in the 'not to be sold' category.[62]

9.63 The ARIA/AMRA Labelling Code is approved by the Standing Committee of Attorneys-General (SCAG).[63]

9.64 In 2002, the then Attorney-General, the Hon Daryl Williams AM QC MP, described the legal status of the ARIA/AMRA Labelling Code as follows:

> The guidelines are neither a law nor a by-law…[T]hey exist as part of the industry-regulated ARIA scheme for labelling audio recordings with explicit lyrics. The effectiveness of the ARIA scheme is monitored by Commonwealth, State and Territory Ministers with classification responsibilities. Ministers have recently required ARIA to amend the ARIA Code to prohibit the sale to minors of audio recordings carrying the strongest ARIA warning label…[T]he Classification Act does not provide for the classification of audio recordings unless they also contain visual material.[64]

9.65 AMRA administers a Complaints Handling Service for handling and resolving all complaints relating to the classification, labelling and/or sale of recorded material.[65] Complaints are resolved by consultation with relevant retailers, either directly, or through ARIA.[66] If ARIA or AMRA members fail to cooperate with the scheme, they may be expelled from their respective organisation.[67]

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60 ARIA and AMRA, *Submission 52*, p. 6.

61 ARIA and AMRA, *Submission 52*, pp. 14-15.

62 Mr Ian Harvey, AMRA, *Committee Hansard*, 25 March 2011, p. 26.

63 ARIA and AMRA, *Submission 52*, p. 2.

64 The Hon. Daryl Williams AM QC MP, Attorney-General, *House of Representatives Hansard*, 17 June 2002, p. 3601.

65 ARIA and AMRA, *Submission 52*, pp 15-17.

66 ARIA and AMRA, *Submission 52*, p. 16.

67 ARIA and AMRA, *Submission 52*, p. 17.

9.66 The ARIA/AMRA Labelling Code also establishes a Music Ombudsman to assist members of both AMRA and ARIA mediate any unresolved complaints. The Music Ombudsman provides an annual report to the Standing Committee of Attorneys-General on the operation of the ARIA/AMRA Labelling Code.[68]

Effectiveness of the ARIA/AMRA Labelling Code

9.67 Mr Ian Harvey from AMRA was of the opinion that the ARIA/AMRA Labelling Code is working well. He noted that, in 2010, 358 of approximately 5,800 recordings released or sold by ARIA and AMRA carried a warning label.[69] Additionally, he noted that the complaints service took between five and 10 complaints per annum that required action.[70] Accordingly:

> To date we believe the code has been an effective tool, or as an effective tool as can be created, to provide consumers with the appropriate advice regarding the product that they are picking up in stores. The code of course is aligned to the National Classification Scheme in that our level 1, 2 and 3 labelling regime follows the same criteria and is applied to the extent that it can given that it is only audio, as the M, MA and R18+ classifications are applied to film and other media.[71]

9.68 The ARIA/AMRA Labelling Code complaints mechanism is supported by a Recorded Music Labelling Code Ombudsman. However, in her evidence to the committee the Ombudsman, Mrs Una Lawrence, noted that it was rare for complaints to be escalated to her level. In describing her role, Mrs Lawrence stated:

> I really do two things for ARIA and AMRA. I prepare a sort of overview report of the operation of the whole scheme on an annual basis, and that is submitted to [the Standing Committee of Attorneys-General]. I also act as an appeal/complaints review person. In the time in which I have been involved with the scheme, which is since 2003, only one person has actually chosen to escalate a complaint to me. So, that has not been a very onerous part of my role, but on that occasion the complaint was upheld.[72]

9.69 Mr Harvey from AMRA informed the committee that as the ARIA/AMRA Labelling Code has matured, it has become entrenched in the culture of the industry. This industry awareness has improved overall compliance. For example, retailers who receive an unlabelled product that they believe should be labelled often inform AMRA as a matter of course.[73]

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68 ARIA and AMRA, *Submission 52*, p. 17.

69 *Committee Hansard*, 25 March 2011, p. 14.

70 *Committee Hansard*, 25 March 2011, p. 15.

71 *Committee Hansard*, 25 March 2011, p. 15.

72 *Committee Hansard*, 25 March 2011, p. 17.

73 *Committee Hansard*, 25 March 2011, p. 21.

9.70 Mr Harvey also noted that artists themselves are aware of the scheme and seek to comply with classification standards:

> One of the services that we offer is an advisory group within ARIA and AMRA. On a number of occasions we have been asked to sit to look at a particular product, and to look at an artist's work. They are concerned that they might be heading towards the R level restrictions. They do not want to be restricted, so they have sought some advice on how to effectively tone it down so that only a level 2 label is applied. The artists do self-censure from time to time once they actually understand the code themselves. Others, of course, might see it as a status raising mark to have an R level restricted recording. It depends on the artist.[74]

Case study

9.71 The submissions of Collective Shout and FamilyVoice Australia both referred to a song by Cannibal Corpse entitled 'Stripped, Raped and Strangled' as an example of a recording that is available in Australia under the ARIA/AMRA Labelling Code, albeit subject to a Level 3 Warning. The song lyrics graphically describe the serial rape and murder of young women.[75] Collective Shout argued:

> It would be appropriate for the classification of music lyrics to become part of the national classification scheme with guidelines which more effectively exclude form release or sale lyrics which celebrate sexual violence against women.[76]

9.72 ARIA responded to FamilyVoice's submission in relation to the lyrics of 'Stripped, Raped and Strangled' stating:

> [T]he fact is that in relation to the particular Cannibal Corpse release cited by FamilyVoice Australia, this release may not categorically be refused classification under the [ARIA/AMRA Labelling] Code. Each release must be reviewed and classified on the basis of the product supplied to the particular ARIA or AMRA member. In the instance cited, there was no cover artwork, the lyrics were not reproduced and the vocals are indecipherable. Based on the product that was supplied for classification it is difficult to find anything offensive in either of these acts if you are just listening to the recording or even watching them on YouTube. It is difficult to be offended when you have no idea of what is being said.[77]

9.73 A Cannibal Corpse album released prior to the introduction of the ARIA/AMRA Labelling Code featured a lyric sheet as part of the album artwork. As album artwork is a submittable publication under the National Classification Scheme, it was assessed by the Classification Board and deemed Refused Classification

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74 *Committee Hansard*, 25 March 2011, p. 23.

75 Collective Shout, *Submission 65*, p. 18; FamilyVoice Australia, *Submission 15*, p. 20.

76 Collective Shout, *Submission 65*, p. 18.

77 ARIA and AMRA, answers to questions on notice, received 29 April 2011.

because of the printed lyrics. In response, the band redesigned the album artwork, eliminating the lyric sheet, which was then passed by the Classification Board.[78]

9.74 Despite the fact that the audio lyrics remain unchanged, the album is allowed to be sold under the ARIA/AMRA Labelling Code because the lyrics are unintelligible.[79] As Mr Harvey explained:

> You have to understand that you cannot actually understand the lyric that is being sung in Cannibal Corpse. It is just vocal noise; you cannot discern the words, and this is quite important. Importantly therefore, we cannot actually classify what we cannot understand. It is English, but absolutely unintelligible.[80]

9.75 Mr Harvey and Mrs Lawrence emphasised to the committee that, despite the lyrics being available on internet websites, under the terms of the ARIA/AMRA Labelling Code, audio recordings can only be classified using the material included with the album itself.[81] ARIA and AMRA defended the application of the ARIA/AMRA Labelling Code in this way:

> [I]t is procedurally unfair if we...take the view that we should refuse classification for a particular release on the basis of the previous releases by an artist. Each release must be reviewed at face value and each Cannibal Corpse release (or in fact any release by an artist) would be reviewed and classified in accordance with the principles of the [ARIA/AMRA Labelling] Code.[82]

9.76 ARIA and AMRA noted that Cannibal Corpse are 'not considered mainstream artists', have never entered the ARIA top 100 singles or albums chart in Australia, and 'are not representative of the vast majority of recorded music in Australia'.[83]

9.77 Aside from extreme cases such as Cannibal Corpse, FamilyVoice Australia noted that songs by mainstream artists such as Kid Rock, the Pussycat Dolls, Ludacris and 50 Cent include lyrics that sexualise or degrade women.[84]

9.78 Another example, drawn to the attention of the committee by Salt Shakers, was the classification of the album 'Loud' by Rihanna. Salt Shakers noted that three of

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78 Mr Ian Harvey, AMRA, *Committee Hansard*, 25 March 2011, p. 23.

79 Mr Ian Harvey, AMRA, *Committee Hansard*, 25 March 2011, p. 23.

80 *Committee Hansard*, 25 March 2011, p. 23. However, the committee understands that there are versions of this Cannibal Corpse song where the lyrics of the song are discernable.

81 *Committee Hansard*, 25 March 2011, p. 23.

82 ARIA and AMRA, answers to questions on notice, received 29 April 2011.

83 ARIA and AMRA, answers to questions on notice, received 29 April 2011.

84 FamilyVoice Australia, *Submission 15*, p. 20.

the songs on the album include sexual references, while others have specific descriptions of violence.[85] As Salt Shakers submitted:

> To find out what Loud would be rated by the ARIA Labelling Code of Practice one cannot turn to the ARIA website. The website states the three levels as Level 1: Moderate, Level 2: Strong, Level 3: Restricted but does not have a way to see what albums are actually rated.
>
> Even calling up ARIA General Inquiries did not help in determining the classification of this album.
>
> Loud is available on both Sanity and JB Hi Fi websites for purchase but neither express any classification whatsoever. Only by physically looking at the album or, in this case, getting a Sanity employee to observe the album cover (we phoned the store and the employee couldn't tell us without going and looking at the album cover and reporting the 'rating' to us) did we discover that Loud is classified PG for "infrequent moderate coarse language".[86]

9.79 Salt Shakers and FamilyVoice Australia were therefore in favour of strengthening the existing code, including the possibility of incorporating music in the National Classification Scheme.[87]

Online delivery of music

9.80 Another significant issue raised in the context of recorded music was the increasing prevalence of online music stores. Mr Harvey informed the committee that the ARIA/AMRA Labelling Code does not apply to online music stores, creating a gap in classification:

> This is the difficult issue for us at both ARIA and AMRA levels. The two principal suppliers of online digital product into this market are members of neither organisation. There is no reason for them to be members of either organisation. Their content is held offshore, it is not domestic, although one of the companies is an Australian company. BigPond's content is held in Singapore, as I understand; they use an international provider and they put a BigPond front end to it. iTunes, of course is a US company and I think their servers are stored in Canada. We have no leverage with those organisations to deliver either our code, or probably more pertinently, the National Classification Scheme.[88]

9.81 Telstra clarified this point for the committee, stating that all of its media content is streamed from servers in Australia. As such, it complies with both Schedule 7 of the *Broadcasting Services Act 1992* and the Content Services Code

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85 Salt Shakers, *Submission 2*3, pp 13-14.

86 Salt Shakers, *Submission 2*3, p. 14.

87 Salt Shakers, *Submission 23*, p. 14; FamilyVoice Australia, *Submission 15*, p. 22.

88 *Committee Hansard*, 25 March 2011, p. 16.

when providing such content.[89] The committee notes that, while the Content Services Code and AMRA/ARIA Labelling Code are similar in nature, there may be some discrepancies.

9.82 In regards to iTunes, Mr Harvey informed the committee that iTunes manages its own classification regime, which includes a warning about explicit content next to song titles.[90]

9.83 In this context, MSA outlined its concerns about the apparent lack of regulation applying to online music stores:

> Frustration is growing, in many areas, in relation to the increasing amount of music being downloaded from iTunes and similar services. No alerts are provided, however, where offensive lyrics are involved, and this needs to be urgently addressed. Parents are now giving out alerts among their own networks, but the whole issue is still difficult for them to police in their own homes.[91]

89 Telstra, answer to question on notice, received 21 April 2011.

90 *Committee Hansard*, 25 March 2011, p. 18.

91 Media Standards Australia, *Submission 21*, p. 23.