

21 April 2011

Ms Ann Palmer  
Principal Research Officer  
Senate Legal and Constitutional Affairs Committee  
Parliament House  
CANBERRA ACT 2600

Dear Ms Palmer

**Senate Legal & Constitutional Committee Inquiry into the National Classification Scheme**

ASTRA provides the following information in relation to questions on notice as per your email of 18 April 2011:

**1. *Complaints made to the Australian Communications and Media Authority (ACMA) since 1999 regarding subscription television classification matters, and the number of those upheld***

Since its establishment on 1 July 2005, the ACMA has conducted 13 investigations of complaints regarding classification of programming provided by a subscription television service. 7 of those complaints were upheld. The results of all investigations by the ACMA of complaints about broadcasting services are published in ACMA's Annual Report, available on the ACMA website:

[http://www.acma.gov.au/WEB/STANDARD/pc=ACMA\\_PUBS\\_NDX](http://www.acma.gov.au/WEB/STANDARD/pc=ACMA_PUBS_NDX)

Before the establishment of the ACMA, investigations were undertaken by the Australian Broadcasting Authority (ABA). According to available ABA Annual Reports supplied by the ACMA to ASTRA, no investigations were made by the ABA from July 2000 to June 2005 relating to complaints regarding classification of programming provided by Australian subscription television licensees.

**2. *Availability of sexually explicit material to Indigenous communities in the Northern Territory***

R18+ material may be viewed on subscription television on a limited number of very specific narrowcast channels and services:

- Programs on the "Adults Only" services are generally rated R18+ and can only be viewed on a pay per view basis, or by monthly subscription;
- A very small number of programs (c9-10 per annum) on the World Movies channel may be classified R18+, are only available via additional subscription to the movie tier, and are screened strictly at responsible times;
- A very small number of programs (c3-4 per annum) available on the FOXTEL or AUSTAR Box Office service may be rated R18+, and are only available on a pay per view basis.

AUSTAR provides subscription television services to the Northern Territory.

ASTRA reiterates its evidence to the Committee that R18+ rated programs on the Adults Only channels on subscription television are only accessible through a pre-established PIN number. ASTRA is advised that the parental lock functionality in AUSTAR set top boxes is factory set at the MA classification; any subscriber who wishes to access R18+ content will be required to enter the pre-established PIN before accessing such content. This familiarises subscribers with the parental lock process, which prevents a child who lands on an 'Adults Only' movie channel to obtain access to an AO movie unless they enter a pre-established PIN number into a unique screen that precedes the movie.

ASTRA also notes that, in relation to the comments of Senator Crossin, there has been no mandate for AUSTAR to block channels in any part of Australia. Additionally, the *Little Children are Sacred Report* made no recommendations in relation to restricting remote Indigenous communities from accessing certain subscription television services. The Report did recommend (on page 200) that, in relation to the accessibility of sexually explicit content in remote Indigenous communities, an education campaign be conducted to inform communities of:

- the meaning of and rationale for film and television show classifications; and
- the prohibition contained in the Criminal Code making it an offence to intentionally expose a child under the age of 16 years to an indecent object or film, video or audio tape or photograph or book and the implications generally for a child's wellbeing of permitting them to watch or see such sexually explicit material.

Since 2008 AUSTAR has been working with the Department of Families, Housing, Community Services and Indigenous Affairs on an education program for Indigenous Communities to better inform adults in the Community about AUSTAR's services and the parental control technology they can use to restrict their children's access to programming that is unsuitable for them to watch.

ASTRA is further advised that if AUSTAR discovers that any of its customers are misusing its services by allowing children to watch R18+ rated television content, AUSTAR would not hesitate to cancel that customer's AUSTAR service for breach of the conditions under which they receive it.

### **3. *Response to the Report of the Senate Environment, Communications and the Arts Committee Inquiry into the sexualisation of children in the contemporary media environment***

The Report made two recommendations in relation to broadcasters:

- Recommendation 4: The Committee recommends that broadcasters review their classification of music videos specifically with regard to sexualising imagery.
- Recommendation 5: The Committee recommends that broadcasters consider establishing dedicated children's television channels.

In relation to Recommendation 4, ASTRA refers to its written submission to the Committee for this inquiry in relation to the terms of reference (i) and (k). The ASTRA Codes incorporate the

Guidelines for the Classification of Film and Computer Games, the same guidelines used by the Classification Board. One of the classifiable elements taken into consideration when classifying content is 'sex'. This classifiable element of 'sex' includes sexual references (verbal and visual) and sex scenes. Sexualised imagery, such as provocative dancing, is an example of a visual sexual reference. Therefore, 'sexualised imagery' is taken into consideration in forming a classification decision under the Classification Guidelines.

In relation to Recommendation 5, ASTRA notes that there are eight dedicated children's channels available on the AUSTAR and FOXTEL platforms: Boomerang, Cartoon Network, CBeebies, Disney Channel, KidsCo, Nick Jr, Nickelodeon & Playhouse Disney (soon to be renamed Disney Jr).

#### **4. Number of complaints relating to classification matters received annually by subscription television broadcasters**

Under the Subscription Broadcast Television Codes of Practice, subscription television licensees are required to maintain a record of written complaints received and make a summary available to ACMA annually or on request.

In 2010, subscription television broadcasting licensees received 21 written complaints related to classification matters, less than 1% of the total number of written complaints to subscription television licensees under the Codes.

#### **5. Details of code breaches determined by the ACMA in relation to classification matters on subscription television**

There have been 7 investigations by the ACMA relating to classification matters that have led to a determination that an ASTRA licensee member has breached the relevant Codes of Practice. These are detailed in the table below.

Licensee	Title/program or topic	Reason for breach	Date of Publication
FOXTEL	<i>How To Be A Property Developer</i>	Language in PG	15 Nov 2006
FOXTEL	<i>The Family Guy</i>	Sexual references and violence in PG	29 Sep 2008
FOXTEL	<i>The Wonderful World of Sex - Episode 2026</i>	Sexual content in MA15+	27 Aug 2009
FOXTEL	<i>The Wonderful World of Sex - Episode 2006</i>	Sexual content in MA15+	27 Aug 2009
FOXTEL	<i>Cathouse - Hot to Trot</i>	Sexual content in MA15+	27 Aug 2009
AUSTAR	<i>Cathouse - Never Too Late to Learn and Superstars</i>	Sexual content in MA15+	27 Nov 2009
FOXTEL	<i>Turandot</i>	Violence of mild impact in G	28 Feb 2011

Further details, including the ACMA investigation reports, are available on the ACMA website at: [http://www.acma.gov.au/WEB/STANDARD/pc=PC\\_310292](http://www.acma.gov.au/WEB/STANDARD/pc=PC_310292)

## **6. Subscription television viewer numbers, including programs viewed by children**

### **(i) Subscription television viewing generally**

Subscriber numbers have steadily increased since subscription television first commenced in Australia in 1995. Currently, 7.2 million people or 34% of the Australian population have subscription television in their homes.

In the year to date for 2011, subscription television has had a 22.7% share of viewing in metropolitan homes, and 18.6% share of viewing in regional homes.

### **(ii) Program viewing by children 13-17 years:**

In the year to date for 2011, the following channels have the highest subscription television audience share for children aged 13-17 years:

<b>Rank</b>	<b>Channel</b>	<b>Share to STV %</b>
1	FOX8	14.4
2	Disney Channel	12.1
3	Comedy Channel	6.2
4	Nickelodeon	5.5
5	MTV	3
6	TV1	2.8
7	Arena	2.5
8	FOX SPORTS 3	2.5
9	FOX SPORTS 1	2.5
10	111 Hits	2.4

The following programs have been the most watched on subscription television by children aged 13-17 years in the year to date for 2011:

<b>Rank</b>	<b>Program</b>	<b>Channel</b>
1	FAMILY GUY	FOX8
2	THE SIMPSONS	FOX8
3	THE POWERPUFF GIRLS	Cartoon Network
4	ADVENTURE TIME	Cartoon Network
5	CAMP LAZLO	Cartoon Network
6	PHINEAS AND FERB	Disney Channel
7	SPONGEBOB SQUAREPANTS	Nickelodeon
8	HANNAH MONTANA FOREVER	Disney Channel
9	BEN 10	Cartoon Network
10	GOOD LUCK CHARLIE	Disney Channel

Note: these are the highest viewed individual program broadcasts in year to date, with 24,000-30,000 viewers aged 13-17 years.

(iii) Program viewing by children under 13 years:

In the year to date for 2011, the following channels have the highest subscription television audience share of children under 13 years:

Rank	Channel	Share to STV %
1	Disney Channel	12.7
2	Nick Jr.	11.5
3	Nickelodeon	9.4
4	Cartoon Network	8.1
5	FOX8	7.6
6	Playhouse Disney	7.6
7	Boomerang	3.6
8	CBeebies	3.3
9	LifeStyle	1.5
10	FMC - Family Movie Channel	1.4

The following programs have been the most watched on subscription television by children under 13 years in the year to date for 2011:

Rank	Program	Channel
1	DORA THE EXPLORER	Nick Jr.
2	HANNAH MONTANA FOREVER	Disney Channel
3	MATILDA	Disney Channel
4	DORA THE EXPLORER	Nick Jr.
5	DORA THE EXPLORER	Nick Jr.
6	SPONGEBOB SQUAREPANTS	Nickelodeon
7	CURIOUS GEORGE	Nick Jr.
8	DORA THE EXPLORER	Nick Jr.
9	DORA THE EXPLORER	Nick Jr.
10	WOW! WOW! WUBBZY!	Nick Jr.

Note: these are the highest viewed individual program broadcasts year to date, with 56,000-64,000 viewers aged under 13 years.

**7. Details of complaints relating to classification of music videos**

As noted in the answer to Question 4 above, in 2010 ASTRA licensee members received a total of 21 written complaints relating to classification matters. ASTRA does not have further information on the program content that was the subject of the written complaint.

### **Additional information**

ASTRA would also like to take this opportunity to provide some additional context and clarification in relation to one of the issues raised during its appearance before the Committee.

Senator Crossin asked if subscription television broadcasters relied on the Classification Board for the classification of films shown on the World Movies channel and the Adults Only channels (p.23 of the transcript).

As detailed in ASTRA's submission to the Committee, all television broadcasters, including subscription television broadcasters, are responsible for classifying the programs they broadcast. Requirements for classification of content broadcast by subscription television services are in the Subscription Broadcast Television and Subscription Narrowcast Television codes of practice (the ASTRA Codes). Classification categories under the National Classification Code and the Classification Guidelines are incorporated into the ASTRA Codes.

Where a film has previously been classified by the Classification Board (for example, where it has been submitted to the Classification Board prior to a cinematic release), and that film is to appear unedited on a subscription television channel, the classification of that film by the subscription television broadcaster will be consistent with the previous determination of the Classification Board.

Please feel free to contact myself or Simon Curtis, Policy and Regulatory Affairs Manager, on (02) 9776 2684 if you have any queries regarding the above, or if ASTRA can be of any further assistance to the Committee.

Yours sincerely,

Petra Buchanan  
Chief Executive Officer