

Talked (via teleconf)
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Senate Legal & Con. Ref
Committee
Tabled by: Australian Council
of Children & Media

A CROC of questions: Obstacles and challenges of implementing children's rights in relation to media use

Adaptation of presentation by Professor Elizabeth Handsley to *Scared, Sleepless and Hostile Conference*, Sydney, 1 March 2011

The issues of children's media use and well-being

- Scared
- Sleepless
- Hostile
- Social, emotional, physical development
- Stalking (?)
- Also consumerism, obesity, 'skankification'

Legal responses: actual

- Classification law
- Broadcasting regulation (including online services)
 - Legislation
 - Children's Television Standards
 - Industry codes
- Telecommunications regulation
- Advertising regulation
 - Legislation
 - Industry codes

A few gaps

- Developmental stages – the current classification does nothing to recognise the literature on children's development through different stages
- Contextual justification – much material is given a free pass because it is justified by the context – this applies particularly to violent games
- Frequency (long scenes in a long film?) – the impact of classifiable elements is sometimes seen as lessened when they appear in a longer film. This does not make sense if one thinks of it from the perspective of how the relevant scenes would affect a child.
- Realistic/stylised; fantasy/glamorised; consequences of violence – these terms describe sub-categories of violence where the NCS goes against the literature. Stylised violence is seen as having less impact, whereas the literature would suggest we should be more concerned with depictions that do not show the real-life consequences of the violence.

Fantasy violence is seen as somehow lesser in impact, whereas the literature would suggest glamorised violence (which fantasy violence often is, eg in Harry Potter) is of more concern.

- Scary material (cf violent) – some material is not exactly violent, but still terrifying. This is not addressed anywhere in our system.

- News and current affairs – not classified at all under the Commercial Television Industry Code of Practice.

- Conditions of use, including over-use – this might not be strictly a concern of a classification system, but it should not be ignored, especially in relation to games.

Legal responses: possible

- Children's rights

- Generally

- In relation to media

- Children's consumer law

Obstacles: political pressure

- Case study: sexualised video clips – the commercial television industry submitted to the Senate Standing Committee Inquiry on Sexualisation of Children in the Media that there had been no complaints on this. The Standing Committee found that there were community concerns and recommended that the broadcasters review their approach to classifying this material. When the government released its response, some of its most detailed comments were reserved for this recommendation, where it more or less mouthed the industry line on there having been no complaints. When FreeTV reviewed its Code shortly thereafter, not a single word was changed relating to classification of this material. This shows how much political power the industry has.

- Fragmentation of the 'yes' case: a number of different groups support reforms to protect children further, from a variety of perspectives.

- Children's professionals

- Christian conservatives

- Atheist feminists ...

- Inconsistencies in the 'no' case – using the R18+ games debate as an example:

- Industry – must be primarily interested in legalising material currently not legal

–Gamers – appear to be primarily interested in having recognition for their adulthood

Obstacles: ideological objections

- Adult freedom
- Media freedom
- Industry profits
- Parental responsibility
- Child-hardening – the idea that children live in a world full of violent media and degrading depictions, and just need to get used to it!

Obstacles: technological developments

- Mobile platforms
- Offshore providers
- Anonymity

Obstacles: doctrinal fragmentation

- 3 broad paradigms:
- Classification (offence/moral guardianship)
- Broadcasting (corporate obligation/debt based on licence to access scarce public resource)
- Consumer protection (corporate abuse of power) – this is the one that best captures the issues in this field

Insights from children's law

- Duty to protect (cF avoiding paternalism)
- Interests paramount (eg family law)
- Precautionary principle ie act when there is sufficient evidence of a risk to children's well-being, not when incontrovertible
- Take children on own terms

A children's media law based on UNCROC

- Special care and assistance for childhood (Preamble)
- Recognise importance of family harmony (Preamble) – need to support parents, not just leave them to get on with it
- Children's interests a primary consideration in all actions concerning them, public and private (Art 3(1))
- Positive measures to protect well-being (Art 3(2))

- Including from parents (Art 19) – recognises parents aren't always up to the task, and may need some support
- Balancing respect for parents, enforcement of duties and assistance to them (Art 3(2); Art 5; Art 18(2); Art 24(2)(f)) – a more satisfying and nuanced model of parenthood than is found in the popular 'they should just take responsibility' model we find in public discourse
- Right to 'survival and development' (Art 6) – law needs to recognise children are developing – this is an important part of their special need
- Right to freedom of expression, including to seek, receive and impart information and ideas of all kinds, subject to considerations of, among other things, public health (Art 13)
- Protection of the child from information and material injurious to his or her well-being (Art 17 (e))
- bearing in mind children's freedom of expression (Art 13) and parents' responsibilities (Art 18)

Principles and challenges: effectiveness

- Clarity of definitions, coverage: these need to be considered closely
- Enforcement (including resources)
- Independence and non-capture of enforcing bodies
- Public information and education
- Not undermined by marketing
- eg M-rated pyjamas – frequently M-rated movies are marketed to very young children through merchandise. This needs to be taken seriously because it undermines the message to parents from the classification, especially considering it usually happens long before the movie is released.

Principles and challenges: seamlessness

- Same rules for all platforms
- And/or clear articulation of reasons for difference – there may be reasons for treating mobile platforms differently from DVDs, but if so these need to be spelt out and subject to ongoing debate and review.
- Based on children's needs not, on historical arrangements, political expediency etc
- One enforcement body

Principles and challenges: evidence base

- Building evidence into process at each of the following stages:
 - Framing of rules
 - Operation of rules

–Updating of rules

•How much evidence? – at what point should the classification system be satisfied that action is justified?

•Standard of proof a familiar legal concept

–Balance of probabilities for civil cases

–Beyond reasonable doubt for criminal cases

–NEVER absolute certainty – yet this is what the government seems to be expecting in relation to electronic games. In spite of a strong body of research saying that there is ground for caution, the government is acting on the basis of a finding that the evidence is ‘inconclusive’. We have locked people up for the term of their natural lives on less evidence than ‘conclusive’.

Take-home message

•Laws are determined by history, not by best interests of children

•Taking children’s interests as central concept changes things fundamentally

•Need to address the evidence on influence of media on children’s well-being, and theorise parenting

