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SENATE

LEGAL AND CONSTITUTIONAL AFFAIRS LEGISLATION COMMITTEE

Reference: Australian film and literature classification scheme

THURSDAY, 7 APRIL 2011

SYDNEY

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SENATE LEGAL AND CONSTITUTIONAL AFFAIRS

REFERENCES COMMITTEE

Thursday, 7 April 2011

Members: Senator Barnett (Chair), Senator Crossin (Deputy Chair) and Senators Furner, Ludlam, Parry and Trood

Participating members: Senators Abetz, Adams, Back, Bernardi, Bilyk, Birmingham, Mark Bishop, Boswell, Boyce, Brandis, Bob Brown, Carol Brown, Bushby, Cameron, Cash, Colbeck, Coonan, Cormann, Eggleston, Faulkner, Ferguson, Fielding, Fierravanti-Wells, Fifield, Fisher, Forshaw, Hanson-Young, Heffernan, Humphries, Hurley, Hutchins, Johnston, Joyce, Kroger, Ian Macdonald, McEwen, McGauran, Marshall, Mason, Milne, Minchin, Moore, Nash, O'Brien, Payne, Polley, Pratt, Ronaldson, Ryan, Scullion, Siewert, Stephens, Sterle, Troeth, Williams, Wortley and Xenophon

Senators in attendance: Senator Barnett and Senator Crossin

Terms of reference for the inquiry:

To inquire into and report on:

a) the use of serial classifications for publications;

b) the desirability of national standards for the display of restricted publications and films;

c) the enforcement system, including call-in notices, referrals to state and territory law enforcement agencies and follow-up of such referrals;

d) the interaction between the National Classification Scheme and customs regulations;

e) the application of the National Classification Scheme to works of art and the role of artistic merit in classification decisions;

f) the impact of X18+ films, including their role in the sexual abuse of children;

g) the classification of films, including explicit sex or scenes of torture and degradation, sexual violence and nudity as R18+;

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

i) the application of the National Classification Scheme to music videos;

j) the effectiveness of the 'ARIA/AMRA Labelling Code of Practice for Recorded Music Product Containing Potentially Offensive Lyrics and/or Themes';

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

l) the interaction between the National Classification Scheme and the role of the Australian Communications and Media Authority in supervising broadcast standards for television and Internet content;

m) the effectiveness of the National Classification Scheme in dealing with new technologies and new media, including mobile phone applications, which have the capacity to deliver content to children, young people and adults;

n) the Government's reviews of the Refused Classification (RC) category; and

o) any other matter, with the exception of the introduction of a R18+ classification for computer games which has been the subject of a current consultation by the Attorney-General's Department.

WITNESSES

Committee met at 9.03 am

CAMERON, Ms Fiona, Chief Operating Officer, Screen Australia

DEANER, Mr Matthew, Manager, Strategy and Research, Screen Australia

CHAIR (Senator Barnett)—Good morning. This is the second public hearing for the Senate Legal and Constitutional Affairs References Committee inquiry into Australia's film and literature classification scheme. The inquiry was referred to the committee by the Senate on 16 November 2010 for inquiry and report by 30 June 2011. Terms of reference of the inquiry are on the committee's website. The committee has received 62 submissions for this inquiry, the majority of which have been authorised for publication and are available on the committee's website.

I remind all witnesses that in giving evidence to the committee they are protected by parliamentary privilege. It is unlawful for anyone to threaten or disadvantage a witness on account of evidence given to a committee and such action may be treated by the Senate as a contempt. It is also a contempt to give false and misleading evidence to a committee. The committee prefers all evidence to be given in public but, under the Senate's resolutions, witnesses have the right to request to be heard in private session. It is important that witnesses give the committee notice if they intend to ask to give evidence in camera. If a witness objects to answering a question, the witness should state the ground upon which the objection is taken, and the committee will determine whether it will insist on an answer, having regard to the ground which is claimed. If the committee is determined to insist on an answer a witness may request that the answer be given in camera. Such a request may also be made at any other time.

Welcome, Ms Cameron and Mr Deaner, and thank you for being here. Screen Australia has lodged submission No. 56 with the committee. Do you wish to make any amendments or alterations to that submission?

Ms Cameron—No, we do not.

CHAIR—We invite you to make an opening statement after which we will have some questions.

Ms Cameron—Thank you for the opportunity. Screen Australia is a federal statutory authority. We commenced operations on 1 July 2008 as the amalgamation of Film Finance Corporation, the Australian Film Commission and Film Australia, so we are coming up to our third birthday only. We are the primary funding body for the Australian screen production industry. Our objectives are to grow demand for Australian content and to support the development of a more commercially sustainable screen industry. Our functions include investing in feature films, documentaries, television drama and children's programs. We also fund development, particularly script development, and we are becoming more involved in digital development and production. In fact, recently we have launched a draft all media fund within this context, which is about developing digital platforms, including games, that can demonstrate a narrative and production of all media content as well.

We also provide data and research to the industry and government and that is the department that my colleague heads up. In that context, it is fair to say that 2011 is formally the year of convergence. It has been talked about for some 20 years, but we really now are in a position where changes in media consumption patterns are a reality. We are in a multiscreen environment and we have more access to more screens which of course begs more content. To demonstrate the sorts of media consumption patterns that we are talking about, you can quite clearly see in the research that TV is still consumed some three hours a day on average by consumers. That makes it a very predominant medium.

Surprisingly, cinema is up with some of the research we have looked at. It surprises me to some extent, but then when you look at where it is up it is less surprising in that it is up with the younger demographic or the psychographic we call young optimists. When you think about why that is the case, it is because they are probably wanting to get out of the house, socialise, get out from underneath their parents and also control the screen rather than have the screen control them. Gaming is also up which is not surprising. As far as watching of films is concerned, predominantly films are watched still through the DVD video rental market. While that is coming down a little, that is still by far how the majority of feature films are watched. Social media users obviously are more likely to game and they are less likely to watch television.

As far as this multiscreen environment is concerned, and more access to more content to more screens, it is very timely that this inquiry is talking about how you classify content, because there is more of it coming from everywhere. Our submission is very limited. As you will see it is one page. We really have just talked about screen content, given that it is our primary function. What we basically are saying is that a consistent national

approach is desirable, regardless of the platform. Broadly speaking, linear content does not change no matter what screen it is presented on. So whether a program is classified MA on video or on feature film or on pay television or on free-to-air television TV, it is MA.

To some extent, there is still some confusion as to how these classifications are labelled. We would ask that consideration be given to more uniformity. It may well be that that provides for one body rather than two; so less subjectivity in some of these decisions. There are examples, and I know that you already have them in your submissions, of one program being classified differently on different mediums. As far as our stakeholders are concerned, who are predominantly the production community, going to different bodies is not only expensive but also administratively burdensome. There is room for more consistency and less administrative difficulties.

I guess that is about the consistent content classification, where appropriate. As far as applying that consistent classification and labelling that on the different screens, there probably is room for flexibility. If you are providing content on mobile phones you may well need to demonstrate proof of age. Once you have proof of age it may well be that you have to label it differently. I do not mean that the look is different; I mean that it might come up on the screen differently, depending on what screen we are dealing with.

As far as the conversion environment is concerned, as I have mentioned, much more content and a demand for much more content means that classifying content becomes really quite a difficult thing to manage. I guess more pressure will come on self-assessment by industry assessors, which we do not think is a bad thing as long as it is underpinned by some form of co-regulatory code of practice that allows the regulator, whoever it might be, to review, audit and spot-check any self-assessment. If they are able to do that rather than assessing upfront, the authority or body will be in good shape to conduct spot-checks, reviews and audits as necessary.

In closing, with more content and more access points, there is a need for a simpler and more consistent process. The world is changing. I guess while you would not want to throw the baby out with the bathwater—because, broadly speaking, the classification system in Australia has served us well—there are rooms for improvement, for simplification and for consistency.

CHAIR—Do you wish to add anything, Mr Deaner? Or are you happy with that introduction?

Mr Deaner—I am happy with that introduction.

CHAIR—Okay, I will kick off the questions. Thank you for your opening remarks. It is obviously very useful for us. We have received your letter and submission. I wanted to go to the research to start with. You mentioned the three hours per day for consumers, I think you said. Are you able to break that down into adults and children? Secondly, what sort of platforms? Was that just television or did it include computers, internet and so on? I do not know if you have that sort of research, but we are interested in whatever you have.

Ms Cameron—We have just undertaken a fairly significant research piece about audience trends: where they are, who they are and where they are going. It will not be released until—

Mr Deaner—On 2 May.

Ms Cameron—There is probably some stuff that we can provide to you embargoed. Broadly speaking, the three hours per day was related to pay and free, and in excess of 95 per cent of the population are watching three hours a day. We can provide and table further information.

CHAIR—Has that gone up or down over the last five or 10 years? Do you have those sorts of figures?

Ms Cameron—Yes, it is very consistent for the last five years.

CHAIR—Do you have figures for children?

Ms Cameron—We do. The figures for children are a little cyclical on the basis that there are content regulations for children's television on free-to-air. They are measured over a three-year period and they go up and down over that period of time. They are pretty stable on the basis that the quota provides for a certain amount to be broadcast. Once again, we can get you that information.

CHAIR—That would be useful if you took it on notice. You mentioned cinema. Can you give us any figures and research on numbers and details regarding watching the cinema?

Ms Cameron—This research program can and we can certainly provide that. As I said, over the last five years it has gone up in the order of three to five per cent. To me this was surprising because you always think cinema is an old medium, but it is an old medium with growth.

CHAIR—Can you tell us what we are likely to get on 2 May—just so we know what is coming?

Mr Deaner—Screen Australia has compiled data from Roy Morgan's single-source data. That looked at participation of people across various screens in 2010, but also looked back at trends from the last five years. The overwhelming trend of the last five years is the addition of new activities to old ones with established distribution points being resilient. My colleague commented about television remaining very strong at three hours a day. The Roy Morgan data considers the participation rates of Australians in various parts of the media. When we talk about cinema being slightly up, we are talking about people participating more in cinema. When we say gaming is up, we mean gaming is up four percentage points to 30 per cent of people, for example. We know that for children in a younger male demographic, as they participate in more social media and more gaming activities, their participation in television drops slightly. Those sorts of changes are evident in the data that we are looking at.

We are also trying to identify within that research project the extent to which people are moving between different platforms, which is very important in the context of the review being undertaken. We are finding that at least 65 per cent of the population are watching content across multiple screens. As you add more screens that percentage drops because it is more complicated, but generally speaking that means that people are watching screen content across different devices, and that is quite an interesting point. What we are trying to do in this exercise is reveal all of these trends. We are releasing the report that identifies a snapshot of Australian society now.

Ms Cameron—That is on 2 May.

CHAIR—That is helpful to know. Thanks again for that. We appreciate your comments regarding uniformity and consistency across different media platforms. I have asked that question to most of the witnesses to date and there has been a reasonably consistent theme in terms of support for uniformity and consistency. You have covered that, for which I am thankful. In terms of the issue of other countries, have you done an analysis of the classification schemes or the censorship laws in other countries? Are you aware of that? If so, are you able to share your knowledge and experience with us?

Ms Cameron—I do not have any detail in that regard.

Mr Deaner—We have not looked into that.

CHAIR—That is fine. Just going back to the screen, Ms Cameron, you were discussing controlling the screen and being able to turn it off and on as and when required. Then you made the comment, 'rather than the screen controlling them.' I thought it was an interesting observation that you shared. Can you tell us a little bit more about the reasons why you spoke in such a way and how controlling the screen is, particularly for kids?

Ms Cameron—I guess I was talking about that psychographic that we have labelled the young optimists, who want their viewing when they want it, on their terms and under their control. That is the demographic that is going to cinema to be social, that is watching online and that may watch less than the three hours—in fact, they do watch less than three hours on the basis that it does not suit them. Rather than being passive and sitting back they are leaning forward and they are the ones who are watching at their time and on their terms. That was more the point. Rather than the screen controlling them, they want to control where they watch the content and when they watch content.

CHAIR—Can you break down how many people are controlling the screen as they see fit, rather than in a passive sense, because the three hours a day seems to be quite a high figure. Is it more passive or is it more pro-active?

Ms Cameron—The three hours is passive because it is TV watching. The demographic that watches less than three hours is younger. I do not know exactly how much but it might be even an hour less a day, and in that time they are well and truly doing things that are more active.

Mr Deaner—I can add to that by saying that the young optimists, in terms of the category of data that we are grouping together, are about 1.5 million people. Their free TV consumption falls to 88 per cent above what was the 96 per cent we were talking about in terms of the average population. It drops away but, as we talked about, they are adding a whole heap of other activities, including social media consumption and other types of screen activities.

CHAIR—You mentioned social media. Do you play a role in any way or do you just do research in terms of social media, Facebook and the like?

Ms Cameron—More about trends analysis? Anything that we fund has to have what we call significant Australian content. That pretty much means that typically it is not social media so to speak. It can come across on a social media forum but it is not going to be social media.

CHAIR—But have you analysis of the social media usage?

Ms Cameron—Once again, it is in the context of that trend analysis.

CHAIR—Excellent, thank you. Your funding of different projects is a reasonably new entity. I am not up-to-date with that and I do not think the committee is either. How much funding do you provide each year and what are the terms and conditions of that funding? Does it apply to the ratings—it has to be above a G or PG or MA or whatever?

Ms Cameron—Broadly speaking, our appropriation is between $80 to $90 million a year. That has been on a bit of a downward trend on the basis that we also regulate the government's producer offset mechanism, which is a tax rebate for television and film production. That was only introduced late 20007. As the producer offset mechanism kicked in, our direct funding reduced, so the offset mechanism is an indirect tax subsidy. The direct funding that Screen Australia provides is direct to the producer. It was $89 million last year. It has come off a high of about $96 million. We provide that to feature film and to television. Our act requires us to have an emphasis on children's programming, documentaries, programs of cultural merit, so the breakdown of the $60 to $80 million that goes out our door is, broadly speaking, $30 million with feature films, $30 million will be television. There is some marketing and development funding as well but within television there is documentary and children's programming. There is no requirement for our funds specifically to be allocated to any particular classification beyond our emphasis on children's content.

CHAIR—Would that be dominant?

Ms Cameron—No, not dominant. It is just part of the television funding and it is also quite cyclical because it is very hard to increase demand in the area of children's television when there is a quota. The chances of any broadcaster going above that quota is very unlikely because it is very hard to monitor children's content. So broadly speaking there is no requirement to fund per classification level.

CHAIR—But before you fund it you would know the classification level which the film or whatever is targeting?

Ms Cameron—Not at the development stage because that is script development so it is very early. When it comes in for production finance, yes, we would broadly know what the classification is going to be.

CHAIR—Are you able to provide a breakdown of the classifications for the products that you fund?

Ms Cameron—Post funding absolutely because once it is broadcast it is classified.

CHAIR—Could you do that on notice and let us know?

Ms Cameron—For what time periods?

CHAIR—The last 12 months would be fine.

Senator CROSSIN—When you talk about needing a uniform classification approach, where do you actually identify or see the inconsistencies?

Ms Cameron—One of the examples that has been used in this committee before has been a program that might be classified MA on television, might be on the website as AV, and might be MA 15+ somewhere else. So from an audience perspective it is not broadly consistent. That is one example. Another example is that for a video to be classified through the Classification Board a DVD, in theory it could get a different classification than on television which may well leave the broadcaster in licence breach.

Senator CROSSIN—How does that happen—same content, just different people applying the rating?

Ms Cameron—Potentially subjective decision making between two bodies can be involved there.

Senator CROSSIN—So if you look at the National Classification Code, are you suggesting two things—that the labelling needs to be consistent between publications, films and games for example, and the descriptors for those labels should be consistent?

Ms Cameron—I believe so, yes.

Senator CROSSIN—So on two fronts there.

Ms Cameron—Yes.

Senator CROSSIN—So an MA15+ in films should be the same as an MA15+ in computer games and should have the same descriptors that classify them as that?

Ms Cameron—Yes, that would provide for good consistency for our stakeholders, the producers, so they knew what they were dealing with and also potentially they do not have to go to two bodies which administratively could be quite difficult.

Senator CROSSIN—You talk in your submission about the interaction between the National Classification Scheme and the role of ACMA. Where do you see that as being inconsistent or a hurdle for dealing with this issue?

Ms Cameron—Once again, although the national classifications are used by television stations and by ACMA, potentially two bodies are ranking the same product, so that can cause differences. And sometimes the Classification Board may be more conservative than ACMA and as a result you potentially get a situation where you have broadcasters in breach. I am sure my colleagues at Free TV when they are here later in the day may well have some comments there.

Senator CROSSIN—So what is the answer there? Not only making the National Classification Code consistent across mediums, but are you suggesting that there should be just one body in this country that classifies all mediums?

Ms Cameron—Yes, I think that that should be considered. If there is more self-assessment maybe that body has more of an audit role and a review role so that it is freed up to really become a serious watchdog and a serious kind of review mechanism.

Senator CROSSIN—Let us go to this issue of self-assessment as you have raised it, because I think that is an area of contention in the classification industry—whether people should be self-assessing and the market relies on them regulating each other, or whether there should be a strict body which actually applies the classification. Have you got any view about what you think is the most effective and consistent?

Ms Cameron—I think that in this environment of multiscreens, and more content coming down the pipe or the television or whatever, there will be much more content coming from everywhere and it becomes much more difficult to preclassify certain things, and certain things are now required to be preclassified. And the pressure on a body will be immense, so I think that self-assessment is certainly a good way forward and I also think in saying that—

Senator CROSSIN—Is it reliable enough, though?

Ms Cameron—One of the powerful things that a regulator has in a role of review and audit is that moral suasion. Say a self-assessment goes wrong and it is picked up and the regulator is able to say, 'This is not classified properly,' what are you going to do about it? And then that is heightened by public discussion and public debate—and these things are always very public—the broadcaster or the channel or the content provider has got commercial considerations through advertisers and has community standard provisions and they are all quite heightened in a lot of what they are doing, and the regulator's muscle in that moral suasion has been seen in the past to be very effective. So I think that in itself the moral suasion of a regulator should not be disregarded.

Senator CROSSIN—But it is good enough to say, 'What are you going to do about it?' rather than, 'Your self-regulation of this does not meet the standard and you must change the classification'?

Ms Cameron—I think that if they are found to be in breach through an audit, the regulator could well have the power to require a change, and possibly should, because classification serves to protect children, serves as a community standard and serves to ensure content is not illegal, and we would not want to throw that out.

Senator CROSSIN—Finally, take me through this: we are in a self-regulating industry then. Does that mean that the body—whatever the overarching body is—that dealing with non-compliance would only deal with it when issues are brought before them or are they constantly proactive, reviewing what is in the market? If they are doing that, how does that lessen their workload, rather than everything having to come through them as a filter anyway?

Ms Cameron—I am thinking about this out loud, as we talk. The idea of them doing a bit of both, that is, it coming to them when it is picked up as inconsistent, and them spot checking and auditing. Auditing does not have to have the same workload as classifying everything, so they may have a routine of spot checking platforms and different medium, and people do not know where it is happening. So it is like an audit.

Broadcasters or content providers would not know when or how it was coming. I do think, personally, that auditing in that fashion would be really good to keep the system honest.

CHAIR—It has been very useful to have the evidence of Screen Australia, so thank you very much for being here.

[9.32 am]

BAIN, Ms Alina, Director of Codes, Policy and Regulatory Affairs, Australian Association of National Advertisers

LEESONG, Mr Daniel, Chief Executive Officer, The Communications Council

MOLDRICH, Ms Charmaine, Chief Executive Officer, Outdoor Media Association

CHAIR—Welcome. The submission from AANA is No.28; from the Communication Council, No. 47; and from the Outdoor Media Association, No. 57. Do any of you wish to make any alterations or amendments to those submissions?

Ms Bain—Yes, I would like to note a correction for the committee on page 21 of our submission in relation to the complaints figures. We note in our last dot point on the top of page 21, eight complaints found in breach; that number should actually be seven.

CHAIR—Thank you. That is noted. Would any of you like to make an opening statement before we move to questions?

Ms Bain—AANA thanks the committee and appreciates this opportunity to provide evidence to the inquiry into the Australian film and classifications scheme. AANA is the peak industry body representing Australia's national advertisers. I would like to note for the committee that the advertising Standards Bureau is independent and administers the complaints system which underpins the advertising self-regulatory system. AANA established the self-regulatory system in 1997. It is comprised of a number of codes, practice notices and industry initiatives. The code of ethics is the cornerstone of the self-regulatory system in Australia. It and the other AANA codes apply across all media, including outdoor media. The code of ethics deals with questions of truth and accuracy, along with the portrayal of people, the portrayal of violence, the treatment of sex, sexuality and nudity, the use of language and prevailing community standards on health and safety. The code is currently under review by the AANA. That review is being undertaken by an independent reviewer, Dr Terry Beed, who was appointed by AANA in 2010. The review of the code has found a high level of community and industry satisfaction and recognition of the code's pivotal role in the self-regulatory system. When we launched the review of the code in 2010, we had aimed to have that review completed by February of this year, However, in deference to this inquiry and also the House of Representatives inquiry into billboards and outdoor advertising, AANA can confirm that that review will be extended. AANA will review the input into this inquiry and will be interested in this committee's recommendations. In relation to that code review, we conducted a public consultation process last year and we regard this committee's process as another important input to the code review.

In relation to the other AANA codes, the code of advertising and marketing to children, and the food and beverages code, I can note for the committee that those codes will be reviewed in t011 by Dr Terry Beed as an independent reviewer. I would like to also note in relation to those other codes that following the Senate inquiry into the sexualisation of children, AANA amended the code for marketing and advertising communications to children to include a direct prohibition against the sexualisation of children and a ban on the use of sexual imagery in advertising directed to children. In 2010, the ASB has reported that less than two per cent of complaints were about the sexualisation of children.

I would like to note for the committee that AANA reviews the self-regulatory system as a transparent robust system, and one which can adapt quickly and easily to changing community standards. Importantly, it comes as no cost to the complainant or the taxpayer. AANA regards the low level of complaint and low level of breaches as indicative of a system which is working well and responding to community safeguards. Given the low level of complaint, and the high level of satisfaction with the code of ethics, AANA does not regard the classification of outdoor media as being required. Notwithstanding this low level of complaint, however, double AANA regards the outcome of this review as an important input to its code review process.

CHAIR—Thank you.

Mr Leesong—Thank you for the opportunity to appear before the committee today. The Communications Council is a relatively newly formed body. It is an amalgamation of four different industry associations on the agency delivery side of the business. We are the peak rep body representing agencies in the marketing and communications sector. As opposed to the advertisers, which are covered by AANA, our remit is the actual creators and deliverers of the content in the creative space. Conservatively the sector is worth about $30 billion

to the Australian economy per annum. Our members obviously hail and didn't from different creative disciplines and they include traditional advertising agencies, graphic design houses, production companies and we encompass the full production cycle from brief and concept to delivery of the actual communication within the different channels. Our organisation's charter is to help members grow their business and develop their individual careers. We do this through providing educational and advisory services and the traditional association business advice services which you will see in the more traditional associations.

From the outset we recognise the importance of members acting in a legally and ethically responsible manner. In fact, a lot of the focus of our membership and as an industry body is the education of the code of ethics and the broader education of compliance and advice of compliance with codes amongst our membership. To give you an example, the organisation which I represent conducted over 50 ethics workshops around Australia which were designed specifically to deal with the actual practitioners, the creatives, the account managers and the planners in how they should be addressing campaign development in line with community expectations.

We obviously strongly support the ongoing use of a self-regulatory framework as a mechanism for effectively achieving both community interest and encouraging commerce to operate efficiently. We do point to the high industry and community satisfaction of the independent reviews which are done through the ASB, the high recall rate of where to complain, for example, is a very healthy thing. At the last count that was at around 63 per cent, which I am sure the ASB will mention. That, I am sure, is higher than the vast majority of very senior, dare I say it, cabinet ministers names in the unprompted recall rate and knowledge.

We also point to the relatively low level of upheld complaints overall. When we look at the number of advertising campaigns out there, the number of complaints and the number of complaints upheld, we think the system is handling what is a very large task very effectively. We do not consider that including outdoor advertising within the National Classification Scheme is appropriate or necessary. More importantly, we do not believe it is practically possible. My colleagues will go through the exact number of campaigns out in the marketplace in the outdoor media context, but it is in excess of 30,000-odd advertisements. Classifying them provides a really challenging administrative burden.

In summary, we are obviously very committed to making sure that our communications mechanisms are in line with community expectations. It is within the interests of both the agency and the client advertiser if it has a role in social media and there are major commercial ramifications. Overall, we are more than happy to answer any questions you have about how the current system operates and where we fit into the scheme of promoting and encouraging responsible communications throughout Australia.

Ms Moldrich—Thank you for this opportunity to respond to your inquiry. The Outdoor Media Association is the peak industry body representing 97 per cent of Australia's outdoor media display companies as well as production facilities and some media display asset owners. The OMA does not represent businesses that display on-premise signage or other first-party advertising. Our media display members advertise third-party products including on buses, trains, taxis, pedestrian bridges, billboards, street furniture and in bus stations, railway stations, shopping centres, universities and airport precincts.

In both outdoor and other advertising, the vast majority of ads are not complained about and the majority of those that do receive complaints are found to be compliant with the AANA codes. Our members are conscious of their commitment to comply with the self-regulatory system and to this end the industry conducts internal reviews of all ads before they are posted. On the rare occasions when the ASB upholds a complaint, the industry takes immediate action to remove the ad.

The OMA submits that the self-regulatory system is efficient and effective, with only seven out of 30,000 ads posted last year upheld by the ASB. We have a 99.98 per cent accuracy rate which is an excellent record by any reasonable standards. It is simply a popular myth that outdoor advertising is dominated by a multitude of inappropriate images. While the OMA hopes to achieve a figure that is even closer to 100 per cent, we consider the inclusion into a National Classification Scheme would be unnecessarily costly and onerous both for government and for business.

The industry takes it obligations to the community seriously and it can be relied on to comply with the self-regulatory system. You can see the social responsibility of the industry in its commitment to numerous codes of practice and in the extensive and ongoing contributions that it makes to community which are all outlined in detail in our submission. Contrary to what some submissions have suggested, the industry is motivated to comply with the self-regulatory system because the industry wants that system to work. This again is reflected

in our 99.98 per cent accuracy rate. We feel that the industry has nothing to gain from offending the community because advertisers are ultimately market driven.

The OMA rejects the assertion that simply because a self-regulatory system is subscribed to it must be biased and ineffective. We ask that you take a look at the make-up of the ASB, which is comprised of a broad range of individuals that do not have a background in advertising and who have been briefed on the research about prevailing community standards. We would also like to share our view that a perfect system of no complaints and no breaches is simply not realistic. We note the example of TV advertising. TV ads are classified and yet they still made up 62 per cent of the complaints to the ASB in 2010 and 15 cases were upheld. With this in mind, incorporating outdoor advertising into a National Classification Scheme on account of the seven upheld cases seems unnecessary, costly and burdensome on both government and business.

It also needs to be noted that the seven ads upheld by the ASB were not posted in blatant disregard of the codes. We believe that there is room for improvement on our 99.98 per cent accuracy rate by an introduction of a system of education, so that our members are better equipped to judge how the ASB applies the codes, particularly in the context of the broad audience that views our ads. Judgments about these matters are very subjective, so education on how best to make judgments is an appropriate response. An outcome of the current inquiries is that the OMA has already started this process of education.

Finally, we would like to advise the committee of the research the OMA commissioned in 2007. ACNielsen found that 87 per cent of people were neutral or positive about the role of outdoor advertising, while only 13 per cent were negative about it. The reason we bring this to the committee's attention now is that we feel that some of the submissions that are calling for restrictions on outdoor advertisements do not represent the majority of the community, and we ask that you bear this in mind when weighing up the various arguments. Quite simply, classification of outdoor advertising would be unnecessarily costly and cumbersome, and this would make it a less appealing medium for advertisers. Large and small businesses in the industry would suffer significant loss of revenue as a result. Not only is this a harsh response in the context of our 99.98 per cent accuracy rate, but it would also affect the industry's ability to continue making significant contributions to the community. Again, we submit that the small number of cases upheld by the ASB simply does not justify government intervention into a system that is working well and which the industry is clearly committed to abide by; however, we do welcome this inquiry as a means of further scrutinising our own processes.

Senator CROSSIN—I have quite a few questions to ask you, but I will try to get this in a bit of context. The AANA is the Australian Association of National Advertisers. You say in your submission that in 2010 there were 33 million national ads across all media. That would include outdoors advertisements but would it also include television advertisements?

Ms Moldrich—Yes. That figure represents all national advertising campaigns. It is across all media and from advertisers, including advertisers who are our members and advertisers who are not our members.

Senator CROSSIN—So we have got 33 million ads in one year and, of that, you received 600 complaints. Is that correct?

Ms Moldrich—The Advertising Standards Bureau reported that over that same time period they received 600 complaints.

Senator CROSSIN—So if we go to the Outdoor Media Association: you have got 30,000 advertisements in one year, of which seven were found to be in breach.

Ms Moldrich—Yes.

Senator CROSSIN—So if we try to put this into some perspective here, we are actually talking about a huge number of advertisements and a very minute number of issues or complaints. Would that be correct? It would probably be less than one percent?

Ms Moldrich—Yes, it is 0.1 per cent.

Senator CROSSIN—So that is your basis for putting to us two issues: that the self-regulation scheme works and there is no reason to include advertising, whether it is on television or outdoor media, into the National Classification Scheme?

Ms Moldrich—Yes.

Senator CROSSIN—I am just trying to crystallise it.

Ms Moldrich—We also think that the codes that we subscribe to are very similar to the National Classification Scheme codes. It is not that our codes are any different.

Senator CROSSIN—Let us explore that a bit. So, of your seven that were found to be in breach of the AANA code of ethics, can you just give us a bit of a snapshot of what that content was or why they were in breach?

Ms Bain —I have got some detail I can provide for the committee in relation to that. The relevant code clause for the majority of those complaints was clause 2.3 of the code of ethics. The majority of those seven were advertisements from the sex industry, and they were dealt with under clause 2.3 of the code, which is the clause that deals with the requirement to treat sex, sexuality and nudity with sensitivity to the relative audience. There was also an advertisement for a clothing company which was complained about on the basis of the image portrayed of the woman, what she was wearing and the context in which she was portrayed. There was also an ad from a dating company that runs a dating service with a slogan 'Life is short, have an affair.' They are the types of ads that were complained about and found in breach.

Senator CROSSIN—And you are saying that those companies immediately removed those advertisements once they were found to be in breach?

Ms Bain —Yes. The ASB has reported that there is a very high level of compliance with their decisions. Immediately following an Advertising Standards Board meeting where breaches are found, their CEO calls the relevant advertiser and has a discussion with them in relation to the particular matter. As I noted, there is an almost 100 per cent compliance rate with the decisions of the Advertising Standards Board across all media.

Senator CROSSIN—Mr Leesong, I wrote down something you said during your initial presentation—I hope I recorded it accurately. It was something along the lines that classifying provides challenging and administrative burdens. Can you elaborate on what you meant by that?

Mr Leesong—Yes. When an agency puts together a campaign it is usually an integrated campaign that has six, seven or eight different channels. So TV might or might not be part of that. The TV lead time with the budgets involved tends to be a bit longer so you can go through a more formalised process, but when you are dealing with some of the other media—whether it be outdoor advertising, some of the magazine deadlines or the newspaper deadlines—actually classifying that information can be very challenging. An agency may well be briefed the day before deadlines saying, for example, 'We need an advertisement on the circus coming to town. It needs to go in tomorrow's *Sydney Morning Herald*.' The ability for that to be classified would be very limiting; it would actually put a stop on commerce. We think it would have significant impact.

Senator CROSSIN—So can I just explore that. If I am going to launch a new brand of perfume, for example—however I may depict that in my advertisement—do I have to go through a different process for TV advertising than I would say, to put it in a woman's magazine?

Mr Leesong—Yes, you would. You would have to get a CAT clearance.

Senator CROSSIN—Even though it might be the same picture, the same slogan, the same message?

Mr Leesong—Yes. But what an advertisement is assessed against for TV, given it is a moving image and so fourth, can be quite different to a still image.

Senator CROSSIN—I see. Would it not be better if there was one body that looked at all of that or is that impractical?

Mr Leesong—We believe it is impractical. When you are dealing with 33 million advertisements it is just a huge undertaking.

Senator CROSSIN—Where is the roadblock then? How do you get over this? You are saying it is a challenge and it is an administrative burden.

Mr Leesong—Currently the scheme does not dictate that you have to have pre-vetting or pre-classification of other mediums. Television is a different case. But if you are putting an outdoor advertisement up, you can put it up. The complaints mechanism is still in place, so if it is complained against then you have got to be held accountable, but it is a different system to pre-approving every single piece of communication.

Senator CROSSIN—You are saying to us: leave it as it is; do not go to a pre-classification system before you launch your advertisement because that would be cumbersome, challenging and an administrative nightmare. Just leave it as it is; the system is working.

Mr Leesong—Yes. That is our submission.

Ms Bain—Can I just add to that if I could. In relation to advertisers preparing their campaigns and talking to their creative agencies, there is a dialogue in relation to the codes and how the codes would be applied by the ASB if and when there was a complaint. It is a very healthy dialogue and, as Mr Leesong has pointed out, there is also a very targeted education campaign. So throughout that process, in a sense the industry bodies are educating the advertisers about the code provisions. In doing so, it is an informal clearance process. I do not want to call it a 'clearance process' because it is not required, but there are those checks and balances on the way through.

Mr Leesong—That is interesting: our members call us quite frequently if there is a bit of a grey area that they are unsure about, and we can give them some unofficial guidance. From an agency's perspective, it is a very competitive industry and business is very hard to win. There have been a number of cases where advertisements or campaigns have been found in breach of the code, and that has been terminal to the business. They have lost the account. That, for an agency, can have significant ramifications.

Senator CROSSIN—There have been times where the ramifications have had a major impact which have made advertising agencies go under?

Mr Leesong—The impacts are twofold. The advertiser wastes, in some cases, hundreds of thousands of dollars in the campaign development process. National TV campaigns are not cheap to put together. Some times the agency has to foot the bill, or they lose the account entirely.

Senator CROSSIN—Ms Moldrich, you talked about the situation where a minority in the community did not like some of the outside advertisements—it probably impinges on, I guess, their moral values. Do you believe the self-regulation of the industry had got that balance right? Or is there room for improvement?

Ms Moldrich—Yes, to both questions. If you look at what we post—the number of complaints and the number of complaints that are upheld—we are adhering to the codes. The codes are a good test of community standards. The ASB is comprised of people who come from across the community and they are the adjudicators of these standards. Can we do more? Can we not have seven cases upheld? Yes, absolutely, we can do more. Rather than more regulation we need to look at more education. Certainly from OMA's point of view, we are looking to the ASB, so we run mandatory education seminars for all of our operators so that they understand the codes as well as how community standards change. It is not something that is set in concrete, and the ASB are doing research into that. We as heads of those industry organisations are very aware of those issues. We need to pass that knowledge down to our members. Education is the key.

Senator CROSSIN—Is one way around it ensuring that all outdoor advertising has a G rating?

Ms Moldrich—In the majority of cases, outdoor advertising is G rated—without a rating system. But G rating does not just imply that there will not be any themes of nudity, sexuality or language; it is in the context of the ads, it is in the context of the products.

Senator CROSSIN—Are you saying you could have a G-rated advertisement but it could still have some sexuality connotations in it?

Ms Bain—Certainly under the National Classification Scheme, under the G criteria, some references to sex and some forms of nudity are permitted in that classification zone. Our view is that to apply the G classification criteria to outdoor advertising would be a very heavy regulatory stick for what is a very small number of breaches found.

Senator CROSSIN—You have currently got an extensive review of your codes, is that because they are reviewed regularly or because you feel there are elements of the system that are not functioning effectively and it is time to do a bit of a spring clean?

Ms Bain—The reason AANA is reviewing its code of ethics is that we hold the view that a self-regulatory system needs to include a robust review process on a periodic basis. This is the first full-scale review we have conducted of the code of ethics since it came in in 1997. There have been amendments but this is the first time we have had a large review of the code. We found that process to be very useful in terms of telling us how the code is being perceived in the community and by industry and we found through that process that there is a very high level of community satisfaction with the code. As a result of the code review process there are a number of issues that have been raised which then have flow-through effects to the other codes—the code of marketing and advertising to children and the food and beverages code. There are some common themes throughout the codes and we have found that through the code of ethics review some further work and review needs to be conducted of those other two codes. We will be doing that this year with the independent reviewer.

Senator CROSSIN—Should it have been reviewed prior to now—12 to 14 years on seems like a long time before a major review.

Ms Bain—We do not feel that the code was out of date; there is a high level of community satisfaction with it. We are of the view that it has been operating and working well and providing appropriate community standards as a result. Because the review has shown that high level of satisfaction, we do not think an earlier review was required. But we do feel that it is time that that review process was undertaken.

Senator CROSSIN—Do you get a sense that there will be some major redrafting or just some fine tuning to modernise and update some of the sentiments?

Ms Bain—There will not be a major rewrite or review of the code because of the high level of satisfaction. There will be some technical drafting changes coming though, and some changes in concept coming out of the review process. Importantly, one major area of feedback was that people were seeking further guidance on the code and how it applies, and AANA will be putting together a guidance or practice note to sit along side the code of ethics so that industry and consumers can see and understand how the provisions were intended to be interpreted and how the ASB has applied those.

Senator CROSSIN—Ms Moldrich, you were saying that you believe there needs to be more education of advertisers coming to you. Do you need to be running education campaigns on your code, and how to comply with it?

Ms Moldrich—Each of us do various forms of education. The AANA deals with advertisers, the Communications Council deals with the creative agencies. We are the people who post those ads—so we are the end product, really. We post those ads on billboards. They have been through a process by the time they arrive into our formats. What we do is a prevetting system. So there is a check and balance when it gets to us. We need to educate our members on how the codes are being interpreted by the ASB, what community standards are, and what the community is currently thinking about? It is a very changing and evolving code. It is a live code; it is not set in concrete. It is subjective—advertising is a very subjective medium. What I would consider to be okay you might not consider to be okay. What we understand is that the codes are for all people and the ASB represents the community's view.

Ms Bain—Certainly, as a result of this inquiry, we will see these three organisations coming together to look at some targeted education campaigns, particularly in relation to outdoor media. We have heard now the community concern and we will look at rolling some integrated education campaigns into our educational programs.

Mr Leesong—We are not starting from zero base here. Our organisation alone hosted over 50 seminars around Australia on this exact issue. As well, we train 700 to 800 people a year through our university arm, AdSchool and AWARD School. People who do those courses are also educated on the code of ethics and how they relate to good business practice. So extensive work has already been undertaken. We think we can rack it up a little bit more, but off a good base.

Senator CROSSIN—Do you regulate advertisements on the internet?

Ms Bain—The codes apply across all media. They are not media specific so, yes, they do.

Senator CROSSIN—When you open up a webpage, occasionally, two seconds into it an ad will pop up whether you want it or not. Apart from the fact that it drives me insane—

Mr Leesong—It is a controversial form of advertising.

Senator CROSSIN—I agree with Screen Australia, I like to control what I watch when I watch it. Do those ads need to be run past you before they are placed on that sort of portal? If they pop up and you do not like them, do you have to make a complaint about them?

Mr Leesong—It is a part of the self-regulatory system. Often those advertisements are on TV as well. Often they have been given a CAD approval number. It is not a requirement but there is often duplication.

Senator CROSSIN—If you found that those ads were inappropriate would you, as a consumer, need to make a separate complaint?

Mr Leesong—Yes, just like any advertisement.

CHAIR—I have a range of questions and we are limited somewhat by time so I am going to be as swift as I can and, likewise, if you can assist. If you need to take the questions on notice, feel free. That may assist in timing. In terms of the Senate Standing Committee on Environment, Communications and the Arts inquiry

into the sexualisation of children in the contemporary media environment that you, Ms Bain, mentioned in your opening remarks—for which I am thankful—you indicated the response to that inquiry. Did you all provide a response? I am interested in further and better particulars of the response that you provided to the Senate inquiry, which was, frankly, a bit of a hallmark inquiry. It made a lot of recommendations. You may not have made any response to the recommendations but obviously the AANA have. Are you able to outline to the committee, either now or on notice, what responses you have made?

Ms Bain—Specifically in response to the inquiry, AANA reviewed and amended its code of advertising and marketing communications to children. That was a direct result of that review.

CHAIR—Could you be more specific? I would like to know exactly.

Ms Bain—I can take you through the changes.

CHAIR—Are you able to do that on notice?

Ms Bain—Yes. I can give you the changes now or I can provide them for you in written form.

CHAIR—Will that be a short response now?

Ms Bain—It will be very short. I will paraphrase the amendments. They state that advertising and marketing communications to children must not include sexual imagery in contravention of prevailing community standards and must not state or imply that children are sexual beings or that ownership or enjoyment of a product would enhance their sexuality.

CHAIR—Was there anything else or was that pretty much it?

Ms Bain—As a result of those amendments to the code of ethics—and this predated my time at AANA—there was some training in relation to those changes and to that code in conjunction with the Communications Council.

CHAIR—Ms Moldrich or Mr Leesong, would you like to respond?

Mr Leesong—Broadly, they were related to the codes and the way they are interpreted. So AANA's modification of that was then relayed through our organisation to practitioners.

Ms Moldrich—For the Outdoor Media Association, the major issue that arose from that code and what was used in determining complaints was that a higher standard be used when looking at outdoor advertising in view of the broad audience. The ASB brought that into play. But I can take on notice how we responded to that.

CHAIR—Yes, if you could. Are you referring to AANA changing its code?

Ms Moldrich—And the way the ASB has then looked at complaints for outdoor advertising as a consequence of that change.

CHAIR—If you can be a little more specific on notice, that would be appreciated. To the AANA in regard to the review, I just wanted to get a quick update. When is the report due?

Ms Bain—We are looking to release the code and Dr Beed's report before the end of this financial year, so we are probably looking at May or early June

CHAIR—So you are going to release the revised code and his report simultaneously?

Ms Bain—Yes. I am not sure at this stage how much detail we will provide in terms of his report, but we will certainly provide a summary of that. We are working through the drafting amendments to the code at the moment and working that through with several key stakeholders. That process is in train.

CHAIR—Based on his report?

Ms Bain—Based on this report and the outcomes of his review and also taking into account evidence given in this inquiry and the House of Representatives inquiry.

CHAIR—Has he concluded his report?

Ms Bain—He has concluded the formal part of his review but he is also observing and participating in this inquiry and the House of Representatives inquiry.

CHAIR—That is fine, but has he concluded his report and submitted it to the AANA for review?

Ms Bain—He has.

CHAIR—When was that done?

Ms Bain—About a month ago.

CHAIR—My understanding is that the original aim was by the end of last year.

Ms Bain—By the end of February 2011 we hoped to have the whole thing wrapped up.

CHAIR—Sorry, by the end of February. So he got it in in March. You have got the report but he is now participating in these two inquiries and reviewing what comes through and I assume making additional comments to his report. Is that right?

Ms Bain—Correct.

CHAIR—Can you outline, either now or on notice, his report and his recommendations or the key outcomes of his report? We are very interested in his report.

Ms Bain—I can take that on notice.

CHAIR—We would like either the report and its recommendations or an overview of that, if that is a matter you can take on notice and talk to your people at the AANA about. Thank you for that. On this issue of uniformity, the merit of having the same standards for the same content across different platforms has come up with previous witnesses. Do you support that principle?

Ms Moldrich—Yes, we do.

Mr Leesong—As a principle, absolutely. The devil is always in the detail as to what that means in the practical aspects of delivery.

Ms Bain—Yes we would, but we would note that for some media, for example outdoor, the classification scheme should not be laid over that system as an additional layer of regulation.

CHAIR—That is a pretty big exemption there. I am just looking at the code and the four key principles and I am really asking whether you think we should add that. There is a view that perhaps we should add uniformity, or words to that effect, in terms of the principles. Do you think that is a good way to go or do you think that is going too far? Do you have a problem with it or do you not have a view?

Ms Moldrich—The principles are fine. I think, as Daniel said, the devil is in the detail. If you look at the current self-regulatory system, it is essentially underpinned by the same principles. It is not like we are working in isolation to the classification principles. They are still the same principles; that is the underpinning of it. We do that in a self-regulatory environment.

CHAIR—We touched on the G rating earlier in conversation with Senator Crossin. I have got the G rating here in front of me. I think you were making the point that nudity is possible under a G rating but it should be justified by context. I also note that sexual activity should be very mild and very discretely implied and be justified by context. In terms of outdoor media advertising, there is a view that has been put that we should have a G rating across the board. I think, Ms Moldrich, you indicated that the bulk of the outdoor advertising as far as you are concerned is G. But you are indicating that perhaps some of it is higher than G and therefore G should not be appropriate. I just want to flesh that out with you in terms of the G rating.

Ms Moldrich—I think putting a rating system into a self-regulatory arena that is working very well, when we have 99.98 per cent of our ads complying with the codes, is a very onerous thing to do. It needs to be a lot more evidence based as to why this would—

CHAIR—Is it onerous if it is already G rated?

Ms Moldrich—There are campaigns in the majority that are G rated, but there are also campaigns like the latest one run by the Australian government on the harms of ecstasy. That would not be G rated. There are films like *Harry Potter* that are—

CHAIR—Just to clarify, would that pass your test and be okay for outdoor advertising?

Ms Moldrich—Yes, absolutely. This has been posted recently. There are quit smoking campaigns that would not be G rated. So I think adding another layer to a system that is working very well is compliant. When we misjudge that—and I take the view that from time to time we misjudge that—we do pull those ads down.

CHAIR—Let me clarify: do you think outdoor advertising should be allowed for both the smoking and ecstasy ads? Do you think outdoor advertising is appropriate? What rating would apply?

Ms Moldrich—It is not in my purview to rate ads, so I do not really know. Yes, I think if a product or a message—

CHAIR—With respect, you must know. If you are saying it is okay for outdoors, you must know what level of rating would apply to that ad.

Ms Moldrich—I would not know whether that was an M or a PG. I think it is above G, if that is the opinion you are wanting. But, if you want me to be more precise, I do not have either the training nor the guidelines—

CHAIR—But it would be one of those two, in your view?

Ms Moldrich—Yes, in my view.

CHAIR—It would not be more than M, would it?

Ms Moldrich—No.

CHAIR—It would either be PG or M, the next level up.

Ms Moldrich—Yes, and we look to the ASB to give us those guidelines, and we look to the codes to set those guidelines.

CHAIR—All right. As we have previously discussed, the House of Representatives inquiry is going on at the moment. There has been evidence put to that committee in terms of some of the ads being very sexually full-on, raunchy and that sort of thing. What do you say to those concerns, when people say, 'It is way over the top'? I think there were some examples of that in another arena. How do you respond to that?

Ms Moldrich—In my opening address one of the things that I said is that it is actually a popular myth that outdoor advertising is dominated by a multitude of inappropriate images. In fact, that is not the case. From time to time, products are advertised, like lingerie, which uses imagery that members of the community could find offensive. But what the ASB does is look at the entire community and it looks at commercial interests and it looks at the codes. As long as the codes are there and the codes underpin the principles of the classification system then we have to be guided by that. No system is 100 per cent foolproof.

CHAIR—Based on what you have shared then and your responses to the examples you have used with ecstasy and smoking, it is okay for outdoor advertising to be at the level of M.

Ms Moldrich—I am not in any position to make that value judgment, I do not think. I think that I have to leave it to the codes, because we work to the codes and we look to the ASB to being the agency that looks at how advertising adheres to those codes. We post ads that come from advertising agencies for legitimate legal products, and there are codes in place. We manage through those codes. There is a complaints process in place and we sign up to that complaints process.

CHAIR—I will give you an example. The Australian Council on Children and the Media provided to the committee, in response to a question on notice, examples of outdoor advertisements, one of which was on a bus, one on a billboard, so at least these two may be third-party advertisements and relevant to OMA. They were overtly sexual and the advertising standards bureau had dismissed claims in relation to them. I am not sure if you are aware of those examples. Do you think that the objectification of women is a concern, particularly in relation to outdoor advertising?

Ms Moldrich—I have those two examples. You are talking about the Bardot denim ad and the drink Sprite ad. As I said, I do not make those value judgments. I think that the public have every right to complain about these ads, about any ad really.

CHAIR—But the complaints were dismissed.

Ms Moldrich—There was a complaint recently about an ad where a mother was changing a baby's nappy. Someone complained about an anti-cancer ad. That is the right in a democratic society for people to complain. Then you have a process where those complaints are looked at. In the case of both these ads, the ASB dismissed them because they did not see them as being overtly sexualised. We look to the ASB and the board, which is comprised of 20 people, one of them works in gender studies—

CHAIR—So you think they made the right decision. You are happy with their decision.

Ms Moldrich—I am neither happy nor sad about their decision. I respect their decision.

CHAIR—Do you support their decision?

Ms Moldrich—Do I support it personally or as the OMA?

CHAIR—As the OMA. You are speaking on behalf of them.

Ms Moldrich—Absolutely I support their decision.

Senator CROSSIN—Is that an example of the advertisements there? Can we have a look at them?

Ms Moldrich—Are these the ads that Women's Health linked or raised an issue about?

CHAIR—Yes. The photocopy is not so good. I am aware of the ads.

Mr Leesong—I think the key issue there is that the ASB system is set up to actually handle and adjudicate the complaints and we as bodies support that process. The actual specifics of do we agree or disagree with decisions, they are issues that need to be raised with the ASB and their reasons behind those decisions.

CHAIR—I appreciate your views, I respect your views. I am interested in your views as to whether you think those that are appropriate or not, in the public arena on billboards. You have shared your view that you support the ASB on it and I respect that too. That is not a problem.

You mentioned earlier about the ASB and the high compliance, Ms Bain, and obviously you are pleased with the high compliance, but sometimes there is noncompliance. What happens in that situation?

Ms Bain—There have been from time to time examples where a decision of the Advertising Standards Board has not been complied with and the CEO of the ASB, Ms Jolly, has a process of following through with the advertiser. In the case of billboard and outdoor advertising, from time to time she has approached, for example, local councils and local government to talk to them about the particular advertising campaign. But we say the high level of compliance shows that the system is working and working very well. There are a small number of cases and I think Ms Jolly has provided evidence to the House of Representatives inquiry of one particular example. I am sure she could provide some more detail for you on her processes there.

CHAIR—What do you do about the noncompliance? How do you follow up? It is a voluntary code, isn't it?

Ms Bain—It is a voluntary code and it is a voluntary self-regulatory system but, as other members here have stated, it is in advertisers' interest to show that the system is working and working well. The ASB has provided one example where in the outdoor space the advertiser refused to take down the advertisement. It was actually a sandwich board, as I understand it, that had been up for many years and received one complaint and the owner of that sandwich board refused to take it down. Ms Jolly in her capacity as the CEO of the Advertising Standards Board has approached the local council in that regard.

Ms Moldrich—All of our members for these examples are first-party advertising or on-premise advertising. These are not our main members. Our main members have 100 per cent compliance.

CHAIR—I will come back to that. I will just check if Senator Crossin wanted to follow up on those photos.

Senator CROSSIN—No, I just wanted your reaction to the Women's Health Victoria submission, and I think we have covered that.

Ms Moldrich—One of those images that you were looking at, which is the Calvin Klein ad, was upheld.

CHAIR—But you are confirming that the 'Drink Sprite, look sexy' ad was dismissed by the Australian Standards Bureau?

Ms Moldrich—Yes.

CHAIR—I find that staggering, frankly. With your advertising outdoor, that is to your members, isn't it? On pages 8 and 9 of your submission you have given evidence regarding Parramatta Road—for which we are very thankful—where 2,140 of those ads were on-premises signs compared to 14 third-party advertisements, and you have a couple of photos in your submission. How are on-premises signs regulated, if at all?

Ms Moldrich—On-premise and first-party advertising do not have a body like us who regulate.

CHAIR—Exactly.

Ms Moldrich—They do not sign up to any of the codes. There are in fact hundreds of thousands. They are the signs that proliferate Australia. It is not third-party signage.

CHAIR—That is right and they are unregulated. Is that correct?

Ms Moldrich—They still fall under the regulations. So if you are a member of the public and want to put in a complaint about an on-premise sign, you can and the ASB administers it. In fact, the ASB upheld eight complaints about on-premise ads last year. The fact that they do not have an industry body is neither here nor there; the code still applies to them.

CHAIR—There is a view that once the complaint has been heard it is basically too late. I am not sure what the average length of time is for an ad. I think this was referred to by the Australian Council of Children and the Media. What would be the average time for a billboard ad?

Ms Moldrich—There is not an average time. Billboards are posted every lunar month, but that does not necessarily mean that every lunar month the ad is changed. Some campaigns last for three or four months and some campaigns go for years. In terms of the turnaround rate, I think that the ASB use a best practice model and they have very high turnaround rates.

CHAIR—But weeks or months?

Ms Moldrich—Weeks or days sometimes.

Ms Bain—For complaints coming before the ASB which the secretariat regards as urgent, Ms Jolly can convene the board and have a decision within 24 to 48 hours for those types of advertisements.

CHAIR—Just going to the communications council: Mr Leesong, on page 8 of your submission you made reference to the gender portrayal objectification. So that is the objectification of women?

Mr Leesong—Yes.

CHAIR—And then there is body image. You have that in your submission to highlight what key points? Is it that they are concerns for your industry and that you are addressing them appropriately?

Mr Leesong—Going back a number of years it was quite a hot-button topic. It really just demonstrates the way that we approach keeping current with community expectations and community attitudes and what we do if issues are raised. Gender portrayal is a good one. The education campaign around how best to communicate your message without overstepping the mark is something that we are pretty proud of. You can look at individual examples of ads and there will be some come through the cracks that do make it through. Whether they were done by an agency or not is probably another question. Sometimes they are and sometimes they are not.

CHAIR—But you agree those two areas are areas of sensitivity—the objectification of women and sexualisation of kids?

Mr Leesong—Absolutely. We take it very seriously. In the vast majority of brand cases it can be terminal to the brand equity and the brand value if you get that sort of messaging wrong.

CHAIR—Are you familiar with the St Kilda Junction, Melbourne group scene billboard which was taken down because of the end of the campaign?

Mr Leesong—Sorry, I have not seen that one.

Ms Moldrich—Is that the Calvin Klein ad?

CHAIR—I think it is Calvin Klein and they were wearing—

Ms Moldrich—It was upheld by the ASB.

CHAIR—As appropriate?

Ms Moldrich—No. The complaint was not dismissed; the complaint was upheld and the campaign was brought down.

CHAIR—It was brought down, but that was at the end of the campaign. How many weeks or months did it stay up?

Ms Moldrich—I will have to take that on notice.

CHAIR—Would you check for us how long it stayed up during the course of that campaign?

Ms Moldrich—Yes, certainly. Sometimes the complaints do not necessarily come at the start of a campaign. We recently had an ad where the complaint was upheld and that ad had been in the marketplace for two years. So it does not necessarily follow that the complaint arrived on the first day that those billboards went up. The complaint may have arrived at the end of the campaign. I will take that on notice and check all of those facts for you.

CHAIR—Thank you so much for that. I have a question for the AANA which you may have to take on notice. Please provide the committee with more information in relation to the nine advertisements which were found to be in breach of the AANA code in 2010. It is referred to on page 21 of your submission. I would like to know the outcome of the breaches.

Ms Bain—The outcome of the breaches was that the billboards were brought down by the advertiser following notification by the Advertising Standards Board. The figure I gave in the submission is actually the one that I corrected earlier.

CHAIR—From eight to seven?

Ms Bain—Correct. I provided an outline of the content of those advertisements to Senator Crossin.

CHAIR—What happened to those advertisers that breached the code, apart from the advertisements being brought down? Is there any other sanction?

Ms Bain—No, there is no system of sanction and penalties. As Mr Leesong has outlined, the self-regulatory system relies upon advertisers wanting to do the right thing. Because of the cost of these campaigns no advertiser wants a campaign to be brought down midstream. That contributes to the high level of compliance.

CHAIR—On page 15 of your submission you discuss the introduction of a formalised training session with members and service provider organisations. I am interested to know how those training sessions are formalised.

Ms Bain—Those training sessions will be brought into place once we have finalised and released the review of the code of ethics. We will conduct some formal training programs with our members and also in conjunction with the Communications Council and their accreditation program.

CHAIR—Will it be compulsory?

Ms Bain—No.

CHAIR—What is the rate of take-up for training opportunities across the industry?

Ms Bain—We have not launched those training programs as yet, so I am unable to provide you with those figures, although Mr Leesong through his accreditation program can probably provide you with some details.

Mr Leesong—Basically, accredited agencies comprise 80 per cent of the large agencies in Australia. Part of their undertaking to become accredited is to sign up to this training and provide all their key staff with 15 hours per annum of professional development. This specific training plays a key part in them maintaining their professional development points.

CHAIR—Fair enough. Does the AANA support a G rating for outdoor billboards?

Ms Bain—No, we do not. We are not of the view that a classification system is required in the outdoor space, as a result of the high level of compliance.

CHAIR—Thanks for your feedback on that. Page 17 of the Outdoor Media Association submission refers to the internal reviews of advertisements before they are displayed. Would you share with the committee how the internal review process works.

Ms Moldrich—Each of our media display owners have their own internal pre-vetting system where ads are looked at, especially adds that we think may be in breach of the code. We also have an informal system where, if their pre-vetting system has looked at an ad and still is not clear about it, they talk to me about it. I also look at those ads and talk to the ASB. We are getting more diligent with that process since these reviews, because it has given us a chance to really scrutinise why those seven ads were misjudged. We take that matter very seriously. It is not great for business to have an ad come down.

CHAIR—Let us use an example. Did the two ads that the Advertising Standards Bureau said were absolutely fine—the drinks one, bright, look sexy; and the Bardot denim one, which we have here and I am staggered by their decision—come to you in the review process?

Ms Moldrich—No, neither of those ads came to me.

CHAIR—So it would have been reviewed internally by which organisation?

Ms Moldrich—If those organisations felt that it did not comply with the code, yes, it would have been reviewed internally.

C and HAIR—Just to clarify: it would have been reviewed internally?

Ms Moldrich—Yes.

CHAIR—Are you able to identify the organisations?

Ms Moldrich—No, I am not. I do not know who posted those ads.

CHAIR—But it would have been one of your members?

Ms Moldrich—Yes, absolutely.

CHAIR—You do not have total coverage but you do have dominant—

Ms Moldrich—We have 97 per cent coverage—and those two ads in question were posted by our members. But I could not name them.

CHAIR—Excuse my ignorance, but is it inappropriate to know that?

Ms Moldrich—I really don't know who they are.

CHAIR—Can you take that on notice?

Ms Moldrich—Yes, I can take that on notice.

CHAIR—So complaints came in and it went to the Advertising Standards Bureau. Can you give us any further particulars regarding the timing of that—when the complaints were made, how many complaints, how long it took the bureau and when the decision was made?

Ms Moldrich—Yes. I can also give you the case notes on each of those.

CHAIR—Thank you. The committee will break for a few minutes.

Proceedings suspended from 10.36 am to 10.51 am

BREALEY, Mr Michael, Head of Strategy and Governance for ABC Television, Australian Broadcasting Corporation

BUCHANAN, Ms Petra, Chief Executive Officer, Australian Subscription Television and Radio Association

FLYNN, Ms Julie, Chief Executive Officer, Free TV Australia

MEAGHER, Mr Bruce, Director, Strategy and Communications, Special Broadcasting Service Corporation

CHAIR—Welcome. We have received your submissions. If you do not wish to make any amendments or alterations to those submissions or make an opening statement we will go straight to questions. Senator Crossin.

Senator CROSSIN—I have got some questions for SBS to start with. I am not picking you off one by one; this is just the order in which you appear on the program. We have had quite a few submissions talk to us about the interaction between the National Classification Scheme and the role of the ACMA. Even Screen Australia raised that with us this morning. Do you believe there are some inconsistencies or duplication problems? You raised it in your submission, so obviously you must think there is an issue with what is happening.

Mr Meagher—By and large, it works reasonably well. The only issue is that it is important to understand that the Classification Board, when it classifies television programs, is looking at them in a particular way, which is different from the way we look at them and the way it is adjudicated if it goes to the ACMA.

Senator CROSSIN—Why do they look at them differently from you?

Mr Meagher—They do not look at them as television series. Typically they only classify things when they are presented to them as DVDs, in which case they get the full set. They classify a box set and put a rating on the front of it. That means whatever is the highest level of classification throughout the course of the series will be the classification it receives. Secondly, DVD sets often contain extra material that would never be broadcast by a broadcaster, so if that contains something of a higher classification level than the actual series then that would be the classification that the box set gets.

Senator CROSSIN—You get the box set at the start of the series, before you run it?

Mr Meagher—No. Maybe I should step back. We base our codes on the Classification Board's guidelines and, where we can, we have regard to what the Classification Board may say about a particular program or series. Often the Classification Board has not classified a television series before it goes to air—they have not looked at the DVD. The DVD may not have been released so there is not necessarily a classification there. And they do classify, as I say, for different purposes and in different ways. While we regard those guidelines as good and appropriate in giving us a yardstick, the determinations of the board are not determinative for us. We look at the series and we have the capacity to classify individual programs. There may be a series where most of them are G and one of them is PG, or something like that. We also have the capacity, which obviously the board does not have, to edit, so we can bring a classification down, if it is above the classification for, say, a timeslot. Therefore, our point is not that there is necessarily a problem. In fact, it is a good thing that, while we base our classification on the guidelines, the determinations of the board do not ultimately bind us and it is important that ACMA has a separate ability to look at the context in which our classification occurred. That is a very useful thing. It would be a problem if the ACMA were bound by decisions of the board because they are done differently and for different purposes.

Senator CROSSIN—Is it on that basis both the SBS and possibly the ABC say that you are not subject to the same programming standards, because you have the capacity to editor TV programs?

Mr Meagher—That is part of it.

Senator CROSSIN—Is that why you are so wedded to your self-regulation regime?

Mr Meagher—Two things are important to here. Certainly as public broadcasters we have always abided by the principle that we have independence—our acts require us to be independent, to exercise independent judgment—in all these matters, whether it is classification or a range of other matters. As a principle, that is an important starting point. As you say, the context in which we make these judgments is different from the

context in which the Classification Board makes its judgments. Therefore, it is important that we have that flexibility.

Senator CROSSIN—But some people would now be questioning that, I think. Some people would be saying why should you be different? Why should you not be subject to the regulations of the Classification Board and stick to them? Why is it that you say, for example, 'We are an independent broadcaster so that is what is good about our act. We have the flexibility to self-regulate and manage what is broadcast.' Others might have a quite contrary view and say, 'That flexibility is too flexible now. It is too lenient'. They may say, particularly with some of your programs, that it is time you complied. And there is no opt-out regime.

Mr Meagher—It is not that we opt out. We have clearly established guidelines and our guidelines are based on the Classification Board guidelines. We apply them. We have an internal complaints mechanism and then we have oversight by the ACMA and that seems to work very well. In terms of the number of complaints in relation to classification matters, since 1999, which is the last list, we have had four breaches upheld by the ACMA in relation to classification.

Senator CROSSIN—Out of how many?

Mr Meagher—I would have to take that on notice. Out of thousands of hours of broadcasting we would get 40, 50 or 60 complaints a year. Not all of them relate—in fact the majority of them do not relate—to classification issues. A tiny number of those are upheld as breaches of the code. It is not that we are asking to opt out or be excused. We have guidelines and we apply them. It is more about the appropriate application of those guidelines, bearing in mind our statutory duty to maintain independence.

Mr Brealey—I would echo those sentiments and add two points. We apply our code of practice and our guidelines and they are quite stringent and complex. They are drawn from the national classification guidelines but they are our own for all the reasons that SBS has outlined. Similarly, we get very few complaints about classification in the context of how many hours of broadcasting we do. To put that in context, to say that it should change because it should be uniform, we should also be looking at the effectiveness of the scheme we have at the moment. 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, as SBS have said, 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.

Senator CROSSIN—So you would both put to us that the system is working, that the number of complaints is minimal, that the way in which you operate is independent, with classifiers, bearing in mind that the classification scheme is predominantly functional and effective.

Mr Brealey—Yes.

Senator CROSSIN—In your submission, SBS says:

While SBS will take into account the Classification Board's decisions where relevant, they are sometimes not as comprehensive as the detailed approach which SBS applies to its classification process.

So SBS is not compelled to take into account the Classification Board's decisions?

Mr Meagher—No, we are not.

Senator CROSSIN—Have there been examples of inconsistencies?

Mr Meagher—One of the reasons we say that is—and it goes a little bit to what Mr Brealey was just saying—the Classification Board has a huge workload and often, particularly for television series, documentary series or the like which get released in DVD form, one person will review that person will make a judgment and no doubt exercise the best professional decision. They will give some reasons but they are often not particularly detailed. We have had instances where our classifiers have first of all edited the program in any event, to remove some of that material, and have also exercised their judgment and maybe come to a slightly different conclusion. It may well be that the decision of the board which gets published (a) does not square entirely with what ends up in the program that was broadcast and (b) because there is an element of subjectivity to it, where something is marginal we may take one view which might be slightly different from

the view of the individual classifier at the board. As a practical matter, we do exercise the judgment to edit or not to edit, to classify in a particular way, and that seems to work fairly well.

Senator CROSSIN—You also go on to say that your classification decisions are based on guidelines. However, in the external review process the impact test is not helpful. Can you explain that, please?

Mr Meagher—I think the general point there is that the impact test is quite subjective and, therefore, to the extent that you can—and obviously there are judgments in all of this stuff—there needs to be clarity and certainty in any guidelines, if they are to be of use. To the extent that the impact test is very subjective in and of itself, it is not a particularly helpful yardstick.

Mr Brealey—That is not to say that we do not assess impact. We do; we just do not apply the impact test. We look at impact on all of the themes that might apply in a particular program. We still take those things into consideration but there is no impact test.

Senator CROSSIN—Just take me through why that is.

Mr Brealey—As Mr Meagher says, I think that in some ways it is a fairly general high-level test and is somewhat subjective. Secondly, I think that it is important for us to be able to look at each of the elements of a particular program to assess their impact as well as being able to look at the overall impact. Although we do not apply an impact test, we do get down into far more detail and granularity around the particular themes or aspects of a program that may render the classification for the program.

Senator CROSSIN—On that basis do you then say, 'We think that this should be classified at X and therefore shown late at night'? Are they the two guides?

Mr Brealey—Not the official X category of course. We would never broadcast X content, but I take your point—

Senator CROSSIN—Sorry, that was a very poor choice of an example. I did not mean it in that context; I meant do you look at a particular show and then classify it as being whatever, Y let us say instead of X, and then say, 'Because it has this classification this is when it should be shown'? Is that what you do? Is that your impact assessment?

Mr Brealey—In a sense, yes. What we are doing is assessing the entirety of the program and making a classification decision about it, which in turn affects where it appears in the schedule. I think we also need to keep in mind that we are not just looking at acquired programs that are out there in the marketplace like DVDs and feature films, we also spend a lot of time making television and we spend a lot of time working with film makers to ensure that the program's classification is appropriate for our audience.

Senator CROSSIN—Would there be times with both of your channels when you would say, 'That is not suitable for television at all''?

Mr Brealey—We do not do anything that is above MA. We do not broadcast any of that sort of thing—any R rated content or above. We are really looking at the line between M and MA or PG and M. That is where you edit to make it appropriate.

Mr Meagher—I think it is also quite important that, as Mr Brealey was saying, in the dynamics of where we commission content, the network will have views on what audience the particular content is appropriate for and which timeslot it wants to broadcast the material in. There have been instances where, in the scripting stages for example, we may say to a producer, 'We want this to be an 8.30 show. You cannot have those elements.' Obviously the producers sometimes push back and say it is important to the integrity of the program. That sort of debate goes on quite a lot. The consequence is that, if the producer prevails, it might have to be a 9.30 show because we simply cannot put it in the 8.30 slot. It is quite a fluid process.

Senator CROSSIN—I want to switch to ASTRA now. Ms Buchanan, unlike ABC and SBS, you do actually have R 18+ on your World Movies and adults only channels.

Ms Buchanan—On our narrowcast channel. There are two different ways in which subscription television is provided. There is the subscription broadcasting and then there is the narrowcast service. Anything that is in a narrowcast, which those two channels are, actually has a technological device so that it is not broadly available to all subscribers.

Senator CROSSIN—You have to specifically request those two as additional—

Ms Buchanan—Yes, as pay per view, where you are making a purchase and you are activating that with some kind of code.

Senator CROSSIN—Okay. I am well aware of the fact that you can also regulate access to those channels through your remote control with a PIN.

Ms Buchanan—Yes, a parental locking device.

Senator CROSSIN—The question I want to ask you is: have you finally got around the inability to block those channels in remote Indigenous communities? I thought there was a problem there.

Ms Buchanan—I would have to take that on notice in terms of having any particular knowledge about Indigenous areas. But our services are national, so for Foxtel you can actually block complete channels that may be an issue to a family and then you can block by classification level. I am happy to look into it, but as a national service with the universal technology in place I do not see why that would be a problem in one area over another.

Senator CROSSIN—It comes out of the *Little children are sacred* report in the Northern Territory, where it was suggested, in particular, that those two channels would not be available to whole communities rather than to subscriber by subscriber. I had thought that there was a debate about the technological difficulties in doing that.

Ms Buchanan—I think we are talking about two different things. I am sorry, I thought you were following the strand about the parental lock. The parental lock is basically a remote control device that links into the set-top box and allows the household to decide that they do not want a certain level of classification. All of that is basically locked out from being viewed, or you can blanket lock out specific channels. That is in the subscription broadcast environment. In the narrowcast environment, the two services that you speak of are on request, so to speak, so they are discretionary, pay per view options and, therefore, because we are a national service, from one geography, blocking that would be very challenging technologically. So the two are quite different.

Senator CROSSIN—Yes, they are.

Ms Flynn—But you still have to buy in.

Ms Buchanan—Yes. You still have to have the resource and the wherewithal to make the purchase, so it is not as if in any regard that is freely available content.

Senator CROSSIN—So do you rely on the Classification Board for the ratings for your world movies and your R 18-plus channel?

Ms Buchanan—For all programming, yes.

Senator CROSSIN—So any questioning of that rating is not necessarily an issue that is taken up with you; it would be taken up with the Classification Review Board?

Ms Buchanan—In the case of a subscriber complaint, in the first instance they are directed towards the broadcast licence holder, so one of the platforms. In turn, if they are not satisfied with that, they can take it to the ACMA and then there is a review process.

Senator CROSSIN—What is the number of complaints you have had?

Ms Buchanan—Regarding classification, it was less than one per cent in 2010.

Senator CROSSIN—That is less than one per cent out of all of the movies that you are showing, right across the board?

Ms Buchanan—Out of every element of programming.

Senator CROSSIN—So, again, we are not hearing that this is a major area of national concern, if we want to put in context?

Ms Buchanan—No, not at all.

Senator CROSSIN—I have a final question that I want to ask all of you. Should music video clips be subject to a classification scheme? I am assuming here, so you might want to correct me. Particularly for the ABC, I suppose you look at the music video clip and your classifiers decide what time of day or night it is to be shown? As I understand it, music video clips are not subject to a classification.

Mr Brealey—All of them are classified. In the context of the program, all of them are assessed on the basis of our code of practice.

Senator CROSSIN—On your code of practice but not on the National Classification Code?

Mr Brealey—No. As with all of the television content that we broadcast, the ABC is responsible for assessing and classifying it.

Senator CROSSIN—So that goes to music video clips as well? You do that yourself?

Mr Brealey—Yes.

Senator CROSSIN—But, generally, music video clips are not run through the Classification Board, are they? My question is: should they be?

Mr Brealey—To be honest, I do not know. I know that anything that goes to air for television, including music videos, has to be classified internally by us according to our code, but I am not sure what role the board plays in that.

Senator CROSSIN—On the ABC?

Mr Brealey—Yes, on the ABC.

Senator CROSSIN—Okay.

Ms Buchanan—For subscription television, they all comply with the National Classification Scheme.

Senator CROSSIN—What do you mean by that?

Ms Buchanan—In terms of the classification of any of the content. Obviously, there are specific, wholly dedicated music channels. We have quite a volume of that content and, therefore—

Senator CROSSIN—But is each of the video clips classified?

Ms Buchanan—Yes, each is individually classified.

Senator CROSSIN—The classification subjects you to the time of the day that you show them?

Ms Buchanan—They tend to program them in blocks, so that once a block is rated at a certain level they would show them together, and then at a higher level at another time et cetera.

Senator CROSSIN—What is the degree of the volume of complaints against them?

Ms Flynn—Can I say something on behalf of free TV, because this area is very germane to us?

Senator CROSSIN—Yes.

Ms Flynn—We are quite different from all three. We derive from the National Classification Board system, but we are tighter than and more detailed than the National Classification Board system, which is what I think Bruce was saying earlier, because we have a broader range of programming content that we have to classify rather than just films. I have a copy of the code of practice, and if you go through the detail and do a straight line comparison you will see that we are much more specific about what things mean and what things are allowed and what are not.

We are the only broadcaster that has a time zone. I do not think that pay TV is subject to time zones whereas we are subject to time zones. When we show music videos—for instance, there is one that is shown in the morning on the weekend that is G rated and two that are PG rated—all of the content in those programs is reviewed and classified. If it does not meet the G rating it cannot appear and if it does not meet PG rating it cannot appear in PG either, so it is either edited or dropped. I think there is some confusion because there are different rules that apply on other platforms, so the level of consistency that you were talking about is not there.

Senator CROSSIN—Ms Flynn, I think that is what I am trying to get to.

Ms Flynn—I think the difference is that pay TV is not time zoned. I am not sure how the time zones work.

Mr Meagher—We are, but we are under our codes.

Ms Flynn—They are under their codes but they operate on a different—**Mr Meagher**—We apply the same standards that the—

Ms Flynn—Increasingly this will become an issue because it is not just free-to-air television. Increasingly now TVs are connected TVs. That means they have an Ethernet port. Samsung launched their connected TV in Australia as recently as this week. There is already T box, TiVo and Fetch TV. 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.

Even within one device delivering a number of different platforms, the same content on the one device will be regulated differently.

Senator CROSSIN—I think that is the crux of what I am actually trying to get to here. Ms Buchanan, when we talk about the classification of music videos, I could see perhaps quite an extreme, highly classified video at 10 o'clock in the morning on some of your channels simply because you are not time zoned, but in my wildest dreams I would not see it on seven, or SBS or two at 10 o'clock in the morning because there is a further fence around the classification system. So it is classified, and then there is a regulation or a code around who can see it and when, but with pay TV that is not there, essentially, is it?

Ms Buchanan—Yes, because in 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.

Senator CROSSIN—So you rely, I suppose, on the judgment of your subscriber when it comes to their capacity to regulate what they view and the people in their household they protect.

Ms Buchanan—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.

Senator CROSSIN—Ms Flynn, is there an ever-increasing need to move to greater consistency in terms of misuse?

Ms Flynn—We would be arguing there is a converged media review that the Minister for Communications has announced that will be underway later this year. I think what we have been arguing is that in this new environment, this new connected world, we have to work out what is important to us as a country, as a community, as broadcasters, as governments and parliaments, what are the harms we want to protect against and the goods we want to preserve and how do we apply those in a more even fashion across-the-board. Technology, and particularly the NBN, is just going to change everything, it is a game-changer for everybody, and you cannot pretend that it is 1965 anymore and that free to air television from the commercial and national broadcasters is all that there is, because it is not. I have a son who is now nearly 18 but when he was 11 and he was a mad Simpsons fan he was not sitting at home saying, 'Now I am moving from a highly regulated commercial free to air channel to a less regulated pay-TV channel to a totally unregulated download from the internet.' He was sitting at home saying, 'I want to watch *The Simpsons*. I cannot watch them because it is regulated so I can't watch it until 7.30, but I can watch it on another channel over there now or I can go and download it on the internet.' Children have been driving the changes, not the other way around, in all of this. So the need that Ms Buchanan was just talking about for information and for adequate protection mechanisms we absolutely 100 per cent endorse. One of the things that came out of an earlier Senate inquiry and a recommendation on the codes of practice was that the ACMA has now mandated parental locks on all digital television receivers. We think that is a very big advance for parents and people who are caring for children because it allows you to control what and when people are watching. But the challenges are there. People are now time shifting. PVRs mean that something taped at 8 o'clock at night might be watched at 10 o'clock the next morning. What is the relevance of a time zone then?

Senator CROSSIN—So what you are saying to us today really is that the industry across-the-board is aware of the shifting nature of people wanting to regulate when they watch it and how they watch it—I have to say I am one of those consumers in my lifestyle—and that the classification system is working?

Ms Flynn—Yes. Don't take my word for it. These are the results of a review that was done by the ACMA into reality TV as part of its review, you may recollect, a couple of years ago. They found that 90 per cent consider they should be able to decide what they watch on commercial free to air television and 93.5 per cent consider parents should be able to decide what their children watch. ACMA concluded that these results are indicative of a high level of acceptance of the current arrangements for the regulation of broadcasting content and a commitment on behalf of viewers to regulate their own viewing and that of their children. But in relation to the classification system itself 96.8 per cent, which is a pretty good number anyone's terms, are familiar with the classification symbols shown before programs and focus groups demonstrated a good understanding

of the distinction between M and MA, and 94.3 per cent are familiar with the consumer information shown before programs. Eighty-eight per cent were aware that broadcasting content is subject to classification time zone.

CHAIR—Can you identify that report? It is an ACMA one?

Ms Flynn—That was the ACMA's own independent research that it did in the context of its review of reality TV in 2007. This is it. I am very happy to hand that up to you.

CHAIR—Thank you. Senator Crossin has covered a lot of ground, which has been most useful. Thank you for that. In terms of the codes, I have ASTRA here, for which I am thankful. I do not have the ABC and SBS.

Mr Meagher—We can send them to you.

CHAIR—I assume they are on the website but I do not have a copy with me. Do you have a copy with you?

Ms Flynn—Yes, we have one.

CHAIR—ABC do you have yours there?

Mr Brealey—Yes. It is part of our code of practice.

Mr Meagher—The relevant classification sections of our code is attached to our submission. So that is there. There are obviously other aspects of the codes which interact to some extent with that.

CHAIR—In terms of the Senate committee inquiry into the sexualisation of children, which was held a couple of years ago now, did you respond to that inquiry and if so how did you do that? If you did not, that is fine. I am just clarifying whether you responded in any way at all to that Senate committee report and recommendation.

Mr Brealey—I am unaware whether we did. It was before my time. But I can find out for you.

CHAIR—Could you just take that on notice and check. And if you did respond please give us some details in terms of what you did.

Mr Meagher—Similarly, I would have to check. It may be that we did not in the sense that we show little or no children's programming. But I will check on it.

Ms Flynn—We, as you may well know, have had a new children's television standard applied in the instance since then by the ACMA and we have also adopted the AANA code of practice and their reference to the sexualisation of children, which is contained therein.

Ms Buchanan—For subscription TV, I will have to take that on notice. It was prior to my time. We also, within our codes, reflect the AANA.

CHAIR—Going to SBS, you said there were about 40 to 60 complaints per annum.

Mr Meagher—I will have to take that on notice.

CHAIR—Yes, can you clarify that for us. You mentioned the breaches. What happens in the case of a breach?

Mr Meagher—There are two ways in which a breach can happen. First, a complainant will complain to SBS and we have an internal ombudsman who makes a decision. If she determines that there has been a breach she will also recommend action, which typically would be some form of counselling and education for the relevant programmers. It may involve a correction on air or an apology, if that is appropriate. If, as a result of that investigation, a complainant is not satisfied, either because the complaint has not been upheld by our ombudsman or even if it has they do not feel there has been adequate action taken, then they can go to the ACMA. The ACMA then conducts an investigation and they too then make a finding. If they find a breach they publicise it for a start—

CHAIR—How do they do that?

Mr Meagher—Typically, they will issue a press release, and it will appear in their annual report.

CHAIR—Does it appear on SBS?

Mr Meagher—Certainly, in our annual reports and on our website we publish the results of complaint handling processes, both our internal ones and the ACMA's findings. Then typically they make some form of recommendation as to how we should deal with it—whether it is in the form of a public correction, changes to practice and procedure internally and those sorts of things.

CHAIR—It is a voluntary code, but you abide by the code?

Mr Meagher—Yes. We regard our public standing and our integrity as important. I do not have the annual report with me, but can you provide details of the breaches: how many and the circumstances of the breaches, and what happened in each case?

Mr Meagher—In terms of the classification breaches?

CHAIR—Yes. Do you know how many there are?

Mr Meagher—I have a list here going back to 1999. There have been four where the ACMA has found that we breached the codes.

CHAIR—But what about the internal ombudsman?

Mr Meagher—I do not have that list with me but I can find it.

CHAIR—Thank you. Going to the issue of research, we had Screen Australia tell us about the three hours per day for the average Australian to watch TV. Do you have any research to corroborate that? Or do you have any information that it is anything different in terms of screen watching, or any other research that might assist the committee in terms of this technological world that we are living in?

Ms Flynn—We can certainly take that on notice. We have the reports that come through from OzTAM, which I am sure pay TV uses as well. We have a summary document from last year from our marketing team that I can provide.

CHAIR—That would be useful. Do you have any details of research regarding other technologies, let us say, computers, internet, computer games and usage time?

Ms Flynn—No.

Mr Meagher—We could have a look. The major accounting firms, Deloitte and PwC and people like that, regularly produce that sort of data.

Ms Flynn—Yes. I think if you check, the ASB will provide you with that sort of data.

CHAIR—We will follow up on that. If you have any further particulars regarding usage by the average Australian and also by children of the different platforms, that would be of interest to our committee.

Mr Meagher—We will have a look and see what we have got. There is some material.

CHAIR—I think Senator Crossin covered the issue of uniformity, and Ms Flynn provided a comprehensive response. But I am interested in the different views of the witnesses on the merit of uniformity across different platforms—the same content. What is your view with respect to the merit of uniformity?

Mr Brealey—I might go back to some of the points I made before. I agree with Ms Flynn that there definitely is a real case to be made about that. We have a converging media environment, audiences and consumers can access the same types of content via a variety of means but it is not always regulated or classified in the same way. Sometimes it is not classified at all. It definitely makes perfect sense that for audiences there should be some standard that is understandable to them. On the other hand, I would also say that for a lot of the reasons that we have already outlined, particularly for the ABC, while we agree that there should be a national classification system and that we should be able to draw from that to create our own code, there are instances where it is, particularly for practical reasons, useful for us to be able to make our own analysis and decisions around classification of particular programs. We apply a very high standard. I do not think that there would be any greater level of risk to audiences about ABC content than content online, but we would like to retain the flexibility to assess our own content and classify it ourselves.

Mr Meagher—We broadly agree with that. Yes, a consistent set of guidelines as the starting point would be very useful. The challenge of course is that increasingly people have access to content that does not originate in Australia or does not touch Australian hands. That is where the system becomes difficult. Nonetheless, if Australian citizens broadly understand how our scheme works, they can apply some judgment to content that they see or that their children are seeing from offshore.

Ms Flynn—I think we would all be in the same space in that, obviously, classifying for movies or DVDs is quite different from classifying for television. For instance, there is no time zone for a movie—unless you get to MA15+. So there already is a difference. I am not saying those differences should not be accommodated but that there should just be a much more consistent view as to how the things that we think are important are applied in relation to the classification system. The interaction between the ACB and ACMA can work in a

variety of ways. Sometimes you will see a program that we have classified and ACMA has approved as a C being given a PG, as a series, by the board, largely because the board is reviewing it for different reasons. That does not mean it is not a C. It has already been preclassified. Sometimes they might take a view that something is less—less as in MA—whereas the ACMA might think it is stronger.

CHAIR—Ms Buchanan, do you want to add to that?

Ms Buchanan—Yes, just to reiterate what I mentioned earlier. We support the National Classification Scheme and we would like to see that across the board. Where we differ, however, is that each of the platforms and the way in which businesses are operating in this new converged involvement are different and, obviously, our business model would be very challenged if we were to have time zones or other things imposed, because that is actually not the service that people are procuring.

CHAIR—Fair enough. I am a little tight for time so I am going to be as quick as I can to seek your response if possible. I want to go to the ABC, in terms of your code of practice. It is based on the guidelines for the classifications of film and computer games but there are important differences and, according to page 1 of your submission, that reflects the ABC's independence as a public broadcaster. So I am thinking to myself how can the ABC's independence as a public broadcaster qualify you to and allow you to be slightly different? Why is that?

Mr Brealey—As Mr Meagher said before, it is in our legislation to be independent in editorial content matters. Part of that is being able to make decisions around our content that we know suits our audience and that we think are the most appropriate for our audience and for the ABC.

CHAIR—Have you got an example?

Mr Brealey—As we were saying before, some of the ways in which content is assessed by the board is on the basis of DVD sets. We look at individual programs. We will cut them down or edit them where we think it would be appropriate for our audiences to do that. In that case we have quite different circumstances around the sorts of content we broadcast in some cases and we need to be flexible enough to deal with those.

CHAIR—Can you give me any specific examples or can you take them on notice?

Mr Brealey—Of where we have differed?

CHAIR—Yes.

Mr Brealey—I will take it on notice.

CHAIR—We had evidence from Family Voice Australia. They told the committee about a complaint made against the ABC which was upheld by ACMA regarding the ABC incorrectly classifying a program. That is in the committee *Hansard* of 25 March at page 78. You might not have had a chance to have a look at it. If not, could I ask you to do so. According to the witness, nothing happened as a result. So I am wondering if you could perhaps respond to us on that on notice if it does not come to mind straight away.

Mr Brealey—I do not know which program specifically so we will take that on notice.

CHAIR—Thank you. On pages 2 and 3 of its submission the ABC discusses the classification of music videos and refers to G and PG time zones. Are those time zones the same as those in the commercial television industry code of practice? If not, what are the time zones? Why is this not consistent?

Mr Brealey—They are all the same apart from on multichannels, where we have G slots. I do not think the others do have G slots.

CHAIR—So that is the reason?

Mr Brealey—That is the only difference. We have kept our G slots because we do far more children's programming on our multichannels, not on our main channel.

CHAIR—Ms Flynn, we have talked about this parental lock mechanism and we have discussed that a little bit. When was that introduced? Are there any cases where it has not worked? Have you got any examples where perhaps it has not worked appropriately.

Ms Flynn—We are a horizontal market. Unlike subscription television, we do not own the set-top boxes or the digital televisions so I have no way of knowing that. But what I can tell you is that the group that checks all these things in Australia, run by Tim O'Keefe, did some research when we were lobbying a couple of years ago and found that the vast majority of TVs and set-top boxes in Australia already carried a digital parental lock. It was a large part of the campaign we ran for the government to have them mandated so that they were

present in all. I am not aware of any failures. The mandating should help to bring some consistency, however, in approach. That would be a matter for you to check with the ACMA.

CHAIR—So we could check with the ACMA, as you say, with respect to—

Ms Flynn—We have no direct control or relationship with the set-top box manufacturers or the TV manufacturers, because we are in a horizontal market. People do not go, like they would in the subscription television environment, and buy a product from a pay-TV provider and get their individual box. What they do is go out and say, 'I'm going to get this box and I am going to get that TV.' They take it all home and how it operates is not in the control of any of the free-to-air broadcasters. The mandating of the parental lock has been undertaken by the ACMA in relation to the manufacturers and the importers into Australia, so they would be best placed to answer any questions along those lines.

CHAIR—We can follow that up.

Ms Flynn—From our perspective, however, we are very keen to help promote the parental lock. We see it as a very useful tool for parents.

CHAIR—What I am interested to know is whether the locking system has been circumvented.

Ms Flynn—Of course, anything can be circumvented. If you have whiz-bang kids in your household, you would know they can always find a way around things. That is the argument that is going on about the internet filtering system and what have you as well. But what this does do for parents is provide them with the basic confidence that they have a tool that they can put to use to ensure that their children are watching what they think is age appropriate.

CHAIR—That does make sense. You mentioned the converged media review, Senator Conroy's one later in the year. When does that start and when does that finish?

Ms Flynn—He has announced the review at the beginning of March. He has yet to announce the third person on the panel. The panel is going to be chaired by Glenn Boreham, who is also the chair of Screen Australia. The second member is Malcolm Long. I understand they are due to report back to government by the first quarter of 2012.

CHAIR—I want to go back to the ABC, on artistic merit and the classification of works of art. In your submission you refer to the Henson photographs and the fact that you put on a documentary after all that. It sounds like that was quite provocative. Would you agree with that?

Mr Brealey—Airing the program was provocative?

CHAIR—Yes.

Mr Brealey—Given that we only had one complaint, I do not know that I would characterise it as provocative.

CHAIR—But New South Wales police seized a number of those works of art and then you put on a documentary.

Mr Brealey—Yes, I see your point. To be honest, it would have been scheduled a long time before either we knew for certain when they were going to be exhibited and certainly long before we would have known that the police would take action. It would have been a decision to pull the program on the basis of the action of the police in New South Wales. It would have already gone through the internal process of assessing it as to whether or not it was appropriate in terms of editorial policy and classification. I was not involved in that decision but I would assume that they would have looked at all of those and considered whether or not it needed to be either delayed or taken off air and then taken the decision that it did not.

CHAIR—And it would have been reviewed at the time by your internal reviewers?

Mr Brealey—When it was acquired it would have gone through the classification team and it would have been looked at for editorial policy.

CHAIR—When you say 'acquired'—

Mr Brealey—At the time that we bought it.

CHAIR—But that would have been before the New South Wales police intervened?

Mr Brealey—Yes.

CHAIR—But I am asking if post the New South Wales police intervening you would have had it reviewed by your internal reviewers.

Mr Brealey—We did get a complaint and on the basis of that complaint it would have been reviewed.

CHAIR—And what happened to that complaint?

Mr Brealey—I do not know but I think that it was not upheld. I would have to get back to you on that.

CHAIR—Would you check that and provide further particulars regarding the complaint and what the outcome was?

Mr Brealey—Yes, definitely.

CHAIR—On the issue of the classification of music videos, which has been touched on by Senator Crossin: you classify those—and *Rage* is one that comes to mind that is shown at different times of the day. Can you remember when that is shown on TV?

Mr Brealey—*Rage* is usually overnight and into early Saturday morning, I believe.

CHAIR—Yes, it goes into the morning, I think.

Mr Brealey—Until 11 am.

CHAIR—Yes, that is right. So how do you classify that?

Mr Brealey—We are particularly sensitive to music video content, given that a large proportion of our content is aimed at young people. ABC2 is predominantly around preschoolers and ABC3 is entirely for school-aged children. So anything that is on in time zones where children might be likely to be awake and watching will be G or PG.

CHAIR—All right. You have touched on it in your submissions and we have had it in other submissions—those two sensitive areas of the sexualisation of children and the objectification of women. You would agree that those issues are sensitive but they are still considered as part of your review of the music videos?

Mr Brealey—Yes, they are definitely sensitive and they are also considered. I think in the last 12 months *Rage* has had about 24 complaints on the basis of its content. To put that in context, it is probably less than two per cent of the total complaints about content. I do not think any of those escalated to ACMA.

CHAIR—Can you, again on notice, give us some details with regard to the complaints, the nature of the complaints and what has happened to those complaints—where they went and how they have been dealt with?

Mr Brealey—Yes.

CHAIR—Thank you. We are nearly out of time.

Senator CROSSIN—Could I just ask a question about that?

CHAIR—Yes.

Senator CROSSIN—I am just a little bit confused about the music videos subject to the National Classification Scheme. APRA and ARIA were quite clear in their evidence to us in Canberra that music videos are not subject to the National Classification Scheme. They are subject to your classification guidelines, are they?

Mr Brealey—We classify them ourselves, yes. I cannot tell you for certain how they are treated under the National Classification Scheme or by the board.

Ms Flynn—In our case, they would be subject to the regulations that we have, which draw on the National Classification Scheme, are more specific about G and PG and will be subject to time zones.

Senator CROSSIN—I see.

CHAIR—'Your regulations' being the code?

Ms Flynn—Yes.

Senator CROSSIN—So that is right.

Ms Flynn—So we would not have anything specifically about music videos per se; we would have something specific about G and PG programming.

Senator CROSSIN—The issue that we have been getting evidence on, broadly, is whether or not music videos should go through the National Classification Scheme—

Ms Flynn—This is the first I have heard that they did not.

Senator CROSSIN—over and above or separate to what you all do under your own separate codes—regardless of that, whether they should go through a National Classification Scheme just like films do, for example.

Ms Flynn—I was not aware that they did not.

Senator CROSSIN—No, they do not. APRA and ARIA are quite adamant about that.

Mr Brealey—I would only say: so long as it does not impact on our ability to classify them ourselves. The only thing I would say is that it would have a practical impact on the board, because that is an awful lot of work to do.

Ms Flynn—And, in practical terms, they have to be regulated when they are broadcast anyway, so they are being regulated. Whether they think they are subject to the national classification system or not, to be broadcast they have to meet the codes of practice of each of the broadcasters and subscription television, and we are all subject to—we draw our essence from—the national classification system.

Senator CROSSIN—We do not have the submission with us, but we had a submission that had the words of a song attached to it.

CHAIR—It was FamilyVoice Australia. It was the lyrics—

Senator CROSSIN—I ask you—ABC, SBS and Free TV—to take on notice to have a look at FamilyVoice Australia's submission. Have a look at the song and the words of that song and let us know what sort of classification your areas would apply to that, because they highlight that to us as one example where that song/video has not been subject to the National Classification Scheme but was still broadcast on air, as I understand it.

Mr Brealey—If it had been broadcast, it would certainly have been interrogated under our codes, which draw heavily on the scheme. It is also worthwhile making the point, I think, particularly in the case of the ABC, that apart from the classification code we also have 120-odd pages of editorial policy which apply a whole lot of rules around our content as well, and we use both of those together to make sure that the content is appropriate and responsible.

Ms Flynn—We have an extremely low level. Over the last five years, less than one per cent of complaints have been about music video. We had over 1,500 complaints to our review of the code in 2009, and 0.3 per cent of those were about music videos, so it is a very low level of complaint. Even when encouraged to bring forward whatever they wanted to bring forward, it was very low.

CHAIR—AMRA and ARIA noted when they presented to us in Canberra that their complaints regarding music videos were not actionable under their code. Senator Crossin covered this. You are saying it is a small percentage, but can we get some details of the complaints that you do get about these music videos and the nature of the complaints? I presume they are about sexualisation of kids and objectification of women.

Ms Flynn—It would be very hard for us to go back now and check on all of that. We can get some high-level detail for you.

CHAIR—Yes, just some overview details would be fine. I do not want you to go back forever, but just a little, a year or two, would be fine—and give us a feel for the nature of that.

Mr Brealey—And I would assume that there would be a proportion about language as well.

CHAIR—Yes. Certainly, in the lyrics in the FamilyVoice Australia submission, the language was—it was written down, and you will see in the submission that it was certainly offensive, I think, to a lot of people.

Mr Meagher—Just for the record, obviously we do not have a music video program.

CHAIR—No.

Mr Meagher—There might be a random thing included in another program, but there is no consistency.

CHAIR—All right. I think we will leave it there. If we have some more questions, we can put them on notice. Thank you again for your submissions.

[11.53 am]

BUSH, Mr Simon James, Chief Executive, Australian Home Entertainment Distributors Association

Evidence was taken via teleconference—

CHAIR—Mr Bush, thanks very much for being there. We have the association's submission, No. 31, with the committee. Do you wish to make any amendments or alterations to that submission?

Mr Bush—No, thank you.

CHAIR—I understand that you are based at your home for very important reasons—

Mr Bush—Thank you!

CHAIR—and we hope that things go well for your wife at the other end.

Mr Bush—Thank you, Mr Chairman. Yes, things have gone well; we have had the baby.

CHAIR—Congratulations. Can you give us the details?

Mr Bush—A little boy, born on Saturday morning, a week early. He was actually due yesterday, thus my inability to be there today. I would have loved to have been there today for the committee.

CHAIR—Very good. Do you have a name?

Mr Bush—Reuben.

CHAIR—Excellent. Congratulations. We invite you to make an opening statement, and then at the conclusion we will have some questions.

Mr Bush—Thank you for the opportunity to make a submission to the Senate inquiry into the National Classification Scheme, a scheme with which I am very familiar and have been at the forefront of working with successive federal governments in introducing sensible legislative and operational improvements to ensure it remains updated and relevant as new technologies are developed to distribute film and TV content. It is worth noting that the classification act predates the introduction of the DVD format and the internet as a delivery platform.

The Australian Home Entertainment Distributors Association represents the $1.3 billion Australian film and TV home entertainment industry, which covers both packaged goods and digital content. The association currently has 12 members, including all the major Hollywood film distribution companies, through to wholly owned Australian companies such as Roadshow Entertainment, Madman Entertainment, Hopscotch Entertainment, FremantleMedia Australia and Anchor Bay Entertainment.

AHEDA fully supports the spirit and intent of the National Classification Scheme, which commenced on 1 January 1996, namely to provide information and guidance to the public, parents and children about the suitability of content, such as film and TV shows. As an industry we fully comply with the scheme and the classifications act and we recognise it is in our interests to ensure our content is well understood and age appropriate. In fact the major distribution companies, their brands and reputations are worth more than any one title or rating. All AHEDA members—for example, Disney—are deeply concerned about protecting their reputation and brands at all costs. This concern then matches the intent of the scheme.

However, AHEDA also sees limitations with the scheme and the way it is governed through legislation such as the classification, broadcasting and telecommunications acts, which regulate different platforms but the same content. The classifications act is an analog piece of legislation in a digital world, I would argue. We also have come across some issues with the federated model and the way states can introduce legislative amendments and change to the way the scheme operates in each state or territory that I would argue go against the original intent of the scheme around harmonisation and simplification. In our submission I suggested that in developing any proposed reforms to the scheme the guiding principle should encompass same content, same rating, single system, different platform. Thank you, and I welcome any questions you may have.

CHAIR—Mr Bush, thank you very much for your submission. I will start with some questions. I think you summed it up at the end in terms of the merit of uniformity across different platforms, so long as the rules and principles apply to the same content. Is that correct and can you flesh that out for us?

Mr Bush—Yes. You would be aware that media convergence is happening right now. It is not just some sort of theory that perhaps 10 years ago people were discussing. Obviously there is a convergence review occurring concurrently. But what you are seeing now is the same piece of content. Let us take a TV show or a

film. It can be released on the internet, whether that be a paid model or a free model. It might be broadcast. It might be made available on DVD all at the same time. Also it could be made available by mobile phone, for that matter. There is one scheme that wraps around all those different platforms or channels, whether it be internet, DVD or broadcast, yet there are different schemes and different pieces of legislation. What we do see—and I point this out in the submission—is that you get different classification ratings on subscription TV from those on free TV. When I looked at that I thought that was peculiar. There might be some sensible reasons for that, but as a parent now and as a consumer I find it slightly odd and confusing. So I do not think the platform should matter anymore; I think the content is what is important.

CHAIR—That summarises it quite well. Thank you for that. In terms of the code, we have the four principles that are set out in the code, which you would be familiar with. Do you think that perhaps we should be adding a further principle to the code—that is, the merit of uniformity—to address the concerns you have just raised and to ensure the same rules apply to the same content across different platforms? Do you think there is merit in that or would you be supportive of that approach?

Mr Bush—The intent of the scheme is sound. I think what has happened is that the way technology has progressed has created a gap in the legislative enactment of the intent of the scheme. If that needs to be spelt out by an additional imperative of the scheme then that would be helpful. So I do not see that being a problem at all.

CHAIR—You have set out your guiding principles on page 15 of your submission, you have set out the inconsistencies with the current system on page 7 and you have outlined some examples from the international community of the overseas experience. I think the committee is keen to get more details of the system that applies overseas. Do you have any further and better particulars regarding the overseas experience, apart from what you have set out on pages 13 and 14 of your submission?

Mr Bush—I do not. I did that research for the submission a little while ago, so hopefully it is not dated now. I do not think it would be. But I note that you are meeting with the Classification Board this afternoon and hopefully they have done some of that work, or perhaps the Attorney-General's Department might be able to provide you with some of that work.

CHAIR—We will follow that up. On page 16 of your submission you propose that all films and TV content be classified and approved by trained industry classifiers, as in self-assessment. How big a deal is that? What volume of material would be covered? Do you think there are adequate resources, or what are the potential resources needed to fulfil that requirement within the industry?

Mr Bush—There are already schemes currently operating around industry self-assessment as a result of amendments to legislation made in the last few years—the Additional Content Assessors Scheme and the TV Series Assessment Scheme. Those are up and running, so my members have already done COB approved training courses and have the authority to assess those materials and then submit to the COB for approval. So there already is that capability within the distribution companies.

CHAIR—I just want to draw out some detail of this recommendation you have on page 16 and 17 about a new model. You are saying complaints should be referred to the Classification Review Board but via ACMA, and that ACMA should weed out vexatious complaints. Won't that create more red tape and another hoop to jump through? How would you respond to the question about unnecessary, complex requirements to go through before having these matters attended to? What do you say to that argument?

Mr Bush—The reason why I put the model in there was to try and create a single scheme and system that applied across all platforms. Obviously ACMA has a role to play with TV and broadcasting. In terms of the classification act and film content, you could ask the chairman of the COB this afternoon how many complaints he receives about DVD ratings and film ratings. It is in the low single digits each year, so there are next to none. I know, Senator, that at Senate estimates previously you have raised issues about specific films and there is certainly a role for complaints, whether they are from the states or from individuals. I would not want to circumvent that complaints mechanism; I think it is appropriate.

I guess this model is about designing a holistic scheme, leveraging those systems that are in place for complaints. What would be the best way to do that? I am somewhat relaxed about what that might end up looking like, but I would suggest ACMA as a way of owning the code, potentially across all platforms, and governing a complaints based process that would then refer things to the review board as necessary. That might not necessarily be the case with state attorney-generals, of course. They would potentially have the power to refer things directly. So there are a number of ways you could go in designing a system.

CHAIR—Yes, and I really appreciate your suggestion about that model, because these are the issues for us as a committee and we need to be looking at solutions as well. So I appreciate your contribution there. In terms of the federal government's constitutional ability to legislate in this area and to establish a model accordingly, do you think the power is there for the federal parliament to enact relevant legislation to establish such a model?

Mr Bush—It is a very good question. In the model I have proposed I still propose a role for the states. They would still have classification legislation as well as the Commonwealth having classification legislation, primarily around enforcement and the ability to refer complaints as well. So perhaps you are not necessarily taking away 100 per cent of the rights of the states and dissolving that piece of legislation; maybe it is simply a modification. The concern I have with the states is that their current role is moving away from the original intent of the scheme around harmonisation and simplification. I think we have got the situation now where each state can do its own thing, which creates confusion and disharmony. If we can design a system that takes away some of those elements and puts them in the federal sphere, and leaves enforcement and referral of complaints mechanisms to the states, then perhaps that Commonwealth constitutional issue is a moot point. I do not know. I would have to leave that for more learned minds than myself.

CHAIR—Thank you very much for that. I will pass to Senator Crossin.

Senator CROSSIN—Mr Bush, thank you for your time today. You make an interesting observation about the act actually being based on an analogue piece of legislation rather than the digital world. Do you welcome the federal government's reference to the Australian Law Reform Commission to actually review the legislation in this area?

Mr Bush—The ALRC inquiry into classification is absolutely welcome. I think I mentioned at the outset that I have been working with successive governments since the reforms to the system to keep it up to date with technology. Certainly a wholesale review of the scheme is warranted. So I welcome the ALRC review into the entire scheme.

Senator CROSSIN—Can I ask for your view about self-regulation. We have had ABC, SBS and Free TV this morning, and also the outside media advertising people, who seem to use the National Classification Scheme as a guiding principle but self-regulate when it comes to content. Do you have a feeling that that is working effectively or not working and what are your reasons for that?

Mr Bush—I have a focus on film and TV content in packaged and digital forms. In terms of the broadcasting standards and adherence to the scheme, I will make a couple of points. One is that you do not necessarily have consistency. So reforming the scheme to have a 'single content, single system, different platform' type message as the guiding principle is not a bad one to have. I think you have probably talked to them about levels of complaints and you do get examples. I was aware of the committee hearing you had in Canberra where you talked about applications and mobile games. I guess it is being cognisant of the volume of material and how quickly this stuff needs to get classified when it is received internationally and it needs to get on the street or be broadcast. In designing a scheme you have got to be cognisant of the sheer volume of content, what role you want the government and the classification scheme to have within that content and then how you can design a scheme to deal with the volume.

In other words, there has been some controversy around applications on mobile phones and computer software. In the old Windows software you might have at home or in the office you have got solitaire or Tetris or whatever it might be. The interpretation currently taken by the board is that that constitutes your game and therefore it falls within the remit of the act. Previously that has not been the interpretation and the legal advice. You get this level of confusion and arguably you could say, 'We have got no interest in classifying that. That is not what our focus should be on and it is not what is important.' I guess the guiding principles to the scheme are a good basis to start with—what is important, and within that what content would fall within what we need to control, the ratings and what gets consumed by parents and families. That is probably a roundabout way of answering your question, but the more you look at this the more complicated it is. I think it really is a question of what content you really want to get your hands dirty with, if I can put it in those crude terms.

Senator CROSSIN—So what is your view about video games and music videos?

Mr Bush—They fall within the scheme and they should be classified appropriately. The question is how do you classify them and what is the best scheme to classify them. That is the debate, mindful again of what constitutes a computer game as opposed to an application, and that is a difficult thing for the government to grapple with. Within that, what about when the game sits on a server offshore and the transaction takes place

offshore: what laws of Australia apply in terms of the classification? So there are interesting international and jurisdictional issues around this as well.

Senator CROSSIN—We have had evidence of that from submitters when we were in Canberra, particularly in relation to iTunes.

Mr Bush—That is right. I can give you an example where we are self-regulated and I think it is a good example, where as a *Sydney Morning Herald* subscriber I received a Fairfax marketing email. In there was a DVD subscription service. There were no classifications on the email of those films and I believe there should have been. I contacted Fairfax and said, 'You need to put these on and do the right thing, be a good citizen and provide that information.' That was subsequently done. But that service was being run out of Singapore and technically they did not have to do that but we self-regulated and put that on there. It is a complicated world and I guess it is going to be interesting to design a system that meets current and future challenges. The volume and international nature of where we source the content you have got to be mindful of and design a scheme that makes it easy for people to self-regulate and do it themselves and do it quickly. If you make it overly onerous then people are just going to not do it. I think Senator Barnett's and no doubt your frustration with enforcement on the ground by state police forces in particular. We know that is minimal. It is a difficult balance you are trying to achieve in a policy sense.

Senator CROSSIN—What are your comments on the interaction between the Classification Board and ACMA, particularly in relation to complaints handling?

Mr Bush—Correct me if I am wrong, but I think there is a role between ACMA referring complaints around internet-based content to the board for review. I think that is the process by which ACMA has a role and interaction with the Classification Board. I do not think it is anything further than that. In the proposal I have put forward I have suggested there should be a home entertainment classification code of practice. ACMA has a current mandate and current experience in running industry codes whereas the Classification Board does not. That is where I suggest it might be a sensible place to sit.

CHAIR—Mr Bush, thank you very much for your evidence today amidst a busy schedule for you with your new parenting responsibilities. We will have a short break for lunch.

Proceedings suspended from 12.13 pm to 12.57 pm

HOTCHKIN, Mr Paul, President, Media Standards Australia

Evidence was taken via teleconference—

CHAIR—Welcome. We have your submission, which we have numbered 21. Do you want to make any amendments or alterations to it?

Mr Hotchkin—No, thank you.

CHAIR—I now invite you to make some opening remarks and then we will have some questions.

Mr Hotchkin—Media Standards Australia is a nationwide advocacy group for children and families in matters of the media. As president of MSA I believe the classification system is a brilliant concept in running with our Australian democracy but it is imperfect and flawed. It was designed mainly to protect children, and there are many instances where this is not the case. There is no doubt that there are parts of the entertainment media pushing the boundaries of community standards, causing dysfunction and desensitisation, so we applaud this timely inquiry.

There are a couple of major concerns which have come up since we placed our submission and I would like to quickly bring them to your attention. We were wondering if McDonald's family restaurants have a new slogan: 'Do you want porn with your happy meal?' McDonald's in Busselton, a very popular rural holiday town in Western Australia, is showing pornographic music videos through Foxtel's MAX channel. One particular music video clip shown in early January this year was *Girls on Film* by Duran Duran. It was the uncut and unedited version, which shows naked women and women in see-through negligees in various supposedly erotic scenes such as nude mud wrestling and a close-up of an ice cube being rubbed on a nipple—the sort of thing you would not find on *Sesame Street* or *Play School*. 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.

Further, we also understand that this cases is not isolated. In the past, people who go to fitness gyms have also complained about music videos on Foxtel's MAX channel. Foxtel rate about 95 per cent of material on their MAX channel as MA. I do not think that Foxtel have any control over what its members do with their subscriptions, so I am surprised that ASTRA suggested I contact them. Pay TV needs to advise its members that it is against the law to show films that have a classification of MA+. Due to the serious nature of the complaint it would have been great if someone from the ACMA, or even ASTRA, had taken the initiative and responded and acted quickly. To my knowledge, nothing has been done.

This case in particular is a good example of the sexualisation of children and the objectification of women. I again ask: who is going to take the initiative and the necessary steps to protect our children? We have received many complaints about the entertainment media over the years. 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 generally too hard for the public and a lot of complaints are flying under the radar. We wonder if a special one-stop independent complaints department should be set up that advocates for the public and provides support to the media in question and to the relevant bodies such as ACMA to instigate further economic accountability actions.

We also believe that, whatever the outcomes of this inquiry, parents desperately need to be proactive with their children's upbringing in relation to media matters. Part of that is guidelines set by government, a detailed education process about classifications and a recommendation to set boundaries on such things as time spent on social networking sites and not having TVs, computers or mobile phones in bedrooms et cetera.

Finally, the Minister for Home Affairs, Brendan O'Connor, has asked the Australian Law Reform Commission to review the National Classification Scheme. We have two questions about that. Firstly, is the minister doing so purely because of the pressure from the computer games industry, which is desperate for the R18+ rating for computer games? In fact, Mr O'Connor said we are becoming the laughing stock of the

developed world because we are the only country that does not have an R18+ classification level for video games. That is a matter of opinion, because we know from past US Senate subcommittee hearings that both the US government and families have had enough of extremely violent video games. This is mainly due to the fact that the US has allowed video game companies to self-regulate.

The person who knows more than anyone else about the effects of violence in real life and in the entertainment media is Lieutenant Colonel David Grossman, who has written a book about 'killology'. He says:

Violence is like the nicotine in cigarettes. The reason why the media has to pump ever more violence into us is because we've built up a tolerance. In order to get the same high, we need ever-higher levels … The television industry has gained its market share through an addictive and toxic ingredient.

Our last question is: will be ALRC finally over the outcomes from this enquiry to work in conjunction with us?

CHAIR—Thank you. I want to go to your case study regarding McDonald's very shortly, but just tell us a bit more about Media Standards Australia. We have got your submission. You represent children and families across the country. How does your organisation operate? Can you tell us a bit more about your organisation?

Mr Hotchkin—We follow what is happening in the media, so we monitor the media, particularly the entertainment media, and because it is so broad that can be quite difficult. We lobby governments for changes in legislation. We also notify parents and families of what is happening.

CHAIR—Do you have many members? Where are you based? Are you part time, full time or are you honorary? How does it work?

Mr Hotchkin—This is a voluntary position. Our committee members are also volunteers. We have about 4,000 to 5,000 members Australia wide.

CHAIR—Thanks very much for that. Going to your case study, which is quite alarming, you said you have written a letter. Is it possible for the committee to have a copy of that letter?

Mr Hotchkin—Yes.

CHAIR—So you would be happy to forward that to us?

Mr Hotchkin—Yes.

CHAIR—Thank you very much. How long ago was that?

Mr Hotchkin—That was the next day. This is a personal experience. I took my family down to Busselton for a holiday and my wife took her two sons for lunch there and that is when she noticed the video clip. But this has been going on for more than a year. It first happened last year, where it was not just a sexually-oriented music video, it was also another horrific one in nature.

CHAIR—What does 'horrific' mean? Violent or sexual?

Mr Hotchkin—Horrific would be violent. It was Robbie Williams taking his clothes off and then he took his skin off to reveal the muscle tendons, sinew and blood and then that came off to reveal his skeleton. To me that is not something a child should be seeing. Obviously there are adult-themed music videos playing at these venues and the whole lot is just being ignored. McDonald's has been receiving complaints, but apparently, because it is company policy, once the people leave then they just turn it back on. I was a bit naive last year. I thought: 'Well, they've turned it off. They heard the complaint; they're doing something about it.' But going back again this year and then finding out about the Duran Duran video, that is when I sent a letter to the head office of McDonald's the next day. I thought this is so important that I should send it by express registered mail.

CHAIR—When did you do that?

Mr Hotchkin—It was 5 or 6 January.

CHAIR—So just this year?

Mr Hotchkin—Yes.

CHAIR—You said you have contacted the various organisations—McDonald's, ASTRA, ACMA—and you have not received a response?

Mr Hotchkin—I thought I would go straight to ACMA because I figured this was too important. I was not specifically complaining about any specific scene, but the fact that MA music clips were being broadcast. That was my primary concern. They then referred me to ASTRA and the classification branch.

CHAIR—What time of day was this visit that you had?

Mr Hotchkin—It was probably about 12 o'clock or one o'clock in the afternoon. It was the busiest time. Being a very popular holiday resort town, McDonald's gets very busy around that time of the year.

CHAIR—Fair enough. You said that this was not a one-off; that this has happened before. Is this the first time that you have written and complained?

Mr Hotchkin—That is right. Last year was the first time. While it was important, I was a bit naive and I thought, 'They turned it off and they are going to do something about it,' so I left it. This year, when I realised that nothing had changed and given the nature of the clip and that it is actually a banned video clip in other countries and possibly this one—

CHAIR—How do you know that?

Mr Hotchkin—How do I know that it was banned?

CHAIR—Yes.

Mr Hotchkin—I guess I read it on the internet.

CHAIR—And this is the Duran Duran music video clip?

Mr Hotchkin—Yes.

CHAIR—What would it be rated?

Mr Hotchkin—If I was doing the rating, MA. Foxtel rate that as MA—so, to me, they are doing the right thing. The people who are doing the wrong thing are the people who are streaming the content to the general public.

CHAIR—Okay, I am with you. We certainly look forward to getting your letter and hopefully getting feedback from the relevant authorities on your concerns on that one.

Mr Hotchkin—Okay.

CHAIR—Going to your submission, obviously you have got some serious concerns about the sexualisation of children, the objectification of women and the pornification of our society—using your words.

Mr Hotchkin—Yes.

CHAIR—Do you have evidence to say that this is bad for kids? On page 2 of your submission you indicated that data supporting the health risks of the oversexualisation of minors is being ignored. Do you have evidence or research that highlights that?

Mr Hotchkin—I possibly do, but not in front of me.

CHAIR—Could you take that on notice and maybe alert the committee to that research or forward it to us?

Mr Hotchkin—Yes.

CHAIR—Thank you very much. You have highlighted the recommendation of an introduction of a rewards system for family friendly video stores, similar to the National Heart Foundation tick. Can you tell us a bit more about how that would work and if you think it is feasible?

Mr Hotchkin—Firstly, my committee helped me with the submission, so please bear with me. I guess it would go to promoting the G-rating type videos or PG-type videos. The video companies would have to meet specific rulings or guidelines to be able to get that tick. That way families would know that it is a family friendly store.

CHAIR—You also recommended that, if the serial classification of publications is maintained, there should be spot checks. You talked about the merit of spot checks. Some people would argue that that is happening at the moment. What is your answer to that and why do you think that this is the way to go?

Mr Hotchkin—If it is happening at the moment, why are some of the publications that are not supposed to be coming through coming through? If there is a level of trust for self-regulators, there has to be some sort of trade-off.

CHAIR—So your view is that at the moment the publications, or some of them, are not adhering to the guidelines?

Mr Hotchkin—Yes.

CHAIR—And that is why the random spot checks will help fix that problem?

Mr Hotchkin—That is right.

CHAIR—I want to ask you about your recommendations on the prohibition of the sale of the X-18+ films in the Northern Territory and the Australian Capital Territory. I know Senator Crossin has an interest in this area as well. What are your views and recommendations on that? You have summarised some of those thoughts on pages 13 to 20.

Mr Hotchkin—We do not believe that there should be any sale or anything to do with X-rated video in the Northern Territory or even Canberra, for that matter. The serious nature of it is obviously causing quite a bit of dysfunction in the community. Having a free supply of that is only adding fuel to the fire. We are dead against it. With the internet, for instance, I heard the other day that just about every child under the age of 13 has viewed pornography. That is just shocking. Somewhere along the line someone has to say, 'We're going to do something about it.' I understand that this is what this inquiry is about. There has to be rigid restriction on the proliferation of pornography, because of the damage that is being done in the community.

CHAIR—A number of the industry associations have been here this morning. On pages 22 and 23 of your submission you talk about the AANA code of practice and you say that it should be tightened up. Can you explain what you mean by that? If you have any, could you give us examples of where it needs to be tightened up in terms of the code?

Mr Hotchkin—Is this the billboards—

CHAIR—Yes, they appeared this morning.

Mr Hotchkin—The question asked was whether it should be under the classification scheme. The problem is that you could have material that could be generally G rated—it does not have foul language, for instance—and, on the surface, it is G rated, but it can still come under 'obscene' in a sense and against community standards simply because it is talking about erections, for instance. There has to be a sensibility where the advertisers on billboards say, 'We're trying to attract people's attention, but how can we do that without being obscene about it?' I guess it is about using common sense, but sometimes that does not prevail in these instances.

CHAIR—You want to tighten up these codes but they would probably argue that they are trying to make the codes consistent with community standards and values. What do you say to that? How do you know what the community values are? Are you better at assessing that than they are?

Mr Hotchkin—That is exactly right. Community standards can be gauged by the amount of complaints generally. That was pretty close to the point of what I was saying before—that is, that people do not know where to complain. The might think there is too much violence or too much sex or that it is not appropriate for children, but the thinking of advertisers or people who are on TV or radio is, 'We've got to go to the code of practice and see if we are in the right'—ignoring what the actual complaint is about. They will say, 'Well, actually, this scene is M rated and that is what we have rated it, so we've done everything right. But the actual complaint is not so much about that; it is actually about what it actually is. It could be too much violence, too much sex or too much sexual innuendo at an inappropriate timeslot.

Instead of actually listening to the complaints and trying to justify what they are doing, they need to listen to the overall reactions. That is what I believe. There should be a complaints department set up so that it can literally provide guidelines to these businesses and say: 'We've had 300 complaints because of too much sex being shown in this time slot. You need to do something about it.'

CHAIR—We are a bit tight on time. Are you aware of the Advertising Standards Bureau and the fact that they dismiss these complaints regarding the outdoor advertising 'Drink Sprite. Look Sexy*' and the Bardot denim advertisement?

Mr Hotchkin—No, not those specific ones.

CHAIR—Can I draw that to your attention and if you have a view please let us know what your views are. I would be interested to get your feedback. There has been it appears an increase in the number of adult services in newspapers. What is your position on those ads which some people might say are in your face?

Mr Hotchkin—If only Gail were here. Our vice president is just amazing on the subject of sex advertising. She is the most qualified person to answer that. Unfortunately, she is not here. I do not think there should be any sex advertising in newspapers simply because newspapers are used in schools for craft and so on and are available to kids.

CHAIR—Okay. I might have missed it in your submission but if you have any views could you take it on notice regarding adult services advertising in newspapers and please let us know?

Mr Hotchkin—Okay.

Senator CROSSIN—I want to ask you about your recommendation regarding the display requirements for restricted publications. You obviously favour the legislation that is used in South Australia. Can you take us through that legislation and why you would want to see that rolled out nationally?

Mr Hotchkin—What we are finding is that there is no consistency in any part of the National Classification Scheme. In other words, if there is an R rating, for instance, why is not there a separate section? What we are finding is that you go into a video store and they will have an adult section, but not a specific R rated section. You could go into the new release section and the R rating will be mixed up with all the other ratings on display instead of actually having a specific section to one side for the R rated material. It is really about the consistency and saying to the general public, 'The R rating is an adult type classification.' It brings consistency to the whole thing.

Senator CROSSIN—This is for videos as well as publications?

Mr Hotchkin—That is right.

Senator CROSSIN—Okay. Is it also your submission that perhaps some of those publications should not be available in newsagents, petrol stations or supermarkets?

Mr Hotchkin—No, they should not. The problem with the publications is that when it is geared up for adult material why are they selling it in petrol stations? It does not make sense. All of these venues have kids going through them. I can remember standing in the line at a supermarket and there was a mother in front of me with a child and right at the eye level of the child was literally a soft pornography magazine. I thought: 'Hang on a sec. This really is wrong. Why are they selling this in shops where there are mothers with children doing their shopping?'

I think this is where the problem lies. Again, there is no consistency. People are not actually thinking about who is coming to the shop and saying where there are children coming through, 'This is inappropriate.'

Senator CROSSIN—So as part of the review of the classification system you believe there should be standards on how and where are these goods are sold or displayed?

Mr Hotchkin—That is exactly right. That is what I am saying. If you are going to work in one area then it has to work right across the whole board because otherwise it is sending mixed messages. About two or three years ago with computer games someone said there are markings for computer games and there are markings for video and decided to make the markings for video the same as the markings for film, so people think it is okay because computer games are exactly the same as films. That is the way people think, but of course they are not because one is passive viewing and the other is interactive viewing. Computer games have stronger content because of the nature of it than passive viewing obviously. Again, maybe that has to be looked at as well. People are now saying: 'There is a R-rating for film. Why isn't there one for computer games?' If it were kept separate then that argument would never exist.

Senator CROSSIN—I want to ask you about X18+ films. Your organisation has a view that they should not be available at all in this country.

Mr Hotchkin—No.

Senator CROSSIN—Therefore, they should be banned as imported goods?

Mr Hotchkin—That is exactly right. There are problems with all of these addictive substances. Pornography is quite addictive and is causing quite a bit of harm to children and families. We have the research to back that up. Of course, there are other things like tobacco, alcohol and so on. We cannot get that right. Kids as young as 13 are smoking and drinking and even binge drinking, and we as adults cannot protect them. That astonishes me. You would think that adults are responsible enough to say, 'No alcohol and no smoking,' and that is where it is drawn, but kids are actually accessing it. How can we allow other things to come in, like R-rated computer games or X-rated films, when we cannot protect children from them?

CHAIR—I have a quick question regarding the Henson portraits and paintings and your view on artistic merit. There is an argument that artistic merit should be allowed and therefore that should not be a problem. What is your position on that?

Mr Hotchkin—Artistic merit can be anything. That is the problem—it is too broad and too vague. Anyone can justify artistic merit. A mass murderer can say 'the way I did it was artwork', and he can be quite proud of the artistic merit of what he has done.

Because of the internet we are living in an age where we cannot be naive with it. If someone is taking photographs of, say, nude girls, one would have to question what the motives are or who the customers are, for instance. Then there have to be community standards—you cannot say, 'That's okay for him but not for him.' Unfortunately this is the age we live in. We have to say, 'Mate, what you might be doing is legitimate on the surface, but unfortunately the lines have been drawn and we can't do it any more, and that is the way it is.' I guess that parents have to be smart enough not to take photos of their children naked and put them up on Facebook for the same reason.

In a sense society has lost its innocence and we have to be one step ahead of what is out there, and we have to be consistent about it. There are going to be a lot of noses put out of joint—people are going to be put out, and they are going to say 'that's our freedom of expression gone' or they are going to go to that. But when it comes to protecting children, freedom of expression is a whole different thing, especially when it is also about community standards.

So it is not so much a matter of the government setting the community's standards as it is a matter of the community setting them. That is part of this education process—you would not believe how many people think that the government has a pair of scissors and is cutting up film, when it is actually a democratic process. If the public knew more about the workings of how the classification system worked in line with the Australian democracy, then, firstly, you would get full support and, secondly, people would have more of an understanding and be able to work with that in setting boundaries for their children as well.

CHAIR—Thank you, Mr Hotchkin. We are out of time. We appreciate your evidence today and your submission.

[1.33 pm]

AYRES, Ms Robyn, Executive Director, Arts Law Centre of Australia

TENG, Miss Joanne, Solicitor, Arts Law Centre of Australia

BENNETT MOSES, Dr Lyria Kay, Acting Academic Co-Director, Cyberspace Law and Policy Centre

CHAIR—I am advised that the Electronic Frontiers Australia witnesses have been held up in air traffic, so we move to our next witnesses. They are from the Arts Law Centre and the Cyberspace Law and Policy Centre, and I welcome them. Thank you for the Arts Law Centre's submission No. 33 and the Cyberspace Law and Policy Centre submission No. 54, which have both been lodged with the committee. Do you wish to make any alterations or amendments to the submissions?

Ms Ayres—Arts Law does not want to make any changes.

Dr Bennett Moses—Only two very small things: first, something I forgot to do on be actual submission—that is, to thank a student researcher, Lauren Loz, for her assistance with the submission; second, though I am not sure if this is the appropriate procedure, I referred to an article in my submission, and I have copies if the committee would find that useful.

CHAIR—Thank you very much; that would be appreciated. I invite you to make an opening statement, after which we will have questions.

Ms Ayres—The Arts Law Centre of Australia provides legal advice, resources and education to artists and arts organisations across Australia. This means that we are familiar with the different approaches to aspects of classification and censorship, including some of the criminal provisions across the states and territories and how these intersect with the classification schemes. Freedom of expression is obviously a very important issue for Australia's creative community and the artists and arts organisations we advise.

The current classification system can make it difficult for the artists or arts organisations, who generally come to us for advice because they want to comply with the law. Increasingly, the nature of creative practices in Australia is that artists are practising across art forms—artists' work may encompass a number of genres, including traditional art forms such as painting, and may also include video and film, photography, text, music, interactive games and websites. These could all be in the one exhibition. Not only do artists face differences in approach depending on which jurisdiction they are in but they also face differences in the law depending on the type of creative work and the method of distribution.

In addition, some artists or arts organisations funded through the Australia Council may have to navigate an additional layer of requirements, as they have to comply with the protocols, created by the Australia Council, for working with children. The result of this is a tendency for artists and galleries to avoid work that may involve children. There was a recent example of a charity fundraising exhibition being cancelled by Sydney Children's Hospital because it contained a photograph of a bare-chested boy which was by one of Australia's outstanding artists, Del Kathryn Barton. Arts Law supports a national classification system in principle, but it has become a very complex web of legislation, industry codes and other requirements which are inconsistent across jurisdictions, art forms and delivery platforms. Australia's creators and their industries need a clear, transparent, consistent classification system which is relatively simple and cheap to comply with. The current cost for classification are prohibitive for most artists, given that the research consistently shows that Australia's artists, irrespective of art form, earn very low incomes from their creative work.

We also need to be mindful of the national and international context in which creators are operating. There is a problem for Australian creators if the burden of compliance with a uniquely Australian classification system is significant, especially given that our creators are competing with an enormous volume of content created and made available online here but coming from overseas. It is therefore increasingly important that the broader community be educated about the material and information that is available on the internet and other platforms and that work is done on systems such as filters that can be installed privately so that people take responsibility for what they and their children access rather than expecting the government to be able to classify all content that is now able to be accessed. Arts Law endorses the self-regulation models that are currently in place, for example with the music and television industries, and encourages an examination of how these might be expanded rather than the reverse.

Currently, under the classification scheme, artists have to determine whether certain works are submittable publications, which raises the difficult issue of what is likely to cause offence to a reasonable adult. This is a

rubbery concept, and there will be extremely divergent views ranging from those with an extremely low tolerance to sensitive material—the same material which many others in the community would have no difficulty with—to those with a higher of tolerance for the same material. This indicates the need for regular research on community views as to what a reasonable adult would find offensive, which would be made publicly available and then help form the basis of decision making about the classification scheme.

Some of the important issues that are addressed in more detail in our submission are those relating to the treatment of works of art under the classification scheme and the role of artistic merit. Arts Law supports the current provisions, which allow proper consideration to be given to the cultural context in which the work is created and consumed in the community. We would welcome the broadening of certain exemptions that currently exist to artistic works irrespective of the art form—for example, video art, especially if the work is exhibited in a gallery space. This would help overcome the current uncertainties, which sometimes result in innocuous material having to go through an expensive and time-consuming classification process just to be on the safe side. The literary or artistic merit of a work continues to be an important consideration in relation to classification decisions and should be retained and strengthened. In addition, Arts Law welcomes the suggestion made by the Western Australian government that the use of expert evidence would assist in decision making about artistic merit

Finally, just as a general comment, we are aware that there are a number of reviews currently underway in relation to classification issues. As the committee is no doubt well aware, in addition to this inquiry there is the work of the Australian Law Reform Commission, the examination of the issue in the convergence inquiry and the inquiry into the classification of computer games. It is obviously important that there be a cooperative approach with any findings ideally informing the broad ranging work of the Australian Law Reform Commission in reviewing the National Classification Scheme. Those are the formal comments I wanted to make in addition to our submission.

Dr Bennett Moses—The Cyberspace Law and Policy Centre is based at the University of New South Wales. It does public interest work around issues surrounding communication technologies and the law. That is the organisation I am speaking on behalf of today. I want to raise two issues in relation to the classification scheme: the first is what I might call the problem with the RC category as it is currently defined; the second is the problem of the common assumption that what applies offline ought to apply online. I will deal first with the problem with the RC category.

The RC category fails to distinguish between two different types of material: material that every Australian and the people of most nations view as beyond even a wide notion of freedom of speech—a classic example is something like child pornography—and material where there is controversy both within Australia and, especially, internationally as to whether that material ought to be commercially available; here I am thinking of things like sexual violence or extreme violence. For the moment, the RC category contains both, despite the fact that even groups arguing for high levels of censorship would likely agree that it requires a different approach. For instance, child pornography ought not to be simply a question of self-regulation or even ad hoc reporting to organisations like ACMA; in the case of child pornography, the community expects active policing both within Australia and through cooperation with foreign agencies overseas. It is not simply about access to content; it is also, more broadly, about prevention of child abuse. That is not necessarily the case with other material, such as sexual violence, where, whatever people's objections to it may be—and there are many objections raised to it, though I am not going to go into them because I am sure you will have testimony from others—it is a different and much more controversial category, and it is legal to possess many types of RC material in parts of Australia even though it is illegal to sell it.

The fact that the RC category contains both often leads to confusion in debates about particular policies and, in the experience of the Cyberspace Law and Policy Centre, most prominently and recently in the debate over a mandatory internet filter. During that debate the political rhetoric focused on child pornography while the proposed legislation was based around the RC category. To a large extent, especially online, they need very different policy perspectives. In the case of child pornography there is a lot of agreement at an international level which enables interagency cooperation in locating and preventing the production of child abuse materials. There are questions as to how many resources are being put into that and so forth but it is a very different sort of question.

When one looks at Australian access to RC material that is legally available overseas, such as sexual violence, interagency cooperation is not always an option. However, similarly and understandably many Australians are concerned about a filter of an unpublished list, based on what ACMA or the Classification

Board or a combination of the two deem to be RC material, where inevitably, because you cannot publish the list for fairly obvious reasons, you cannot have full citizen oversight of the process. This would be done, if one takes out the child pornography material, purely to prevent access to material that can be legally possessed although not sold in most Australian jurisdictions. There is understandable concern in the case of the broader RC category about scope creep, given the reality that community standards are a slippery concept and not everyone agrees.

Although this hearing is not looking directly at the internet filtering proposal per se—and we would argue further that no sensible decision can be made without further research on the true effectiveness of a filtering solution against clearly articulated goals—nevertheless as a preliminary matter we believe it would be helpful to differentiate between the two types of RC content I have described and to think separately how to deal with each of them from a policy perspective.

The second issue I wanted to raise is the common assumption that what applies offline ought to apply online. In other words, it is commonly said that there is a need for similar treatment in both contexts. As I have argued in the article I handed up earlier which is published in the *UNSW Law Journal* and also footnoted in my submission, there is less clarity over what that concept means. If it simply means that classification and censorship are issues that have to be viewed holistically—in other words, we have to recognise the fact that Australians are now accessing content both online and offline and to think about policy goals of a broader context—then there is little doubt that the online world and the offline world are both important. However, if instead one treats that view as being that the outcomes ought to be the same—and it was stated in the political debate around the filter that it should be the same as it is in your local bookstore or library as it is online—in other words, it should be as hard to access particular material online as it is offline—then we have to acknowledge that in order to achieve such an objective, you would need some very restrictive laws.

One of the issues this committee is considering is the billboard issue. It is very easy for the Australian government to regulate what goes on billboards that are in Australian locations. If you want to make it as hard to access particular material online you inevitably have to have a greater negative impact on freedom of speech than you would need to have to achieve the same objective offline. It is not that it is impossible. In China, for example, if the Chinese government does not want its citizens to view particular material, although it cannot prevent it absolutely it can achieve high levels of control, but it can only do that by having in place a censorship system which most Australians would not be comfortable with. So we cannot say, for example, that a policy or law that Australians would be willing to accept would be able to achieve the same outcomes online and offline in terms of the difficulty of accessing particular categories of material.

The third thing it can mean is simply that the same provisions—in other words, the same laws—ought to apply both online and offline. For example, if it is illegal to screen a film at Australian cinemas, it should be illegal to host it on an Australian website and that is, subject to some inconsistencies and problems, essentially the way the system works at the moment. The problem with that is around cost-effectiveness, so banning material in Australian bookstores or movie theatres means that it will be hard—although likely not impossible—to access that material offline. A similar ban in legislation in terms of restricting what Australian content hosts can host on the internet is unlikely to increase the difficulty of accessing such material online, given the international nature of the internet.

There are other differences in terms of formulation of laws and some of these have been discussed by other witnesses—for example, the economic impact of a requirement to have content classified before publication differs offline and online. It is not unreasonable to ask a film distributor, where the film is going to be screened in Australian cinemas, to pay a couple of thousand dollars; however, it is unrealistic to impose similar costs on, for example, developers of mobile phone applications. In other words, taking the three together, it is very easy to say that what applies offline ought to apply online. It is much more difficult to work out what that means and, depending on the meaning one chooses, whether it can be achieved and whether it can be achieved cost effectively. Ultimately, we need to make sure that the classification and censorship scheme is cost-effective, both online and offline. That might entail different solutions and that might mean that the outcomes are different. In other words, one might not achieve the same level of control in both contexts.

CHAIR—Let us go to questions. The Arts Law Centre of Australia is based at Woolloomooloo. Ms Ayres, could you tell us a little bit more about it. I have read your submission, but is it part of another university?

Ms Ayres—No, we are not. We are a not-for-profit organisation. We are part of a network of community legal centres around Australia. We are a community legal service that provides legal advice to artists and arts organisations around Australia. We only have one office, which is based in Woolloomooloo, but our work is

national. For example, I am in Perth today seeing various arts organisations and government bodies. When I talk about 'artists', I am using the word very broadly. We cover all genres, from visual artists, filmmakers, musicians, writers, performers and actors to dancers. It is very broad.

CHAIR—But you are funded by the community legal centres around Australia?

Ms Ayres—No, we are not funded by the community legal centres. We get a grant from the Australia Council for the arts; we get some grants from state arts funding bodies, like Arts New South Wales; we also earn some income ourselves through our educational work and the subscription service that we provide. It is a combination of free and very low-cost legal services.

CHAIR—On pages 9 and 10 of your submission, you talk about the merit of and your support for a standardised national enforcement regime. I am interested to know your thoughts as a lawyer on the constitutionality of any reform and what heads of power we may have has a parliament to legislate. Are you able to outline your views on that?

Ms Ayres—I have not given that particular issue consideration. Given the federation that exists, obviously it would be much better if we could have an agreed uniform approach to this rather than it being the Commonwealth overriding the states where there was resistance.

CHAIR—I have asked this question a few times. I appreciate that. If you have anything further to add on notice after further thought on that question, please let us know.

Ms Ayres—Yes.

CHAIR—Dr Bennett Moses, is your doctorate in law?

Dr Bennett Moses—It is in law.

CHAIR—Would you like to respond to that question?

Dr Bennett Moses—It is not in constitutional law but it is in law. As I said, I am not an expert in constitutional law. Two things struck me about that question. The first is that, if one needs to decide the sort of content that is national, if one looks at, for example, billboard regulation or something like that, there is no real reason, in terms of a democracy, why a state should not be able to say that it finds particular content more troubling than another state. There may be different community attitudes towards it. Each should be able to separately and democratically make that decision. The real problem around that is the permeability of boundaries with respect to a lot of content. In other words, more and more content is national. In that context, obviously a federal approach is desirable. It is easier to create a federal approach if one separates things like the RC category, which I talked about earlier. If you look at something like child pornography, you can see there really is international consensus and condemnation. In fact, it is referred to in various treaties. There are treaties surrounding children's rights and there is reference to child pornography in the cybercrime convention. In fact, the treaties power can justify a federal approach to dealing with child pornography.

CHAIR—I want to go back to the Arts Law Centre and your submission again. I just want to draw you out on these Henson photographs. Obviously there was some controversy a few years ago, but you have noted on page 8 of your submission:

More recent Henson works of art have been submitted for classification …

What is the latest information on that and what sort of work are we talking about? Are they similar? It is potentially controversial yet again, but what can you share in shedding some light on these new Henson photographs?

Ms Teng—I believe they were photographs similar in subject matter. They have been submitted for classification and nothing more has come of them because there has been very little attention given to it, in comparison to the previous incident, and they have been deemed to be not problematic.

CHAIR—So they have been classified or not classified?

Ms Teng—They were submitted for classification and I have yet to double-check on the status of that application. But given that the exhibition has gone ahead without any further controversy then it seems that those have been deemed not to be problematic.

CHAIR—Could you take that on notice and check those facts for us and let us know further and better particulars regarding those particular photographs?

Ms Ayres—Sure.

CHAIR—Thank you. We will move on. I want to go back to this proposition that you think that these works of art should essentially be exempt from the classification laws. Is that right, or am I interpreting that the wrong way? If I am right, can you flesh out the reasons why they should be?

Ms Ayres—At the moment works of art are not exempt as such. Works of art only have to be submitted for classification if they are likely to be refused classification or if they are likely to cause offence to a reasonable adult to the extent that the publication should not be either sold or displayed as an unrestricted publication or are not suitable for a minor to see or read. I suppose it is getting back to the idea that to possess these works of art, which are—they do not contain any illegal content. Even if they were refused classification in terms of distribution, or being sold, there is no reason why they cannot be owned or be viewed. I suppose the argument is if adults are able to view these works of art in their own homes, then why can't they go and view them in a gallery space. While it might be open to the public, it is a much smaller segment of the population that visits gallery spaces and those who do go are familiar with the cultural context in which work may be confronting or may be dealing with sensitive issues. It is not like they are seeing it on a billboard, for example, or in the window display of a shop.

CHAIR—Ms Ayres, let me ask you another question then: should any standards apply? Should any rules apply to these works of art, or are you saying it should be anything goes, particularly in the public arena? As you have just agreed and admitted in your statement there, they are open to the public, including children. So do you think there should be any standards applying to these works of art?

Ms Ayres—Yes, sure, we do think there should be standards applying to the works of art. But like the speaker from the Cyberspace Law and Policy Centre, we think it is a much more difficult issue when it involves—we have no problem at all with a strong enforcement system applying to child pornography, I think everybody agrees with that. But when it is dealing with more sensitive material, then adults should be able to exercise the freedom of choice as to whether or not they want to view material that may be sensitive.

CHAIR—What about children?

Ms Ayres—Yes, adults should be responsible for what their children have access to.

Ms Teng—If I may add something, it is our experience when it comes to galleries putting on potentially offensive content, whether it be material such as Japanese woodblock prints which have some pornographic material or things that may be offensive, that the galleries themselves will on their own initiative put them in restricted areas with a notice out front saying, 'This in here contains material that may not be suitable for children'. They have judged for themselves the content of those exhibitions. They obviously want to have people come in, they do not want to court controversy, so they take very good care to have such spaces cordoned off and notice given to people who may go in.

CHAIR—Did that apply to the Henson photographs?

Ms Teng—In this case no, but this was a private gallery and I do not think it was really given a chance to do it because the photographs were seized before the gallery could even start.

CHAIR—That gallery was open to the public, was it not?

Ms Teng—The gallery was open to the public but the exhibition in question was a private exhibition. Those photographs were seized before the public exhibition could go ahead.

Ms Ayres—If I could clarify about the Henson photographs, they were only displayed in the private gallery subsequent to them being classified as having a PG rating, so there was no reason why the gallery would feel any necessity to restrict access. The point that Jo Teng is making is correct, and it comes back to that idea of industries taking responsibility to self-regulate. Certainly the visual arts would be well placed and, as Ms Teng has outlined, has already taken that self-regulation approach so that children and parents can be notified if there is content that people may find difficult to view.

CHAIR—In this context, do you agree that the objectification of women and the sexualisation of children are sensitive issues that public policymakers have to be aware of?

Ms Ayres—Yes, I would agree with that. Even though they are sensitive issues, I think that if you have got artistic work which actually explores those issues that is a valid theme to be exploring and for the community to be discussing.

CHAIR—Okay. In light of the time, I will move on to a question to Dr Bennett Moses. On page 2 of your submission you have called for better empirical understanding of community concerns about the risks associated with online content. We are aware of some research with regard to the impact of pornography and

its consequences for young children and children across the board. What studies might you be referring to or can you outline your views about the need for better understanding?

Dr Bennett Moses—While I am not denying that there are studies on, for example, the media impact notion, what I am looking at here is the particular concerns of children and their parents. In other words, often in the political debates around this there are various assumptions about what parents in particular are concerned about with respect to what their children access online, and that was the discussion in light of the internet filter. The internet filter would screen out RC content and would have very little effect on the vast amounts of pornography available on the internet. If you look at what parents concerns actually are—and a number of witnesses have put this in their submissions as well—what parents ultimately want is some sort of filter that they can use to prevent their child accessing a far broader range of material than anything that would be deemed acceptable at a broad national level. In other words, we can talk nationally about whether there should be a filter, whether it would be cost effective and so forth, but the maximal extent of that filter that was ever looked at was RC. In fact, I think that concerns around internet content—and I do not know because I do not believe there is any empirical survey evidence on this, or not that I am aware of—are across a broad range of things.

Leaving aside my role at the Cyberspace Law and Policy Centre for a moment, as a parent of two children I am far more concerned that my son might state his address online in a social media context or might access even normal non-RC pornography—x-rated pornography and so forth—than I would be specifically about the risk, which I think is relatively small, that he would access RC content. In other words, I am not sure that parents' concerns lined up with what they were assumed to be in that debate.

CHAIR—Okay, I am with you. Thank you.

Senator CROSSIN—Can you clarify for me your recommendation on page 16 of your submission. Are you suggesting that ACMA should only be able to blacklist or take down material that is illegal? Is it your submission to us today that if it is artistic but not illegal then it should be available?

Ms Teng—Not so much that it should be available but more the fact that it is automatically blacklisted. It is treated as if it is illegal, which is quite easy to apply when you are talking about subject matter such as child pornography. When you are talking about material that is a little more controversial or maybe acceptable to some but not to others, it is much more of a grey area. So taking action such as blacklisting it automatically is concerning. Are there other ways? Could notice be given to the website owner that perhaps it should be put behind an age restriction? Or can ACMA themselves or the ISP put up an age restriction block to notify those who wish to access the site, 'This contains material which may potentially offend; if you wish to continue click on this link.' It is more the way it is treated. It is treated as if it is illegal and should not be accessed at all, no matter who you are or whatever your particular tastes or acceptability may be.

Senator CROSSIN—You are saying that if it is not illegal then it should be up to the individual to make up their own mind as to whether they access it.

Ms Teng—Yes.

Senator CROSSIN—It conflicts, really, with some of the evidence we have had from other witnesses, who believe that R18+ material, for example, should be totally banned in this country—that there is a level of morality or acceptability in this country we should set. You are saying, unless it is illegal, everything should be available and it is up to the individual.

Ms Teng—When it is on the internet it is easily accessed material, and it really depends on the person. What may be considered much more offensive to someone might not be to somebody else—R18, the classic example of games. They are commercially widely available in other countries that are comparable with Australia; for example, Canada and America. A lot of people here, given the connected nature of the internet, will look at that and say, 'It is available there; why can't it be available here?' Some people do not want to access or have their children accessing that material, and I fully respect their decision and support their choices, but there are ways they can tailor their computers with blocking technology or methods that do not impact on other people who may not have children or who are tolerant of such material.

Senator CROSSIN—Should that material be classified?

Ms Teng—It could be classified, but not necessarily immediately blacklisted.

Senator CROSSIN—That leads me to debate with you, Dr Bennett Moses, content that is available offline and online. Should there be a base level in which all content is classified whether it is available on or off?

Dr Bennett Moses—It would be helpful to my answer to make the distinction I made before between the two types RC material. When one looks at a category of material like child pornography, there is sufficient concern both nationally and internationally about that content. It is not simply about access to the content; it is about the problematics of its production—if I can put it that way. You can get interagency cooperation overseas and I would absolutely endorse all efforts that the Australian government can put into it, and all the resources

Senator CROSSIN—I am going to stop you there because I would assume that, because that is illegal, it would be contraband. I am probably now talking about the next level down—let us see extreme violence in a movie.

Dr Bennett Moses—For extreme violence, you do not have that option. In other words, you do not have the option you have for child pornography for international cooperation because every country—the RC category, which is the category with sexual violence, extreme violence and so forth, is an Australian concept that would be very different for example in the United States. So you do not have that option. When you are looking at what you can do about content in that sort of category, sitting as the Australian government, you can do lots of things. One option, which no one would consider, would be to ban provision of the internet to any Australian. That would mean no Australian could access that content, but that is clearly off the table. So without that, you can go to various levels of restriction to prevent people accessing that content. One option that was proposed was the internet filter. That had various problems and lots of people have talked about those problems. I do not know whether you want me to discuss those.

Senator CROSSIN—No, that is okay.

Dr Bennett Moses—That is one way of doing it. The difficulty is whatever system you come up with is unlikely to be as effective as the solution you can come up with to prevent that content being in bookstores, movie theatres or anywhere else.

Senator CROSSIN—Let us say we have a film and, if it is available on DVD, it might be classified as R18+. If it is available on the Internet, it is harder to classify because it might emanate from America, for example, and you download it. Therefore, it is not within the realms of our classification system to get our hands on it and classify it. But there are some who are saying that content of that nature should not be allowed in this country at all. I suppose you are saying that it is hard to filter it because there is no way of knowing what its content is and what its classification is.

Dr Bennett Moses—This is my point about online and offline. If you have a particular result in mind, it should be as hard to access that online as it is offline. You will find the only way to do that would be something even more restrictive than the proposed internet filter. Theoretically at least you could go down the line the Chinese government goes down. It is very difficult from within China, but not impossible, to access content the Chinese government does not want you to access but whether the Australian people would be comfortable with those kinds of solutions is another question. I am not saying it is impossible to achieve; I am saying you cannot achieve it with the same cost-effectiveness, with the same overall impact of freedom of speech online as compared to what you would need to achieve it offline.

If we take child pornography off the table, whether it is so important to prevent Australians accessing that kind of material—sexual violence, extreme violence and so forth—that the solution you would need to really prevent Australians accessing it online, and whether it is so important, and that is a policy question on which I am not an expert, to put in measures which would need to be quite extreme and even looking at the internet filter which was not going as far as the Chinese government, for example, if you look at a solution like that, it is not really going to prevent people accessing that kind of material. It was a finite list ultimately based on reporting. If someone wants to get sexual violence, they will still be able to find it. So ultimately, at the end of the day, whereas it is very hard to find offline, the decision has to be made that maybe that ideally we do not want Australians accessing this kind of material. Given the nature of the internet, what kinds of laws are cost-effective at achieving that goal? I do not think there is a law that Australians would tolerate which can achieve the same outcome online and offline. The question is: to what extent does the government want to go? If you look at something which is lesser, like a filtering solution, what you end up with is very little effectiveness. It does not prevent access to that kind of material but, nevertheless, does have implications for freedom of speech, especially given the inevitable prohibition on publishing the contents of the prohibited list, which raises all sorts of issues, and that is inevitable in the structure of this scheme.

In summary, my answer is that it might be possible and there might be many people who think that would be desirable. My question for policy makers would be: how far, how restrictive do we want to make Australian

access to the internet? Given alternatives like home-installed filters, and so forth, that do not prevent Australians accessing it because they are not mandatory but which, nevertheless, and assuming, as I think is right, and again I am not sure there have been studies on this—given that ultimately that is what I think more parents in particular are concerned about, it is as much, 'I don't want my child to access pornography' and 'As a parent, I want to control what content my child accesses,' as it is concerns about 'This particular high-grade RC content.' I hope that answers your question.

Senator CROSSIN—I just want to ask about music videos. I am going to change tack completely here and ask all three of you whether you have a view about whether or not music videos should be subject to the Classification Board. We heard this morning from Free TV, ABC and SBS, who in some way have their own internal code of practice and classification filtering system that they apply channel by channel, essentially. But there has been a debate about whether or not we should subject music videos to the Australian classification code.

Ms Ayres—I would suggest that the current self-regulation by the music industry in relation to CDs could be just expanded to include the music videos, because that seems to be working without very many problems, like the other self-regulation schemes. I think the idea of empowering arts industries to self-regulate is probably a much more cost-effective solution, rather than requiring more and more content to be classified by the Classification Board.

Senator CROSSIN—Dr Bennett Moses, do you have a view?

Dr Bennett Moses—I have no particular views on music videos.

Senator CROSSIN—Miss Teng, do you want to make a comment?

Miss Teng—I am fine, thank you.

Senator CROSSIN—Okay.

Miss Teng—If I could just comment: I think, Senator Barnett, you asked about what happened with reference to Bill Henson in his exhibition last year—how he had still committed the works for publication. I have found out that they were found to be bona fide artworks according to the Commonwealth censor, who granted it an unrestricted classification.

CHAIR—Sorry, I could not hear that.

Miss Teng—The exhibition last year we have referred to in our submission—which was still submitted, out of caution, to the censor—was found to be bona fide artworks according to the Commonwealth censor, who granted it an unrestricted classification.

CHAIR—That is the Classification Board?

Miss Teng—Yes.

CHAIR—That got an unrestricted classification?

Miss Teng—Yes.

CHAIR—And that is being put on public display?

Miss Teng—They were put on public display last year.

CHAIR—That has come to fruition?

Miss Teng—That has come to fruition, yes. But it is more the fact that, in order to head off any potential controversy, a lot of artists might feel the need, out of sheer caution, to go to the censor just to get that stamp that says, 'This is unrestricted,' or G or PG, when they might not have had to bear that cost in the first place.

CHAIR—I would like to know more. You said they were similar to the Henson 2008 photographs. If so, can you—

Ms Ayres—I am sorry; I cannot hear anything.

CHAIR—I am just asking a question of Miss Teng in terms of the Henson photographs. She indicated earlier in evidence that they were similar to the previous Henson photographs, and I am wondering if there is any evidence to that effect. Can you email us a link? Can you perhaps take that on notice?

Miss Teng—The link is provided, in the submission that we have, to the *Brisbane Times* article, which I am currently looking at. It describes them as '10 softly lit portrait images' featuring 'a long-haired female model' which shows 'her face and bare shoulders or bare arms and legs'.

CHAIR—Can we actually see the photographs? Can you send us a link to the photographs?

Miss Teng—I will try to find a link to the photographs or perhaps even ask the gallery if they can provide any copies.

CHAIR—That would be useful, knowing that it has been to the Classification Board and that they have not classified it. Thank you. We are done there. Thank you for that.

[2.20 pm]

BUTERA, Ms Rita, Executive Director, Women's Health Victoria

DUREY, Ms Rose, Senior Policy Officer, Women's Health Victoria

Evidence was taken via teleconference—

CHAIR—We have your submission, submission No. 16. Would you like to make any amendments or alterations to the submission?

Ms Butera—No.

Ms Durey—No.

CHAIR—Please proceed with an opening statement after which we will have questions.

Ms Butera—As an introduction, Women's Health Victoria is a state-wide women's health promotion, information and advocacy service. Our vision is for a society that takes a proactive approach to health and wellbeing, is empowering in respect of women and girls, and takes into account the diversity of their life circumstances.

We would like to thank the committee for the opportunity to speak today. Our evidence today is based on the topics covered in our written submission. We are responding specifically to points (h), (i), (k) and (o). Our evidence considers how the Australian film and literature classification scheme can be strengthened so that the representation of women in the media is positive, respectful, reflects the diversity of women and is relevant to the products that are being advertised.

Ms Durey—We recommend that outdoor advertising should be subject to the National Classification Scheme. Unlike other forms of advertising, we do not have a choice about whether or not we see outdoor advertising. It is in the public space and so therefore the responsibility of the National Classification Scheme is greater because the images are more difficult to avoid. Our concerns with outdoor advertising relate to the portrayal of women and are about the failure to represent the diversity of women in body size and shape as well as race, sexuality, disability and religion; the use of women and women's body parts to sell products and the association of women with sex where women are represented as sexual objects. This can all manifest in negative self-esteem and body image among women and girls. It promotes acceptance of objectifying images and it perpetuates and reinforces gender stereotypes.

Ms Butera—In relation to music videos, we recommend that the National Classification Scheme should be applied and that current classification processes should be expanded to include objectification of women depicted either visually or lyrically. Objectification is about seeing a person as an object and not as an individual with their own beliefs, values, views and experiences. Women's experience of sexual objectification can translate into mental health problems—mainly eating disorders, depression and sexual dysfunction.

Music videos are just one way that women are objectified in society. Because objectification does not fit the classification criteria for music videos, music videos that objectify and demean women often remain unmodified and are shown during general viewing times—for example, on Saturday mornings. The National Classification Scheme must apply to music videos.

Ms Durey—In relation to point K, which is about the objectification of women in media and advertising, we believe that a national voluntary system of advertising self-regulation is ineffective in preventing the objectification of women. Objectification is not recognised as a separate ground in the advertiser code of ethics and it does not fall under discrimination and vilification.

There is considerable evidence about the negative consequences for health and wellbeing. For girls it can result in body dissatisfaction and appearance anxieties and it can affect mental and physical health, sexuality and attitudes and beliefs. For society more generally it can contribute to sexism. There are several studies that show that women and men exposed to sexually objectifying images of women from mainstream media were found to be significantly more accepting of rape myths, sexual harassment, sex role stereotypes, interpersonal violence and adversarial sexual beliefs about relationships. So objectification is a serious issue and should be treated in the same way as discrimination and vilification. The New Zealand advertising codes of practice have a clause that incorporates objectification, which was referred to in our written submission, and that could be used as a model for Australia. At the moment, ads that demean and perpetuate stereotypes are sanctioned because they fall outside the scope of the code.

Ms Butera—In relation to the representation of women's genitalia in women's and unrestricted access pornographic magazines, we are increasingly concerned about the rise in the numbers of women undergoing cosmetic vaginal surgery such as vulvoplasty and labioplasty. These procedures lack peer reviewed scientific evidence and are associated with some serious risks, such as scarring, disfigurement, infection and altered sexual sensation. The growing demand for these procedures can be linked to a lack of awareness about natural diversity in female genitalia. One reason for this is that representations of women's vulvas are digitally altered in magazines. Where this classification comes in is that, when we see depictions of women's genitalia, it is important that we do see the real thing to demonstrate that diversity.

Altered images can be seen in women's magazines and in unrestricted pornographic magazines. They inform both women's and men's perceptions of genital appearances. We believe that the Guidelines for the Classification of Publications 2005 should be amended so that the real depictions of women's genitalia can be published for unrestricted consumption. In the absence of this, images that have been digitally altered should be labelled as such, which is consistent with the voluntary industry code of conduct on body image. This would ensure that women and men are aware of the significant natural variations that exist in female genital appearance and that they do not have to resort to surgery.

In conclusion we would like to say that this is a great opportunity to do something about gender inequality. It is an opportunity for responsibility and accountability and for strengthening the classification system in a way that we can challenge the sexual objectification that we see around us. Objectification has a big impact on health and wellbeing of individuals and the community. The pervasiveness of media and advertising means that a more robust, targeted classification system has the potential to ultimately change how girls see themselves and how boys see girls.

CHAIR—Thank you for your opening remarks. We will go to questions.

Senator CROSSIN—Good afternoon to you both. I want to explore the discussion as to whether it is the classification system that is not addressing your issue about the objectification of women in the media or whether what we need is a better code of practice for the media and advertising standards, rather than the classification system.

Ms Durey—I think it would ideally be a combination of both. I think you need a strong code of ethics that incorporates objectification, like the New Zealand code, and that needs to be backed up and accompanied by a strong national classification scheme that has a similar set of criteria, because they cover different things. Advertising is not necessarily covered in the National Classification Scheme in the same way. I think ideally you would want both.

Senator CROSSIN—We obviously have an advertising code of practice, but in relation to how that deals with the depiction of women in the media, are you saying that ours is deficient compared to New Zealand's?

Ms Durey—Yes. In the Australian version there is no room for objectification of women at all. In the New Zealand version there is that scope and I think that clause would be easy enough to add, which would then cover this whole way of portraying women. In fact, the Advertising Standards Bureau themselves have admitted that the two criteria that the objectification of women might fall under are discrimination and vilification, but objectification is different to that. So the Advertising Standards Bureau cannot actually do anything about the ads they admit people are offended by because they objectify women because the scope of the code is not broad enough.

Senator CROSSIN—We had the outdoor media advertisers with us this morning who produced a billboard that had the slogan 'Drink Sprite look sexy,' which I am assuming would have no problem getting through a classifications code. There is probably nothing there that breaches the code in any way. It probably is quite a low level classification. So subjecting this to the classification code standards would not address your concerns about the way in which women are depicted and treated in this advertisement.

Ms Durey—No. I have not seen the advertisement. The New Zealand code says:

> Advertisements should not employ sexual appeal in a manner which is exploitative or degrading of any individual or group … In particular people should not be portrayed in a manner which uses sexual appeal simply to draw attention to an unrelated product. Children must not be portrayed in a manner which treats them as the objects of sexual appeal.

I have not seen the ad, but there is potential for ads like that to be covered. Outdoor advertising is quite unregulated compared to other forms of advertising, even though we have no choice about whether or not we see it.

Senator CROSSIN—They put to us this morning that it is quite well regulated in that it is self-regulated. They point to the fact that from 30,000 outdoor media advertisement last year they got only seven complaints and from 33 million advertisements they got 600 complaints. They put it to us that the statistics show that the self-regulation is working.

Ms Durey—I am not so sure about that. I think self-regulation often does not work because it relies on self-regulation. The current system we have is self-regulating, yet there are complaints by the board themselves saying they want to regulate these ads but they cannot because the code does not cover it. I think having it backed up by the National Classification Scheme is one way of sending a clear message that these kinds of ads are not appropriate. In terms of complaints, I do not think they are the best measure of how people really feel. A lot of people do not even realise that they can send in complaints to the Advertising Standards Bureau. A lot of complaints are online and it is difficult for many people to negotiate the language and work out how to submit a complaint. It is not advertised very well that you can actually complain.

Senator CROSSIN—Can I ask you then: what yardstick would you use to evaluate whether or not the self-regulation is working? Are you just going on public sentiment or feeling? I suppose if you were doing some research you would need something a bit more concrete. As I said this morning, the witnesses bring to us the fact that less than one or two per cent of all advertising media have complaints and half of those are dismissed when they are taken to ACMA, for example. So what evidence would you use to say that you believe the system of self-regulation is not working?

Ms Durey—One of the things that we drew from in our submission was a research report put out by the Advertising Standards Bureau themselves on community perceptions of sex, sexuality and nudity in advertising. That was in 2010. They did focus groups and a range of different measures, so it was not just measuring complaints. It shows us what people are really thinking and does not just take complaints as the one indicator of how happy people are with what they see.

Senator CROSSIN—But that is more about the portrayal of women rather than the dysfunction of the classification system, isn't it?

Ms Durey—Yes, but the Advertising Standards Bureau have said that the code is not big enough to capture the objectification of women, even though people are offended by it. Ideally, we would want to see the code strengthened by including objectification as another ground, along with discrimination and vilification.

CHAIR—You said on page 2 of your submission that the findings of the Portrayal of Women Advisory Committee support the application of the classification scheme to outdoor advertising. When was that report done?

Ms Durey—In 2002, and that was in Victoria. A lot of the recommendations were not taken up, but we still find it a really valuable report. They did an inquiry and they consulted and for us it is a very useful report.

CHAIR—So you stand by that and you support that. What about the view that there should simply be a G rating for outdoor advertising?

Ms Durey—Yes, we would support that—definitely. That is appropriate, given the people who are seeing outdoor advertising.

CHAIR—I am just going to move to another area. On page 5 of your submission you referred to the New Zealand example, the advertising code of practice in New Zealand. You said that was a good example for addressing the objectification of women in advertising. Have you got any other examples from overseas? That is one thing we as a committee are interested in. We will obviously be asking the department and perhaps the Classification Board a little bit more about the overseas experience. Have you got any other examples from overseas?

Ms Durey—No, we do not, because for us the New Zealand example captured what we wanted to say. But we could definitely do some research if you wanted us to submit information we can find about what is going on in other countries.

CHAIR—If it is not too much trouble. Do not go to too much trouble, but please let us know if you have some other evidence from overseas that you think would be good examples for the committee to consider, particularly with respect to your key concerns of the objectification of women and/or the sexualisation of children. They seem to be two sensitive areas that we need to be cognisant of.

Ms Durey—We will.

CHAIR—We became aware today, and this is on the public record, that the Advertising Standards Bureau dismissed the complaints regarding these two outdoor advertisements. One was 'Drink Sprite. Look Sexy' and the other was the Bardot Denim ad, which was on buses in and around Melbourne. Are you aware of those outdoor advertisements?

Ms Durey—No, we have not seen them.

Ms Butera—No.

CHAIR—Can I draw those to your attention and I would welcome your feedback on them. I am personally staggered that the bureau would dismiss the complaints, based on the evidence before us on these ads, which are in the area of objectification of women for sure, I would say, but other people may have a different view. I would welcome your input on that.

Ms Durey—Yes. Under the code the only grounds they have are discrimination and vilification. Objectification is actually a distinct issue. It is about seeing a person as an object not an individual with their own identity, whereas discrimination is about bigotry and intolerance and vilification is about humiliation. So objectification is different, and the hard thing about the code as it stands at the moment is that it cannot capture these things that you and I know are offensive and objectify women. It has its hands tied until the code changes.

CHAIR—Okay. Do you have suggestions on how that could happen?

Ms Durey—The New Zealand example. Also, on the portrayal of women in outdoor advertising, they made a recommendation for what they call gender portrayal guidelines for outdoor advertising which have six different criteria about avoiding negative sexual imagery and portraying women and men equally. This recommendation was not taken up but, in the absence of the New Zealand model, that would be a way of including objectification separately.

CHAIR—I want to ask you about the complaints mechanism. Many of the witnesses from associations we have heard from today have talked about the low level of complaints. Senator Crossin has asked you a little bit about it, but I want to flesh this out a little bit. I would like to know your views on the complaints mechanism and whether it is valid to say that because only around one or two per cent complain it is not really a problem. What do you say to that argument?

Ms Durey—I think complaints are one indicator, but quite a poor indicator, of how people really feel about what they see. As I said before, a lot of people, even in the feminist women's health sector in Victoria and in a lot of services, do not know that they can make complaints. There is a lack of awareness. There is probably a lack of accessibility in terms of language and making complaints online. I think it is an important role and we should be able to make complaints. But if you look at the research the Advertising Standards Bureau themselves have done, the evidence from that is clear that people are unhappy about the lot of what they see but they do not necessarily make complaints. As an organisation, Women's Health Victoria have made a few complaints, mainly about ads on TV, but we do not do it for every single thing we see.

CHAIR—How did you find the complaint process that you have been involved with—what has been your experience?

Ms Durey—The one that I was directly involved in was about the Brute deodorant ad. I can use the computer and it was easy enough for me to submit. But, because it did not fall into what we were trying to say about objectification and did not actually fall into discrimination or vilification, it was not able to be upheld—I think we refer to it in our submission—even though the Advertising Standards Bureau said people find this offensive and it objectifies women, but it does not amount to discrimination or vilification so they cannot do anything about it.

CHAIR—I do have some other questions. I asked earlier about this. There seems to be prolific advertising in newspapers regarding adult services based on sexual services from women. Do you have a view on those ads? They seem to have increased in number and in their in-your-face approach. What is your experience and what is your view of those ads? How should they be reviewed?

Ms Durey—These are in the classified sections of the paper?

CHAIR—Yes.

Ms Durey—When we were thinking about this submission we did not actually think about ads in classifieds. I think they are offensive, they do objectify women, they are accessible to everyone. Some of them are quite graphic.

Ms Butera—Some of them are becoming more common in magazines that young girls are reading. They are much more visual and much more in your face as well. Probably for younger women who have not been so exposed it is becoming more mainstream and that probably is a bit of a concern as well.

CHAIR—Yes, some people would say community standards have changed, therefore there is no problem in these ads increasing in number and in their offensiveness or in terms of their structure of marketing and advertising. What do you say to that one?

Ms Durey—I disagree. I think there are a lot of people out there who see it as something they cannot do anything about because our society has become so hypersexualised and we see sex everywhere. What used to be hard-core pornography is moving into the mainstream but this is one way we can try to control this. There are lots of other ways. There are education and media literacy courses for women and young boys and girls. But in terms of this committee, controlling what we do see or better regulating what we do see is one way we can try to stem the tide a bit.

CHAIR—Do you think we are more hypersexualised—using your words—than other like countries, whether it be the UK, New Zealand or, say, the US or Canada?

Ms Durey—I doubt it. I do not know for sure.

CHAIR—Fair enough.

Ms Durey—I doubt it. I think we are all probably on a par. I am not sure about New Zealand or even countries like Norway and Sweden that are renowned for their gender equality. I am not sure how much sex they see in ads. I do not know.

CHAIR—That is not a problem. Thank you very much for your submission and your time today.

[2.49 pm]

PAM, Mr Andrew, board member, Electronic Frontiers Australia

CHAIR—Welcome. I understand you came up from Melbourne today.

Mr Pam—I did, and thank you for rearranging the schedule to accommodate my unexpected travel emergency.

CHAIR—No problem. We have your submission, No. 13, as lodged with the committee. Do you have any amendments or alterations to the submission?

Mr Pam—No.

CHAIR—Please proceed with an opening statement, after which we will have some questions.

Mr Pam—I would like to start by mentioning my personal credentials. I have 2½ decades of experience as a computer programmer, computer systems administrator and computer science researcher, including work at the highest levels with the internet engineering task force, the web consortium, and academic and technical presentations. So I have considerable detailed technical knowledge, including operating services for Australian citizens and citizens of other countries over that 2½ decades.

I have a statement that my wife, Dr Katherine Phelps, provided, which I would like to read. She wanted to say:

Fear and silence are deadly to our children. I was the victim of childhood sexual abuse. When I was very young, my parents told me, concerning bullying, 'Just ignore those kids, stand up to them or stay out of their way.' The message was clear. My parents weren't going to help me when other children were doing me harm. At Sunday school I was told that girls who were raped were asking for it and adults made it clear that anything of a sexual nature was fearful and evil.

Because the town I grew up in was so small, I attended a combined primary-secondary school. When some 18-year-old boys targeted me at 12 years old for sexual abuse, I just took it. After all, who could I tell without having my life further threatened? Do I really want to say anything and risk losing the love of my parents? Let me repeat what I said earlier: fear and silence are deadly to our children. We censor the internet instead of talking with their children about what they might find there. This nation will just be pushing underground abuse that could be stopped. Children need to know they can seek help, that they can talk about their concerns without fear and know something will be done directly about the perpetrators to stop the hurting. Stopping a few words and pictures online is not going to do abused children a single bit of good.

My wife is, in fact, a life member of the Electronic Frontiers Australia, but that is not an official position of the organisation.

The only other things I wanted to specifically point out include that, with the changes we are seeing now in technology and, indeed, to some degree in culture, which is driven by that, effectively every citizen in Australia now has the opportunity—and frequently exercises it—to be an author and publisher in multiple media, so the censorship and classification regimes no longer apply merely to some restricted subset of people who act as publishers but potentially to all citizens who now act as publishers constantly throughout their daily activities with computer mediated communications. This is a very significant change, effectively, in that the applicability of these laws and regulations is now far wider in scope than might have been envisaged originally.

CHAIR—Thanks for that. I will respond to the presentation on behalf of your wife. I am obviously very sorry to hear that, as I am sure the committee is. I hope that an appropriate response has been provided and that the relevant authorities have been advised about those matters.

Mr Pam—Yes, that is the case.

CHAIR—I would like to pass that on to your wife. Thank you for your submission. Do you agree that, in terms of the classification system across the country, there is inconsistency in the law as it applies to the content on different platforms?

Mr Pam—Yes. Clearly, the existing system explicitly divides into different types of media. There are different regulations for computer games, films and publications of various nature, but this is also becoming quite fluid. As everything becomes digital, the boundaries between these are not quite so clear.

CHAIR—Indeed. Can you see the merit of a more uniform approach? We have had a lot of witnesses expressing the view for a uniform approach, one that is consistent across the different platforms that apply to the same content. Can you see the merit in that?

Mr Pam—Yes. Certainly, uniformity is desirable in many respects—also, of course, in the goal of having unified regulations across the whole nation. The applicability of different types of media is certainly an area where that would be useful, bearing in mind the caveat that there is a useful distinction between online and offline media and that, more and more, we are going to see a larger proportion of all media in this country being digital and online media. There are already predictions, and there is some evidence, that we are starting to see a decline in physical media—DVDs, CDs and even print media to a lesser extent. Television is also moving in the direction of more user created, YouTube style content—content that does not necessarily come from this country. So it is becoming increasingly difficult to treat online digital media in quite the same way as we treat physical media. I think that is a useful distinction that can be preserved and, in fact, probably should be preserved, while certainly it makes sense to treat an image as an image, and that certainly is a place where unification is sensible.

CHAIR—In terms of enforcement, we are about to hear from the Classification Board. They have made certain call-in notices and then referred it to the relevant state and territory law enforcement authorities. There has clearly been a bit of a disconnect there in issues. Do you have a view on how that can best be dealt with and do you have any suggestions for reform?

Mr Pam—I would suggest that certainly in cases of outright illegality, in cases of production of illegal pornography, child pornography and other kinds, certainly enforcement procedures can be taken directly against infringers who commit crimes. And there are other kinds of crime. One area that immediately springs to mind is that I and many of the people whose email I manage on a daily basis would routinely receive communications which might be perhaps obscene or pornographic or might be fraudulent or inciting to commit crime or fraud. Potentially this would suggest that an overzealous application of censorship laws could apply. In practice, of course, this is never enforced. One receives unsolicited spam emails constantly and occasionally on the web. This happens all the time to everyone who uses the internet. Not only that but in fact enforcement of the censorship code is already very much selective in the online world.

I am sure you have heard evidence before but speaking from my technical knowledge I can assure you, as I think others have said, that no measures currently proposed other than very strict measures of the nature of China or perhaps Libya or Egypt would actually succeed in preventing people from gaining access to pretty much any media that has ever been produced in the world that is now available digitally. There is plenty of media that is not available digitally, but that media which has been made available publicly and digitally there are ways to privately and securely obtain that and it is really not able to be enforced. I fully understand about the ability of children to access objectionable material. I do not know how much research has been done on this but it is certainly my observation that some degree of this content is produced by teenagers. Sexting is one known case of this. Teenagers have a tendency to experiment with these things and to some degree again there is the risk that we go into a very complicated morass there of the things that teenagers do, and one can have great difficulty preventing them other than by enforcement in the home.

CHAIR—You talked about online and offline and part of your answer there touches on that. On page 42 of your submission you recommend a white list. Could you explain how that would work and the merits of it?

Mr Pam—The internet was never conceived with the view that it should be for use by children. It was intended for use by adults. Any attempt to restrict the content now is very much after the horse has bolted, to some degree. It has never been intended to be in any way restricted except as people choose to restrict themselves. So the concept of a white list is to intentionally construct such restricted areas. We see commercial organisations, Disney and others, do this with products they market to children. They have online forums in which there are various mechanisms of moderation or filtering that they apply. Even with products that are intended for consumption in the home such as computer games, more and more these have online components. It is very much the case now that most computer games are provided with some degree of online component. So again to the extent that they are intended to be marketed to and consumed by children they would need some kind of filtering there, which is generally provided by the vendor.

I would argue that that is probably the best way to do it. In fact, in one of our own websites—my wife and I have a variety of websites personally—we have intentionally created a kid's version of the website that is restricted to only content we believe to be suitable for children. That is an approach I would recommend, because it is then possible—indeed with the sort of home filtering products that are already on the market—to restrict viewing in the home, provided that physical supervision of the computer is maintained.

CHAIR—On page 5 of your submission you have recommended a review of the laws regarding illegal content, and child pornography is part of that of course. Would you set out your views on how that can be adequately resourced and dealt with How would that work? Tell us a bit more about it.

Mr Pam—That touches on the remark I made earlier that there are some challenging concerns at the moment about the production of illegal content by underage producers because, as I said, now everyone is potentially a media producer and publisher. To the extent that the legal system tries to address these things on a case-by-case basis it has not been a major problem as yet in this country, but certainly those are things we are concerned about. We as an organisation support the view that there are things that are rightly illegal and which actions should be taken on and enforced, but we believe that the most effective mechanism is going to be at the production stage, and to some extent at the early distribution stage, and not really at the later distribution and reception stage, because at that stage it is too late and could not be very effective at all. So we would certainly like to see adequate resourcing for policing of those laws at the production stage of illegal content. There are other issues—like, as I said, fraud; there is plenty of incitement to fraud and things of that nature on the internet now—which police can usefully be resourced to deal with.

Senator CROSSIN—I want to clarify your conclusion in your submission. You are saying that the Classification Board should be phased out entirely? Does that mean that right across the system we should go to self-regulation?

Mr Pam—I think, in the long run, yes; because it is going to be of decreasing significance as an increasing amount of all media consumed in Australia becomes digital. The degree to which the Classification Board still has relevance will decline. The degree to which people purchase CDs has already significantly dropped. That will also happen shortly with DVDs. In the longer term it may happen with books. We can expect to see this across all media. We can expect that it will be moving very much toward digital. It will be moving very much towards being user created, in addition to being commercially created, and, as a consequence, the applicability of the existing regime, the Customs enforcement of physical media being transported into the country, will be such a small proportion that it will be difficult to justify applying this regime to what will be the decreasing fraction of all media consumed in the country.

Senator CROSSIN—What we have heard mainly is that people believe the system is fractured, that there is not enough consistency and that the classification levels and indicators for those levels need to be more consistent across films, DVDs and publications?

Mr Pam—Sure.

Senator CROSSIN—So you have quite a contrary view to what we are hearing from the rest of the industry. They are saying, 'Make it more consistent, and provide some sort of base level or baseline guarantee for the community about the standards that are acceptable at certain levels.'

Mr Pam—We are not opposed to classification; quite the contrary: classification is very useful where it provides information for people who are about to consume media, information about what it is they can expect to see. That is great. But again we would suggest that that is going to be decreasingly feasible because of the amount of content that exists and that is being created every minute. Bear in mind that, for example, the world wide web is moving from what was called web 1.0 to what is now called web 2.0, which seems to be some sort of industry buzzword indicating more dynamic content—which is to say: it is less and less about static information and more and more about information that is dynamically generated and may be different for every viewer and different at every moment that you look at it.

It is really difficult to see how the Classification Board can be expected to classify material that is not the same when they look at it as when another person looks at it and not the same an hour later. A lot of content online will be of this nature. Again I just think that the relevance is going to be difficult. I certainly would support information as far as possible being given to people who wish to know what it is they are about to see but again there is a long-standing tradition—when I say 'long-standing', traditions on the internet are quite short obviously—of many years now, again a lot of teenagers seem to enjoy this sort of thing, of tricking people into visiting sites that they did not intend to visit. One of the better-known examples is the so-called 'Rick Roll', making people visit the music video of Rick Astley's famous song *Never Gonna Give You Up* but there are less benign versions of that which have been around for many years now where, for example, a photo of a gentleman with a prolapsed bowel is a popular shock effect and people are sent these things unsolicited as a practical joke.

The problem is that as of yet this has not been able to be prevented by anything short of draconian regimes because anybody can copy this kind of shock image again, rename it as something else and present it to you at another address and under another name. I think it is very difficult to see how it is feasible. I am not opposed to the concept. I just think that the danger is in having regulations and laws that are effectively unenforceable and unworkable.

Senator CROSSIN—There are two other areas that I want to ask you quickly about. Should music videos be subject to a classification scheme even if it is a self regulating scheme and should even music videos be subject to time restrictions? On pay TV they are not, you can watch any kind of music video or movie for that matter at any time of the day based on the fact that it is user pays, so you are the user and you decide. There are two issues: whether there should be regulations about what is available on the television, I suppose, at certain times and whether music videos should be classified.

Mr Pam—I have no objection to music videos being classified in the labelling sense. Again, it is valuable for people to know what they can expect to see. I do not see a problem with that and effectively music video is a short film and there is a very good case that it should be treated as a short film. In terms of prescribing hours when certain types of content can be shown I think a distinction needs to be drawn there between content that is provided with user choice and selection and content that is made available with less choice.

Certainly, billboards, as was suggested earlier, are something where you get very little choice, they are just there and you cannot help seeing them as you go past. Television as we know it now is somewhere in the middle. Again, that is in flux as well. It is certainly the case that the model of television as we currently conceive of it has already altered with the introduction of digital channels and is altering further with the introduction of internet streaming. I know that internet service providers are starting to offer television-like services that come entirely over the internet connection. There are also overseas stations that make their content available through the internet, through YouTube, things like Hulu and so on. So there are a variety of services that change television as we know it now and I think that will continue.

To the extent that we are talking about the existing broadcast model of television where you still do have a choice to turn on the TV and watch what is currently showing, there is some element of user choice but clearly less so than when you request a specific program as you would on the internet. So I think there is some argument that some kinds of restrictions around what people can inadvertently stumble across are not inappropriate. To the extent that it is a model that we are moving away from—who can say in 10 years time whether the use of broadcast media to that degree will be as prevalent? Certainly, if we look at the history of radio, people did not stop using radio but the way we consume it has massively changed. People used to sit around the radio at home and listen to it and now we use it in a very different way. We listen to it in cars but we do not really sit around it the same way as we used to. I think we can expect to see those kinds of changes. There is always the danger of ossifying a legal and regulatory regime that ultimately does not reflect the forward movement that we are already seeing quite markedly.

Senator CROSSIN—Thank you. I have no further questions.

CHAIR—Thank you very much, Mr Pam, for your evidence today and for your submission.

Mr Pam—Thank you

[3.10 pm]

McDONALD, Mr Donald, Director, Classification Board

O'BRIEN, Ms Lesley, Deputy Director, Classification Board

SCOTT, Mr Gregory, Senior Classifier, Classification Board

GRIFFIN, Mr Trevor, Deputy Convenor, Classification Review Board

CHAIR—We welcome the representatives from the Classification Board and the Classification Review Board. I thank you especially, Mr McDonald, for being here. We met at Senate estimates, and I was not sure exactly how much longer we had with you in that role. Is it nearly at its conclusion?

Mr McDonald—Yes; my term ends at the end of April.

CHAIR—All the best for post April, and thank you again for being here.

Mr McDonald—Thank you.

CHAIR—We have not received a submission from the Classification Board. I would normally invite you to make an opening statement, but I am wondering if you would like to share with us why you have not made a submission.

Mr McDonald—I did not think it was appropriate for the Classification Board to make a submission because we deal with legislation as it exists. It is fine for everybody else to have all sorts of opinions about how it should be, but we have to deal with it as it is, and your terms of reference did not, I believe, make it appropriate for us to make a formal submission about the structures as they are now.

CHAIR—Thanks for that feedback. Would you like to make an opening statement to our committee before we have some questions?

Mr McDonald—I do have an opening statement. I am conscious of the fact that a great many things I will be saying in this opening statement are things that both you, Chair, and Senator Crossin will be familiar with, but I feel that, for the purposes of the record of this inquiry, it is important to note these things. I will provide a broad overview of the Classification Board's functions and responsibilities under the National Classification Scheme with a focus on the issues raised in your terms of reference. I can certainly provide more detail at your request.

The fundamental role of the Classification Board is to make classification decisions; enforcement is primarily the responsibility of states and territories. Australian Customs and Border Protection regulate what can and cannot be imported into Australia. As to the issue of community standards, when appointing new members to the board it is a requirement of the classification act that consideration be given to ensuring that the board is comprised of members who are broadly representative of the Australian community. Board decisions aim to reflect the diversity of opinion found in our community. Board members are appointed, as you know, as statutory officers by the Governor-General on the recommendation of the Minister for Justice after consultation with state and territory ministers with a responsibility for classification. All states and territories are now represented on the board. The board also has a good gender balance, with seven females and five males. Board member ages range from 26 to 72 years.

The board classifies films, computer games and certain publications. The classification act requires the board to make decisions in accordance with the national classification code, the guidelines and the matters set out in section 11 of the act. The code contains the principles that are considered in making classification decisions. It also lists the classification categories and broadly describes the kind of content which is permissible in each category. The classification guidelines are used to classify films. They detail the scope and limits of material suitable for each category.

As to publications, under the scheme only what are defined as submittable publications are required to be classified. Publications can be classified individually as a single issue; alternatively, the act provides that the board may grant serial classification declarations. That means the board can declare that the classification granted for a publication applies also to all future publications, a specified number of future issues or all future issues published within a specified period. The board currently limits the period of a serial classification declaration to 12 months. The board conducts compliance checks of all publications granted serial declaration after a three-month period to determine whether future issues have higher content or breach other conditions of the declaration. Audits may also take place in response to complaints.

As the director of the board, I have powers under the act and the state and territory enforcement acts to call in unclassified publications for classification if I believe them to be submittable. I have similar call-in powers in relation to films, computer games and advertisements. In 2009-10, I called in 49 adult publications and 444 adult films. In the 2010-11 period to 28 February, I called in seven adult publications and 46 adult films. As at the end of February this year, only one of the call-in notices for adult publications has been complied with. While some distributors indicated that they no longer had copies of the called in product to submit, it is an offence not to comply with a call-in notice. Every instance of failure to comply with a call-in notice results in the Attorney-General's Department notifying the relevant law enforcement agency. I know the department has been proactive in trying to engage with law enforcement agencies. I support this approach. Classification enforcement is an ongoing issue that the board and the community are concerned about. I understand that enforcement issues are a focus of this review and will be of the ALRC review.

As to customs, the role of the Australian Customs and Border Protection Service in the classification enforcement context is to monitor objectionable material at Australia's borders. As director of the board, I have powers under the customs regulations to grant permission to import or export objectionable goods. The criteria used in the customs regulations to determine if something is an objectionable good mirror the RC criteria of the classification act.

A range of material falls outside the scope of the National Classification Scheme. This includes television content, music, theatre and other live performances, some artworks, internet content and billboards. The question of the effectiveness of mechanisms for classifying or otherwise dealing with material outside the National Classification Scheme and whether such material should come before the Classification Board is for government policymakers to determine. Questions on the issue of whether there should be national standards applicable to content across all media are also, in my view, most appropriately directed to the ALRC in the first instance.

As to the sexualisation of children, the committee will recall that in April 2008, at the Senate Standing Committee on Environment, Communications and the Arts inquiry into the sexualisation of children in the contemporary media environment, I provided evidence on how the Classification Scheme relates to depictions of children in publications and films. As I advised that committee, depictions of exploitative child nudity and sexual activity involving a child, sexual abuse or other exploitative or offensive depictions involving children are routinely refused classification if the material is submitted for classification. I also provided evidence on a range of other matters relating to classification which can be found in that transcript.

Mobile and online computer games are regulated both by the Broadcasting Services Act and the National Classification Scheme. State and territory enforcement legislation makes it an offence to sell or distribute these games to the public without classification. Presently the majority of these games are not classified prior to being made available. I raised my concerns in this regard with the Minister for Justice. I understand that since then, state and territory censorship ministers have agreed to the development of an interim solution to this issue, noting that long-term solutions would be considered by the ALRC in the context of its review.

We are in a period of unprecedented scrutiny and review of the National Classification Scheme. As well as this committee's inquiry into classification, there is of course they ALRC's review. As you would know, the Attorney-General and the Minister for Justice have asked the ALRC to conduct a review of classification in Australia. The terms of reference state that the review will inquire into the existing legal framework of the National Classification Scheme, the challenges facing the scheme and the needs of the community in an involving technological environment. The ALRC review will provide an opportunity for significant reform and renewal of classification in Australia, and is greeted with full and enthusiastic support of the Classification Board, as is this review and the other review activity that is currently underway. Thank you. I look forward to questions.

CHAIR—Thank you. Did the Classification Review Board wish to make any opening remarks?

Mr Griffin—Yes, I would like to make some brief observations. First of all, I apologise for the absence of the convenor, Ms Victoria Rubensohn, who has other difficulties with respect to family matters other conflicts in terms of timing. She did wish me to tender her apology for her absence. The second thing is to say that I do not speak for the board because the board has not made any formal decision in relation to any of the issues covered by the terms of reference of this committee. But I just indicate that the review board is established under the Classification (Publications, Films and Computer Games) Act. It is an independent statutory body. Its powers are akin in many respects to those of quasi judicial organisations. It is separate from the Classification Board and maintains that separateness in its day-to-day operation.

It meets only when it is required to review decisions made by the Classification Board and that is by application of the minister, the person aggrieved or by the original applicant. Under the act it is required, when it reviews a decision of the Classification Board, to make a fresh classification decision based upon the principles of the act, the code and the guidelines. It does use the same legislative tools as the Classification Board. Applications for review can be made by the original applicant, by the Minister for Justice or by a person aggrieved. The Minister for Justice may apply for a review on his or own behalf or at the request of a state or territory minister responsible for classification. Most of the review applications are submitted by the original applicants, who may be dissatisfied with the Classification Board's decision.

I will outline the process of review when there is an application received by the board. First, the board must comprise at least three members. It then has several procedural matters to deal with—determining that it is a valid application, whether or not there are interested parties and the issuing of a press release to give public information about the application for review. The decision made by the review board comes after viewing the film or DVD, or reading the publication or dealing with computer games. The decision must, in ordinary circumstances, be made within 20 working days of a valid application being received. There is no control over what may be submitted for review but the application must conform with the provisions of the act. In the 2009-10 reporting period there were eight review decisions made. In 2008-09 there were 10 review decisions made. Since 1 July last year to the present time there has been only one decision taken by the review board.

The review board members are appointed by the Governor-General on the recommendation of the Minister for Justice after consultation with state and territory ministers with responsibility for classification. When new members of the review board are appointed it is a requirement of the classification act that consideration be given to ensuring the review board is comprised of members who are broadly representative of the Australian community.

Review board decisions seek to reflect the principles in the act, the provisions of the code and the guidelines. While the review board has not made any formal submission it is very largely for the reason that it is an independent statutory body and faces a dilemma that if it were to make certain submissions to the Senate committee it may well compromise its deliberations in respect of any particular application which might subsequently be made. Thank you.

CHAIR—Thank you. We will go to questions. I will kick-off. We have quite a bit of ground to cover. I will go to the first issue, Mr McDonald, regarding the call-in notices. It has come up consistently at Senate estimates. You are aware of the concerns that have been expressed. In fact, I think that is one of the reasons that we are having this inquiry. No doubt, I imagine it is one of the reasons that the ALRC is also looking at these issues. Let us go straight there. Clearly, there are hundreds and hundreds of call-in notices that are made and advise us that they are then referred to the law enforcement agencies in the relevant states and territories. But clearly, little is done. What do you think can be done to reform and improve the system?

Mr McDonald—My impression is that it really comes down to the priorities that the states and territories place on this. They wish to have these rules and regulations in place, they are parties to the scheme but in pursuing these matters presumably their police forces—and mostly that is what we are talking about—have to make decisions about what resources they put to it. The effort that goes into it varies from state to state. There is possibly, if I could say, an issue of how fair dinkum the states are about this. The issue of so-called restricted premises—adult shops, which are actually not supposed to be there and yet there would not be a shopping centre that does not have one. Unless that end of the spectrum is dealt with, how does anybody really take it all that seriously? I am sorry to be so blunt about it, but I cannot see any other way to address your question.

CHAIR—I think you have given it your best shot in that regard. It is deeply concerning. I just want to refer you to a submission from Kids Free 2B Kids which I can advise we have received today and it is public today. It will be on the website so you are able to access it. It says from Julie Gale that she would like to submit this signatory list for the review of the National Classification Scheme which was sent to the A-G's by the Classification Board on 1 April 2010—so just a few days ago—relevant to the terms of reference (a), (b) and (c). It says:

We, the undersigned, are opposed to restricted pornographic publications and material being sold where they can easily be seen and accessed by children.

We call for the sale and display of Restricted publications to be limited to adults-only premises.

Further, we support a review of the Classification of Publications Guidelines, to determine whether there should be more stringent requirements for the display of the so-called "lads" magazines such as 'People' 'The Picture' 'Zoo' and 'Ralph' magazines etc.

Then it has a list of people including Alastair Nicholson, Tim Costello, Nonie Hazlehurst, Clive Hamilton, Joe Tucci, Steve Biddulph and many others. It is a whole page of distinguished honourable Australians. Do you have a response to that statement and that expression of concern about the system?

Mr McDonald—It is a point of view about availability. Talking now about publications, the scheme as it exists struggles to strike a balance between adults being free to read what they choose—and if you are going to be free to read it you have to be able to access it—and, on the other hand, the protection of children. That is the balance to be struck.

CHAIR—We have made this submission public today, but I am able to say that we could not put all the pictures on our website. We have a little notation down the bottom that you have to obtain it directly if you want to get the full details, but it is a public document. Frankly, I find some of this material in this Kids Free 2B Kids submission quite offensive and, clearly, grossly pornographic in many respects. This is material that is available in corner stores, milk bars, newsagencies and petrol stations all around Australia.

The submission says that a number of recent audits by the Classification Board revealed that the majority of category 1 restricted magazines in the public arena do not comply with the classification laws and therefore are illegal. The audits also found that many magazines given serial classification do not comply with the original classification. Many magazines sold in the public arena should be refused classification; many magazines sold in the public arena are unclassified or should be category 2. Distributors are flouting the law by sealing illegal magazines with official category 1 labels and selling them to retailers. Numerous distributors fail to respond or give unsatisfactory responses to call-in notices from the board. Many magazines in the public arena depict young-looking females who appear to be under the age of 18 or who are posed in a childlike manner—that is, pink headbands, pigtails, braces on teeth, school uniforms, surrounded by soft cuddly toys et cetera.

The submission is here. You can see the photos. It is all available in the public arena. Do you have any response to those concerns that are expressed?

Mr McDonald—It is a bit hard to respond to general assertions that I do not even have in front of me, but Mr Scott might have some comment about the issue of audits.

Mr Scott—We currently audit every magazine that has a serial declaration. We did find last year that a few were breaching their audit.

CHAIR—How many?

Mr Scott—I will have to take that on notice. When that is found to occur we revoke that serial declaration and that particular magazine is to be taken off the shelves as it is no longer classified. As a reaction to the breach in serial declarations, the director decided that the length of the serials was to be shortened from 24 months to 12 months, which I guess enables us to have more control over the classification of the magazines on a year to year basis. Every magazine that we have granted a serial we have audited within three months from the date we approved the serial declaration. Most recently, the majority of those have passed their designated classification. I do not have any numbers with me, I am sorry.

CHAIR—Can you take that on notice?

Mr Scott—I can. For the publications and the distributors that are involved in the classification scheme there seems to be a high level of compliance, but the issue is with magazines that are outside the scheme. I think a lot of the magazines that are of concern to Julie Gale are outside the scheme. We have a community liaison scheme that is endeavouring to do various police action on trying to get distributors of magazines in the scheme or have those who are flouting the rules be accountable for their actions.

CHAIR—You are happy to take on notice those areas where we need to follow up and come back to the committee. Do you want to add anything there, Mr McDonald?

Mr McDonald—No.

CHAIR—Clearly, the system is not working. You have indicated your views on the relevant law enforcement agencies and the priority that should or should not be attached to that. We are a bit tight on time so I will move through some of the other areas. Do you have a view on the parliament's ability to legislate in this area to provide what some would say is a uniform approach so that we have a consistent law that applies to the same content across different platforms, different media? You have indicated what you are responsible for, but there is a lot that falls outside your jurisdiction. How do you think we can get a uniform approach and what constitutional powers do we have to do that?

Mr McDonald—I do not know whether there are constitutional issues around that, but it would be entirely possible to imagine a classification scheme that had the same descriptions and markings for films, publications, DVDs and games. It is entirely possible to imagine that. That is not exactly the direction that ministers seem to be moving in, but they may after this review, after the ALRC and after Senator Conroy's convergence review.

CHAIR—Let me just clarify this. One view put forward this morning was to have consistent ratings and consistent consumer advice.

Mr McDonald—I think it is a really fine ideal. No-one can actually argue against consistency. The difficulty is the varying impacts of different media. This is really for ministers to decide but they are presently struggling famously with whether there should be an R18+ category for computer games. There has not been because there has been a view hitherto that games are different. Indeed, currently games have the same guidelines under the act as films except that there is not a category of R18+, but it may well be if there is to be a R18+ category for games that—and this is one of the options ministers are looking at—there are different guidelines for the games because of their interactive nature.

I am only referring to that as an example of the different impacts that different media have and clearly hitherto there has been a feeling that film has a different impact to publications. Depending on where you are standing, you might think it is more or less one than the other, but people have clearly thought they have different impacts therefore they need different guidelines and different ways of organising their classification.

CHAIR—Okay. I will move on to—

Mr McDonald—It is easy to be dismissive about the way things have been done hitherto but there have been logics driving the decisions up till now. They may or may not be still applicable but they were not stupid, all those past decisions.

CHAIR—No. Of course they were introduced to the time when the government and the parliament of the day thought they were relevant. In 2011 we are trying to develop a system which is relevant to today moving forward with the digitalisation of the media. That is where we are coming from. Are you able to take on notice and let us know your views of how it works in overseas jurisdictions, particularly like jurisdictions? We are a federation of states, so Canada, and even other countries like New Zealand, US and UK. Are you able to help us in that regard?

Mr McDonald—Yes, I think we can help you directly or point you in the directions of help.

CHAIR—Thank you. The Henson photographs came out in earlier evidence. You have given that the tick in terms of the more recent gallery that was opened in Sydney, I understand.

Mr McDonald—It happened in two gallery shows in the last year, and for both of those the gallery submitted the catalogue that was to be published and therefore the images were in fact viewed in the context of being in a catalogue. In both cases they were classified under the publications guidelines as unrestricted.

CHAIR—We had evidence earlier today about two billboard ads, the Bardot denim ad and the Drink Sprite, look sexy ad. I am not sure if you are familiar with them. Does the board or do you have a view on the appropriateness of those? The complaint was made and then was dismissed by the Advertising Standards Bureau.

Mr McDonald—We are not currently in the loop of billboard advertising.

CHAIR—No, but I wonder if you have seen it and you are aware of it. If you are not, I would like you to have a look at it and express a view.

Mr McDonald—I will be very happy to have a look at it.

CHAIR—We might do that on notice in light of the time. Or let us do it now. If you can share a view on those ads that would be great.

Mr McDonald—If they came to us as an application, we would view them as publications. I cannot make an on-the-spot classification and I am not a constituted panel, but my inclination, my response to them straight up, is that they just look like another ad to me, the sort of ads you would see any day of the week in any regular magazine. But I need the views of my colleagues.

Mr Gregory—I guess we would treat it as publication. In our guidelines there are specific rules for the covers of unrestricted publications and we would assess the elements of the billboards and ascertain whether

they are suitable for public display or not and whether any impact. I will read from the guidelines to be clear. If we were treating this as a cover of the magazine, for example:

> Covers must be suitable for display in public. The impact of any descriptions, depictions and references on covers should be low. Publications with covers which are not suitable for public display will not be permitted in the unrestricted category.

I do not think these two advertisements would breach the unrestricted guidelines that we have before us at the moment.

Ms O'Brien—Under nudity, depictions of nudity should be very discreet, and I think it could be argued that those are discreet. Depictions of sexualised nudity, whether obscured or otherwise, are not permitted. So under the guidelines as they stand and if we were to apply these to these advertisements, it would seem that these would meet the criteria for an unrestricted cover.

CHAIR—All right. That is very revealing. Thank you for your feedback. Can I move on to billboard ads. I know it is outside your jurisdiction but how should they be regulated? We have had the views of the Outdoor Media Association who say that they have a code which applies for third-party advertisements but if you do it yourself in your own business or retail and put up your own billboard it is not covered by them at all. Do you have a view on how they should be better regulated, if at all?

Mr McDonald—It would be a matter for the government via the parliament to decide, but it could not be argued that it was absurd or unreasonable to say that they might be classified as though they were publications and, indeed, as Mr Scott has said, as covers of publications. There are different rules surrounding a cover as opposed to the inside pages of a magazine—in other words, they are more stringent for a cover. That would not be an absurd conclusion to reach.

CHAIR—No. Some have argued that it should just be G across the board for outdoor billboards. Is that absurd or would that not be absurd?

Mr McDonald—Well, that is to then connect it to film classification, and these are clearly not a film. They are much closer, in fact they are very close, to a publication cover. That would mean they are either unrestricted or they are restricted category 1 or category 2. In the case of billboards you could not make them restricted, because of the whole issue of display, so they would either have to be unrestricted or refused classification.

CHAIR—Sure.

Ms O'Brien—Perhaps that supports the argument you were putting before about standardisation of classification across all the different categories—publications, film, computer games.

CHAIR—Point taken, but I put it to you that billboards are very much more in your face than simply a magazine in a newsagency. I respect you have made your view, and people are entitled to disagree with it, but thank you for your feedback.

Can I move on to music videos and the appropriate way to have them rated and regulated, if that is appropriate.

Mr McDonald—I might ask Ms O'Brien and Mr Scott to speak to music DVDs, but we do routinely classify music DVDs.

Mr Scott—We routinely classify music DVDs that comprise music video clips. We also classify several computer games, like karaoke type games such as SingStar and things like that which contain the video clips. Again, we will apply the relevant guidelines and assess the impact of the elements within individual film clips or the material that it is submitted. We do classify film clips, when they are submitted to us, in accordance with the guidelines that we are given.

CHAIR—But they are not required to be sent to you directly, are they?

Mr Scott—If they are to be distributed on a DVD they must be.

Ms O'Brien—But not if, for example, they are on television.

Mr Scott—No, if it is on television they have their own rules.

CHAIR—That is the point we discussed this morning—you do not see them or review them or classify them if they are on television.

Mr McDonald—If they are solely on television, no.

CHAIR—This is the issue: you have one rule that applies to video DVDs, and commercial TV has a different approach to SBS to ABC. They all have a different approach but a different code that applies in each case, which is primarily voluntary.

Mr McDonald—The ABC, SBS and commercial television codes differ only in some detailed emphasis, one from another, and that is not really for us to argue one way or the other. To me, the issue of video clips on television is no different from any other product on television: it is either classified in a way that is right for its audience and right for the time or it is not.

CHAIR—We are a bit tight for time so I just indicate to you that Senator McGauran was an apology today and that he and I obviously have an interest in *Salo*. Do you have anything further to add to that matter, bearing in mind where it is at in the court system?

Mr McDonald—I certainly have nothing to add. Of course, as Mr Griffin has made clear, the decision that the Federal Court is dealing with at the moment is the Review Board's decision—not that it varied in any particular significance from ours. In my view it is with the court, and that is where it belongs at the moment.

CHAIR—Fair enough. Mr Griffin, do you want to add anything?

Mr Griffin—No, Chair. It is with the court, and the review board has always made a rule of relying on its published reasons, which are the considered views of the review board, rather than publicly debating some nuance or other aspect of those reasons. Also, having regard to the fact that the matter is before the Federal Court, we have taken the view both in this case and in several others—I think *Viva Erotica* was one of those, several years ago—that it is sub judice and in that respect inappropriate to comment on.

Senator CROSSIN—This is just for background information for myself: when you say 'submittable publications have to be classified', what do you mean?

Mr McDonald—There is a definition of 'submittable publication' in the act. The act's approach, if I can try to go to the reasons that were behind the framers of the act, was that generally publications should not be subject to classification. The act says:

"submittable publication" means an unclassified publication that, having regard to section 9A or to the Code and the classification guidelines to the extent that they relate to publications, contains depictions or descriptions that:

(a) are likely to cause the publication to be classified RC; or

(b) are likely to cause offence to a reasonable adult to the extent that the publication should not be sold or displayed as an unrestricted publication; or

(c) are unsuitable for a minor to see or read.

Senator CROSSIN—Okay. Take me through what happens if something is published and the publishers or the authors do not submit it to you for classification. Are there instances where you discover publications that should have been?

Mr McDonald—Yes, there are.

Senator CROSSIN—What happens there?

Mr McDonald—It occurs frequently with magazines but very rarely with books, although there was a case where I called in two books that had been published in Queensland two years ago. If a publication is unclassified, I have the power under the act to require publishers to submit the application for classification within three days when I have reasonable grounds to believe that it is submittable.

Senator CROSSIN—Is that what you have called a 'call-in notice'?

Mr McDonald—Yes, exactly.

Senator CROSSIN—I see. So when you discover there is something out there that should have been submitted for classification and it has not been, you initiate a call-in notice?

Mr McDonald—Yes. That does not mean that I have made a classification decision; it just means that, prima facie, it could meet those provisions of the section that I read out, and then the publication, when it comes in—which is not all that often, as we talked about—goes through the normal classification process.

Senator CROSSIN—Take me through the process. Let us say that this publication is out there far and wide, you have called it in, it has to be classified and it is quite a restricted classification then. How do you get back out through the networks to advise distributors when that publication is out there on display and for sale?

Mr McDonald—The Attorney-General's Department, which provides all the administrative support that we have, immediately inform all of the state and territory enforcement agencies—mostly police but also offices of fair trading et cetera. They also publish a regular bulletin of all of the publications that are known to them to be unclassified, and that is routinely updated about monthly and emailed to those relevant parties. Also, the officers of the department make contact with retail chains and generally try to make sure that all the people who ought to know that this publication is in breach do in fact know.

Senator CROSSIN—And the distributor?

Mr McDonald—I am sorry, and the distributor.

Senator CROSSIN—Mr McDonald, will you be heavily involved in the review the Law Reform Commission is undertaking?

Mr McDonald—I expect in some way or another, yes.

Senator CROSSIN—Okay. Have you made a submission to them or is that process just starting?

Mr McDonald—We have not. The board is considering making a submission around those areas of the legislation that we believe we presently have difficulty with or have increasing difficulty with because of technological changes. Everybody has been speaking to you all day about that.

Senator CROSSIN—That was my next question. One of the submitters today quite eloquently said that the act is based on an analog framework rather than a move to a digital world now. Would that pretty much encapsulate some of the outdatedness of the act that you are dealing with?

Mr McDonald—Yes. The act is outdated for some things and perfectly in tune for other things. It works perfectly for films and DVDs. It works quite well for publications. What it does not work for are things that are published on the internet. The internet is the responsibility of ACMA because it comes under the Broadcasting Services Act but they submit a great deal of material to us for classification triggered by complaints that they receive. ACMA as you know is a complaints driven operation in that sense.

Senator CROSSIN—So the work that the Australian Law Reform Commission is about to undertake is probably timely in terms of trying to look at some of these emerging issues in the field?

Mr McDonald—Absolutely timely. I am delighted that it is coming about. I hope it has enough time to do the important work that it needs to do. Whilst we do not know what the terms of reference of Senator Conroy's convergence review are going to be, that is another important part of that review process.

CHAIR—I would like to follow up on that. You indicated that the system works well for films and DVDs and then you added publications. Why would you say it works well for publications?

Mr McDonald—It does work well for publications but people have to abide by the law.

CHAIR—Therefore it does not work well for publications because people are breaking the law.

Mr McDonald—It would probably be a foolish analogy to make but there are laws against murder and against burglary and both crimes are routinely committed. That does not make the laws around those offences bad laws. It just means that when people break those laws there are more resources and more energy put into pursuing the people who have broken them or appear to have broken them.

CHAIR—But you would not want to go on the record would you saying that the system regarding publications in this country is working well because that is how I heard you say it, bearing in mind that this material gets into—

Mr McDonald—I would go on record as saying that it is working except for a small percentage of the publications that are available to the general public. There are huge numbers of magazines but people have varying concerns about those magazines. I know certain of the organisations are concerned that children see these covers in the supermarket or the newsagent. On the one hand, as I said, this act struggles to strike a balance between the rights of adults and the protection of children.

CHAIR—We know that. I appreciate what you are saying, but you make all these call-in notices and then nothing ever happens. How can you say it is working well? It does not follow, does it?

Mr McDonald—Most magazines present us with no problems whatsoever. There are publishers of what you might call adult magazines who comply with the requirements of the act, who submit their publications and who conform and there are some outlaws—that is to say, people who act beyond the law—who do not.

CHAIR—But the point you made in your opening remarks, which seems to go against what you have just been saying about it working well, was that it has not been a priority for state and territory law enforcement agencies to actually follow up on your call-in notices. For you as a Classification Board maybe it is working well, but the law enforcement agencies are not following up the call-in notices. That is really what is happening, isn't it?

Mr McDonald—Yes, I think that is a significant part of the issue.

CHAIR—I just wanted to pick you up on the fact that you said it was working well. The other issue you raised was that national standards should be referred to the ALRC. You said this in your opening remarks. I am wondering why you said that. Did I mishear you? Is there a role for our committee in providing advice on national standards or do you think this should be an area only for the ALRC to determine?

Mr McDonald—Perhaps I have said something that was possible to misunderstand. I am not quite sure—

CHAIR—But you are not saying that our committee cannot share a view on the merit of national standards?

Mr McDonald—Absolutely not.

CHAIR—You indicated, I thought, that it was just a matter for the ALRC. It was in your opening statement.

Mr McDonald—I think I did in several cases refer to the ALRC, this review and others because I am trying not to exclude the House of Representatives inquiry into billboard advertising and Senator Conroy's proposed inquiry.

CHAIR—You have indicated you are providing a submission to the ALRC and you indicated in response to Senator Crossin that there were areas where you felt it was okay and areas where you felt there was 'difficulty'. I would be very interested to know the areas where you think there is difficulty. To me that means there is room for improvement. Do you want to outline that now?

Clearly, as a board it seems to me that you are considering putting in a substantive submission to the ALRC. We do not have a submission from you, unfortunately. You have given us verbal comments today, but we do not have a submission. We do not know the areas in comprehensive detail where you think we are going well and where you think we are having difficulty. Frankly, as a committee we would welcome it, because it you have all this experience and expertise within your board. We would like to know your views.

So you are preparing a submission for the ALRC. This Senate committee, which will report on 30 June or before, is very interested in your views on where the system can be improved. I am putting out a plea to you. We cannot force you—perhaps that is a matter for conjecture—but we would welcome your input and contribution.

Mr McDonald—That is noted, Senator.

CHAIR—Would that be something you could take on notice?

Mr McDonald—I have indeed taken that on notice.

CHAIR—Thank you very much. We are out of time. We thank you for being here. We appreciate your input. I thank all witnesses who have given evidence to the committee today.

Committee adjourned at 4.04 pm