



Submission to Australian Human Rights Commission on Australia's progress on the Rights of the Child since 2012

Introduction:

The Australian Council on Children and the Media (ACCM) is a unique national community organisation whose members share a strong commitment to the promotion of the healthy development of Australian children. Their particular interest and expertise is in the role that media experiences play in that development.

ACCM is recognised as the peak body for children's rights to live in a media environment that supports their healthy development, expands their horizons and provides them with pleasure.

Its mission is to support families, industry and decision makers in building and maintaining an enjoyable media environment that fosters the health, safety and wellbeing of Australian children.

The Australian Council on Children and the Media provides evidence-based reviews, information and advocacy to support healthy media choices for children.

The Australian Council on Children and the Media is structured as a not for profit company limited by guarantee with a national Board representative of major child focussed organisations in Australia. For more about ACCM see Attachment 1.

2. Convention provisions of relevance to children's media use:

For the purposes of this submission, the provisions of the Convention on the Rights of the Child (CROC) of most relevance to ACCM's work are the following:

Article 16

1. No child shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence, nor to unlawful attacks on his or her honour and reputation.
2. The child has the right to the protection of the law against such interference or attacks.

Article 17

States Parties recognize the important function performed by the mass media and shall ensure that the child has access to information and material from a diversity of national and international sources, especially those aimed at the promotion of his or her social, spiritual and moral well-being and physical and mental health.

To this end, States Parties shall:

- (a) Encourage the mass media to disseminate information and material of social and cultural benefit to the child and in accordance with the spirit of article 29;

Promoting healthy choices and stronger voices in children's media

(b) Encourage international co-operation in the production, exchange and dissemination of such information and material from a diversity of cultural, national and international sources;

(c) Encourage the production and dissemination of children's books;

(d) Encourage the mass media to have particular regard to the linguistic needs of the child who belongs to a minority group or who is indigenous;

(e) Encourage the development of appropriate guidelines for the protection of the child from information and material injurious to his or her well-being, bearing in mind the provisions of articles 13 and 18.

Article 18

2. For the purpose of guaranteeing and promoting the rights set forth in the present Convention, States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children.

3. Relevant findings regarding Australia in the report of the Committee on the Rights of the Child Sixtieth session 29 May–15 June 2012 were:

3.1 Findings on privacy provisions:

Privacy

42. The Committee recommends that the State party consider enacting comprehensive national legislation enshrining the right to privacy. It also urges the State party to establish child-specific and child-friendly mechanisms for children complaining against breaches of their privacy and to increase the protection of children involved in penal proceedings. In particular, the Committee urges the State party to abolish legislation, such as the Prohibited Behaviour Orders Act 2010 (WA), which allows the publication of child offender details.

3.2 ACCM can find no comment relating to article 17 in that report.

3.3 ACCM can find no comment relating to Australia's support for parents attempting to manage the rapidly expanding media environment and new technologies so that they benefit their children.

4. ACCM's comments on Group 4 Civil rights and freedoms

4.1 Protection of privacy and protection of the image (art. 16)

The protection of privacy generally in Australia is widely recognised as being inadequate, and children's privacy fares even worse, especially regarding the gathering of personal information from media users. The above statement by the Committee does not appear to relate to that side of privacy, but it is a growing and complex area of concern that requires a significant investment from the government.

The Office of the Australian Information Commissioner has a set of Privacy Principles but none of these applies specifically to the special considerations necessary to protect the privacy of children. Of particular concern is the ongoing and seemingly unchecked gathering of personal data that occurs when children play online games, and enter sites set up by those who promote products to children.

Australian Privacy Principle 7 — direct marketing requires that:

7.1 If an organisation holds personal information about an individual, the organisation must not use or disclose the information for the purpose of direct marketing. (Australia. Office of the Privacy Commissioner 2014)

However, other clauses allow the disclosure of personal or sensitive information for the purposes of direct marketing provided the individual knew this was likely or gave consent or a number of other factors are met. None of these would be really effective in protecting young children, who are unlikely to be able to make an assessment of whether the use of the information for marketing is likely, or to give informed consent to such use.

The *Spam Act 2003* provides that a person may not send or cause to be sent a commercial electronic message that has an Australian link, and which is not a designated commercial message (s 16(1)). This has provided little protection for children.

As far back as 2006, ACCM argued to the Australian Law Reform Commission's Inquiry into Privacy:

In our view, protecting children from interference with their privacy through direct marketing is becoming increasingly important in light of children's increasing use of the internet, email and SMS, and advertisers' widespread use of these technologies to market products directly to children ... We are particularly concerned about direct marketing using these technologies because, unlike television, these technologies enable marketers to interact directly with children. Direct marketing using these technologies intrudes directly into children's personal space, and provides marketers with unsupervised access to children. (Obesity Action Coalition and Young Media Australia 2006)

As technology has developed, and children's use of it has become more embedded in their lives, the urgency of addressing these issues has only grown.

Legal and other protections for children's privacy should be informed by the following questions:

- Are children capable of dealing effectively with direct marketing?
- At what age can they recognise marketing practices as such?
- At what age are they capable of recognising the risks associated with providing their personal information?
- At what age are they capable of giving informed consent?

We can conclude that Australia has not moved far forward in providing effective protections for children from invasions of privacy from internet marketing.

4.2 Access to information from a diversity of sources and protection from material harmful to his or her well-being (art. 17)

4.2.1 Australia's system of quotas designed to promote the provision of Australian television specifically for children has been the envy of the world for nearly 40 years. The Children's Television Standards ensure that Australian children have access to high quality, entertaining and culturally relevant content that enhances their lives and experience. It is difficult to imagine a better example of government action to fulfill the obligations described in the first paragraph of article 17.

The system has survived a number of threats over many years, but the present expansion of media platforms and outlets has provided the catalyst for renewed attempts by the commercial TV industry to remove these quotas, and they are under very serious threat. Further, the ABC, while providing specialist children's TV channels, neither commissions nor produces adequate annual hours of Australian children's programs, including and especially drama. The funding of the ABC for such activities needs serious review.

4.2.2 In parallel with the developments above, children's screen media across all platforms has become rapidly more merchandise-linked: few programs are produced without an accompanying campaign to sell associated products. This tends to limit story lines to those designed to show off a toy or line of toys and indeed raises the question of whether the 'programs' are in fact program-length advertisements for the merchandise. Such content is clearly not *'aimed at the promotion of [children's] social, spiritual and moral well-being and physical and mental health'*.

4.2.3 Advertising of foods of low nutritional value occurs at a high level in programs that children watch often. Much Australian research has shown the extent of this problem, and the damaging impacts of this exposure on young children's eating preferences and weight status. (Dixon 2017, Hurwitz 2017, Smithers 2018). To the extent that such content poses risks for children's health, it also calls up Australia's obligations under article 24. (Handsley 2014, and 2018, Gorman 2017)

4.2.4 Exposure to ads for gambling within live sports programs has been growing and is a cause for a strong public outcry. The Government has moved to provide some limits on these, but failed to provide the protections needed. The limits appear as more of a compromise between children's interests and those of commercial businesses. A children's rights-based approach would have yielded something stronger.

4.2.5 Exposure to simulated gambling processes via children's apps and games is also potentially injurious to children. Gambling is not presently included in the National Classification Scheme as a classifiable element. ACCM's *Know before You Load* app review service, which includes a Children and Gambling WatchList, is a unique community initiative, funded only by the Government of South Australia.

4.2.6 Australia's National Classification Scheme (NCS) for films and electronic games is in urgent need of overhaul. Although its primary purposes include the protection of children, it needs to focus much more closely on evidence as to what is injurious to children's wellbeing, rather than what might be seen as offensive. In particular it should take violence more seriously, as this is the element in relation to which the evidence of harmful impacts is strongest.

Conversely, classifiable elements could be added that enhanced compliance with CROC, for example the introduction of objectification of women and racial vilification could assist in ensuring that children's media experience is in keeping with the spirit of article 29, as required by article 17(a). In view of the difficulties associated with marketing to children, especially of some foods and of gambling products, there is also a strong case for including covert techniques, such as product placement, in the list of classifiable elements.

The NCS also fails to recognise the varying needs of children at different ages. This leads to some classification decisions failing to provide the proper level of protection, or adequate information to parents and carers so that they can fulfill their responsibilities of choosing appropriate content. ACCM's surveys have found that close to 90% of parents would prefer

an age-based classification system. In this respect the NCS falls short of Australia's obligations under both article 17 and article 18.

4.3. States Parties shall render appropriate assistance to parents and legal guardians in the performance of their child-rearing responsibilities and shall ensure the development of institutions, facilities and services for the care of children

In addition to the above comments regarding the failings of the NCS, we draw attention to parents' needs for support in keeping their children safe in online environments.

The Australian government has provided significant support in the area of cybersafety programs via its E Safety Commissioner. However, this Office's main focus has been on primary school and teenaged children. Moreover, the broadening of the Office's scope to include adult safety issues risks distracting attention even from these older children. It would be more effective to focus on the very early years when children's screen use habits are being formed and are more capable of modification towards healthy use.

The Government has not provided the effective support and research-based information to parents with very young children that would equip and enable them to manage well this new and complex area of child rearing.

Further, there is considerable scope for action by the Australian government to support parents in finding quality, non-injurious media content from among the masses of commercially oriented media whose design is to promote sales of linked merchandise, content that promotes unhealthy diets or gambling, content that glamorises violence, and so on.

CONCLUSION

Media use has taken on a significance in children's lives that could only have been dreamed of at the time the CROC was being drafted. Still the Convention lays down important principles that can be used to guide government action in ensuring that children and parents can navigate this new world in beneficial and appropriate ways.

Due to time constraints our submission has focussed on the three most directly relevant articles, namely 16 (privacy), 17 (mass media) and 18 (support for parents) but we have also identified the

Media use has taken on a significance in children's lives that could only have been dreamed of at the time ways in which articles 24 (health) and 29 (goals of education) are implicated with children's media use.

We should be most pleased to expand on any of these matters in further correspondence or in person.

References:

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Attach: 1. About ACCM

ABOUT US: THE AUSTRALIAN COUNCIL ON CHILDREN AND THE MEDIA 2018

The ACCM is a peak not-for-profit national community organisation whose mission is to support families, industry and decision makers in building and maintaining a media environment that fosters the health, safety and wellbeing of Australian children.

Its patrons are Baroness Susan Greenfield and Steve Biddulph.

The ACCM has a national Board representing the states and territories of Australia, and a broad membership of organisations and individuals who support its mission.

ACCM membership includes ECA (Early Childhood Australia), ACSSO (Australian Council of State Schools Organisations), APPA (Australian Primary School Principals Association), AHISA (Association of Heads of Independent Schools Australia); AEU (Australian Education Union), Parenting Research Centre, Council of Mothers' Union in Australia, NSW Parents Council, SAPPA (South Australian Primary Principals Association), and other state-based organisations and individuals.

The ACCM's core activities include the collection and review of research and information about the impact of media on children's development, and advocacy for the needs and interests of children in relation to the media.

The ACCM's core services include:

- the ACCM website www.childrenandmedia.org.au containing evidence based information about media and children (attracting close to 1500 visits per day);
- the award-winning, popular *Know before you go* child-friendly movie review service (now with over 900 movie reviews);
- the award-winning *Know before you Load* apps review service (with close to 700 reviews);
- presentation of topical conferences and seminars;
- the research and development of effective parent media awareness materials;
- making submissions to broadcasting inquiries and reviews;
- participating in media interviews related to media regulation.

The ACCM's current issues include promotion of early management of screen time and content by the very young; and the quality of programs for children; the effectiveness of classification systems; early sexualisation of children in and by the media; the impacts of media violence; the marketing of violent entertainment and junk foods to the young.

The ACCM's programs are led by a team of expert volunteers, supported by a small paid staff. Its programs are supported by project grants and much volunteer input.

The ACCM's awards include National Community Crime Prevention awards 2009, 2006; 2001; National Child Protection 2005, Children's Week 2011; NAPCAN award 2016; Children's Week 2016.

The ACCM is structured as a company limited by guarantee. Its ABN is 16 005 214 531. The organisation is registered for GST, and has DGR and ITEC status.