



Submission to Department of Communications May 2021

Media Reform Green Paper: Modernising television regulation in Australia

INTRODUCTION

ACCM is the peak Australian NGO providing information and advocacy on children's engagement with the media. Its members share a strong commitment to promoting the healthy development of Australian children. Their particular interest and expertise are in the role that media experiences play in that development.

ACCM's core business is to collect and review research and information related to children and the media; to provide information and advice on the impact on children of print, electronic and screen-based media; to provide reviews of movies and apps from a child development perspective; to advocate for the needs and interests of children in relation to the media; and to conduct and act as a catalyst for relevant research.

This submission has been prepared by Prof Elizabeth Handsley FAAL, President of ACCM, and by Barbara Biggins OAM CF, Hon CEO.

SUMMARY

A major fault in this Green Paper is that it does not ever specifically address the diverse needs of the child audience. The emphasis is on the changing media landscape; on the government's desire to move current free-to-air networks from their present spectrum allocations; and on serving the financial interests of the industry. The public interest as a whole takes fourth place, and children are out of the picture entirely.

Platform-neutrality as a concept has a powerful logic to it. However, in practice, it is likely to mean a 'race to the bottom', that is, the more regulated platforms will be deregulated to the level of the others.

If children in all their diversity are to be provided with an adequate range of quality programs there must be specific obligations to achieve this. Just as there have been and still should be Australian content obligations, there should be content obligations for the child audience. These should be placed on all content services whose primary purpose is to provide professionally produced scripted content on the internet to Australian audiences.

Obligatory content for the child audience should be understood as something similar to the current definition of C material in the CTS: high quality content made especially for children that enhances their experience. All age groups should be catered to, as well as a range of

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interests and tastes; and the standards should be independently and rigorously applied, as well as updated regularly to respond to emerging research.

Effective regulation of the advertising to which children are exposed is also required. Similarly there should be safeguards of children's privacy when consuming content online.

Regulation, especially that which includes classification of content and advertising, increases in importance in an environment where time zones as a protective factor for the child audience have been downgraded, or are non-existent.

COMMENT ON GREEN PAPER

Business interests and the public interest

In responding to the Green Paper, ACCM would like to challenge its key assumption that changes to regulation are justified when an industry is challenged by technological change. In a liberal democracy, the usual approach to such developments is to expect businesses to innovate and show flexibility, responding to the change in a way that ensures their continued flourishing. That flourishing need not be defined in such a way as to require the maintenance of the same size or profit margin that an industry had before. Yet the Green Paper frequently talks as if a reduction in profits is in and of itself a reason to deregulate. It is not.

The question, rather, should be whether there has been any change to the public policy considerations on which regulation was originally based and, if so, what regulatory settings are appropriate to the new policy conditions. The central consideration should always be the public interest, and if it required regulation, and still requires regulation, the answer is not to deregulate but to extend regulation to the new elements of the industry.

In the case of children's content, key policy conditions have not changed significantly. Children still have special needs as an audience, and they are still highly likely to be under-served by commercial content sources because of their limited economic power. It is still unethical to advertise to them in the same way that one would advertise to adults, and many of them still come from families that cannot afford alternative entertainment sources. If anything, children's need for a reliable source of diverse, free, quality and age-appropriate content is greater now than 20 years ago, when families had VHS or DVD players and could borrow content from their local library. Now a family that wishes to access such content will almost certainly have to pay for it.

The proposals in the Green Paper seem overly generous to the commercial free-to-air industry: for example, they allow licensees to get the benefit of a lower fee for a new licence and also remove certain quota obligations. The Australian public should not need to sacrifice so much to safeguard the interests of what is still a powerful and lucrative industry.

ACCM also wonders about the role played in the Green Paper by shared multiplexes, and how much of the proposed change is prompted by that, rather than equity between platforms or the public interest in content obligations. The proposal for new licences with more attractive conditions muddies the waters of the balancing act between the latter two considerations,

and ACCM would prefer to see these dealt with independently of any question about spectrum licensing.

Platform neutrality

ACCM is not opposed to the concept of platform-neutrality. It has a powerful logic to it. However, we know that in practice it means a 'race to the bottom', that is, the more regulated platforms will be deregulated to the level of the others. We think it should be the other way around: the regulation of the new platforms should rise to the level of the existing ones. Where this is not possible, the conversation should be about how to achieve the policy goals to the greatest possible extent while also achieving an equitable balance and healthy competition between the platforms. 'Platform neutrality' is not able to capture such a nuanced process.

The child audience

ACCM is dismayed at the overall lack of engagement with children's interests in the Green Paper. Australia has an international obligation under article 3 of the *UN Convention on the Rights of the Child* to make children's best interests a primary consideration in all actions concerning them, and media regulation is clearly such an action. The graphs at page 12 of the Green Paper are telling in that they exclude children under 14 from the picture when tracking changes in viewing habits. Yet this is the precise group to whom the CTS cater because of their distinct needs and habits.

The only content obligations discussed are for Australian, and even the graphs relied on to demonstrate declining audiences do not reflect the viewing patterns of Australians under 14 – who happen to be the precise group whose interests have been served by the Children's Television Standards (CTS). Although the budget allocation for the Australian Children's Television Foundation has recently been increased, a move we applaud, there is no proposal for a funding pool for children under the Create Australian Screen Trust, and no proposal for content or spending obligations for the child audience.

History shows when there are no obligations, children in all their diversity are not provided with an adequate range of quality programs. At present with removal of quotas, it is apparent that the commercial free to air licensees have more or less abandoned investment into programs for children, or even screening older ones. The ACMA's [compliance figures](#) show that in 2020 one of the three licensees did not comply with quotas for children's first release or general children's quotas; and two did not comply with the preschool quota. The ABC provides a modest level of programming for children but cannot be expected to cater for different age ranges and tastes, just as it couldn't be expected to cater for all of adults' diversity and tastes on its present channels. Some streaming services recognise that catering for children is a draw card for parents to keep subscribing, but a) it is available only to those who can pay, and b) the quality of the content is not necessarily high. Children whose families have the internet can access versions of existing platforms supposedly modified for children, but experience shows there are many hazards on such sites.

ACCM submits that just as there are Australian content obligations, there should be content obligations for the child audience. As the Committee on the Rights of the Child said in its recent *General Comment on the rights of the child in relation to the digital environment*,

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signatories to the Convention such as Australia ‘should provide and support the creation of age-appropriate and empowering digital content for children in accordance with children’s evolving capacities’ (para 51).

Minimum spend

ACCM supports the calls by SPA and the ACTF for all content services whose primary purpose is to provide professionally produced scripted content to Australians using the internet to be subject to an expenditure obligation, of 20% of revenue generated in Australia, for Australian content.

ACCM submits further that of this 20%, 25% should be expended on content for the child audience. Given that children under 15 are about 20% of the Australian population, and that 35% of households have dependent children in them, this seems a reasonable figure.

In this context, ‘content for the child audience’ should be understood as something similar to the definition of C material in the CTS: high quality content made especially for children that enhances their experience. The obligations should be framed in such a way that all age groups are catered to, as well as a range of interests and tastes; and the standards should be independently and rigorously applied, as well as updated regularly to respond to emerging research.

ACCM submits further that the proposal to ‘set clear expectations of SVOD and advertising video-on-demand (AVOD) businesses about their investment in Australian programming’ (p 5) should be extended to content for the child audience. We also submit that ‘formal regulatory requirements’ should be implemented straight away, rather than left to the vagaries of some future political moment. Given past experience with industry self-regulation for protecting children’s interests, we can almost guarantee that there will be compliance (if at all) with the letter but not the spirit of the expectations.

In addition to these Australian content measures, ACCM would also be happy to see measures to increase the availability of quality overseas content for the child audience.

Enhancing access

ACCM appreciates that the idea of an hours-per-week quota on certain content, such as that found in the CTS, is difficult to apply to on-demand services. Still, history tells us that it is not enough simply to require that content for the child audience be made; it has to be made available.

During the time of the CTS quotas, certain licensee practices were observed that limited children’s access to that content: for example failure to promote, inconsistent scheduling and scheduling at times when the child audience is less available. While on-demand services obviate some of the difficulties associated with scheduling, catering to the needs of children in homes without access to paid content indicates a need for requirements on free-to-air television in this connection. And in any case, promotion requirements are both necessary and justified on any platform.

Consequential matters

We have already laid out the case for regulation to ensure that children have free access to a diverse range of programs that enhance their lives. Other elements required to ensure that children's rights and interests are served, relate to advertising, privacy and classification.

First, such enhancements to content for the child audience should be accompanied by improvements in advertising regulation in accordance with children's right to have their interests treated as a primary consideration in all matters affecting them. The UN Committee on the Rights of the Child's *General Comment 25 on the rights of the child in the digital environment* (GC25) makes it clear that this principle applies when governments are 'regulating marketing and advertising *accessible to children*' (para 41, emphasis added). The Committee also stated that: 'States Parties should ... regulate ... to *prevent children's exposure* to the promotion of unhealthy products, including certain food and beverages, alcohol, drugs and tobacco and other nicotine products' (para 97, emphasis added). Further, advertising regulation should prevent children's exposure to techniques that have been established by research to be unfair to them (see further eg GC25, paras 40, 110). It is implicit in the concept of preventing exposure that these improvements should apply across the board, to all content that children are likely to access, and not just that which is made especially for them.

Second, there should be strong legislation to safeguard children's privacy, for example to prevent covert tracking when content is accessed online. (See GC25, para 42.) Once again, such protections should not be limited to content produced under the minimum spends recommended above.

Third, the role of classification of all programs and advertising content as an important source of consumer information should be given close and urgent consideration. The key role of such information, and the form it should take, are explained in ACCM's [submission](#) to the Classification Review in February 2020.

ACCM argues for an evidence-based classification system which provides much more age-based information to support parents of young children, and that is capable of being applied effectively as an online system. This need has increased with the watering down over past years of time zone and other protections for families and children in the *Commercial TV Code of Practice*, especially in the early evening hours.

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This submission can be made public.

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