



Australian Law Reform Commission's

Inquiry into

National Classification Scheme Review

Submission by the Australian Publishers Association

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Maree McCaskill
Chief Executive Officer
Australian Publishers Association
60/89 Jones Street
Ultimo NSW 2007
Phone: 61 2 9281 9788
Fax: 61 2 9281 1073
Mobile: 0418 657 453
Email: maree.mccaskill@publishers.asn.au
<http://www.publishers.asn.au>

The Australian Publishers Association (APA) is the peak industry body representing publishers and distributors of books, journals and educational materials in print and electronic form. The APA has over 200 members representing more than 90% of the industry, based on turnover

The APA makes the following submission specifically on the following questions asked by the Australia Law Reform Commission's Issues Paper:

Question 8. Should music and other sound recordings (such as audio books) be classified or regulated in the same way as other content?

Question 9. Should the potential size and composition of the audience affect whether content should be classified?

Question 10. Should the fact that content is accessed in public or at home affect whether it should be classified?

Question 11. In addition to the factors considered above, what other factors should influence whether content should be classified?¹

Summary of Submission

The APA submits that audio books should not be included in any classification scheme, including the National Classification Scheme.

This is so, as a published work is already part of the National Classification Scheme.

An audio book is a derivative legally and practically of a published work.

Audio books

An audio book is a narrated version of a book. It is, in the sense of the noun 'derivative', literally something that is based on another source, not original²

¹ Australian Government, Australian Law Reform Commission, National Classification Scheme Review Issues Paper, Approach to The Inquiry, May 2011, page 5

² The Australian Concise Oxford Dictionary, OUP 1987, p277.

Audio books have also been known by the term ‘talking books’ or books-on-tape.

Nowadays, in the digital age, they are usually recorded onto compact discs (CDs), although some older editions remain on cassette tapes. (Hence the name, ‘books-on-tape’.) More recently, audio books have been available to download from the internet (free or paid-for) and pre-recorded on special MP3 players.

Audio book Industry

Most Australian publishers, as a general practice, do not produce audio books. Rather, they sell the audio book rights to a specialised audio book publisher. The largest of these audio book publishers in Australia is Bolinda Publishing. Indeed, they are largest online audio bookstore in the southern hemisphere and one of the biggest online large print bookstores in the world. (This connection between large print books and audio books are a natural linkage, due to the place audio books have in the quality of life of people who are vision impaired.)

Australia Law Reform Commission’s Issues Paper

The Australia Law Reform Commission (ALRC), in its Issues Paper concerning the National Classification Scheme Review, poses the proposition, in Question 8, that “sound recordings (such as audio books) be classified or regulated in the same way as other content”. When commenting on this question in the Issues Paper, along with Questions 7 and 9 to 11³, the ALRC does not at any point address the issue of audio books. Indeed, this comment also applies to the balance of the Issues Paper.

It seems unusual to raise the possibility of sound recordings being included in a classification scheme and not provide any specific issues as to why this might be a worthwhile consideration. Indeed, if Question 8 was designed to engage in exploration of the issue, and was for this reason, just left to stand as a question without address, the Issues Paper might have been better served to have stated this. Certainly, the purpose of Question 8 might have been better understood. As it stands, the posing of the question can only be taken as one that has the objective of seeing what response it secures.

³ ALRC Inquiry National Classification Scheme Review Issues Paper, May 2011, pages 26 – 27.

In addressing Question 8 three issues need to be noted. These are the current National Classification Scheme, the impact of that Scheme on audio books and the impact of digital convergence on the context of an audio book.

National Classification Scheme

The National Classification Scheme has three essentially distinctions in its statutory classification; publications, films and computer games classifications.

The Classification Act 1995, subsection 7(1) provides for the following:

Publications

3.18 Under the *Classification Act 1995*, publications may be classified as:

- Unrestricted;
- Category 1 restricted;
- Category 2 restricted; or
- RC (Refused Classification).⁴

The National Classification Code (the Code)⁵ is determined under the *Classification (Publications, Films and Computer Games) Act 1995* (the Classification Act). The Code contains the general principles, which form the basis of the Classification Guidelines (the Guidelines).

The Code states:

Classification decisions are to give effect, as far as possible, to the following principles:

- (a) adults should be able to read, hear and see what they want;*
- (b) minors should be protected from material likely to harm or disturb them;*
- (c) everyone should be protected from exposure to unsolicited material that they find offensive;*
- (d) the need to take account of community concerns about:*
 - (i) depictions that condone or incite violence, particularly sexual violence; and*

⁴ See Chapter 3 of the Report 'Review of the National Classification Scheme; achieving the right balance', prepared by the Senate's Legal and Constitutional Affairs Committee, 23 June 2011 http://www.aph.gov.au/Senate/committee/legcon_ctte/classification_board/report/c03.pdf

⁵ <http://www.comlaw.gov.au/Details/F2008C00129>

(ii) the portrayal of persons in a demeaning manner.

Impact of the National Classification Scheme on Audio books

The production of an audio book arises out of the sale of a right usually created at the time of the contract for publication of the book itself and which is made between an author and their publisher. This right for the production of an audio book is usually sold on to a specialist producer.

The audio book is in every sense a negotiated right arising out of the publishing contract. The audio book is a derivative of that book being essentially a right to narrate the 'parent' book. The National Classification Scheme is metaphorically stamped on the produced book and, by this very statutory categorisation of the book, the same governance flows to the audio book.

This principle operates even in the National Classification Scheme where classification is a self-regulatory action with a "call-in mechanism". The classification provided to the original book flows through to the audio book and classification flows because of the audio book's derivative nature to that of the published book.

Convergence Issues

One of the recurring themes in the Issues paper and the Senate Committee Report is the impact of the convergence of technology on the current National Classification Scheme. The boundaries between publications, film and computer games are blurring, making the task of classification sometimes challenging. The issues around this were well expressed by Mr Simon Bush, Chief Executive, Australian Home Entertainment Distributors Association (AHEDA)⁶ in evidence to the Senate Committee hearings:

The classification act is an analogue piece of legislation in a digital world, I would argue. ... In our submission I suggested that in developing reforms to the scheme the guiding principles should encompass same content, same rating, single system, different platform.

⁶ Commonwealth of Australia, Official Committee Hansard, Senate, Legal and Constitutional Affairs References Committee, Thursday, 7 April 2011, page 32

This is applicable to audio books as they have the same content as the parent book (the publication), it is just in a different form or to use the modern term in this context, ‘platform’. The same rating of the parent book should apply. As such audio books, already subject to the National Classification System rating through the parent publication should not be subject again to assessment.

This is why the APA regards this as the “derivative principle”.

A real distinction needs to be acknowledged when audio books are described as a ‘sound recording’ in Question 8 of the Issues paper. A sound recording as contained in an audio book can be distinguished from a sound recording accompanying an image or film. The audio book does not have any image or film attached to it. It is not like a music video. It is a narrative. It is the same content as a book, delivered on a different platform. This is why the word ‘derivative’ has a strong application when it comes to audio books in relationship to the book from which the narrative was derived.

Questions 9 to 10

These questions ask whether the size of audiences and information accessed in public or at home are factors in arguing that music and other sound recordings (such as audio books) warrant classification. The APA submits that these are not relevant factors when considering audio books.

The relevant factor is simply the nature and form of what constitutes an audio book and the ‘derivative principle’.

Question 11

This question seeks to address any other factor to be considered in influencing whether audio book content should be classified. Again the response in the Question 9 to 10 is applicable in answering Question 11.

Social Factors

The use of audio books falls into two main categories: the visually impaired and users of digital technology to listen to rather than read books.

The Australian Government’s Intergenerational Report 2010, Australia to 2050: future challenges states:

The ageing of the population will see the number of people aged 65 to 84 years more than double and the number of people 85 years and over more than quadruple.⁷

There is no doubt that the aging process and/or medical conditions present increasing issues of visual impairment in the population.

Vision Australia has noted “Not all eBook readers are easy to use if you are blind or have low vision”.⁸ The next option for a visually impaired person is an audio book”.

The question to ask is: “Will the inclusion of audio books in the National Classification Scheme provide greater access to audio books by the visually impaired”. The answer must be in the negative to this proposition.

When applying the same question to those who choose to listen to a book rather than read one, and are not visually impaired, the answer is the same.

Will the public or audience for audio books be further protected should audio books be classified? Again, the answer has to be in the negative because of the operation of the ‘derivative principle’.

Does any contemplation of the overarching public policy consideration explored in the Senate Report - ‘Review of the National Classification Scheme: achieving the right balance’ - which was the balance between the freedom of speech and the interests of the community - change the answer to the same question? Again, the answer has to be in the negative.

Conclusion

The APA submits that achieving the right balance is obtained in the classification of the publication from which the rights were derived to produce the audio book.

Maree McCaskill
Chief Executive Officer

⁷ Chapter 1, Overview

http://www.treasury.gov.au/igr/igr2010/report/html/02_Chapter_1_Economic_and_demographic.asp

⁸ <http://www.visionaustralia.org/info.aspx?page=2466>