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# Children's interests in the National Classification Scheme Review

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## Abstract

*It is twenty years since the last thorough review of the National Classification System, and those twenty years have witnessed the burgeoning of the internet and the impact of convergence on what used to be the separate spheres of media, telecommunications and information and communication technologies. Over that time there has been an increasing emphasis placed on children: the need to promote their opportunities in the digital world, and the responsibility of parents, policy makers, content providers and other adults to help protect them from risks. This paper examines the recommendations of the National Classification System Review bearing in mind the findings of AU Kids Online, a research project with 400 Australian children aged 9–16 and the parent most involved in their internet use. The AU Kids Online research was commissioned by the ARC Centre of Excellence for Creative Industries and Innovation and parallels the activities of the €2.5 million EU Kids Online research network, which was funded by the European Commission to ensure a robust evidence base for policy development in this critical area. Protecting children from harm while promoting confidence, competence and enjoyment, in terms of their digital skills and activities, is clearly a core concern of a revised National Classification System.*

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## Introduction

Technological opportunities and public fears around technology have been key concerns of the current Labor government during the Rudd and Gillard administrations. When Kevin Rudd came to power in 2007, he did so promising to build a national broadband network. Balancing 'progress' with 'protection of children', in May 2008 the Labor government committed \$125.8 million to 'a comprehensive cyber-safety plan to combat online risks and help parents and educators protect children from inappropriate material'. Proposed measures included 'increased funding towards cyber-safety education and awareness-raising activities, content filtering and law enforcement' (DBCDE 2008). One of the most discussed, and controversial, of these initiatives was the 'content filtering', which took the form of a proposed mandatory internet filter (Lumby et al 2010).

Underlining this twin commitment to embrace the positive opportunities of the emerging digital environment while safeguarding those at risk, the Labor government also initiated a compendium of major reviews and inquiries into media, technology and telecommunications. In 2011, the media law firm Gilbert + Tobin issued a 'Tracker' to assist clients and interested others to keep up with the burgeoning policy debates and developments (G+T 2011). Key among these government reviews (although absent from the online version of the tracker), was the Convergence Review, examining 'the policy and regulatory frameworks that apply to the converged media and communications landscape in Australia' (DBCDE 2010). Feeding into the Convergence Review were the Independent Media Inquiry, headed by Ray Finkelstein, QC, and

also commissioned by the Department of Broadband, Communications and the Digital Economy (DBCDE, 2011a); and the National Classification Scheme Review, conducted under the auspices of the Australian Law Reform Commission (ALRC), headed by Professor Terry Flew (ALRC 2011).

The policy commitment to keeping children safe online, and in terms of their media experiences, is implicit in the Convergence Review's Emerging Issues paper as the seventh of ten guiding principles: '7. Communications and media services available to Australians should reflect community standards and the views and expectations of the Australian public.' (DBCDE 2011b: 9) It is further explored in relation to broadcast media time zone restrictions and the then-current National Classification Scheme in the discussion paper around community Standards:

The classification time zones were instituted primarily to protect children from potentially harmful material. They have also served a secondary role of ensuring that the community has a common understanding of the type of material that may be available at a specific time of day, making it easier for people to avoid potentially offensive content. (DBCDE 2011c: 16)

The Convergence Review's *Interim Report* was published in December 2011. It noted that it 'does not cover all the issues that will be addressed in the final report [and this] will also take other relevant reviews into consideration', including 'the National Classification Scheme Review, reporting in February 2012' (DBCDE 2011d: 1). There are five references to children in the 22-page *Convergence Review Interim Report* including, 'all content providers will still be subject to some requirements, such as those protecting children from harmful content' (DBCDE 2011d: 9) and 'Any new regulatory framework for content standards should reflect the individual rights of adult Australians to read, hear, see and produce content of their choosing within the law. This needs to be balanced with appropriate protections from offensive content, particularly for children.' (DBCDE 2011d:16) The Convergence Review's *Final Report*, presented to the Minister on 30 March 2012, and made public on 30 April, drew heavily upon the recommendations of the National Classification Scheme Review (ALRC 2012a; 2012b) to determine the specifics around children's protection in terms of media and the online environment. To help ensure a fertile cross-consideration of the deliberations of each review, Ms Louise McElvogue, an eminent new media strategist, and one of three principal architects of the Convergence Review, also served on the Advisory Committee for the National Classification Scheme Review.

This paper concerns the final report for the National Classification Scheme Review (ALRC 2012a; 2012b) and addresses the importance of considering children as active users of media and online resources. It argues that children, and older citizens, have rights around their digital engagement (BBC 2010), and need to be included in discussions about how to make the internet safe for their use. Notwithstanding this, there is a comparative dearth of reliable research around children's actual online experiences. One exception to this generality, referenced in the Final Report of the National Classification Scheme Review (ALRC 2012a: 256–8) is the ARC Centre of Excellence for Creative Industries and Innovation-funded AU Kids Online research (Green et al 2011). That work, in combination with the wider EU Kids Online findings (Livingstone et al 2011a; 2011b), will be relied upon here in terms of their implications for evidence-based policy in this area.

## Research Methodology

This paper employs a critical review of the ALRC's *National Classification Scheme Review: Classification – Content regulation and convergent media: Final Report* (ALRC 2012a), alongside

detailed consideration of the AU Kids Online findings and the EU Kids Online research. As the Review committee notes, 'Research that actively engages young people [will] continue to play a key role in addressing these ongoing issues relating to young people and convergent media' (ALRC 2012a: 258). Regarding the interplay of research findings and policy development, Livingstone et al. comment that:

there is a complex relation between evidence and policy. Research may identify the factors that reduce risks, but policy may decide it is better to tolerate some risks than to implement a strategy to reduce them. This may be because the costs are too high for the child (e.g. their freedoms are overly restricted), to the state (e.g. too heavy a burden of implementation and compliance) or to the industry (e.g. too much regulation). Research findings, therefore, inform but do not determine policy directions. (Livingstone et al. 2011a: 12)

As regards the AU Kids Online research, the methodology used was carefully mirrored upon that of EU Kids Online as a means of ensuring comparability. Although there were areas of country-specific difference in the 25 countries involved in the European research (Livingstone et al 2011a: 163), all countries undertook cognitive testing to ensure comparability of understanding around key concepts to be used in the face to face interviews with children. The cognitive testing was in addition to, and followed on from, the pilot testing of the surveys and interview protocols.

Cognitive testing was carried out in August 2010 as part of the Australian research preparation. Significant work centred upon the issue of a child feeling 'bothered'. In terms of explaining this term to the child in the Australian survey, it was ultimately defined as something which 'made you feel uncomfortable, upset, or feel that you shouldn't have seen it' (Green et al. 2011: 8). A low threshold was specified for the child 'being bothered' as a result of an online experience so that later questions could examine the intensity of the feeling and its duration. If a term such as 'upset' had been used, rather than 'bothered', it would not have made sense for a child to later say that they were 'not at all upset' (low intensity) and 'I got over it straight away' (short duration). At the other end of the continuum, data was also collected around online experiences which resulted in the child feeling 'very upset' (high intensity), 'for a couple of months or more' (long duration).

The EU Kids Online research, and consequently the AU Kids Online research, had a specific focus upon risk as a result of being funded by the European Commission's Safer Internet Program (2009-11, Contract SIP-KEP-321803). Given the importance of contextualising the risks that children run in terms of their online experiences, children and parents were also asked about the child's behaviour offline. This included asking the child for information around whether they drank alcohol, whether they had been in trouble with the police, and whether they had had sex. (Some questions were only asked of children aged 11–16, not the 9–10 year olds.) Further, data was collected around children's exposure to and viewing of sexual images offline (for example, via film, television and magazines), as a means of assessing the relative risk as a result of exposure to sexual images online. Bullying online was also considered in terms of bullying experienced in face-to-face contexts.

Children's online opportunities were included in the research, not solely to balance out the emphasis on risk, but also because it is a risk to children that too many restrictions might prevent them from benefitting from the possibilities presented by the digital environment. As Livingstone et al. note (2011a: 141), 'if more children in a country use the internet daily, this is, broadly

speaking, associated with both more risk and more opportunities. Since beneficial uses of the internet will surely develop digital skills and build competence and resilience to manage online risks, this poses a conundrum to policy makers.'

Each interview was carried out at home with a child aged 9–16 (chosen by random as having the most recent birthday prior to the date of the interview), while their parent or caregiver was present, but not in the room. With ethics and other practical considerations in mind, the interviewer gave the child either a Computer Administered Personal Interviewing (CAPI) survey sheet or a Paper Administered Personal Interviewing (PAPI) survey sheet, depending upon the country's data collection method, so that the child could answer sensitive questions in confidence. Thus, children were not required to verbalise their responses around topics that might have distressed them or that they might find embarrassing. Children were shown how to submit confidential material using the online program before handing the computer back to the interviewer, or they could watch their paper survey being sealed in an unnamed but numbered envelope by the interviewer, to be opened only by researchers who had no knowledge of the child who had completed the questions. The parent or caregiver most involved was also interviewed, separately, about their rules and strategies around internet access and whether they thought their child had been troubled as a result of their experiences online. The parent's and child's answers could be matched during data analysis so that the different perspectives and accounts of the child's experiences could be compared.

In Europe, the research was conducted by IPSOS and its nation-specific affiliates with 1,000 children, plus a parent or caregiver, in each of the 25 countries. A total of 25,142 children participated (Livingstone et al 2011a: 15). Summarised in the Full Findings report (Livingstone et al 2011a: 15–16), the full methodology for the research is also published online at [www.eukidsonline.net](http://www.eukidsonline.net), along with the parents' and children's questionnaires. 9–10 year old interviewees had a slightly different, and slightly shorter, survey than 11–16 year olds. Also accessible via the project website is the technical fieldwork report, and the research ethics application. In Australia, as a result of budget constraints and the higher cost of a randomised face to face survey in a country which is also a continent, the research was carried out with 400 children, paired with the parent or caregiver most involved with their internet use.

The Australian research was carried out by IPSOS Australia between November 2010 and February 2011, slightly later than the European studies because of the extended search for funding. There were also some delays while IPSOS recruited and trained an appropriate interviewer workforce, gained police clearance and satisfied the working with children checks. It is unusual in Australia to conduct face to face research on a randomised, stratified basis. The technique for delivering a random sample was that which had been used in 18 of the 25 European nations, the 'random walk' method. Forty randomly-selected electoral districts were identified across the nation and ten families were chosen from each electoral district via a random walk which started somewhere inside the electoral district at an address which had been randomly determined. The 400-household sample included participants from every state and territory in Australia. IPSOS staff ensured the consistency and comparability of the data across the 26 countries, and the inter-operability of the final (merged) dataset.

## Definition of Terms: Risk and harm

Although many children are exposed to risks online, there is little evidence that those who experience risks are likely to be harmed. As Livingstone et al. note in their final report (2011b: 44) 'There is little warrant for exaggerated or panicky fears about children's safety online – what's important is to empower all children while addressing the needs of the minority at significant risk of harm'. In Australia, for example, 70% of child respondents said they had not been bothered by any online experiences in the past year and those that said they had been bothered, generally registered low intensity and low duration. The details of this finding will be the subject of current investigation and a future paper.

Although the small proportion of children who are harmed by their online experiences will have taken some risk, or been exposed to risk by others, risk-taking is an important part of learning to negotiate society and has been associated with creativity and confidence, both of which are generally desirable characteristics (Green 2010). What is known about the link between risk and harm is that the more vulnerable (younger children, and girls) are more likely to accept guidance and support in relation to risk, and the children taking the greatest number of risks (older children, and boys) are less likely to be bothered by them. (Livingstone et al 2011a, pp. 54, 58–59) The concept of what material might 'harm' a child is a fraught one, since the meanings attached to 'harm' can be difficult to specify. Notably, however, 'Harm is not the same thing as offence', a point made in a public submission to the ALRC National Classification Scheme Review (Trevaskis 2011: 5). This applies to children and to parents becoming offended.

Some risky material may pose the possibility of harm to some children, but it might be that this can be balanced by possible benefits. Children might find news coverage of Australian bushfires and floods distressing, for example, but it is unclear when such coverage might be deemed harmful and whether the benefits to the child of understanding the importance and gravity of such events might outweigh possible negatives. Similarly, children may be concerned by the possible dangers posed by 'strangers', yet parents often feel it wise to impress upon their child that some strangers are dangerous people and therefore include their child when watching news stories and documentaries about child abductions. It is relevant to note that news and current affairs are traditionally exempt from classification regulations (ALRC 2012a: 141), despite Stuart Cunningham's 1992 finding that study participants 'were more likely to be disturbed by violent scenes witnessed on television news broadcasts than by fictionalised portrayals of violence in feature films or television dramas', a finding cited by the ALRC National Classification Scheme Report (ALRC 2012a: 98 citing Cunningham 1992: 91).

Even if it were possible to require that all content providers protect (all?) children from (all?) harmful content, it would not necessarily be desirable to do so. Duerager and Livingstone (2012) in *How can parents support children's internet safety?*, a report released for the Safer Internet Day 2012 and based on the EU Kids Online research, comment that parental and carer engagement is the best way to protect children from online risk. Restricting access to the internet reduces risk, but it also reduces opportunities, including the opportunity to engage with and create digital content at a time when such skills are increasingly important for participation in employment and with the wider society. They argue that the policy priority for the minimisation of harm should instead be to encourage children's and young people's active engagement with appropriate internet content, and the development of a range of creative and

self-protective digital skills as well as educating parents, children and caregivers about what constitutes safe internet practices.

## **Definition of Terms: Classification**

In Australia, the National Classification Scheme is predicated upon ‘a community expectation that certain media content will be accompanied by classification information, based on decisions that reflect community standards’ (ALRC 2012b: 10). This accepts the fact that most people, most of the time, believe that some material is unsuitable for some audiences. The attempt to rationalise this understanding by reference to the notion of ‘community standards’ introduces the first of many complex notions underpinning the classification endeavour. Notwithstanding the acknowledged complexity, states, territories and the Commonwealth all engage in debates around the National Classification Scheme, complicating matters further. One of the recommendations of the ALRC National Classification Scheme Review is that the Commonwealth should acquire responsibilities in this area to support a consistent over-arching approach to regulation. Thus key recommendations include replacing “the current classification cooperative scheme with enforcement of classification laws under Commonwealth law” with a legally-backed system which involves “a single regulator – with primary responsibility for regulating the new scheme” (ALRC 2012b: 14).

There is a widely-held belief that children, in particular, are unable to make fully-informed decisions about what media they choose to engage with, and that certain materials should not be accessible to them. Children’s viewing needs to be informed by levels of classification, but also by restrictions that stop them accessing material that, while they might want to see it, regulators and others (including parents and educators) believe is unsuitable. Thus a classification system needs to be combined with a regulatory system that established checks and blocks for certain media content.

Several matters arise in attempting to code this belief into a regulatory framework, however. Firstly, the notion of ‘a child’ has acquired the same definition as that of ‘a minor’ and all people under 18 are deemed to be children rather than adults (Fionda 2001; 2005). Clearly, pre-adolescent children have very different capacities, interests and understandings from late-teens; while early adolescents and young people of 16 and above may also have different levels of maturity and interests, largely related to that individual’s level of social, cultural, emotional and physiological development. In particular, with 16 as the age of consent (notwithstanding extensive evidence that as many as one quarter of young Australians may begin their sexually-active lives before their 16th birthday; Rissel et al. 2003), children aged 16–18 may well be sexually-active and still restricted as to their viewing and media consumption choices.

Further, while parents and other caregivers have primary responsibilities for monitoring and regulating children’s access to media, they operate as autonomous adults in the spaces of their own homes. Thus parents may be consumers of adult content materials themselves while responsible for ensuring that such content is not accessible to children in their care. The EU Kids Online II study notes that “7% of 9–16 year olds overall (46% of children who have seen sexual images online) came across them as images that pop up accidentally” (Livingstone et al. 2011a: 51). Pop ups are often a result of a computer having been used by an adult to access commercial adult content. Challenges such as this implicate content providers, industry regulators and technology manufacturers – as well as parents – in a comprehensive classification review.

Finally, one of the more controversial elements of the Australian classification system is the view that there is certain material which, while not involving illegal activity in its making, is nonetheless not permitted to be viewed (Hartley and Green 2010; Hartley et al. 2010). This is content which might disturb a 'reasonable' person, as a result of offending against "the standards of morality, decency and propriety generally accepted by reasonable adults" (s. 11 of Classification (Publications, Films and Computer Games) Act 1995 (Cth), cited in ALRC 2012a: 83). This latter category is understandably contentious and is currently included in the Refused Classification section of the National Classification Scheme. The ALRC Review engaged in extensive discussion around this category. Although they canvassed arguments that the category should cease to exist, and that any material which is currently banned (such as instructions upon suicide, or terrorism promotion) should be prohibited (or not) under specific legislation, their recommendation is that the 'Refused Classification' category should continue in a revised form and be replaced by one to be termed 'Prohibited Content' (ALRC 2012a, pp. 259–82).

## Findings and Discussion

When Australian children were asked whether they had been bothered in the past year by something they had experienced online, they were more likely than children in the 25 European nations to say that they had been. 30% of Australian children said this, compared with an average 12% of European children (Green et al. 2011: 61). Only a proportion of the things that bother Australian children fall within the purview of a National Classification Scheme, however. Comparing the Australian data with that collected from the European nations, out of 26 countries, Australian children were:

- second most likely to have experienced misuse of personal data, particularly when 'somebody used my password to access my information or to pretend to be me';
- third most likely to say they have been bullied online;
- fourth most likely to say they have seen sexual images online;
- sixth most likely to have viewed potentially-harmful user-generated content;
- averagely likely to have received sexual images or messages via online 'sexting', and
- less than averagely likely to have met in person a stranger whom they first met online.

Some of the risks that might harm or disturb children are not capable of being mediated by the National Classification Scheme. Misuse of personal data, online bullying, and having a negative experience as a result of meeting offline a stranger who was first encountered online, are beyond the scope of a classification scheme. In other matters, and particularly with regard to the seeing of sexual images, the issues that concern children are central to the remit of the ALRC National Classification Scheme Review.

The terms of reference for the National Classification Scheme Review put concerns about children's welfare at the heart of the inquiry. Robert McLelland, then the Commonwealth Attorney-General, asked the commissioners appointed to the investigation to frame their comments on a revised National Classification Scheme bearing in mind, amongst other matters, 'the impact of media on children and the increased exposure of children to a wider variety of media including television, music and advertising as well as films and computer games' (ALRC 2012a: 5). Consequently, when the Commissioners drew up eight guiding principles to inform their investigation and recommendations, the principle concerning children was placed at number (3), close to the top of the list, in the context of civil rights and community expectations:



- 1) Australians should be able to read, hear, see and participate in media of their choice;
- 2) communications and media services available to Australians should broadly reflect community standards, while recognising a diversity of views, cultures and ideas in the community;
- 3) children should be protected from material likely to harm or disturb them (ALRC 2012a: 24)

The ALRC Review takes a holistic approach, built around sharing the responsibilities for keeping children safe amongst regulators, industry, families, educators and civil society. It argues against simplistic solutions: ‘The nature of the risks is varied and changeable, and classifying content or restricting access can never be the only response to these challenges’ (ALRC 2012a: 256). This approach is shared by online child safety researchers in Europe. Livingstone et al (2011b: 45) comments that:

Promoting children’s online opportunities, including their right to communicate and their need to take some risks is important to counter simplistic calls for restricting children’s internet use. The ambition must be, instead, to maximise benefits (as defined by children as well as adults) while reducing harm (which is not necessarily the same as reducing risk).

The work below addresses children’s access to sexual images in light of the ALRC Review, and also includes discussion around sexting and user-generated content.

## Sexual images

The EU Kids Online project, and consequently, AU Kids Online, was particularly rigorous in putting children’s access to sexual images online in the context of children’s access to sexual images via all media – film, television, magazines etc. In both contexts, online and off, Australian children were more than usually likely to say that they had seen sexual images. In this circumstance, it was not necessarily the case that the child had been bothered by what they had seen, but the exposure to these sexual images meant there was a risk of being bothered, and of the child being harmed or disturbed. In general terms, there was a congruence between countries where children were more likely to see sexual images online, and where they were likely to see them offline. Australian children were third in seeing sexual images anywhere (after Norway and the Czech Republic), and equal fourth in seeing sexual images online (after Norway, Estonia and Finland; and equal with the Czech Republic and Denmark).

| N = 26      | Seeing sexual images anywhere |         | Seeing sexual images online |         |
|-------------|-------------------------------|---------|-----------------------------|---------|
|             | Children (9-16)               | Rank/26 | Children (9-16)             | Rank/26 |
| Norway      | 46%                           | 1       | 34%                         | 1       |
| Czech Rep.  | 45%                           | 2       | 28%                         | Equal 4 |
| Australia   | 44%                           | 3       | 28%                         | Equal 4 |
| Denmark     | 42%                           | = 4     | 28%                         | Equal 4 |
| Lithuania   | 42%                           | = 4     | 25%                         | Equal 8 |
| Sweden      | 41%                           | 6       | 26%                         | 7       |
| Netherlands | 39%                           | 7       | 22%                         | 10      |
| Estonia     | 37%                           | = 8     | 29%                         | Equal 2 |
| Finland     | 37%                           | = 8     | 29%                         | Equal 2 |
| Slovenia    | 35%                           | 10      | 25%                         | Equal 8 |
| Belgium     | 33%                           | 11      | 20%                         | 11      |

Much so-called adult content involves sexual images. The ALRC Review recommends fundamental regulatory changes to prevent children accessing these materials rather than providing a classification for them. Noting that ‘the sheer volume of adult content on the internet suggests that the focus should be on restricting access to this content, rather than having it formally classified by Australian classifiers’ (ALRC 2012a: 26), and that ‘the effective regulation of media content online cannot rely on pre-screening or pre-classification’ (ALRC 2012a: 286), the:

ALRC recommends that the Classification of Media Content Act (the new Act) should provide that content providers should take reasonable steps to restrict access to adult content that is sold, screened, provided online, or otherwise distributed to the Australian public. This requirement should apply to all adult media content, both online and offline – not just films, television programs and computer games, but also websites, magazines, music, artworks, advertising, user-generated content and other media content. The Australian community may not expect formal advisory classification information for this content but, in the ALRC’s view, content providers should take reasonable steps to restrict access, so that the content may only be accessed by adults who choose to view the content. (ALRC 2012a p. 230)

This approach is consistent with another of the National Classification Scheme Review guiding principles, No. 8, which says that, ‘classification regulation should be focused upon content rather than platform or means of delivery’ (ALRC 2012b: 24), and implicates the situation described earlier around the use of pop up advertisements for adult material. The recommendation also responds to the challenge that ‘Current legislation is characterised by what the Australian Communications and Media Authority (ACMA) has described as “broken concepts”: laws built upon platform-based media regulation, that become less and less effective in a convergent media environment’ (ALRC 2012b: 12), and to a situation in which the existing ‘Classification Act was described as “an analogue piece of legislation in a digital world”’ (ALRC 2012b: 11).

Regulation of the revised National Classification Scheme is to be achieved partly through industry codes of practice supported by ‘statutory obligations to classify and restrict access to some content, and statutory classification criteria’. This means that the ‘code process may be characterised as closer to direct regulation than pure co-regulation. That is, industry would only be free to develop its own rules within the constraints of the legislative requirements’ (ALRC 2012a p. 310). The full report goes on to say that:

What steps are reasonable to take to restrict access will be based upon what is appropriate for delivery platforms. Restricting access offline may be straightforward in some instances, such as the packaging of certain content in plastic, or requiring proof of age on purchase.

While the challenges are clearly greater with online content, content providers will still be expected take reasonable steps to restrict access. Some content providers may be able to issue warnings and use age-verification systems. Others may be expected to promote self-regulatory initiatives to assist consumers to manage their own access to media content, and protect children and others in their care.

Measures to assist parents and guardians in particular may include:

- public education about the use of parental locks and other technical means to protect children from exposure to inappropriate media content;
- digital literacy and education programs;
- use of personal computer-based dynamic content filters; and
- user reporting – ‘flagging’ – of inappropriate content (ALRC 2012a, pp. 26–7).

This recommendation – industry assisting parents to protect children – is consistent with the view that keeping children safe online is a whole-of-community issue involving collaboration among a range of stakeholders in addition to parents, schools and regulators. The challenges involved are burgeoning as a result of the spread of iPads and similar handheld devices, to which many children have access. Increasing mobile internet use makes traditional regimes of parental supervision more problematic, and less effective, especially for older children. This means that safety systems need to be built into the devices used, and should be fail-safe, using easily-transferable skills across brands and products.

The final report on the 25,142-child EU Kids Online II study recommends to industry players that:

To reduce user confusion and impractical skill burdens, privacy settings, parental controls, safety tools and reporting mechanisms should be age-appropriate if for children and far more usable (whether for children or parents) than at present and/or enabled by default.

They also note that:

As children gain internet access (and, it seems, increased access to sexual or inappropriate content) via more diverse and personal platforms, ensuring consistent and easy-to-use safety mechanisms on all devices is vital (Livingstone et al: 2011b: 44).

This establishes an obligation upon manufacturers as well as content providers to help meet the challenge of preventing under-age and inadvertent access. Such industry injunctions are beyond the remit of the ALRC Review, but it should be possible for the ‘reasonable steps’ to be taken by content providers to include liaison with industry to construct child-proof, consistent and easy-to-use technology locks.

It is increasingly recognised that keeping children safe online while supporting their confident development as digital citizens and educating them to be discerning consumers of media and information involves a multi-faceted approach. Indeed, any idea that there might be a one-stop-shop for ensuring child safety online was one of the dangers of the proposed Australian mandatory internet filter. Arguments against this included that it may ‘leave parents and teachers with a false sense of security when it comes to children accessing the internet’ (Lumby et al. 2010: 29). It is arguable that the mandatory internet filter would have done little to remove the kinds of everyday adult content that has the potential to bother some children, but it might encourage people to think that the internet in Australia was successfully sanitised.

This whole-of-community approach to keeping children safe is also the conclusion reached in Europe by the EU Kids Online network. Although addressing a range of risks in addition to seeing sexual content, Livingstone et al.’s 56-page final report (2011b) includes a series of recommendations focussing separately on government, industry, awareness raising, children, parents, educators, child welfare agencies and civil society. Relevant industry recommendations

have already been cited, but key among other recommendations arising from the EU Kids Online II study of 25,142 children are (Livingstone et al. 2011b):

#### **For government (p. 44)**

If industry self-regulation is to meet the needs of children and families, it requires firm steerage from government to ensure that it is inclusive, effective and accountable.

If schools, youth and child welfare services are to raise awareness, provide information and guidance and effectively support children and parents, they require strong encouragement, resources and recognition.

#### **Awareness-raising (p. 44)**

Messages should be matched to different groups – teens may worry about pro-anorexia content, young children can be upset by pornography, those who bully may also be bullied.

Reaching the 'hard to reach', while difficult, is a priority given that vulnerable children are particularly susceptible to online harm (p. 44).

#### **For children (p. 44)**

Children generally grasp the ethical codes of courtesy, consideration and care that guide social interaction offline, but they have more to learn – or to be taught – about the importance of such codes online

Becoming empowered and responsible digital citizens will be increasingly important as the internet becomes ever more embedded into daily life.

#### **For parents (p. 45)**

Parents should be encouraged to make more use of the array of parental controls, though this will require greater availability of easy-to-use, carefully tailored, affordable tools.

Those who encounter risk are not necessarily those who experience more harm, so parents should be encouraged to worry less about the former than the latter, where possible guiding their children so that harms are avoided or managed.

Without undermining parents' trust in their children, parents should be more aware of and more empowered to respond constructively to children's (including teens') rare but sometimes upsetting experiences of harm.

#### **For child welfare professionals (p. 45)**

Now that the internet has entered into the array of long established sources of risk in childhood (including other media, risks in the home or community), online risk should be included in risk assessment processes, recognising that increasingly online and offline are intertwined in a potentially vicious circle.

Children who are vulnerable offline are especially vulnerable online [...] for some children, psychological difficulties or social problems may result in the migration of risk from offline to online settings; this should be recognised by child welfare professionals, youth workers, law enforcement, clinicians etc, and these may require specialist training.

#### **For civil society (p. 45)**

A critical lens should be sustained when examining public anxieties, media reporting, industry accountability or new technological developments to ensure that these do not undermine children's interests. Further, critical analysis of regulatory and technological developments should not assume that all users are adults, that parents can and will

always meet the 'special needs' of children, or that children's interests are somehow antithetical to the public interest.

Clearly, the ALRC Review is only one element of this wider community engagement around children's online safety.

## **User-generated content and 'sexting'**

As indicated earlier, Australian children were more than averagely likely to say that they had seen potentially harmful user-generated content in the previous twelve months. 34% said this, including 52% of girls aged 15 to 16. Few of these children said they had been bothered by this experience. This data on access ranks Australia sixth out of twenty-six countries in this risk area. The kinds of content asked about in the survey included anorexia, self-harm, suicide-support and hate sites (Green et al 2011: 11). The AU Kids Online report notes that, 'The most common potentially harmful content is hate messages (26%), followed by people discussing ways of physically harming or hurting themselves (14%), and sites talking about drug experiences (12%). The first three percentages are above the European average. Few [Australian children] (5%) have visited a suicide site' (Green et al 2011: 37).

It may well be that some instances of accessing potentially-harmful user-generated content indicate positive and proactive health choices. For example, an older child might access a website about drug-taking because of concern about a friend; just as another might try to find out about self-harm because of a friend who is self-harming. It is difficult to make judgements about why these sites are accessed, and why they are of interest to (particularly) teenage girls, without qualitative research in this area. EU Kids Online notes that 'potentially harmful user-generated content (essentially harm associated with the content not mass produced by commercial organisations but rather generated through peer-to-peer conduct)' is among the 'online experiences that, although identified as potentially harmful to children, have attracted little research as yet' (Livingstone et al. 2011a: 97).

The arguments against classifying user-generated content are many, and are widely canvassed in the ALRC Report. The National Classification Scheme Review comments that one of the challenges faced by the classification system is: 'how to design regulations that distinguish between content that is produced by large-scale organisations on a commercial basis, and user-created content' (ALRC 2012a: 71). The review quotes the submission of the Australian Competition and Consumer Commission which argues for the need for careful drafting 'to ensure that other types of online audiovisual content (such as user-generated, semi-professional content and short-duration clips) are not inadvertently captured by ... the new Act' (ACCC 2011, cited by ALRC 2012a: 71).

In its 2011 report on Digital Australians, the Australian Communications and Media Authority notes that media consumers have different expectations around such material: 'Content produced by individuals and posted on the internet was seen as user-generated and there was very little expectation that it would adhere to any standards, apart from the need for it to be legal, and meet the terms and conditions of use of the site it was posted to' (ACMA 2011a: 3 cited in ALRC 2012a: 112). This also seems to be the case in Europe. Citing the European Parliament's Directive on the co-ordination of certain provisions laid down by law, regulation or administrative action in member states concerning the provision of audiovisual media services, Directive 2010/13/EU (2010), the ALRC Review notes that, 'certain categories of audiovisual

media are excluded from regulation, [including ...] user-generated videos and private websites' (ALRC 2011a: 113.). This may become the way Australia handles such privately-produced, user-generated content:

The ALRC recommends that only media content that is both made and distributed on a commercial basis should be required to be classified. This is the content for which Australians appear to expect classification information, and it is also the content provided by persons most likely to be able to provide the classification information. (ALRC 2012a p. 137)

The reason for specifying commercially-produced and commercially-distributed material is to avoid capturing user-generated content that is accessible via 'a platform that operates on a commercial basis – for example, a television station or a video-sharing website with advertisements' (ALRC 2012a p. 137). This is not to say that there would be no restrictions around platforms, since a commercial site would be implicated in the classification system depending upon the nature of the content hosted and its commercial operation. Noting,

the sheer quantity of media content that is now available online, and in particular, the dynamic nature of online content and the volume of user-generated content [...] it may only be reasonable [...] to ask] platforms that host millions of hours of user-generated content [...] to have in place processes to readily identify adult [or other challenging] content after it has been published. Major content providers, for example, might have mechanisms that allow users to 'flag' content as adult or 'inappropriate'" (ALRC 2012a: 236, 286)

As well as being regular consumers of user-generated content, Australian children also produce their own media. In addition to their extensive use of social network sites, such as Facebook, where 29% of 9–10 year olds; 59% of 11–12 year olds; 77% of 13–14 year olds and 92% of 15–16 year olds have accounts (Green et al. 2011: 22); 85% of AU Kids Online respondents watched video clips online and over half of these, 45% of the total cohort, also created their own media to share with friends and family (Green et al. 2011: 8). In this context, only a small percentage of user-generated content poses a risk for children. Even so, given that some is potentially harmful, its likely exclusion from a future Australian classification scheme is a further indication that a major focus has to be placed upon supporting children's development as responsible, resilient and self-directed media users. At the same time, children should be encouraged to talk to parents, teachers and peers if they experience online materials that bother them. In this respect Australia scores extremely favourably, with children's accounts noting that 95% of parents actively mediate their activities online, in terms of safety, second only to the Netherlands in a ranking of the 26 countries (Green et al, 2011: 42).

In one particular area of user-generated content, Australian children score averagely alongside their European counterparts, ranking equal fifteenth out of twenty-six countries. This is in the case of sexting, where 3% of Australian children aged eleven to sixteen said they had sent sexts, and 15% said they had received them (Green et al 2011: 64). This was one of the questions not asked of nine to ten-year-olds. The ALRC Review uses Albury et al.'s (2010: 2) definition of 'sexting' as 'sending sexually explicit or sexually suggestive text messages' and 'the electronic transfer of nude and semi-nude images via mobile phone'. Given the burgeoning of user-generated content among under 18s, and the combination of this with the romantic involvement and other sexual liaisons that characterise many young adult lives, even where it is 'legally

permitted to consent to sexual activity [...] “sexting” content could fall within the bounds of the RC [refused] classification category’ (ALRC 2012a: 264–5).

Further, ‘under the law, sexts are classified as child pornography when the images are of people under 18, even if the person pictured took the photographs themselves and willingly sent it to others’ (Brady 2011). Increasingly such materials are coming to the attention of the police and the young people involved are facing penalties designed to apply to paedophiles and child sex predators, with a number being mandatorily being placed on sex offender registers. A dramatisation of this situation is the subject of a recent educational resource prepared by the ACMA for teachers and others, Tagged (ACMA 2011b) The ALRC Review raises the issue of texting and cites Trevaskis’s (2011) submission that:

Sexting is another example where laws designed to pick up one group of people (users of child pornography) are inadvertently picking up private individuals who should not be expected to know better. That is, it is unreasonable that the law even has reach into such distribution,

A review of the National Classification System is not, however, the mechanism best suited to address this issue. Although the ALRC Report discusses it in the context of the current scope of the RC classification, it is not addressed further in discussions around recommendations for the proposed Prohibited Content category.

## Conclusion

Of the AU Kids Online research, the ALRC Report says the “findings draw attention to the multi-faceted nature of risk and cyber-safety issues for children online, and the need for responses that incorporate public education and support for parents and guardians” (ALRC 2012a: 257). Only one of the six risks investigated by the study involves an area that falls unambiguously within the purview of the National Classification Scheme: that area is the viewing of sexual images, where Australian children scored fourth out of twenty-six countries in terms of risk exposure. The ALRC Report’s response to this challenge is to recommend much greater emphasis on restricting young (under 18) people’s access to such material. Effort spent on classifying adult content should be re-assigned to ensuring its inaccessibility except for those adults who wish to access it.

Two other areas might have possibly been covered by a classification scheme on the grounds that they include elements of ‘publication’. One of these is user-generated content, and the other is sexting. Both of these areas involve risks that were investigated in the AU Kids Online research. In particular, Australia ranked sixth out of 26 in terms of risks run in viewing potentially-harmful user-generated content. Sexting presented an average risk compared with 25 other countries. Both of these areas were discussed in the ALRC Report on the National Classification Scheme Review, but neither is a central tenet of the recommendations except for access to user-generated sexual content between consenting adults (over 18) where this is hosted on a commercial website. In this case the suggestion is that the content providers, the website hosts, are required to treat this as they would commercially-produced sexual images, and to restrict access to adults.

The other risks faced by children and investigated in AU Kids Online are around inter-personal behaviour: misuse of personal data, online bullying, and meeting offline a person who has first been met in an online context. These are clearly not susceptible to a formal regulatory framework, other than when a law is broken.

Given that only one of the six risks investigated in terms of children's online activity is canvassed as falling into the remit of the National Classification Scheme, it would be highly inappropriate to assume that the secret to children's online safety lies in effective regulation. Instead, the work of keeping children safe online while promoting their healthy engagement with the digital environment lies in a whole-of-community approach where children's online safety is everybody's business, and everybody has a shared responsibility.

Livingstone (2011a: 44) notes that 'It is vital to keep listening to children to recognise the changing array of risks they face, to address children's own worries and to support children's ability to cope, whether this involves avoiding, resolving or reporting problems' and that 'Encouraging children to a wider diversity of online activities while teaching critical literacy and safety skills enhances online benefits, digital citizenship and resilience to harm, and so should be encouraged; particular efforts are needed for less privileged and younger children' (Livingstone 2011a: 45). There is comparatively little research directly with children around these sensitive matters. The ALRC Review argues that there should be more: 'Research that actively engages young people [... will] continue to play a key role in addressing these ongoing issues relating to young people and convergent media' (ALRC 2011a: 258). It is hard to disagree.

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