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Australia's Proposed Internet Filtering System and its Implications for Animation, Comics and Gaming (ACG) and Slash Fan Communities

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Abstract

This paper investigates the implications of the Australian Government's proposed Internet filtering system in the light of Australia's blanket prohibition of 'child pornography' (including cartoons, animation, drawings, digitally manipulated photographs, and text) for Australian fan communities of ACG and slash. ACG/slash fan groups in Australia and elsewhere routinely consume, produce and disseminate material containing 'prohibited content' (i.e. featuring fictitious 'under-age' characters in violent and sexual scenarios). Moreover, a large portion of the fans producing and trading in these images are themselves 'under age'. Focusing specifically upon the overwhelmingly female fandom surrounding Japanese 'Boys' Love' (BL) manga, the paper argues that legislators have misrecognised the nature and scope of these online communities. It is also argued that the sheer scale of this kind of material, and the fact that it is legal for download and purchase in jurisdictions such as the US and Japan, make attempts to prohibit access to these purely fictional depictions in Australia unworkable.

Introduction

In its 2007 election manifesto, the Australian Labor Party signalled that if elected it intended to introduce legislation that would require ISPs to offer a ‘clean feed’ internet service to all venues accessible by children, including homes, schools and libraries. The aim of the policy was to protect children from seeking out or inadvertently coming across content prohibited by the Australian Media and Communication Authority (ACMA) (that is, material that has been or would likely be denied classification for release in Australia). The clean feed would be achieved via the issuing of take-down notices to sites located on Australian servers, and the establishment of an ISP-level filter that would block access to a blacklist of overseas sites featuring, among other things, child pornography and extreme violence (Labor’s Plan for Cybersafety, 2007).

After Labor’s election success in November 2007, Stephen Conroy was appointed Minister for Telecommunications. Despite widespread industry scepticism about the technical viability and efficacy of an ISP-level filtering system (Foley, 2008), Conroy moved quickly to establish trials (ABC News, 2007). In March 2009 Wikileaks published a list of 2300 urls that were purported to be on the ACMA blacklist. However, on its website ACMA stated that it had:

previously investigated and taken action on material—including child pornography and child sexual abuse images—at some of the sites on this list of 2300 URLs.

However, the list provided to ACMA differs markedly in length and format to the ACMA blacklist (ACMA, 2009).

In November 2009, there had still been no report by the Minister on the progress of the filtering trials, leading some commentators to argue that the trials had failed to deliver on the government’s ambitious promise to make the internet safer for children. In mid-December 2009, three leading Australian professors of media studies released an extensive report that

raised grave concerns about the scope and potential adverse effects of the proposed filtering scheme (Lumby et al., 2009). However, on 24 December Senator Conroy's office released a consultation paper announcing that legislation to implement the scheme would be tabled in 2010:

The Minister for Broadband, Communications and the Digital Economy has recently announced measures to require internet service provider (ISP) level filtering of overseas-hosted internet material classified Refused Classification (RC) under the National Classification Scheme. Such material includes child sexual abuse imagery, bestiality, sexual violence, detailed instruction in crime, violence or drug use and/or material that advocates the doing of a terrorist act (Consultation Paper, 2009).

As can be seen from the above, 'child sexual abuse imagery' is a primary target of the proposed filter. Yet, largely absent from the debate over the filtering issue so far has been the important point that in Australia 'child sexual abuse imagery' is an extremely broad category that extends even to purely fictional representations of 'under-age' characters in violent or sexual scenarios – including animation, comics, art work and text. Hence, existing legislation targets not only a small coterie of adult paedophiles dealing in representations of actual children, but extensive communities of animation, comics and gaming (ACG) and 'slash' fans (slash imagines sexual scenarios between popular TV, film and fiction characters, see Jenkins, 1992 for an analysis of slash fandom) whose activities involve the consumption, creation and dissemination of representations of young persons that would be classified in Australia as 'child abuse publications'. If Australia's current 'zero tolerance' legislation on child-abuse material is to be taken seriously, any proposed blacklist would need to contain hundreds of thousands of urls linking to these fan sites, thus raising serious concerns about the proposed list's manageability. Because the ACMA list is not publicly disclosed, it is not possible to know if ACG and slash fan sites dealing in purely fictional under-age characters in sexual or

violent scenarios are being or will be blacklisted, leading to concern and confusion among fan communities.

Implications of the filtering scheme for Australian ACG and slash fans

Computer games

The proposed filtering scheme has as one of its main targets websites that depict explicit sex and extreme violence, both real and fictional, in particular when the characters concerned are persons under the age of 18. One potential target for the blacklist is computer games that depict levels of sex and violence over and above those that would result in a MA 15+ classification. Historically video and computer games have been understood as children's media in Australia, the original 1995 *Publications, Films and Computer Games Act* Section 5 declaring that any game content 'unsuitable for a minor to see or read' should be refused classification. This makes little sense when games that feature graphic simulations of sex and violence like the *Grand Theft Auto* series are intended for adult audiences not represented in the criteria for classification.

Australia is unusual among western democracies in refusing to grant a classification of R 18+ to computer games meaning that any game exceeding the MA 15+ classification is illegal to play, even by adults. The gaming community has long complained about this situation, pointing out that the regulation of games content is more severe than that for film. Censorship opponents have argued that there is no reason why adult gamers should not be able to view content in a game that would be given an R 18+ classification were it to appear in a film. However, it has been argued by those supporting the maximum MA 15+ classification that the interactive nature of computer games affords them greater 'impact', hence requiring more stringent regulation.

Another concern rendering gaming problematic is the fact that gamers can generate their own avatars – characters that may 'appear to be' under the age of 18. Hence, under Australian child-abuse legislation outlined below, it would be an offense if in the context of the game the

avatar were to be subject to excessive violence, torture or to sexual exploitation. As will be discussed later, Australia not only regulates the *age of the consumers* of violent and sexual material but also the *age of the fictional characters* that may be represented in these fantasy scenarios.

The regulation of gaming is further rendered problematic by the fact that a game's 'content' is difficult to appraise since different scenarios unfold according to the choices and level of skill of the players. Some games, such as the massively popular *World of Warcraft* and *Second Life*, involve real-time text and voice communications within the game. Does the whole game become blacklisted if someone were to make a complaint to the ACMA about the 'unsuitable' content generated in these communicative spaces?

Commercially available computer games that have been refused classification are already illegal to import and play in Australia. However, the proposed filtering system will impact upon Australian gamers' participation in online gaming communities. Were a complaint to be made to ACMA about the content of a particular online game (and this could even relate to the activities of the 'child' avatars of adult players) and were ACMA to judge that such content were likely to result in the game being refused classification, then the url of the gaming site would be added to the blacklist. Hence, attempts to access the url from within Australia would be blocked, thus denying Australian gamers the opportunity to engage with other gaming communities across the globe.

Animation, comics and slash fiction

In recent years animation and manga (comic books), many of them deriving from Japan, have become immensely popular with young people globally. The development of the internet has enabled national, regional and global exchanges among animation and comic fans. Not only are previously obscure titles now easy to obtain from online stores in Japan and the United States, but many pirated editions are shared between fans. Japanese, Korean and Chinese

originals are often dubbed or subtitled by fans into English and other languages; referred to as ‘scanlations’ these texts are then uploaded onto fan sites. Fans also produce their own pirate versions featuring characters from commercial manga and animation or create their own original stories. Some fan productions are highly popular and are sold at fan conventions in Japan and around the world, whereas others are available via the internet (for an outline of this global fandom see McLelland, ed., 2009a).

The artistic conventions of manga and *anime* (Japan-style animation) tend to favour youthful looks and many characters, despite their adult status being indicated in the narrative, may ‘appear to be’ under age 18. As with the seemingly ‘under-age’ avatars of adult games players, this becomes a problem for Australian fans when these fantasy characters are placed in violent or sexual scenarios.

To an extent, the Japanese ACG fandom has merged with the already well established Western slash fandom which takes characters from popular TV and film series and develops new story lines, frequently involving sexual encounters. Among the most popular is the *Harry Potter* slash fandom which generates over a million Google hits, testifying to the ease of access to this material and its currently unfiltered nature. *Harry Potter* slash, which features imagined sexual interactions mainly between Harry and his schoolmates, like ACG material involving sexual interactions between under-age characters, is in violation of Australia’s child-abuse publication legislation, which is outlined below.

In Australia child pornography and abuse is legislated at both state and federal level. State legislation defines child pornography and abuse as

material that depicts or describes (or appears to depict or describe), in a manner that would in all the circumstances cause offence to reasonable persons, a person who is (or appears to be) a child:

(a) engaged in sexual activity, or (b) in a sexual context, or (c) as the victim of torture, cruelty or physical abuse (whether or not in a sexual context) (*Criminal Code Act 1995* [Commonwealth] s.473.1).

The federal legislation refers not only to images or texts referring to actual ‘persons’ but also to ‘a representation of a person’ and ‘material that describes a person’ who ‘is, or is implied to be under age 18’; (however, most state legislation puts the age at 16 – leading to confusion as to what, exactly, is the legal minimum age for such representations). That cartoon representations fall within the definition of a ‘person’ in the Act was clarified by Justice Michael Adams in his ruling in the case *McEWEN v SIMMONS & ANOR* [2008] NSWSC 1292. The case was an appeal against an earlier conviction for possession of ‘child pornography material’ (in this case images of the cartoon children from *The Simpsons* TV show engaged in sexual interactions). As stated in the ruling:

On 26 February 2008 the plaintiff was convicted in the Parramatta Local Court of the offences of possessing child pornography contrary to s 91H(3) of the *Crimes Act 1900* (the Act) and using his computer to access child pornography material contrary to s 474.19(1)(a)(I) of the *Criminal Code Act 1995* (the Code). The alleged pornography comprised a series of cartoons depicting figures modelled on members of the television animated series ‘The Simpsons’. Sexual acts are depicted as being performed, in particular, by the ‘children’ of the family (*McEWEN v SIMMONS & ANOR* [2008] NSWSC 1292, para 1).

The appeal was launched by the plaintiff on the basis that *The Simpsons* cartoon characters could not reasonably be described as ‘persons’. In his interpretation of the legislation, Justice Adams disagreed, and upheld the judgement of the original magistrate, commenting:

In my view, the Magistrate was correct in determining that, in respect of both the Commonwealth and the New South Wales offences, the word ‘person’ included fictional or imaginary characters and the mere fact that the figure depicted departed from a realistic representation in some respects of a human being did not mean that such a figure was not a ‘person’ (*McEWEN v SIMMONS & ANOR* [2008] NSWSC 1292, para 41).

This decision was reviewed and endorsed in January 2010 by the New South Wales Child Pornography Working Party who stated that they did ‘not believe the decision has any

unintended policy consequences and does not over reach the purpose of the legislation’ (Report, 2010: 42). This ruling is of great importance for Australia-based ACG and slash fans, since it clarifies that in Australia child pornography legislation applies equally to ‘fictional or imaginary characters’, even in instances when such characters ‘depart[.] from a realistic representation’. So far the only other western democracy that has taken such a broad interpretation of ‘person’ in relation to sexualised representations of fictional child characters is Canada, the Canadian Supreme Court stating that when considering ‘material that poses a reasoned risk of harm to children . . . it should include visual works of the imagination as well as depictions of actual people’ (R v Sharpe, 163.1). Albeit in 2009 the UK also enacted legislation targeting fictional representations in comic books, but limited the ban to ‘extreme images’ created solely for the purpose of sexual stimulation (Swaine, 2009).

Australian state legislatures have outlined the nature of prohibited representations in great detail. In New South Wales, the *Crimes Act 1900* SECT 91FA, states that “‘material” includes any film, printed matter, electronic data or *any other thing of any kind* (including any computer image or other depiction)’ (italics mine). The reference to ‘any other thing of any kind’ is clearly a response to the ever expanding array of representations now made possible via new computer technologies, and leaves no scope whatsoever for imagination and fantasy outside the law. Given the ubiquity of such representations on both ACG and slash fan sites, it is easy for fans to stumble across material that would put them at the risk of prosecution. As the *Commonwealth Criminal Code Act 1995* makes clear, an individual is guilty of an offense if said individual, among other things, ‘uses a carriage service’ to access child-pornography material, cause the material to be transmitted, distribute, publish or otherwise make the material available (*Commonwealth Criminal Code Act 1995*, 474.19). Hence Australian fans of ACG and slash who routinely access sites that may contain or link to representations of under-age characters in sexual or violent scenarios run the risk of arrest, prosecution and entry into the sex-offenders’ list.

In the remainder of this paper I shall detail one fandom in particular that is placed in an impossible position by current child-pornography legislation and the proposed filtering

system – the international ‘Boys’ Love’ (BL) fandom. This community has been chosen because it clearly contradicts much of the received wisdom concerning the supposed audience for sexualised representations of under-age characters. The BL fandom, which exists on a global scale, and is well established in Australia, is overwhelmingly female and youth oriented.

‘Boys’ Love’, Its Background and Globalization

Research shows that a large majority of child pornography offenders are male adults (Krone, 2004). However, the BL fandom demonstrates that interest in depictions of sexual interaction between young characters is not specific to a narrow band of male paedophiles. In fact it is demonstrable that a large online community of *predominantly young women and girls* is also interested in creating and disseminating purely fictional accounts of love and sex between boys and young men. The existence of this fandom raises questions as to the universal applicability of existing child pornography legislation and calls for increased research into the nature and the effects of participation in these fandoms.

BL developed from a genre of Japanese comics (manga) known as *shōnen’ai* or ‘boys’ love’ and primarily refers to comic-book style stories and illustrations that deal with romantic and erotic relationships between beautiful boys and good-looking young men (McLelland, 2006). BL can also be used more broadly to signify a literary genre for women comprising manga, illustrated stories, novels and poetry. These homosexual love stories first emerged in Japan in the early 1970s. Since then, male homosexuality has become an ‘essential feature’ and ‘part of the everyday landscape’ of girls’ comic books in Japan (Fujimoto, 2004: 83).

The academic study of these fantasy narratives is now becoming part of Japanese literary studies and internationally has been taken up by feminist and cultural studies (Aoyama, 2009; Wood, 2006). To my knowledge, the age of the characters represented in BL material has never been raised as a point of concern by Japanese scholars who, instead, have focused on

the reasons why so many women and girls should be attracted to representations and narratives concerning male homosexual love (Fujimoto, 2004; Mizoguchi, 2003; Nagaïke, 2003). Similarly, the mainly US-based scholarship that has looked at the genre's global spread has also focused on the nature of the fandom, the problematic age of the characters going largely unmentioned (Pagliassotti, 2008; Wood, 2006). It is Australian scholars who have focused specifically on the problematic nature of the representations themselves (McLelland, 2005; Zanghellini, 2009).

Although to those outside the fandom, BL in the Western context may conjure up images of adult male pederasty, Japanese researchers into BL manga point out that 'The BL phenomenon is... a female gendered space, since its participants—writers, artists, readers, and the majority of editors—are female' (Mizoguchi, 2003: 53). Given BL's 'overwhelmingly female' readership (Nagaïke, 2003: 77), the pornographic nature of these stories and illustrations may come as a surprise to those not familiar with Japanese culture. Despite the fact that much of the debate about pornography in a Western context assumes a generalized male consumer, in Japan there are numerous pornographic print media created and consumed by women. Although the ratings category 'adult' (*seinen*) is applied to manga containing explicit sex or fetishes, and these products are shrink wrapped and sold only in specialty stores, the 'aesthetic' nature of BL means it is not considered adult-rated and is freely available in bookshops and libraries. This may seem odd in the western context since BL stories and illustrations do not shy away from depiction of sexual acts; as Nagaïke notes, BL is 'an example of narrative pornography directed at female readers' and 'BL narratives include all kinds of sexual acts, such as hand jobs, fellatio, digital penetration of the anus and S/M' (Nagaïke, 2003: 80). BL thus has much in common with the largely female Western slash fandom genre that also features explicit fictional descriptions of male homosexuality and it is no surprise that the two fandoms interconnect around certain key texts such as *Harry Potter*.

BL stories have proven particularly popular among female amateur manga fans who create and disseminate their own stories and illustrations via the large comic markets held annually

in Japan. Starting in the late 1970s, popular, commercially produced BL comics such as *June* solicited work from these amateur artists and enabled many to cross-over into mainstream publishing. As the genre developed, it saw an increased sexualisation of its characters, leading to the development of the acronym YAOI (YAmashi, Ochi nashi, Imi nashi) officially made up of the first letters of the phrase ‘no climax, no point, no meaning’, emphasizing that the plots were little more than vehicles to stage the sex scenes between the youthful male characters. Indeed, the highly sexualized nature of some of these depictions is emphasized by an alternate derivation, YAmete Oshiri ga Itai (Stop, my ass hurts).

By the late 1990s researchers in Japan speculated that there was a core readership for BL material of about half a million. In 1998 there were 9 literary magazines, 12 comic magazines and approximately 30 paperbacks being published each month that specialized in BL, with estimated total sales of 1,275,000 volumes (Mizoguchi, 2003: 57). BL comics are openly sold in designated sections of large bookstores throughout Japan and their primary readerships are young women and schoolgirls. Moreover, thousands of BL titles are available in public libraries throughout Japan. Indeed, there have been complaints from some conservative library users about the scale of BL acquisitions, it being estimated that libraries in Sakai City (in the Osaka district) alone had collected over 5,500 BL titles (McLelland 2009b; *Mainichi Shimbun*, 2008). In Japan, concerns have not tended to be raised about the young *age of the characters* depicted in BL texts, but rather about the *age of the consumers* of BL material (McLelland, 2009b). Similar concerns about BL consumption have been raised in Hong Kong and China where the fandom is also widely popular among girls and young women (Liu, 2009).

While BL grew out of Japan’s manga fandom and is historically related to specifically Japanese tropes of romance, it has proven to be widely popular among women readers in other countries, including Australia, who use the internet to access amateur BL websites as well as purchase and trade in printed BL material. International BL fans have been proactive in creating both on- and offline communities and share, sell and swap their BL manga, animations, and stories globally. As Pagliassotti (2008) notes:

two surveys of Western boys' love readers show that many share a strong and mutually supportive subculture; they enjoy communicating with each other about their passion, they create new boys' love works or share existing works with others, and they are actively engaged with boys' love publishers in requesting the import of specific titles.

There is in fact a growing international market for commercial BL products online via Amazon.com, eBay, and other internet book dealers. The interest in BL is such that there is an annual international convention for BL fans and authors which takes place in San Francisco (in October of 2009, for the ninth year) (YAOI-CON website) and the first academic edited collection looking at the genre is due to be released early in 2010 (Levi, et al. 2010)

It must be stressed that although BL can be sexually explicit, published BL and BL websites do *not* contain representations of actual children and do *not* deal in stories that are supposed to represent real people. Rather, it is often observed on BL fan websites that female fans experience discomfort if they are exposed to images or stories about real children (or even real gay pornography). BL is comprised of *fictional* stories and hand-drawn and computer-generated artworks in which older teen (and sometimes preteen) boys engage in a variety of same-sex sexual interactions both with each other and with older men.

Currently, commercially translated English BL manga published in North America are labelled with three rating categories: for Teens (13 years and older); for Older Teens (15 years and older or 16 years and older, depending on publishers); and for Mature Readers (18 years and older or adults only). Although this material is classified for release in the US, material which contains sexualised 'representations of a person' under the age of 18 (or one who 'appears to be' under age 18) would be refused classification in Australia. However, Australian fans who routinely purchase this material from outlets such as Amazon.com or source manga directly from Japan are largely unaware of the fact that the importation and consumption of such material in Australia is illegal.

While websites are not subject to the same ratings system, most English BL websites are prefaced by warnings or disclaimers. BL warnings inform website visitors that the website contains graphic representations of male homosexual relationships and are usually accompanied by age restriction warnings such as ‘You must be 18 years or older in your country to view this website’. In addition, many membership websites require the submission of age or date-of-birth evidence at the time of registration and site access is granted only after proof of appropriate age. To participate in the annual BL convention in San Francisco, a prospective participant is asked to provide proof of age, such as a copy of driver’s license, passport, or birth certificate. The YAOI-CON website notes that ‘YAOI-CON cannot waive the age requirement, even if a minor has parental permission or parental supervision’ [YAOI-CON website]. Hence, concern about BL in the US, like in Japan and China, has centred on the age of the consumers (not the age of the characters). Australia is unusual in prohibiting the consumption of BL and similar ACG and slash fantasy materials on the basis of the supposed age of the persons depicted.

The scope of the Australian legislation is of concern not only for fans but for academics, too, who are attempting to understand fan motivations and consumption practices. Under current legislation it is extremely difficult for an Australia-based academic to study ACG or slash fandoms since it is impossible to know in advance whether in the course of the research the researcher may be exposed to illegal material. In certain circumstances exemptions may be requested from relevant state and federal authorities but in the case of one of my PhD students who is attempting to study fans’ awareness of the legislation (not the content of fan materials), all the necessary exemptions have not been forthcoming and we have received contradictory advice from federal and state authorities. In dealing with the relevant authorities it has become clear that they have little understanding of the nature of the fandoms in question, nor of their scope. Furthermore the roadblocks placed in the way of researchers makes the garnering of information about these communities – that might support the development of better regulations policy – impossible (despite the fact that these fan communities have been widely studied in Japan, the US and elsewhere).

Conclusion

Discussion so far in Australia about depictions of underage sexual activity has largely been informed by the following assumptions: that erotic interest in under-18s is a male preserve; that exposure to even cartoon representations of child sex-imagery is a step toward performing child sex-abuse; that any erotic interest in representations of children is deeply pathological and entirely outside the range of acceptable sexuality; and hence that any sexualised representation of children communicated via any medium ('any thing of any kind') is in need of surveillance, censorship, and prosecution. However, given that the large majority of the creators and consumers of BL are young women and girls – as indeed are slash fans – and that these groups are hardly characteristic of paedophile offenders, it must be questioned whether the law has a legitimate interest in prohibiting this material. Indeed, it could be argued that by including *fictional* representations of child sex in its purview, the law in Australia distracts from the very real dangers of *actual* child pornography and makes the job of law enforcement all the more challenging and problematic.

As discussed, in framing policies regarding 'child pornography material', Australian legislators have emphasised *the age of the characters* represented, and not, as in other jurisdictions, *the age of the consumers* for this type of material. Hence the emphasis has been on banning these representations altogether as opposed to restricting the availability of the representations to age-appropriate cohorts. In its present form the Australian legislation seems unworkable for the following reasons:

1. Child pornography featuring real children is almost universally policed and prosecuted by national and international agencies. Hence the dangers of child pornography are well publicised and few individuals in western democracies would be unaware of the illegal nature of this material. Indeed, police agencies rely upon this widespread community awareness when seeking cooperation from the public. However, fictional text and images of under age characters, as has been discussed in this paper, are subject to different levels

of legislation across the globe. As noted, commercial ACG and BL materials are subject to classification in the US and made available to consumers on the basis of their age, whereas the ratings system is much less strict in Japan. There are even fan conventions dedicated to BL in Japan and the US – demonstrating a level of public visibility and endorsement for the fandom. However, Australia’s policy of treating purely fictional representations in a manner similar to material featuring actual children is not widely advertised or comprehended. This may lead to wide scale infringements with potentially calamitous consequences for the individuals concerned (as was seen in the prosecution relating to *The Simpsons*’ case discussed above). Hence, the New South Wales Child Pornography Working Party’s failure to foresee ‘any unintended policy consequences’ of this decision is of great concern (Report, 2010: 42).

2. The sheer volume and scale of representations of fictional images of under-age characters, of which the BL community is only a small part, make it impossible to filter out at an ISP level. If Google searches were to be made for key terms such as ‘BL manga’, ‘yaoi’ or ‘Harry Potter slash’, results would be in the tens of thousands. If other potentially infringing manga and slash fandoms were to be included, and the list is very long (there is even *Narnia* slash – doubly problematic as it involves bestiality), there would be hundreds of thousands of websites that could potentially be referred to ACMA for inclusion on the blacklist. Indeed, if the filtering system were to be put in place, virtually all websites dealing with manga fandom, online gaming or slash fiction would have to be blocked since a link to even a single offending image falls under Australia’s ‘zero tolerance’ policy for this kind of material.
3. Unlike actual child pornography which circulates underground, primarily relies on peer-to-peer networks rather than the Web, and is difficult to stumble upon, fictional images and narratives are ubiquitous on a variety of ACG and slash fan sites and even the casual browser may inadvertently come across this material. Furthermore, BL and similar kinds of manga and animation that may contain images prohibited in Australia are commercially available elsewhere and advertised as such. A filtering system is clearly unsuitable as a

means for blocking this kind of material – would links to eBay, amazon.com or amazon.co.jp be added to the blacklist?

4. If the existing Australian legislation concerning fictional child pornography were to be taken seriously by the authorities, it would require a blitz of an unimaginable scale. Tens of thousands of young Australians who pursue their interests in ACG and slash fandom in school and university clubs, as well as online, would be caught in this net. Teachers and students in Japanese studies and cultural studies programs that refer to some of this material in their courses on popular culture would need to be interrogated and university library manga collections would have to be searched and potentially offending material destroyed.

In place of the current unsatisfactory and arguably unworkable legislation regulating fictional child pornography, following are some recommendations that might be considered:

1. The clauses in the Commonwealth legislation referring to ‘material that describes a person’ and ‘a representation of a person’ under the age of 18 in a sexual situation be amended to refer only to *realistic* representations that might reasonably be understood as a depiction of an *actual* child. This would exclude the vast majority of highly stylised manga and animated representations (although realistic textual descriptions might still be caught under this definition, even if the protagonist is Harry Potter).
2. The Commonwealth legislation which sets the age of representation at 18 should be amended and brought into line with most state legislation which sets the age at 16, which is the age of consent in Australia. The clause ‘appears to be under the age’ should be abolished and the stated age of the character in the narrative itself accepted.
3. Commercially available BL (and arguably other highly sexualised media including games) should be subject to the same ratings system as other publications and an R 18+ rating made available, with the appropriate safeguards, for adult consumption.
4. The law should respect people’s right to privacy and should not investigate or hold to account persons who imagine, consume, depict or share any clearly *fictional* image

irrespective of the content of that image – no matter how distasteful the image might be to some. The law should only interest itself in images and other representations that are crafted to be *realistic* and might be mistaken for a depiction of an actual person.

The above suggestions would safeguard a large majority of participatory fan cultures that are based on purely fictional scenarios while still prohibiting the use of realistic artworks or narratives to groom or otherwise influence actual children. It would also drastically reduce the number of websites in need of referral were the government's attempts to institute a filtering system to prove successful.

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References

ABC News, 2007, 'Conroy Announces Mandatory Internet Filters to Protect Children', 31 December, available online, <http://www.abc.net.au/news/stories/2007/12/31/2129471.htm> (accessed 7 December 2009).

ACMA, 2009, 'ACMA list of prohibited and potentially prohibited overseas hosted content', 19 March, available online, http://www.acma.gov.au/WEB/STANDARD/pc=PC_311669 (accessed 6 December 2009).

Aoyama, Tomoko, 2009, 'Eureka Discovers Culture Girls, *Fujoshi* and BL', *Intersections: Gender and Sexuality in Asia and the Pacific*, issue 20, available online, <http://intersections.anu.edu.au/issue20/aoyama.htm> (accessed 7 December 2009).

Consultation Paper, 2009, 'Mandatory Internet Service Provider (ISP) Filtering: Measures to Increase Accountability and Transparency for Refused Classification Material', December, available online, http://www.dbcde.gov.au/online_safety_and_security/cybersafety_plan/transparency_measures/consultation_paper (accessed 16 January 2010).

- Criminal Code Act 1995* (Commonwealth) available online,
http://www.austlii.edu.au/au/legis/cth/consol_act/cca1995115/sch1.html (accessed 6 December 2009).
- Foley, Meraiah, 2008, 'Proposed Web Filter Criticized in Australia', *New York Times*, 8 December, available online,
http://www.nytimes.com/2008/12/12/technology/internet/12cyber.html?_r=2 (accessed 6 December 2009).
- Fujimoto, Yukari, 2004, 'Transgender: Female Hermaphrodites and Male Androgynes', Translated by Linda Flores and Kazumi Nagaike; translation edited by Sharalyn Orbaugh, *U.S.-Japan Women's Journal*, 27, 76-117.
- Jenkins, Henry, 1992, *Textual Poachers: Television Fans and Participatory Culture*, London, Routledge, 1992.
- Krone, Tony, 2004, 'A Typology of Online Child Pornography Offending', *Trends and Issues in Crime and Criminal Justice*, July.
- Labor's Plan for Cyber Safety*, 2007, available online,
http://www.alp.org.au/download/now/labors_plan_for_cyber_safety.pdf (accessed 7 December 2009).
- Levi, Antonia, M. McHarry and D. Pagliassotti, 2010, *Boys' Love Manga: Essays on the Sexual Ambiguity and Cross-Cultural Fandom of the Genre*, Jefferson NC, McFarland.
- Liu, Ting, 2009, 'Conflicting Discourses on Boys Love and Subcultural Tactics in Mainland China and Hong Kong', *Intersections: Gender and Sexuality in Asia and the Pacific*, issue 20, online, <http://intersections.anu.edu.au/issue20/liu.htm> (accessed 7 December 2009).
- Lumby, Catherine, L. Green and J. Hartley, 2009, 'Untangling the Net: The Scope of Content Caught by Mandatory Internet Filtering', online,
http://www.ecu.edu.au/pr/downloads/Untangling_The_Net.pdf (accessed 19 January 2010).

McEWEN v SIMMONS & ANOR [2008] NSWSC 1292, 2008, online,
<http://www.lawlink.nsw.gov.au/scjudgments/2008nswsc.nsf/6ccf7431c546464bca2570e6001a45d2/ef4625a9db3003f1ca25751500066d48?OpenDocument> (accessed 7 December 2009).

McLelland, Mark, ed., 2009a, 'Japanese Transnational Fandoms and Female Consumers', special edited edition, *Intersections: Gender and Sexuality in Asia and the Pacific*, issue 20, April, http://intersections.anu.edu.au/issue20_contents.htm (accessed 7 December 2009).

McLelland, Mark, 2009b, '(A)cute Confusion: The Unpredictable Journey of Japanese Popular Culture', *Intersections: Gender and Sexuality in Asia and the Pacific*, issue 20, online: <http://intersections.anu.edu.au/issue20/mclelland.htm> (accessed 7 December 2009).

McLelland, Mark, 2006, 'Why Are Japanese Girls' Comics full of Boys Bonking?', *Refractory: A Journal of Entertainment Media*, December, available online, <http://blogs.arts.unimelb.edu.au/refractory/2006/12/04/why-are-japanese-girls%E2%80%99-comics-full-of-boys-bonking1-mark-mclelland/> (accessed 7 December 2009).

McLelland, Mark, 2005, 'The World of Yaoi: The Internet, Censorship and the Global "Boys' Love" Fandom', *The Australian Feminist Law Journal*, 23, 61-77.

Mainichi shinbun (Mainichi newspaper), 2008, 'Dansei dōseiai atsukatta BL shōsetsu hon' (BL fiction books treating male homosexuality), 5 November.

Mizoguchi, Akiko, 2003, Male-Male Romance by and for Women in Japan: A History and the Subgenres of Yaoi Fictions, *U.S.-Japan Women's Journal*, 25, 49-75.

Nagaike, Kazumi, 2003, 'Perverse Sexualities, Perverse Desires: Representations of Female Fantasies and Yaoi Manga as Pornography Directed at Women', *U.S.-Japan Women's Journal*, 25, 76-103.

NSW *Crimes Act 1900* SECT 91FA, online,
http://www.austlii.edu.au/au/legis/nsw/consol_act/ca190082/s91fa.html.

Pagliassotti, Dru, 2009, 'GloBLisation and Hybridisation: Publishers' Strategies for Bringing Boys' Love to the United States', *Intersections: Gender and Sexuality in Asia and the Pacific*,

issue 20, online, <http://intersections.anu.edu.au/issue20/pagliassotti.htm> (accessed 7 December 2009).

Pagliassotti, Dru, 2008, 'Reading "Boys' Love" in the West', *Participations*, 5(2), November, online: http://www.participations.org/Volume%205/Issue%202/5_02_pagliassotti.htm (accessed 16 January 2010).

Publications, Films and Computer Games Act 1995, available online:

<http://www.comlaw.gov.au/ComLaw/Legislation/ActCompilation1.nsf/frameLodgmentAttachments/9B96D12C9FF96195CA25700A0004B156> (accessed 6 December 2009).

R. v. Sharpe, (2001) 1 S.C.R. 45, 2001 SCC 2, online: <http://scc.lexum.umontreal.ca/en/2001/2001scc2/2001scc2.html> (accessed 20 January 2010).

Report of the Child Pornography Working Party, 2010, NSW Department of Justice and Attorney General, available online: <http://www.apo.org.au/research/report-child-pornography-working-party> (Accessed 1 February 2010).

Swaine, Jon. (2009). 'New Pornography Laws "Could Make Comic books Illegal" Say Campaigners', *Telegraph.co.uk*, 28 January, available online: <http://www.telegraph.co.uk/news/newstopics/politics/4370072/New-pornography-laws-could-make-comic-books-illegal-claim-campaigners.html> (accessed 1 February 2010).

Wood, Andrea, 2006, "'Straight" Women, Queer Texts: Boy Love Manga and the Rise of a Global Counterpublic', *Women's Studies Quarterly*, 34: 1 & 2, 394-414.

YAOI-CON: A Celebration of Male Beauty and Passion in Anime and Manga, <http://www.yaoicon.com/> (accessed 7 December 2009).

Zanghellini, Aleardo, 2009, 'Underage Sex and Romance in Japanese Homoerotic Manga and Anime', *Social and Legal Studies*, 18:2, 159-77.