

ISOC-AU Submission on Review of Broadcasting Services Act

Introduction

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This is a submission by the Internet Society of Australia (ISOC-AU) to the Department of Communications Information Technology and the Arts, for consideration in its review of the operation of Schedule 5 of the Broadcasting Services Act 1992.

The Internet Society of Australia, ISOC-AU, is a non-profit, user-focused organisation that promotes development of the Internet in Australia to benefit the whole community, including business, academic, professional and individual Internet users.

ISOC-AU is committed to the positive evolution of the Internet. It is the Australian chapter of the worldwide Internet Society, ISOC - the parent body of the Internet Engineering Task Force: a large, open community of network designers, operators, vendors, and researchers which actually creates the protocols and standards that are fundamental to Internet operation. Further information about ISOC-AU is available at

<http://www.isoc-au.org.au/>.

ISOC-AU's position on the Act

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ISOC-AU's central position on the relevant provisions of the Broadcasting Services Act is as follows:

- We do not object to the complaints regime as such. It is accepted as appropriate that a uniform approach to content classification be applied to publications over which Australia's jurisdiction extends, and a complaints-based regime is clearly more appropriate than any more intrusive form of classification system in the case of Internet content.

- We do not object to the use of take-down notices provided that they do not implement a more onerous censorship regime online than offline.
We do however note with concern that in some respects the online censorship regime is more onerous than its offline equivalents, in that some material that may legally be distributed in printed form may not be hosted on-line in Australia.

- We do object to Internet Service Providers (ISPs) being made responsible for content and call for the removal of provisions from the legislation by which ISPs are made primarily responsible for content published by third parties. The responsibility to act upon complaints made under the Act ought to be that of content providers rather than content hosts.

In the remainder of this submission, the issues upon which comment has been invited by the Department will be briefly addressed in turn.

Complaints process - performance

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The Internet is a novel environment and applying film and broadcast censorship to Internet content is not effective or appropriate. ISOC-AU

proposed that a model more akin to that existing for print media would in most cases be more appropriate.

Specifically ISOC-AU proposes that when a complaint has been raised about Internet content and a formal classification is sought from the OFLC, the classification be made consistent with off-line content classification systems. This would involve statutory classification of on-line content as one of the various types of content now available off-line. So a video stream might be treated like a film, but a static Web page might be treated like a book.

Recommendation: The application of the film-based classification regime for Internet content be replaced by the application of the classification system most closely analogous to the particular content in question.

ISOC-AU also proposes that ISPs should not be primarily responsible for acting upon complaints under the Act, but that these should be directed by the ABA in the first instance to the person apparently responsible for the publication of the content on-line. Only in the event that the publisher or maintainer of the content declines to remove it should the ISP be approached to do so.

It is normally the case that the person who has placed content on-line is in a far better position to respond to a take-down notice, particularly if the notice is to be challenged, than the ISP who most likely has no prior knowledge of the content in question. Furthermore, to place the burden of compliance upon the maintainer of the content is more equitable and will reduce the compliance burden on ISPs.

Recommendation: The recipient of take-down notices in the first instance should be the person apparently responsible for publishing or maintaining the material on-line rather than the ISP hosting it.

Co-regulatory approach - industry codes of practice

ISOC-AU has anecdotal evidence that the mandated content filtering systems are not being updated to incorporate ABA-notified content. Indeed, some of the filtering products approved for use do not have the capability to filter content that is subject to the operation of the Act (for example, textual content).

In the light of the shortcomings of the current approach of mandating the systems to be used, ISOC-AU recommends that guidelines be published for implementing the framework to enable Internet Service Providers to implement appropriate systems and processes to comply with the intent of the legislation. Amongst other advantages of such an approach, this would allow for filtering solutions to be made available to users of operating systems such as Linux that are not supported by any of the currently approved filters.

Recommendation: That the maintenance of an approved list of filter products be discontinued and that instead a list of

guidelines for the supply of filtering systems be published.

ISOC-AU supports the IIA's "ladybird logo" certification scheme, however, it also recognises that ISPs who may prefer not to identify with the IIA should have a choice as to whether to display the IIA branded logo or not.

Co-regulatory approach - community education and advice

ISOC-AU recognises the efforts of both the ABA and NetAlert to educate Australian families about the safe and responsible use of the Internet. ISOC-AU's motto is "The Internet is for Everybody!". To the extent that the educational activities of the ABA and NetAlert are working in the same direction as ISOC-AU to uphold the values expressed by this statement, ISOC-AU is supportive of their endeavours.

ISOC-AU does not object to the requirements contained in the approved co-regulatory codes for ISPs to provide information to their subscribers

about their rights and responsibilities in relation to Internet content.

This is a suitable and not an unduly onerous role for ISPs to assume, so

long as the information is first made available to them in a form that is readily transmissible to their customers.

International developments and cooperation

ISOC-AU is sceptical of the value of the ICRA content rating system. Because the system is voluntary, only a minute fraction of Web sites are rated using this system, and there is no effective control or auditing of the correctness of the ratings that are voluntarily assigned. By reason of the ineffectiveness and limited use of the ICRA rating system, only a small number of Internet users are believed to use it and those that do are frustrated by its ineffectiveness.

Whilst no proposal has been raised to make the use of ICRA content rating mandatory in Australia, ISOC-AU would caution against the acceptance of any such proposal should it arise.

ISOC-AU however supports the liaison that the ABA and NetAlert have initiated with INHOPE, the International Network of Experts on Content Self-Regulation, Childnet International and Cyberangels.

Research - filtering technologies

In practice, the majority of ISOC-AU's members have not found Internet content filtering software to be reliable in blocking unwanted material,

and it is noted that this observation is largely consistent with the CSIRO's findings.

No significant advances have been noted in content filtering technology since Schedule 5 came into operation, and albeit without having conducted any technical investigation, it is judged highly unlikely by

ISOC-AU that the state of the art currently allows for R-rated content, not the subject of a restricted access system, to be reliably filtered from overseas Internet content without an unwarranted impingement into the accessibility of unobjectionable content.

ISOC-AU concurs with the position taken in the existing co-regulatory codes that allow for ISPs to charge for content filtering systems on a cost-recovery basis. However, ISOC-AU notes that no open source filtering technologies have been scheduled in the codes or investigated in detail by the CSIRO. The recommendation made above to replace the current list of filter products with general guidelines would open the door to the adoption of open source filtering software such as the Junkbuster proxy (<http://www.junkbusters.com/ijb.html>) and the Squidguard filter (<http://www.squidguard.org>) as alternatives to proprietary filtering software if appropriate.

Scope and coverage of schedule 5

Approximately half of the Australian-hosted content investigated by the ABA and found to be prohibited or potentially prohibited since the initiation of the Schedule 5 regime were Internet newsgroup postings. These postings did not necessarily originate from Australia, but were regarded as being hosted in Australia because of their presence on Australian news servers (as well as on thousands of similar servers around the world).

It is notorious that many thousands of newsgroup postings - including no doubt many containing similar content to those investigated by the ABA - are exchanged by Internet news servers every day. It is also plain that such postings automatically expire and are removed from the news servers on which they are hosted within a few days time. Furthermore, as the ABA has not made a practice of requiring offending articles to be removed from every Australian news server, but only from one, take-down notices in respect of news articles are invariably ineffective. For these reasons it cannot be sensibly argued that the complaints regime could ever be effective as a tool for the regulation of the content of Internet newsgroups.

ISOC-AU recommends that Internet newsgroups be specifically exempted from the operation of Schedule 5 by means of an amendment to the definition of "Internet content" in the Schedule. A similar exemption already exists for "ordinary electronic mail", which is in many ways analogous to Internet newsgroups save that the latter are better suited for communications to be directed to a wider audience.

Recommendation: that Internet newsgroups be exempted from the operation of the Act.

At the same time, email mailing lists and chat services ought to be specifically exempted from the operation of the Schedule, as the provisions of the Act cannot sensibly be applied to such transitory forms of communication, yet since "ordinary electronic email" is undefined, it is arguable that at present they might fall within the

ambit of the Act. This would particularly be the case if a log, transcript or archive of the discussions is maintained, however the log or archive itself, if accessible to the public, would independently be subject to the operation of the Schedule 5 regime, and does not justify the communications in their ephemeral state falling subject to the Act.

Recommendation: that email mailing lists and chat services be specifically exempted from the operation of the Act.

For the same reasons, live streamed content that is transitory in nature cannot sensibly be made subject to the Schedule 5 regime, since no sufficient opportunity exists for the material to be investigated and taken down, still less for an objection to a take-down order to be initiated to the Administrative Appeals Tribunal. ISOC-AU does not make any similar objection to the exemption of non-live streaming content (for example, downloadable video files) from the operation of the Act.

Recommendation: that live streamed content be exempted from the operation of the Act.

ISOC-AU has provided a separate submission to the National Office for the Information Economy relating to spam. Reference is made to that submission at <http://www.isoc-au.org.au/Submissions/SpamNOIE020502.html>.

As to the applicability of the Internet content co-regulatory regime to this problem, ISOC-AU believes that a more focused solution is to be preferred, and that reliance on the content notification system to deal with offensive spam is likely to be ineffective.

On the other hand, ISOC-AU would not object to the extension of the Internet content co-regulatory regime to cover spam as a token measure, provided that this did not detract from the need for a separate more targeted attack on this problem to be implemented as a result of the outcomes of the NOIE review.

Convergent devices

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ISOC-AU's members have not reported making or receiving any concerns about the accessibility of Internet content on convergent devices. However, ISOC-AU notes that the use of server-based content filtering systems (including the two open source products mentioned above) will be as effective for the majority of convergent Internet-connected devices as for more traditional Internet access devices such as PCs. ISOC-AU does not see the need for the separate treatment of convergent devices in Schedule 5.

Conclusion

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In summary, ISOC-AU recommends:

1. That a new Internet Content classification system more specifically based on the nature of the content in question (in most cases, print media) replace the currently used film-based classification.

2. That ISPs should not be in the front line when a take-down notice is raised. Such notices should be directed primarily to the person who has created or published the content, rather than the ISP hosting it.

3. That the prescribed list of content filtering systems be replaced with a set of guidelines, to enable ISPs to select and implement content filtering systems that are compatible with their technical environments and meet their customers' needs.

4. That Internet newsgroups, email mailing lists, chat services and live streamed content be exempted from the operation of the Act.