

**Internet Society of Australia**  
**A Chapter of the Internet Society**  
**ACN 076 406 801**

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## **Submission on ACT Draft Internet Content Legislation, 30.09.99**

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The Director  
Public Law Group  
Department of Justice and Community Safety  
GPO Box 158, Canberra ACT 2601

The Internet Society of Australia (ISOC-AU)  
Submission on  
The Supply of Prohibited Internet Content:  
Draft Enforcement Provisions

ISOC-AU welcomes the recognition in the consultation document that "ISPs are considered no more aware of the content they host than a telecommunications company is aware of what is being said on its phone lines" as a major step forward.

Understanding the differences, both subtle and vast, between this entirely new medium of the Internet and existing publication media is not easy. Legislators must make great efforts to come to grips with the intellectual and technological understanding required, or they will continue to fall into the trap of creating legislation that simply cannot carry through their worthwhile intentions, or that criminalises people who are not criminals under any other interpretation.

### **Draft legislation:**

#### **1 Definitions**

- Bringing advertisements under the definition of matter unsuitable for minors and objectionable matter is extending the meaning of these categories to poorly-defined areas. An advertisement for classified matter may not show any actual content that in itself is classifiable, so it should not automatically be a matter for the legislation.

- The extension of "on-line service" to cover bulletin boards is not appropriate: either bulletin boards are covered by the Broadcasting Services Act 1992, or if they are not, they need to be defined in this document with some argument as to why they are being selected out for specific attention.

#### **4 (2) Approved restricted access systems**

What exactly are they? How will they be updated to cover newly classified material? In the treatment of restricted access systems for minors there is a fundamental misunderstanding of how existing systems operate in the real world - they have well-known weaknesses, can be easily avoided, and in any case cannot apply to overseas content which will be still accessible.

This does not even begin to address the availability, cost, installation, updating and notification mechanisms that are required to even attempt to meet such requirements, all within the timeline of the legislation.

## **5 Recklessness**

- (1) A person is reckless as to whether matter is objectionable matter or matter unsuitable for minors:
- (a) if the person is aware of a substantial risk that the matter is objectionable matter or matter unsuitable of minors, and
  - (b) that having regard to the circumstances known to the person, it is unjustifiable to take the risk.

"Risk" in (a) is a risk that the matter is objectionable; risk in (b) presumably applies to taking the risk of either supplying the material or the risk that it will be seen. But having to presume anything in criminal legislation is potentially dangerous - it must be perfectly clear what the offence is.

In general the document fails to address the fundamental problem of the BSA itself, which is based upon the misapprehension that Internet content is analogous to broadcast film. It also supports its extraordinary moves to criminalise matter on-line that is not illegal off-line.

ISOC-AU would like to commend Electronic Frontiers Australia for a deeper analysis of all of these issues from a global perspective, and to also broadly support their findings, at: <http://www.efa.org.au/Publish/agresp9909.html>

In particular, the potentially disastrous outcome of the identification of Internet content with film is highlighted once the relevant State/Territory film legislation is taken into account - librarians, teachers and electronic newspapers may all be committing offences by displaying or selling on-line content that has not been classified. This is surely not the intention of the legislation, and indicates how deeply flawed its basic assumptions are.

In summary, ISOC-AU:

- \* proposes that consideration of the draft legislation be deferred until it is clear how the proposed new crimes will operate. This would involve, at the very least, publication by relevant authorities of draft criteria which will apply to "approved restricted access systems", and draft procedures for obtaining approval of systems.
- \* considers that the present situation, which sees all on-line content treated as if it was a film, is entirely inappropriate. In many instances on-line content is clearly more akin to a book than a film. There is no sound policy reason underlying this arbitrary classification, which came about due to the very recent, and overly hasty, passage of amendments to the Broadcasting Services Act.

\* when a complaint has been raised about Internet content and a formal classification is sought from the OFLC, ISOC-AU proposes that 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 text-only web page might be treated like a book.

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