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SENATE

SELECT COMMITTEE ON INFORMATION
TECHNOLOGIES

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SENATE
SELECT COMMITTEE ON INFORMATION TECHNOLOGIES

Wednesday, 28 April 1999

Members: Senator Ferris (*Chair*), Senator Bishop (*Deputy Chair*), Senators Calvert, Harradine, Lundy, McGauran, Stott Despoja and Tierney

Senators in attendance: Senators Bishop, Calvert, Ferris, Harradine, Lundy, McGauran, Stott Despoja and Tierney

Terms of reference for the inquiry:

- (a) evaluate the development of self-regulatory codes in the information industries;
- (b) monitor the personal, social and economic impact of continuing technological change created by industries and services utilising information technologies;
- (c) examine the government's decision to establish a regulatory framework relating to illegal or offensive material published and transmitted through online services such as the Internet; and
- (d) inquire into and report on such other matters as may be referred to it by the Senate.

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Committee met at 8.13 p.m.

FREEMAN, Mr Andrew Robert, Director, Community Affairs Board, Australian Computer Society

WORTHINGTON, Mr Tom, immediate past President, Australian Computer Society

CHAIR—I call the committee to order and declare open the second public hearing of the Senate Select Committee on Information Technologies into the Broadcasting Services Amendment (Online Services) Bill 1999. Tonight we will be hearing from representatives of the Australian Computer Society, the Australian Information Industry Association and Electronic Frontiers Australia.

I welcome representatives of the Australian Computer Society, Mr Andrew Freeman, Director of the ACS's Community Affairs Board, and Mr Tom Worthington, immediate past president of the ACS.

The committee prefers all evidence to be given in public, but you may at any time request that your evidence, part of your evidence or answers to specific questions be given in camera and the committee will consider any such request. The committee has received your submission. Is it the wish of the committee that the ACS's submission be published? There being no objection, it is so ordered. I now invite you, Mr Freeman, to make an opening statement to the committee and then we will move to questions.

Mr Freeman—The Australian Computer Society has concerns about the Internet content management legislation. The government's objective to protect Australian children from illegal or offensive material on the Internet is commendable but the extent to which technology can achieve this is limited.

We are concerned that the government has unrealistic expectations of what the technology could achieve and believe more time should be spent discussing this issue before a final resolution on the draft legislation is made. While agreeing that children need protection, we would argue against a restrictive regime which could do more harm than good. The bill is important because it is clear that inadequate or ineffective regulation will expose children to some risks online. However, heavy-handed regulation could harm the educational and employment opportunities of a generation of Australian children.

In our submission, we put forward several principles which should form the foundation of any regulation of the Internet. These include support for the principle of freedom of speech. Regulation of the Internet should be no stronger than that of analogous media, such as books and printed publications in relation to the web or, when considering email, the writing of letters and use of the mail system. Any regulation of the Internet should generally focus on the producer of the material rather than the Internet service providers, which only distribute material and are normally not aware of the content. Attempts to use national blocking technologies will almost certainly be ineffective and result in detrimental consequences to the development of the Australian information economy.

Proposals to regulate the Internet should normally be implemented only after international discussion and, ideally, agreement. Parents should be given tools to assist them in controlling access to the Internet by children, rather than the government attempting to redesign the Internet so that all material on it is suitable for persons of any age.

We feel there are several positive aspects of the bill where the government has responded to concerns we have raised in previous submissions. We note that Internet service providers will not have to interpret content rating suitability guidelines. The government has given that task to the Australian Broadcasting Authority, the ABA. ISPs will not be liable without notice; however, provisions may disadvantage small companies. Technically impractical blocking mechanisms are not written into the legislation, but will be determined according to an industry developed code of practice.

We are pleased the government has moved to limit the liability of ISPs rather than making them responsible for monitoring content. However, some concerns remain. The involvement of the ABA is arguably inconsistent with the self-regulatory model. The bill treats the Internet as broadcasting, which is generally not appropriate. The bill provides no explicit protection to consumers who may be injured by its operation. Insufficient time has been provided to comment on the bill; the issues are complex and need greater examination and public debate. There are critical interactions with issues such as privacy which are not addressed in the bill. Our submission is available on the Internet.

I would now like to indicate what the Australian Computer Society is. It is the recognised professional association for information technology professionals in Australia. It is affiliated with the International Federation for Information Processing, along with a number of other countries' representatives of information technology associations. We have around 15,000 members in Australia.

Mr Worthington—I will emphasise a few points. There are some detailed comments on particular sections of the bill in the written submission that emphasise the issue of weighing up the effects that might come from inadequate or ineffective regulation and the effects on children, and on the other hand that, if we get it wrong the other way, the effects heavy-handed regulation may have on education, which the Internet will be used for, and the effects it would have on the economy in Australia in the future. The government now recognises that there will be an information economy online, and so there will be the issue of jobs there, as well.

I think this is now the fourth time I have appeared before this committee and the one under a different name before. Essentially, the Computer Society is making the same general points that it made those other times. I believe you will hear the same sorts of points put by the other bodies represented later on, perhaps in a more strident fashion than that of the Computer Society, which is a professional association. It tends to try to take a more moderate and perhaps less public view on these sorts of things.

CHAIR—Mr Worthington, can I ask a question as a point of clarification? Your press release that went out last Friday says, in its heading 'ACS welcomes government legislation to manage Internet Content'. You go on to say that the legislation is consistent with the position the ACS has recommended over three years to the ABA inquiry and various Senate

standing committee hearings. Your comments tonight and the comments on the conclusion of your submission seem to indicate that you have shifted policy over the weekend. The second dot point in your concluding comments and recommendations is:

In summary, the Bill appears to fail to achieve objectives that the ACS CAB ELSIC supports. It would result in a range of apparently unintended consequences. Thus, in the view of ELSIC, it should not be proceeded with in its current form.

How is it that last Friday it was consistent with the position you have recommended for over three years?

Mr Worthington—Perhaps the heading on the press release might have been a little too positive.

CHAIR—The body of the press release is also pretty positive.

Mr Worthington—We have suggested a number of changes to the bill which would make it more acceptable, but I must say that we have had representations from our members since then about the issue. I suppose there is a slight change in emphasis in the submission we are making today.

CHAIR—It is more than a slight change, I would submit.

Senator MARK BISHOP—On about page 3, under the heading ‘Detailed comments on the Bill’, you argue that the analogy should not be with the classification system that is appropriate to films and TV, but you argue for classification to be akin to that for books and magazines that are sold publicly in Australia. What is the reasoning behind that approach?

Mr Freeman—Some people have argued that the Internet is similar to television. Our belief is that it is not similar to television. Television is a broadcast medium, utilising scarce airwaves, and it is often watched by people who are not necessarily seeking out specific material. That is one of the reasons, for example, that adult material on television is often only shown at particular times, for example, when children are considered to normally be in bed.

The Internet is quite different. The Internet, in particular the World Wide Web, involves seeking out material. It is similar to a library situation where one looks in a catalogue, searches for material and then looks at it. In terms of news groups and things of this nature, it is analogous to letter writing in the sense that, even though millions of people may be reading news groups, all the people who are reading those news groups have chosen to read the news groups. Normally, the material in news groups is indicated by the titles of the news groups. For example, oz.au.acs deals with Australian Computer Society matters.

Senator CALVERT—Could I just interrupt. I cannot believe what I have just heard here. I have a 17-year-old son. If he goes into a newsagent’s shop, he cannot access pornographic material because it is on the top shelf in a plastic bag, yet he can go into his bedroom, click on to the Internet and get whatever he likes. You are trying to say—

Senator LUNDY—On a point of order, Madam Chair, can I suggest that Senator Calvert contain his opinions to the debate in the appropriate place in the chamber? We are here to hear the evidence of witnesses tonight, not to hear political views expressed. That was not a question. He was expressing his political view.

CHAIR—Senator Calvert, were you going to frame your comments as a question?

Senator CALVERT—Yes. Mr Freeman, you likened this material to books. There are ways and means of stopping pornographic material in books being made available to young people. What this legislation is about is trying to do the same thing on the Internet. I am just saying—

CHAIR—Is it a question, Senator Calvert?

Senator LUNDY—No.

Senator CALVERT—Chair, can I ask a question or do I have to be interrupted all night?

CHAIR—Please proceed.

Senator CALVERT—I would like to hear how you believe that that same type of censorship can be achieved on the Internet?

Mr Freeman—I think you have raised some good points. One of the reasons why the ACS said on Friday that we support the bill is that we broadly support the need for analogous regulation in relation to analogous media to apply on the Internet. We do not oppose the fact that the web, for example, is analogous to books. You would recognise that a lot of books at Belconnen library, for example, which children can access are not necessarily appropriate for children. Consistent with your position, you might be arguing children should need the permission of their parents to access libraries.

Senator TIERNEY—There is probably not too much hard-core pornography in Belconnen library.

Mr Freeman—There is some material that is very explicit. As I have said, we do not oppose some form of regulation. What we are opposing is treating the Internet similarly to television. We are saying that it may well be appropriate to treat the web similarly to books, and there is regulation of books in Australia. There is regulation of newspapers in Australia. There is the possibility of complaining about books in Australia. As I say, that may be appropriate; it may not be. The problem is that the bill that we are talking about tonight does not try to treat the web as it might treat books. It treats the web in a very similar way to television. One aspect is R-rated material. Your son can buy erotic magazines at newsagents; he may or may not be able to buy X-rated material. This bill attempts to have a far more restrictive regime on the Internet than it would in terms of newsagents or public libraries. Thus the bill has major problems.

Senator CALVERT—I am just trying to make the point that if you are under-age you cannot access it, whereas on the Internet you can.

Mr Worthington—Can I add a point to the end of Andrew's previous comment before there was the point of order? The other aspect to the Internet is the one-to-one communication where it is equivalent to the telephone: someone can talk to another individual by voice, video or in text. In that aspect, it is similar to the telephone as well.

Senator MARK BISHOP—Mr Freeman, I am going to pursue to some degree the point raised by Senator Calvert, because I am not aware that I can legally purchase X-rated magazines or books in any bookshop in Australia. The only way, that I am aware of, that I can access it legally is to get it by mail order from particular enterprises in Canberra. Is that not the case?

Mr Freeman—As we have mentioned in the submission, we want analogous situations being treated analogously. As you have pointed out yourself, it is possible to get this material via mail order. This bill would not allow it on the Internet. It is attempting to stop it on the Internet, and that is arguably treating an analogous medium differently.

Senator MARK BISHOP—But the point that Senator Calvert was making, and I am pursuing, is that if I live in Perth the only way I can access X-rated printed material is through the particular enterprises located in the ACT.

Mr Freeman—X-rated relates to movies. I do not think it relates to printed material, and that is a very important point. Most of the Internet is printed material. I am not an expert on pornography.

Senator MARK BISHOP—No, I am not suggesting that you are. Let us go down that road a little further. It has been suggested to us in a number of these forums that, with the convergence of technology, we will all be able to access Internet online through our TVs in two, three, four or five years. The only person I have heard suggest that that is not likely was a man from the ABA last night but, up until then, it had been received wisdom that, with the convergence of technologies and the amount of investment being made by major companies around the world, computers, TVs and other broadcast delivery systems were all in the process of conversion.

If that is the case—and your organisation obviously would have a view on the likelihood of that—that means in two to five years time any citizen of this country or any child of any citizen of this country is going to type www. and then whatever, and be able to access whatever range of material they would like on the TV in their lounge room. That seems to suggest to me that the appropriate analogy for regulation is TV and not the book medium that you argue for.

Mr Freeman—This committee or precursors of it have been considering this issue for three or four years. I am quite happy if this committee, in three or four years, if things develop as you predict they will, re-looks at the issue. What I am talking about today is the fact that, in most of the Internet at the moment, people are required to search out. I am also talking about the fact that much of the Internet is printed material as distinct from movies

and this type of thing. The regulation regime at the moment that we are supporting is one that has analogous media. The types of things you are talking about are not analogous at the moment; books and mail is analogous at the moment.

The speed of development is rapid, I agree, but, as I say, the Senate may revisit this issue in a year or two or three. For the moment, it would be regrettable if it developed a regulatory regime which will not work anyway based on what might happen in three or four years in my view.

Mr Worthington—I am just going through my records here. The Computer Society made a submission on the regulating of that sort of technology on 25 August 1992 to the Senate select committee on subscription television services, discussing that aspect of the technology. You will find in fact that the proposals for using your television to access the Internet is essentially that you are using the same box, screen and keyboard but, when you go to use the Internet, you need to have an Internet account because the people supplying the services want to charge you money for it. It would be similar to what you have to do to use the Internet from a computer. It does not come through the broadcast medium.

Senator HARRADINE—And narrowcast.

Mr Worthington—Yes, and narrowcast.

Senator HARRADINE—You will need your money there.

Mr Worthington—There is a convergence in the technology as to which of the technological options the consumers will find useful and convenient. I do not think anybody can say for certain.

Senator MARK BISHOP—But you do not seriously argue with the proposition that convergence of the technologies is going to occur in the not too distant future?

Mr Worthington—The convergence may be that TV becomes part of the Internet rather than the Internet becomes part of TV.

Senator MARK BISHOP—At the bottom dot point of your submission, under the heading 'Positive features of the Bill', you refer to 'reasonable steps'. You say:

The Government has attempted to embody in the legislation that the issue of what constitutes 'reasonable steps' is to be determined according to the relevant industry-developed code of practice.

Mr Freeman—Yes, that is correct; it is there.

Senator MARK BISHOP—We had a lengthy discussion last evening with both the ABA and the IIA on what are reasonable steps. Do you have a view on what would be reasonable steps?

Mr Freeman—We have a view that what comprises reasonable steps would benefit from further elaboration in view, for example, of the different scales and operating models of

Internet service providers. This bill was tabled on Wednesday last week and our media release came out on Friday. We have spent much of the weekend talking with 50 to 100 people on these sorts of issues. It is very clear that these issues are very complex and that there are going to be problems with this in getting a consensus view of what is the appropriate approach.

As Tom Worthington has pointed out, the ACS position is a very moderate position. We concede that regulation, as it applies to analogous media, should appropriately apply to the Internet, and it does not at present. We have grave doubts about the technicalities of doing that, the technologies of doing that, the proposals in this bill, and we believe that it could well degrade the Internet if this is moved forward quickly in the current form. That is one of the reasons we are arguing that this committee should request the Senate to give it more time. We are particularly concerned about filtering technologies, as is the CSIRO. The media release on the study it did showed that there would be major problems with that.

In other words, I guess what we said on Friday was that if the objectives of this bill were properly drafted—but they are not; we have given recommendations of how the objectives should be drafted in a more precise fashion—we would agree with them. The problem is that the bill will not achieve those objectives anyway, and we have explained why in this more detailed submission. If we have more time still, we will go into further detail. But you would appreciate that it is an iterative process to some degree, which, in summary, means that we do not have a view yet of how it could be done, except to say that we think it would be really, really difficult to do it without creating unexpected major negative consequences.

Senator MARK BISHOP—Are the practical difficulties you allude to technological difficulties, legal difficulties or contractual difficulties?

Mr Freeman—As you are aware, one aspect is technological difficulties. You are aware of the filtering aspect?

Senator MARK BISHOP—Yes.

Mr Freeman—Basically, filtering could well degrade the Internet, but people who want to access material will still be able to access it by going around those filters. So, in a sense, the legislation is ineffective in achieving its stated objectives, but it may achieve unstated results which could impact dramatically on Australia's capacity to be involved in e-commerce and related aspects.

Senator MARK BISHOP—One of the provisions of the bill provides for this Commonwealth bill, if it should be passed, to operate at the same time as relevant state legislation that regulates online material. Currently, there is legislation in the Northern Territory, Western Australia and Victoria that regulates online material. Does your organisation have a view on whether there should be one set of national laws covering the field, or are you content for the various state or territory jurisdictions to develop their own regulation as they deem appropriate?

Mr Freeman—We have not taken a position on this but, given our previous discussions on related matters such as privacy legislation, I think it would be fair to say that any

regulatory regime ideally should be national and ideally developed in consultation with all countries of the world, given that the Internet is an international media. Any country trying to act unilaterally will tend to be considered a pariah, if you understand what I am saying.

Senator HARRADINE—I will just follow up on that point. I noted in your paper to us that you said:

Any proposals to regulate the Internet should normally be implemented only after international discussion, and ideally, agreement.

With whom?

Mr Freeman—Ideally, all countries of the world. As I say, that is a major challenge which I do not question. It is not a simple process, but that is the objective. Basically, the objective is to get international agreement on things like controls over child pornography on the Internet, so that one country cannot host child pornography sites, for example.

Senator HARRADINE—But already that matter has been dealt with.

Mr Freeman—I think what you are saying is that there is no need for legislation in relation to some of this, because already there is international agreement via Interpol and things in relation to child pornography. You make a very valid point.

Senator HARRADINE—You are referring to this legislation. Presumably you are referring to the need for agreement between countries in respect of the type of material mentioned in this legislation.

Mr Freeman—The legislation goes well beyond child pornography. The point you make is a valid one. On the issue of child pornography, there is already international cooperation; thus the legislation in relation to that is unnecessary, and I would agree with you there.

Senator HARRADINE—Mr Freeman, can you please come back to the point that I raised with you. You are saying that regulation of the Internet should be implemented after international discussion and agreement. What you are really saying is that this legislation should not go ahead unless you have got international agreement because we would become pariahs.

Mr Freeman—Ideally, that agreement is an objective we should aim for.

Senator HARRADINE—Isn't that suggesting we should then accept the bottom line of the US Supreme Court's interpretation of the right to freedom of expression in the United States? Are you suggesting that? Are you suggesting that that should be the bottom line?

Mr Freeman—There is no legislative right to freedom of expression in Australia, unfortunately.

Senator HARRADINE—I will not argue that point. Do you mean there is no bill of rights? That would be an interesting discussion but I do not think we have time to have it

today. Is the Australian Computer Society happy that this be left to what might or might not be permitted by the United States Supreme Court in its interpretation of the right to freedom of speech?

Mr Freeman—We are making two points. In an Australian context we are quite comfortable with Australia acting unilaterally in terms of treating the Internet as analogous media at present—that is, books and mail. There are very limited controls over books and mail in Australia at present. We are not objecting to that. What we are saying is that if people want to look at broader types of things, ideally they should do that via international agreements because, if they do not, it will be ineffective and may result in the degradation of the Internet in Australia anyway.

Senator HARRADINE—Are you really serious about suggesting that books and mail are the analogous media to the Internet in respect of the material that is referred to in this legislation? Your colleague, Mr Worthington, agreed with me that TV narrowcast has to pay and, of course, you have to pay for Internet access. Isn't the narrowcast medium more analogous than a book?

Mr Worthington—The difficulty is we are arguing by analogy in that the Internet is a group of services which are available and potential services which are available. The other problem is that they keep inventing new sorts of uses and technologies for it. In some ways it is analogous to television, radio, telephone, video and book. For example, I am writing a book at the moment and the draft is available for free on the World Wide Web. That will then be turned into a printed book later.

Senator HARRADINE—Isn't the analogy more to narrowcasting?

Mr Freeman—The problem with your narrowcasting analogy is that the Internet at the moment has a wide range of things on it—some of which are movies, for example. That may be analogous to narrowcasting. The problem is that most of the Internet is text or pictures or documents. In terms of searching for material, using search engines such as AltaVista, you put in words. Certainly, they are attempting to bring up images and things but, effectively, you tend to bring up documents, which are like books.

Senator HARRADINE—Let us look at the movie aspect. You would agree that narrowcasting is the medium that is analogous. Under the legislation, is X or X-equivalent able to be transmitted through narrowcasting? The answer is no. We have been through all this before. Mr Worthington has been here four times.

Mr Freeman—The bill treats my analogies as the exceptions. You treat pornographic videos, in a sense, as the norm on the Internet; I treat them as the exception on the Internet. Most of the material on the Internet is text.

Senator HARRADINE—Quite so, but in the pornographic field most of it is not text.

Mr Freeman—No, there is a lot of text. There is a lot of text pornography, too.

Mr Worthington—Not in my book.

Senator HARRADINE—Let us go to the question of the interactive technology that is hurtling down the track at present. You have virtual reality in the pornography area. The operator can demand of a woman or several women how to take their clothes off. They are the slaves of the operator. By the way, who are your members? Is your society happy about the situation where you have that interactive type of material?

Mr Freeman—We have not taken a position on that issue.

Senator HARRADINE—You haven't?

Mr Freeman—We recognise the Internet as an adult medium. In the submission we have said that we prefer the Internet to be recognised as an adult medium and have requirements for children to get parental consent—that was, arguably, a positive feature of the bill—rather than try to turn the Internet into a medium which is suitable only for children. Can you see what I am getting at?

Senator HARRADINE—I do not think you have answered my question. Do your members support—

Mr Freeman—Over the weekend, the majority of members who spoke on this issue to me—and there were many—basically would support adults having access to interactive sexual activities.

Senator HARRADINE—Through the—

Mr Freeman—Internet. Ideally with some way of determining the people involved are adults. Just as someone of 16 can involve themselves in actual sexual activities normally in Australia. There is no real problem with people using the Internet for those purposes if they are adults in the view of most of the members that I have consulted.

Senator HARRADINE—You are then departing very seriously from what has occurred in legislation before. I asked you quite seriously about the narrowcasting. You appeared not to know that under existing law X material is not available by law under the narrowcasting provisions of the legislation. You appeared not to know that. You are saying that parliament should not approve of this particular legislation although it follows strictly the current situation. You are really asking us to depart completely from where we have been over a period of time. That is what you are asking us to do.

Mr Freeman—I have made the point that most of the Internet is not analogous to narrowcasting in terms of X-rated video type material.

Senator HARRADINE—In this particular regard you did agree that it was—on the movies. Or are you saying that the interactive technology, where the operator can be the master of the women as to what they do and how they do it, is somehow milder than the ordinary X-rated movies?

Mr Worthington—You may have the advantage over us here. I do not know about Mr Freeman, but I have not made use of this technology. The point about the narrowcasting was

that that is an analogy, that in some ways some features of the Internet are like narrowcasting video. With the bandwidth we have available, in practice what the average home user can get at the moment is text and quite good quality still photographs. Video on the Internet, as it is to the home at the moment, actually does not work terribly well. You get a small, blurry, shaky picture. In the future, with cable TV connections, you could get higher quality video, but at the moment it is not very exciting compared with real television.

Senator HARRADINE—Not in Australia, generally.

Senator CALVERT—I go back to comments you made earlier in your introduction, Mr Freeman, when you said that the bill has unrealistic expectations of what can be achieved. I guess that is a fair comment because what the bill does try to achieve is probably in some areas at this point in time not achievable. But that does not mean to say that what the government is trying to do is wrong, given that the technology we are talking about has, in my short period in this parliament, accelerated to such an extent that what we thought impossible four or five years ago is fact now. It is just like the fact that a few years ago most people who could access the Internet were adults and now, because our children are taught to use computers at school, it is a lot easier for younger people to access computers than it was before.

When you say that the bill has unrealistic expectations of what can be achieved, do you believe, though, that in the future—and probably in the not too distant future—there will be ways that Internet access can be restricted to younger people and children whose parents do not believe they want their children to view some of this material, given the fact that at the moment we have evidence to suggest that 60 per cent of the material on the Internet is pornographic anyway?

Mr Freeman—There has been some dispute over this 60 per cent.

Senator CALVERT—You wanted to meet, and we have the evidence.

Mr Freeman—I dispute the 60 per cent, but let us move on. Basically, in our submission we have indicated that we agree with some of the objectives of this bill if they are properly drafted and, as I said, we have attempted to redraft them. We have also said that there are some technologies available that can partly achieve, without detrimental effects, what we understand this bill is attempting to achieve. One of those technologies is filtering on people's own computers. Software such as Net Nanny allows people to put in words or material they do not want their children to be exposed to. We fundamentally believe, though, that the Internet is an adult medium. We fundamentally believe that when children use the Internet they should be doing it with the approval of parental like figures and, ideally, with their involvement—for example, in a school context or in a home context.

Senator CALVERT—That gets back to my question: do you believe it will be possible that in the future technology will be available so that parents, to the best of their ability—nothing is perfect; it is not now—will be able to quite safely restrict their children's access?

Mr Freeman—There already is such technology available.

Senator CALVERT—Yes.

Mr Freeman—You might argue that it is not perfect.

Senator CALVERT—I know.

Mr Freeman—I tend to agree that it is not perfect, but the reality is that the focus is on people controlling what they themselves see or what their children see using technology on their own computer as distinct from trying to control material on Internet service provider systems in Australia. However, when the bill goes back to the Senate you could ask them to refer it back to you to look at further for redrafting completely such that you can look at the Internet for material like books where there could be a complaints mechanism for material on the web in Australia. That could well be productive.

Senator CALVERT—Thanks for those comments. You do make comments about parts of the bill. You say, ‘. . . the R-rating is extremely broad’ and that ‘using a classification system designed for films is not good policy.’ Could you tell us what is good policy?

Mr Freeman—A rating system consistent with what is done with books and written material in Australia would be analogous. Whatever one’s personal views are on, for example, the banning of that material in Victoria where people published an article on shoplifting—that was written material and it was made illegal—that is an analogous situation.

Senator CALVERT—Then anybody who is caught making pornographic material in books available to people under the age of 18 in our state can be charged. How do you do that on the Internet if you are going to have the same system as books?

Mr Freeman—‘Pornographic’ is a very broad term. As I say, *Lady Chatterley’s Lover*, 30 years ago, was called pornographic. The reality is: what do you define as pornographic?

Senator CALVERT—Come on, get real! We are not talking about that sort of stuff. We are talking about the fact that you have only got to press P on the Internet and all this stuff appears free of charge in front of you and young children can access it. You know they can. We have had plenty of evidence about that. They cannot walk into a newsagency and pick up a *Playboy*; it is on the top shelf in a plastic bag. If the newsagent gives it to them, he is charged. On the Internet, you cannot do that.

Mr Freeman—I have treated 16-year-olds as adults. You are treating 18-year-olds as adults. That is not a major issue of dispute. The fundamental point we are making is that, in terms of children accessing chargeable Internet accounts, we have not opposed the concept in this bill of requiring parental consent. We have made some points, such as if a person has a driver’s licence or a credit card that could be treated as *prima facie* evidence that they are an adult. We have not disputed that this medium is an adult medium, just as you are not disputing that newsagencies can sell erotic material to adults. You are not arguing they should not be allowed to do that. It is legal at the moment.

Senator HARRADINE—Could I just comment there? We want to get clear what we are talking about. You have problems with the word ‘pornographic’ but apparently you do not have problems, Mr Freeman, with the word ‘erotic’. Would you accept the definition of pornographic unanimously agreed upon by the Joint Select Committee on Video Materials, whose chair was an ultralibertarian, and which was made up of a cross-section of people from ultralibertarians to conservatives? I am sure Senator Walters would not mind my saying she was on that. That committee agreed unanimously that the definition of what was pornographic was material, the content and intent of which is designed to arouse the sexual desires of its target audience. The committee agreed that that definition would be understood by the users of pornography and by those that are turned off by it. Wouldn’t you agree?

Mr Worthington—The Australian Computer Society does not profess to be experts in the law on the definitions of pornography. I remember you asking ABA representatives at a previous hearing on that issue. We do not profess to have specialist knowledge in what the legal definitions are.

Mr Freeman—In any event such material can be legally sold in newsagencies in Australia, I think you would agree. In that context I do not see the relevance of the question in terms of analogous media.

Senator HARRADINE—You don’t? I have dealt with analogous media before.

Senator LUNDY—I would like to refer back to a couple of comments in your opening statement about the negative impacts you feel that would occur economically. I was hoping that you could extrapolate on that comment. In particular the phrase you used was ‘degrade the Internet’. Can you expand a bit on those comments and what you see as the negative impact on the information economy?

Mr Freeman—In our submission we mentioned the CSIRO study on blocking technologies and how they can degrade the Internet. I would refer you to that. I would also refer you to the fact that people are currently looking at where they are going to set up for e-commerce operations. E-commerce can potentially set up in the United States which has an extremely liberal approach to freedom of speech or in Australia which also has a fairly liberal approach to freedom of speech, but if this bill is passed in its present form it will make Australia arguably the laughing stock of the world. Many companies which wish to provide a diverse range of products may well choose to set up in the United States rather than Australia in that sort of context.

Senator LUNDY—What sort of feedback are you getting from your members who are professionals in the field to give effect to that comment or to motivate you to give that comment because that is a pretty serious assertion?

Mr Freeman—It sounds bad, doesn’t it? We have had one member support the bill strongly in its current form. Apart from that, it is virtually universal condemnation of the actual way it is drafted, not of the objectives. If redrafted as we proposed, we virtually have unanimous support.

Senator LUNDY—So the intent of the bill is supported in limiting the exposure of children to pornographic material online but the methodology is what your members are finding so offensive?

Mr Freeman—If the objectives were properly drafted, the bill still would not achieve them but at least the objectives would be good. So we have redrafted the objectives. The bill will not achieve those objectives anyway, so we have recommended that you recommend to the Senate that it be referred back to you and then we can work on it together, ideally in redrafting it so that it deals with analogous media not—

Senator HARRADINE—You have had four years to do it. So this came as a surprise to you, did it?

Mr Freeman—The actual bill was introduced on Wednesday last week.

Senator HARRADINE—Yes. But it came as a complete surprise? You have been before us for four years or more.

Mr Freeman—Obviously we have had some influence.

Senator HARRADINE—That was in 1992.

Mr Freeman—Obviously we have had some influence because some of the aspects of this bill are a major improvement over previous proposals which were even worse. In a sense, it is true to say that things are improving.

Senator HARRADINE—This is a weak bill. You ought to be happy.

Mr Worthington—To get back to the question on the negative effects of the technology, the last time we were here, one of the issues that concerned me was the way the committee was focusing on the negative aspects of information technology. In fact, the Computer Society suggested changing the title of the committee and its terms of reference to perhaps look at how to enhance some of the positive aspects of the technology.

Perhaps you have to think of a world more like the one in which I work: I do most of my work through the computer system and through the Internet and through more secure equivalent technologies on occasion. That is a way I converse with members of the Australian Computer Society to discuss issues and points of view and actually do work and prepare standards. That is just a part of normal everyday life, and that is done with people who work around the world in different time zones.

It may sound a bit like science fiction and something you might hear about from Bill Gates, but it is a part of everyday life for IT professionals now. The expectation is that it will be more common in business. If it is difficult to get to the Internet and if it is difficult to get to web sites because of the blocking technology or because it costs more, that will make it harder for Australians to take part in that world economy. There are businesses that just do their business online now.

Senator LUNDY—What you are saying is that the life experience of those who engage in Internet based commerce, electronic commerce and social interactivity online—where the Internet is part of their life—actually brings a different perspective from the one held by those who see it as a medium they do not participate in on a daily basis and who perhaps do not understand its role in a changing society and that that is somehow motivating inquiries such as this. I think it is a question of social implication of the role of the Internet and how that affects the deliberations of this committee.

Mr Worthington—Yes. It is something unfamiliar and, with something unfamiliar, the concern is with possible negative consequences. I do not know all the members around the committee table here, but you are quite visible on the Internet and active in its use and Senator Stott-Despoja is seen there on occasions. There is a community online that interacts, does its business and works there and socialises to some extent. It does not seem a dangerous or strange place in the normal course of events. Mind you, for the last week or so, every time I turn my computer on there seemed to be 30 or 40 messages from various people discussing this bill.

Senator LUNDY—I know the feeling.

Mr Worthington—I can imagine, if we had sat around on the invention of the printing press or the telephone, there might have been similar discussions. In fact, there is a book about the Victorian Internet and the development of telegraphy, and the same sorts of issues that are being discussed here were discussed then with telegraphy, including, for example, online gambling and online romances. That is not to say there are not negative consequences and we should not anticipate them and guard against them, particularly for children, but you may be seeing only the negatives because you do not normally use the technology and see the positives.

Senator LUNDY—Perhaps this is an opportunity to traverse some of the positive uses of the Internet and the positive benefits that it can bring. Is it possible for the Computer Society to provide the committee with some references to material about the growth of usage of the Internet, both for educative purposes and for electronic commerce purposes? I am sure we can conduct some research ourselves, but if you can point us to any particular examples of the place and role that the Internet has, in a positive aspect, perhaps it will assist the committee to place this issue in perspective.

Mr Worthington—We can certainly do that. I could whip out my infra-red modem and try it now.

Senator LUNDY—I will just get you to email the URLs to me later, Mr Worthington.

Senator HARRADINE—I get my instructions from my wife through the computer every day. Members of my family are very big users of computers to email around the place. It is a big family. So I take a bit of exception to the inference in the statement by Senator Lundy that the Computer Society should sit us down and teach us about the Internet or email or anything else as far as that is concerned.

CHAIR—I think some people are less noisy about their competencies than others.

Senator LUNDY—I would like to pursue the point about the degradation in the service of the Internet as a result of the filtering technology. You mentioned that briefly. Can you provide the committee with a brief report on your understanding of the impact of that sort of overarching filtering technology on the speed, quality and other issues?

Mr Freeman—In our submission we refer to the CSIRO report. We consider that very good in the blocking aspects. In terms of filtering at recipient as distinct from source of information—that is, at a person's own computer—we are quite supportive of that sort of technology because basically people can control that themselves. The problem with blocking means that it has many unintended consequences, and that has been well documented by the CSIRO study.

Senator LUNDY—Thank you. We have got them as a witness on Monday.

Senator MARK BISHOP—You support the filtering technology, but have problems with the blocking technology; is that right?

Mr Freeman—I am nervous with 'filtering' because you may be interpreting 'filtering' as getting Internet service providers to filter material. When I talk about filtering, I mean software like Net Nanny that people can put on their own computers.

Senator LUNDY—So it is end-user management?

Mr Freeman—We have said in our submission that we would encourage and support the parliament in attempting to promote software that people can use to control what they see. We do not want adults exposed to material that they do not want to see. If people do not want to see material about breasts, we want them to have the choice not to see material about breasts even though they may miss out on material about breast cancer in the process.

Senator STOTT DESPOJA—I did not want to pursue the issue of pornography because it seems to be getting far too much attention, but I did want to ask a general question. Do you think committees like this focus a little too much on issues to do with sexually offensive or sexually explicit material? Where would your organisation rate that kind of concern among your members in relation to a whole range of other issues, problems or positives relating to the Net—whether it is defamation, intellectual property laws, privacy laws, vilification, those kinds of issues as well as those positive uses of the Net to which you refer, Mr Worthington? Where does sexually explicit material rate? Do committees like us perhaps obsess about the issue of sexually explicit material to the detriment of the committee's work on other issues?

Mr Worthington—There are other issues. For example, I think in 1995 the committee asked me to give them samples of the worst and the best on the Internet. One of the concerns people came up with was Internet gambling. That is an example of an issue that perhaps needs to be addressed. Perhaps it is a state government thing rather than a federal government one. That is a negative that perhaps is not receiving much attention—the social consequences of that sort of technology, which is also perhaps going to be available through the television set.

The privacy issue gets a mention in our submission as something that has not been considered. The Computer Society has made submissions on issues to do with privacy and computer systems over many years. There is also the social issue, which we raised back in 1995, which is the problem of making the technology available to different social groups so that you do not have people who do have good access to the technology because they go to the right school or they have got a lot of money and then other people who miss out completely. The Computer Society has made recommendations like making it available from libraries so that the community can get access to it. There are all of those sorts of issues which are worth looking at.

Senator STOTT DESPOJA—Do you have a sense of an order of priority? Do you survey your members as to what issues are of most concern to them?

Mr Worthington—As a professional body of IT people, where the industry is going and support to the IT industry are always an issue. These sorts of inquiries make that a bit harder because we are always trying to promote Australia as a high-tech, sophisticated place for companies to do business and they may get the wrong impression overseas if we are spending our time focusing on Internet porn.

There are economic issues related to this technology, which has all these wonders—and you see it on television and you think, ‘Isn’t it wonderful!’ But when you are a technologist, you are trying to get it to work. Some of it does not work very well. It may work but, when you give it to the customer, you realise they did not want it anyway. How do we invent the technology in our universities and our research organisations so we own the intellectual property? How do we then get that into products that benefit Australians? Those sorts of issues occupy us a lot. Andrew Freeman’s board deals with the social issues of technology. He has a number of committees on various issues, such as education.

Mr Freeman—I think a key point that people make is that there is an email address for the Australian Federal Police. People can report illegal material there already, such as child pornography on the Internet or access to it via the Internet on people’s home computers. There have been some successful prosecutions in relation to this sort of material. I think the impression given by this bill is that nothing is happening. In reality, it is arguable that quite a bit is already happening in terms of current laws being applied in relation to the Internet.

It is arguable that the interpretation of some of the current laws needs to be changed so that people can see that those laws do apply to the Internet. That does not necessarily require a sledgehammer approach; it requires a scalpel type approach. Perhaps minor changes to legislation that already exist could well be far more effective than this. However, we are certainly not rejecting this bill. What we are saying is that, with a major rewrite, it could actually potentially have some use.

Senator STOTT DESPOJA—In relation to the financial implications—or perhaps the resource or hardware implications—of this bill for your members, where do you think the burden for complying with this legislation will fall? What kind of costs are we talking about?

Mr Freeman—Previous efforts tended to make the burden directly on the Internet service provider. This time there is at least some attempt to make the financial burden on the Australian Broadcasting Authority and things. They are talking about amounts of money like a million dollars a year. In reality, I think, in terms of the time involved in responding, it is a real problem. A lot of Internet service providers are very small operations. They might have one or two people working for them; they do not work on the weekend. If someone complains on a Friday and they get an order on Saturday to take some material off under this bill, on Monday they are potentially facing a fine of \$25,000. An 18-year-old running an Internet service provider, who has got \$10,000 in the bank, could be bankrupted by that one fine in a context where they were not even at work on the weekend. They could have been away for a holiday.

The 24-hour requirement and the \$25,000 fine in this for an incorporated body could be a real problem for lots of small Internet service providers. This could, arguably, have a major impact on the industry in terms of people and small businesses being willing to try out moving into this sector. People are quite appalled by the sorts of fines envisaged in this. Most people think incorporated bodies are always big operations, but lots of them are very small.

Senator STOTT DESPOJA—This evening, you have touched on consultation or a lack of it. Senator Harradine has certainly suggested that this has been years in the making and, therefore, you should have anticipated it. I have been on these committees for years, but I did not necessarily anticipate the legislation in this form. I am wondering what contact you have had with government. What consultation was promised to you before the public release of this legislation?

Mr Freeman—The release of the legislation was last Wednesday. I have you on the ELSIC list and one of your staff. I have got Kate Lundy, who is a member of ELSIC and is on the list. Unfortunately, I do not know of any Liberals on the list. I have written to Senator Alston and invited him to join, but he has not taken up the opportunity.

Senator MARK BISHOP—Are there any National Party members?

Mr Freeman—Not as yet. As I say, I treat Senator Alston's—

Senator STOTT DESPOJA—I think you have just recruited one!

Mr Freeman—We would welcome a Liberal or a National Party member of parliament, because the problem at the moment is that we do not necessarily get every perspective from all the politicians. The reality is that we were not consulted about the bill until it was tabled, and that was unfortunate. Once it was tabled—

Senator HARRADINE—Haven't you read the report?

Senator STOTT DESPOJA—That is the *Report on the Regulation of Computer On-Line Services Part 3*.

Senator HARRADINE—Yes. All of that is reflected in the bill—mind you, not as strongly as was recommended. Haven't you read it?

Senator STOTT DESPOJA—I think they gave evidence before it was—

Senator HARRADINE—They did not give evidence—

Mr Freeman—We are familiar with the previous reports, but what I would say is this: as we did in previous times, we made certain recommendations. Some of those recommendations are reflected in this bill, or there is at least an attempt to reflect them in the bill. As I pointed out, if those objectives of the bill were redrafted, we could support the objectives.

The problem remains that the bill treats the Internet as analogous to movies or television. Many people sit down at 4 o'clock in the afternoon to watch television, and they do not know what is going to come on. Very few people sit down at their Internet screen and suddenly see graphic interactive nudes which are sexually involved. It does not normally happen at random. It is not like television. Thus, the analogy is inappropriate.

Senator TIERNEY—We are just going to start calling it that, that is all.

CHAIR—Do you have any last questions, Senator Stott Despoja?

Senator STOTT DESPOJA—I might lodge some questions on notice, but Senator Harradine has referred to the *Report on the Regulation of Computer On-Line Services Part 3* and I want to note for the record that there are dissenting reports contained in that. Just because the witnesses or otherwise are familiar with the content does not mean that all of us on the committee agreed with it.

Senator HARRADINE—I would have hoped that they read the dissenting reports, too, but they apparently have not.

Senator TIERNEY—It was the first dissenting report in six years. It was very disappointing. Mr Freeman, you have made much of the fact that the Internet is an adult medium, so let us have a look at that. Are you arguing for no restrictions on what is on the Internet in terms of what adults can access in this country?

Mr Freeman—No, we are not arguing for that, just as we are not arguing that any book or any written material in Australia should be legal. We are arguing for an analogous regulation of the Internet. We believe that television is not an appropriate analogy; we believe generally that books and letters are appropriate analogies.

Senator TIERNEY—Yes, you keep saying that. It makes me curious because, 18 months ago in London, I watched out of BSkyB a screen which was then being introduced across Great Britain by the Murdoch group, where satellite images came down on what looked like a television screen, but it also happened to be a computer.

There is a whole range of computing functions that you could carry on. You could use one-quarter of the screen and then have the football on the other half. The technology is there. If those people choose to introduce that into Australia and, through these worldwide satellites, start bringing it down here, the technology that you say is three years away could be a lot closer. Surely you would agree that whatever we put in this bill is not for the next 12 months. We are trying to set up an organic system that will move with technology over time.

Mr Freeman—In 1983, people could have done some of the things you spoke about seeing a year ago. The fundamental point remains. The Internet predominantly, at the moment, is analogous to books and letters and those types of things. The point is accepted that a small portion of the Internet relates to some of these other technologies. They are not predominantly being utilised at the moment in the fashion in which they potentially could be.

Senator TIERNEY—What evidence do you have of that? What evidence do you have of how people are using Internet technology in terms of the proportion of what they are accessing?

Mr Freeman—In terms of the interaction I have with a wide range of computer users, that is my impression.

Senator TIERNEY—No. I am talking about hard statistical evidence; I am not talking about anecdotal evidence.

Mr Freeman—I am talking anecdotally in the sense that people who say that 60 per cent of the Internet is pornographic are talking anecdotally.

Senator TIERNEY—What we can agree on here is that no-one has any hard statistics on any of this, so we do not really know what percentage of these types of Internet materials people are using. Is that so? Okay, you do not want to comment on it. Would you agree that material that is illegal in any other medium—on television, in books, on videos—is also illegal material on the Internet in this country?

While you are thinking about that, I will give you some examples. Apart from pornography, there is paedophilia, there are snuff movies, there is racial vilification and information on how to make bombs. All these things are illegal in this country in books, films or videos—anything—so what is your view on this material being on the Internet and what do you think we should do about illegal material on the Internet?

Mr Worthington—As a non-lawyer—neither of us are lawyers—perhaps I could attempt to answer that. My understanding is that those materials are illegal on the Internet now.

Senator TIERNEY—All right. But they are on the Internet and people have been able to access them in Australia by just typing them in and getting them up in a few minutes. My question to you, as senior people in the industry, is: in what way do you think governments should regulate illegal adult material on the Internet?

Mr Worthington—In a similar way to how they regulate it in other forms.

Mr Freeman—Just as they do not necessarily burn books, they could use other perhaps more sophisticated techniques such as taking people to court—charging, fining or imprisoning them. There are examples of where people have had child pornography on their computers and have been taken to court and fined. A lot of our members are saying to us, ‘Why doesn’t the parliament recognise that there already are laws in relation to a lot of this material? Why can’t they see that maybe we just need to interpret those laws a little bit more broadly?’

Perhaps we could give email addresses to the Australian Federal Police so that people who want to report material can. We do not necessarily need a completely new regulatory regime, particularly one designed around television which is arguably the most restrictive regime. A more appropriate regime is a more liberal regime such as the regulatory regime over books.

Senator TIERNEY—I suppose there is a vast difference. Books usually have to go through some selling process—a book store or something like that—and a videotape has to go through a similar sort of process. But wouldn’t you agree that with the Internet we probably need a few new tools to control material that is illegal in any other medium?

Mr Freeman—People are increasing self-publishing books. For 20, 30 or 40 years it has been quite inexpensive to microfiche books, for example. I would accept your point that arguably the Internet provides people with new opportunities to communicate ideas globally that they did not have before. But that does not necessarily mean we need to stamp down on that, in my view.

Senator TIERNEY—People can sit in front of a screen and access it. That is what is different to the analogy you are trying to draw with those other things. In other words, the whole scale of it has gone up dramatically as access is different.

Mr Freeman—Arguably so, and in that context that is one reason why we accept the Internet as an adult medium and why we argue that, if the parliament decided that charged accounts on the Internet should be available only to adults, that is worth exploring further.

Senator TIERNEY—Senator Lundy made the point about degrading the Internet system by putting various filters on, I assume, at the server level. Are you aware of the Singapore and Malaysian experience with this? I was interested in your laughing stock comment in the light of the fact of what happens in Singapore and Malaysia, which would probably have the most restrictive access regime in the world by the use of proxy servers to filter out what the government considers to be unsuitable material. Internet businesses, as we heard last night, are absolutely booming in Singapore. They have gone up—I forget the initial figure, which was fairly low—to 5,000 in a very short period of time. Having such a restrictive server system does not seem to be restricting any commerce in those countries.

Mr Freeman—Other things being equal, the Internet will tend to flourish more in free societies than in highly restrictive societies.

Senator TIERNEY—It has done pretty well in Singapore.

Mr Freeman—Singapore is arguably a highly restrictive society. But I make the point: other things being equal. Thus, Singapore, if it was less restrictive, possibly would even be stronger in this field than it is. Currently, the key country in this field is America, which has constitutional rights to freedom of speech which would make this sort of legislation unlikely to be accepted.

Mr Worthington—If I could just add a bit there, the representative from the EFA might have more information but my understanding is that the restrictions in Singapore are not actually being implemented at the moment; that while it might be on the books, it is not actually being done.

Senator TIERNEY—Is that the case in Malaysia as well?

Mr Worthington—I am less clear there. This is, as I say, only anecdotal; perhaps the EFA people might have more on that.

Senator LUNDY—Just on that point, my understanding is that the Singapore government is making significant investment in actually promoting electronic commerce in Singapore as a hub. So I would be interested in the relative government policies that are promoting Singapore's presence in that area in terms of that recent growth as well, if you have any information or can refer us to a source of information as to the specific circumstances in Singapore, seeing Senator Tierney has drawn on it in both hearings that we have had to date.

Mr Worthington—Yes. In fact, the President of the Australian Computer Society is President of the South-East Asian Regional Computer Confederation at the moment, which has representatives from the countries of the region, so we should be able to provide some information on it.

Senator LUNDY—Perhaps we could ask that person to provide the committee with a report on both Malaysia and Singapore.

CHAIR—Yes, I was about to say that.

Senator TIERNEY—Mr Freeman, at the start you made a number of bald statements. One was that children should be protected. I thought that was a pretty bald statement, seeing that there was no backup argument to what you said. I looked through your submission in vain for any backup to those statements. On this issue of children being protected, given that in a lot of homes parents are not home until after school because of modern working patterns and that children now often have access to this material in their bedrooms without supervision, what steps do you think we could take when that sort of supervision does not exist to protect children from unsuitable material, like making bombs, for example?

Mr Freeman—I think it is a challenge because basically the only way you could really control it would be to stop people having erotic videotapes in their homes, erotic magazines—

Senator HARRADINE—Your use of the word 'erotic'—could you define that?

Mr Freeman—pornographic magazines in the homes, pornographic videos. Basically, the fundamental point we are making is—

Senator HARRADINE—Madam Chair, I did ask a question.

Senator LUNDY—The witness was trying to respond.

CHAIR—I believe that Mr Freeman was just completing the sentence before he addresses the question.

Senator HARRADINE—The word ‘erotic’—isn’t it defined as pertaining to human sexual love? Have you looked at X-rated material? Is there any love in that? Is there any semblance of romance?

Mr Freeman—I prefer to use the word ‘erotic’ because it does not have pejorative connotations that the word ‘pornographic’—

Senator HARRADINE—No, I am asking you the question as to your definition. The word ‘erotic’ has had a long history, hasn’t it? And it does, in definition, pertain to human sexual love. Can you tell me of one X-rated video that has any sense or form pertaining to sexual love?

CHAIR—Perhaps we could try to let Mr Freeman answer the question.

Mr Freeman—The question was asked: what should we do about homes where parents do not supervise their children? That is in summary.

Senator TIERNEY—That is not quite the way I put it.

Mr Freeman—Basically I think the answer to that is—

Senator TIERNEY—I said where supervision does not occur.

Mr Freeman—This bill is not going to solve that problem, as I see it.

Senator TIERNEY—Sorry?

Mr Freeman—That issue will not be resolved through this bill.

Senator TIERNEY—We are open to advice on what you think we could do in this case—obviously we have been looking at things—on what would come through proxy servers and those sorts of things—

Mr Freeman—One approach is having filtering systems on the home computer, and the advantage of that is that parents can put in the words that they do not want their children to look at and things like that. I accept that that is not a perfect solution, but that does not—

Senator TIERNEY—Particularly when the kids are more computer literate than the parents it is not a perfect solution.

CHAIR—Mr Freeman, did you wish to take Senator Harradine's question on notice or were you going to try to answer it?

Senator HARRADINE—Perhaps we will give you a book to read on the history—

Senator TIERNEY—Chair, I have been interrupted twice on the same line of questioning.

CHAIR—Yes, I understand that, Senator Tierney, but I think we should give Mr Freeman an opportunity to try to answer that question before we move off that point.

Mr Freeman—Senator Harradine asked me whether I had seen X-rated videos. I would prefer not to answer that question.

CHAIR—Thank you, Mr Freeman. Senator Tierney, did you have further questions?

Senator TIERNEY—At the level of technology of the server, do you think there is any way in which material can be screened? I ask this question in light of the evidence we have received over three inquiries, where at the start they said it was absolutely, totally impossible and by the 1997 inquiry, I think it was, it was becoming increasingly possible. One of the things they said you could not screen was images, and then more recently they were changing their view on that. Could you outline your view on how technology at the server level could be used to assist parents in screening materials where they are not supervising or where the kids are smarter than they are on computers?

Mr Freeman—I think the fundamental point is made in the CSIRO media release, and that is that it is very difficult to use blocking technology in any way effectively. Basically there are major potential problems with that approach and, in any event, people can normally, if they are smart, get around it. And, as you pointed out, many children are smarter than their parents in relation to this technology. In that context, trying to set up a regime of blocking just in Australia is not going to work in terms of your objectives.

Senator TIERNEY—They get around at the end use. But the child cannot get around the server, one step back; he only gets what comes down the line.

Mr Freeman—My understanding is that there are ways of getting around blocking technologies.

Senator TIERNEY—Maybe you can provide us later with detail on how you think that could work.

CHAIR—Senator Tierney, I am conscious of the time. Have you any more questions?

Senator TIERNEY—That is fine. I will leave it at that.

CHAIR—Senator McGauran, did you have any questions?

Senator McGAURAN—Most have been covered but I will ask one. You said in your introduction that the ABA's role, the fact that it would be there, is contrary to self-regulation. The ABA's role in relation to television classification is one of overseeing or auditing the classification. It is co-regulation. Would you be suggesting that the Internet be an exception, that it does not accept co-regulation? If you do not accept the role of the ABA, how would we ever know you are adhering?

Mr Freeman—I made the point in the submission that it is arguable that having the ABA provide oversight is not a self-regulatory regime. A self-regulatory regime might be a body elected by Internet service providers and those types of people. The fundamental point also is that the ABA's history and focus is on non-analogous media. There are censorship bodies that deal with books and this type of thing; they are not the ABA, as I understand it.

Senator McGAURAN—I must admit you have made a very valiant attempt—I do not know anyone else who would—to sell the Internet as a book—even raising that hoary old chestnut *Lady Chatterley's Lover*. But aren't books monitored or classified under the Film and Literature Censorship Board? And every book is classified, is it not?

Mr Freeman—No. My understanding—

Senator McGAURAN—Not necessarily classified but checked—more so than the ABA would ever do.

Mr Freeman—No, that is not true, as I understand it. What happens is if people see something they do not like, they can refer it to that body and they can then make a decision on it. Do you remember that article in Victoria about shoplifting? They assessed it as illegal. That was not assessed before it was published. Basically, it was referred to them; they then assessed it. That sort of model would be an analogous model.

Mr Worthington—You have me worried now because I am also director of the publications board for the society, and I was not aware of the requirement to submit all books.

Senator McGAURAN—I was not sure either.

Mr Worthington—My understanding is that it is by exception when people complain.

Senator McGAURAN—By complaint—not much different to the ABA.

Mr Freeman—The problem is that the guidelines that this bill refers to in terms of what would happen if people did complain are far too broad. If the ABA used the guidelines related to the legality of books, it may well be a more workable regime. Hopefully, you will support having the bill referred back so that can be considered.

Senator McGAURAN—What is your comment on the following situation? If a 12-year-old walks into a theatre to see an R-rated movie, the theatre owner can be prosecuted for

allowing that to happen; but when a 12-year-old accesses an X-rated, R-rated or equivalent site, or the worst of the worst—pornography—they are free to do that. Why are you seeing the Internet as the exception?

Mr Freeman—One aspect is that blocking technologies will not work. Another aspect is that we do not see the Internet as a complete exception: we are willing to consider techniques that might work. One technique that might work is requiring children to get parental consent to get a charging Internet account. Hopefully, parents would supervise their children's use of that just as, hopefully, they supervise their children's use of public libraries which, as I have pointed out, sometimes have material that 20 or 30 years ago was banned because it was considered pornographic.

CHAIR—Mr Freeman, I was somewhat puzzled by your comment earlier on that you believe that the Internet should actually be an adult medium with access for children only with supervision. Has the Computer Society always had that view? Did you have the view that children should not have access to the Net five years ago?

Mr Freeman—Our view in relation to this matter is an evolving one. I would not argue that our view on this question is finalised. Some people feel that there is a problem with this view because they feel it could infringe on privacy: for example, requiring credit cards or drivers licences to be submitted to prove that someone is an adult. Some of our members believe that could potentially have privacy problems. In a sense, the issue at the moment is trying to get a balance and trying to move forward in a way that we can accommodate some of these objectives—redrafted as we have done—and address some of the concerns of the parliament.

CHAIR—But surely, given that almost every school in Australia is now teaching its students how to use the Net, for you to suggest that the Net should be an adult medium seven years down the track is like trying to turn back the tide, isn't it?

Mr Freeman—Let me explain exactly what we say in the submission. Children may well be using the Internet in the school situation, but we say that they are under the supervision of adults who are acting in parent type roles, such as teachers.

CHAIR—As much as one teacher could supervise a class of 30 children or one librarian could supervise a group of children who come in to use the library after school, they are.

Mr Freeman—This is why we also support filtering technology at the user end, so that schools could well put this sort of technology on and it could work reasonably well. As I say, even that sort of technology is not perfect yet.

CHAIR—Some of my colleagues here this evening have made the point that children are often more computer literate than their parents and, given the fact that children are often at home for three hours of an afternoon before their parents get home, how could you ever suggest that the Internet could be an adults only medium?

Mr Freeman—I did not use the term 'adults only'.

CHAIR—I think you did.

Mr Freeman—Parental-like supervision—the concept of access to the Internet requiring parental approval, or an adult person: those concepts, we believe, are worthy of further exploration.

CHAIR—We will look forward to your further exploring them. Thank you very much, Mr Freeman and Mr Worthington. We appreciate the length of time you have spent with us this evening and the way in which you presented your submission.

Senator LUNDY—Chair, on the point of privacy, I ask that a question be taken on notice in relation to that final point by Mr Freeman, and the potential impact on the privacy of people trying to access the sites that are, I think, identified as R-rated under the proposed legislation.

CHAIR—Senator Stott Despoja also has a couple of questions. Would you be willing to take those on notice?

Mr Worthington—Yes. I hope someone is taking a note of all these.

Senator STOTT DESPOJA—I actually have a note of them, but I prefer to submit questions to you—and of course you are free to get them back to us whenever it is convenient—rather than reading them into the record.

Mr Freeman—Ideally, if you would send them to Tom and me via email, that would be great. You have our email addresses.

CHAIR—Thank you very much for your attendance.

[9.48 p.m.]

UPTON, Mr Peter John, Executive Director, Australian Information Industry Association

CHAIR—Welcome. The committee prefers all evidence to be given in public, but you may at any time request that your evidence, part of your evidence or answers to any specific questions be given in camera and the committee will consider any such request. I understand that your submission is not ready at this stage. Is that correct?

Mr Upton—That is correct, yes. I apologise for that.

CHAIR—I therefore invite you to make an opening statement to the committee and we will subsequently move to questions.

Mr Upton—Thank you. I did forward to the committee secretariat a copy of an earlier submission we made to the Australian Broadcasting Authority's inquiry, which outlined in general the stance we took. I will just rehearse very quickly the principal points we made there. First amongst those was to acknowledge the concern that government, parents and the community in general have, quite validly, to ensure that children are not exposed in an unknowing or uncontrolled way to offensive material on the Net.

In our previous submissions, we alluded to the technical difficulties of regulating content on the Internet, particularly at the service provider level. The difficulties we alluded to there have since been much more comprehensively canvassed in the June 1998 report of the Division of Mathematical and Information Sciences of the CSIRO, *Blocking content on the Internet: a technical perspective*, which has already been referred to tonight.

In the light of those difficulties, which our earlier submissions did not express quite so fully, we nonetheless suggested that there was a need for a cooperative and code based approach to make effective the desire to control access by children to the Internet. We noted particularly the availability of technical blocking and filtering devices at the user level and emphasised the role of adult users and parents in safeguarding children. In adult users, we would include people in the place of parents, teachers and so on. We took the view that there is a need to widely educate parents and the community generally as to the existence and the availability of filtering devices and software at the user level and a new development, the availability of white sites—that is, sites that an Internet service provider may set up and control with a positive list that says, 'Only those things which we approve of will be on here and we give you some sort of a guarantee that that will be so'—and to ensure the awareness of the need for parental guidance and control, to ensure that there is an acceptable outcome for parents concerned for the welfare of their children.

We went on to express the view that ISPs should not be made responsible for what they cannot control—that is, they are not the authors in principal form of the content on the Internet. I should just interpolate at this point that the Australian Information Industry Association represents a very broad cross-section of the industry—the IT&T industry, not the Internet industry per se—but that does include a range of large and small ISPs, a range of

content providers and the major communications carriers, including Telstra and Optus, all of whom are involved in one way or another in the Internet.

We went on to express the further view that ISPs should not be put in the position of having to decide what is acceptable content—that is, an individual ISP—nor should the individual ISP become the focal point of contact for complaints about content on the Internet.

Turning to the bill, let me first of all say that AIIA endorse the approach that the government has put forward here in making the determination of offensive matter the province of the ABA and the related classification board, because this also means that individual ISPs will not be the primary focal point for complaint. The ABA is the body to be required under the draft bill to act upon information and complaints about material on the Internet.

As the ISP does not have control over the generation of content—as I have already mentioned—this is a reasonable approach to take. AIIA, on the other hand, offers no comment on the workability or suitability of the classification scheme the government has proposed in the bill, except to note that the principle of classification, as has been already worked over here to some degree, should be to provide the same sorts of outcomes as for other communication media—that is, we think there is some advantage in having a consistent classification standard across all media. That would be desirable.

Having said that, the scheme that the bill proposes seems more intrusive than that which actually operates in the broadcast arena, because complaints in the broadcast arena are, in the first instance, referred to and handled by an industry body with lengthy notice periods. Only in the final resort, where an industry body is unable to resolve a case, does the ABA become involved.

Unlike the situation which applies to broadcasters, the Internet industry, under the proposed scheme, is not being asked to decide for itself, through an industry body, the primary handling of complaints or the primary dealing with them. That decision is going to be made by a classification board, which is an independent government body, on referral from the broadcasting authority. And referral to the ABA will become the first step in the online services industry, rather than a safety net position—which is my understanding—that it is in the broadcasting industry.

Where the ABA determines that material is offensive and hosted in Australia, it will then direct the ISP to remove that material from its server. In the case of material not hosted in Australia, the authority may refer it to an international law enforcement agency, leaving the issue of what, if any, action can be taken by an ISP in Australia in relation to internationally hosted prohibited content to industry codes which are as yet to be developed, with the ABA having the reserve power to make an industry standard in certain circumstances. The AIIA notes in this regard that the envisaged time frame for the development of these codes is very short. It is very tight. It talks about 1 January 2000 and there will be notice periods in there when the codes will have to be made available for public comment. A period of time is required for the ABA to approve those codes and we flag that the timetable may not be achievable with adequate consultation.

Failure to comply with the direction from the ABA or the provisions of an industry code or standard will constitute an offence, and here AIIA would urge caution in determining penalty. It has already been mentioned that the penalty of \$25,000 a day for offences may be inadvertent—that is, not all ISPs are 24 hour a day operations, although their sites may be up 24 hours a day—and technical in nature. These are being talked about. This is an industry which contains a lot of very small firms. There are over 600 ISPs in Australia. The entire industry turns over about \$200 million a year and many ISPs are therefore quite small, family or one person businesses.

I would also like to mention that government statements have referred to ABA directions being complied with, subject to technical feasibility in doing so—without defining what technical feasibility might be—and to commercial considerations, but neither of these provisions seems to appear in the draft bill. They seem to be of considerable concern because a direction to take down, if it cannot be complied with for technical reasons, has to be decided extremely quickly under the way the provisions work. The shortness of the notice period makes any other approach difficult to sustain.

This point should also be borne in mind when considering the technical measures. In regard to application level blocking, the point I am asking to be borne in mind here is the smallness of many of the ISPs in question. Application level blocking using proxy servers will require many of these small businesses to invest in an effective duplication of server networks they already have and to incur the substantial additional dollar costs which the CSIRO's report identifies at page 29. The dollar costs associated with packet level blocking are likely to be even higher and again I refer to the CSIRO's report, page 37.

AIIA believes that the technical difficulties that have been noted in the CSIRO report will certainly make a complete reliance upon technical blocking inappropriate and ultimately likely to be unsuccessful. Technical measures at the ISP level may be part of a combined approach but AIIA believes that such measures must have regard to the likely commercial outcomes and the broader national interest. AIIA believes that it will be to Australia's advantage to remain an attractive investment destination for Internet hosts and content providers, these being an essential component of the information industry. For this to be so, our cost structures need to be in line roughly with competing jurisdictions and that will include costs necessarily associated with regulatory compliance.

AIIA therefore endorses the bill's emphasis on developing industry codes, which, while requiring regard to be had to technical developments that are likely to happen on an ongoing basis, do not necessarily require technical solutions. We endorse the emphasis on the codes, which will seek to ensure that online accounts are not provided to children without adult consent. I have already mentioned that many ISPs do this. That is a requirement, which a number of ISPs have indicated to me that they already have, that no one under the age of 18 is allowed to have an account with them. There are also codes which will concentrate on educating parents about how to supervise and control children's access to the Net, codes which will educate about filtering technologies and the use of those technologies, and codes which will encourage the commercial development of filtered Internet carriage service providers—that is, the sorts of services to which people may voluntarily subscribe, knowing that certain kinds of material will not be available or, more positively, knowing absolutely what sorts of material might be made available from them.

AIIA further endorses the approach of educating content providers and fostering the development of Internet content labelling technologies. We believe that there will be a market response to an informed demand for clean or white listed sites to which concerned parents can then subscribe with a high degree of confidence that their children might be shielded from what they judge to be inappropriate content.

In summary, we endorse the bill's intention. It covers a difficult and changing landscape and, therefore, I think it sets out to adopt a developmental approach, recognising that there is a likelihood of technological developments leading to solutions, and it requires industry codes to take those sorts of developments into account. We propose to make some more detailed comments on specific provisions of the bill. I would like to throw it open for questions, if I may.

Senator LUNDY—Going to your point about the impact on smaller ISPs, you have mentioned the potential disadvantage for many of those small businesses that may have one or two employees. What imposition do you envisage occurring to those smaller ISPs if, indeed, a server based filtering system requirement is imposed upon them in terms of resource issues such as staffing and its associated costs, the purchase of equipment, administrative time, et cetera?

Mr Upton—I think the types of costs that I was alluding to are spelt out in the CSIRO's report. It talks about it on page 37 in terms of packet level filtering and it talks about the proposition that packet blocking must be implemented in hardware if performance is not to be affected. That means a substantial investment in high-end routers to achieve that level of blocking.

The cost is not the only obstacle that the CSIRO report mentions. It mentions the fact that, with the way in which packet level blocking is implemented, it is quite likely to also create a higher service requirement which translates directly into staff costs and, therefore, into additional costs for anybody who is involved in being an ISP.

Equally significantly, I think the point for Australia is that packet level blocking is—in the words of the CSIRO report—likely to create considerable holes in the Internet simply because the way in which packet level blocking operates might require effectively taking whole sections out of sites which do not happen to be located here. That might be the way in which you have to handle that level of blocking. Somebody, in a rather extreme way, said that you might end up having to take the AOL site off the air because it is located in Virginia and that might be the way in which you would have to implement that sort of blocking. I am not sufficiently technically au fait to know whether that is indeed true, but that is a proposition that was put to me.

Similarly, going back further, the CSIRO report again identified a number of costs involved in employing proxy servers. I think it makes the point that these costs are likely to fall much more heavily on small businesses than on large businesses.

Senator LUNDY—Is that because it is not a bandwidth ratio issue?

Mr Upton—Simply, they will not have the proxy server sites spread around the country in the way that major ISPs may have already, so there is a direct capital cost to implementing a proxy server network to achieve the proxy server level.

Senator LUNDY—To clarify that, in the installation of a proxy server, it does not make any difference whether you have 1,000 or 300 people on your books, you still need one proxy server. Is that right?

Mr Upton—I would prefer to have the elaboration that is contained here, which is a little more detailed than saying it as simply as that. In essence, it means that an ISP below a certain size is more likely to have to make a substantial additional investment in additional server equipment in order to meet this level of blocking.

Senator LUNDY—In the AIIA's assessment, what impact will this legislation have, or is it currently having, on the growth opportunities in electronic commerce and the IT&T sector in Australia?

Mr Upton—That is very hard to judge. The fact of the matter is that, at the moment, we have a bill in prospect rather than one which is there. The bill leaves many matters to be sorted out through the development of codes. A worst-case analysis has been put to me by an American based software company, which takes the view that, if the bill is passed as it stands, it would be a show stopper in terms of them locating their headquarters in Australia.

Senator LUNDY—So they would change their decision if this bill were passed?

Mr Upton—That is, in fact, what their email said. I do not necessarily say that is exactly what would happen, but their argument was: 'Where we locate our server is so important to where we locate our head office that, if we believed we had to implement this level of control on our server in Australia, we would probably make that a material consideration in deciding whether or not to put our headquarters here.' That is the only piece of information I have on the subject. It is in the realm of hearsay, but I would be happy to tender the email.

Senator LUNDY—Yes, that would be useful. One of the concerns about this bill is how it appears to counter current endeavours on behalf of the federal government to actively promote the growth of electronic commerce, the use of the online environment to promote export, the IT industry, et cetera.

Mr Upton—I would prefer to say that we, the industry, believe it will have some effect. Quantifying it will always be difficult, and how you would go about it would be very much in the eye of the beholder. However, I would like to quickly mention the fact that the Internet blocking situation in Malaysia has been totally abandoned. One of the reasons that it was totally abandoned was that it was so frequently mentioned as a show stopper in terms of attracting investment into Malaysia.

Senator LUNDY—Did they actually do surveys as to why people would or would not consider investing in Malaysia?

Mr Upton—This was part of the rationalisation the government of Malaysia employed for abandoning their stance. I think it is possible to say that Malaysia had a range of other difficulties which may equally well have been material, but they took the view that this rationalisation would be advanced as one for walking away from the censorship regime they had proposed.

I would also add—and others may have information specifically on this—that the regime that has been put in place in Singapore is generally regarded as not working. There are three ISPs only in Singapore at this moment—that is a vast difference to the situation of 600 plus in Australia—and they are very closely supervised and licensed by the Singapore Broadcasting Authority, SBA, I think. The point can also be made about Singapore that the regime does not apply to commercial web servers anyway.

Senator LUNDY—So the regime applies to privately run—

Mr Upton—That is right—when I offer a web service—if I am a corporation using my own server, I am not involved in that regime anyway.

Senator LUNDY—So anyone accessing the Internet through their workplace in Singapore is not covered by their censorship regime?

Mr Upton—This is my understanding.

Senator LUNDY—That is all I have for the moment, Madam Chair, but I would like the option to come back to ask questions if that is possible.

Senator STOTT DESPOJA—Mr Upton, you have actually answered some of the questions I had in relation to e-commerce, but in relation to consumer protections beyond that, from a business or consumer perspective, the ACS has identified in its submission some privacy considerations. Do you share some of its concerns about those under this legislation?

Mr Upton—Yes. I was mentally rehearsing the information industry answer to the question of what we would regard as the priorities in the electronic commerce field at the moment. We would certainly regard getting uniform national privacy legislation as being very high on the list. We would also regard in the same vein the importance of the need to establish a uniform electronic commerce framework law. We should also deal with the two issues that are conflated in the public mind—privacy and security—as the two are not exactly the same thing. All of the information we have is that the perception that privacy may not be respected or that personal information may not be secure is a major constraint to people actively engaging in electronic business. From this industry association's point of view, they are very major issues that need to be dealt with. I am not sure that I took the exact point about privacy that was being advanced here. I take it that it had to do with the provision of credit card and related information.

Senator STOTT DESPOJA—And also Internet content and how you define that, I believe. Not only in the business sense in relation to some of those issues but also in personal privacy, I note that you referred to this legislation as being more intrusive. I know that you meant that specifically in relation to the complaints mechanism, but I am wondering

if there is potential for intrusion into people's personal information. The ACS certainly identifies some concerns that may have been voiced by members in relation to credit card information. As for emails and that kind of private data, I think that is another question that needs to be answered.

Mr Upton—We certainly have concerns about privacy on the net, but I have no specific concern that relates to this bill at the moment. I will certainly take the question on notice and test it.

Senator STOTT DESPOJA—On that issue of the timing, you apologise for not having a submission, although I think your verbal submission has been very informative and comprehensive. Do you have any views about the consultative process leading up to the tabling of this legislation? Do you have any views about the time line and the fact that we have not even had the submission date closed and yet we are sitting here until roughly midnight each night rushing through legislation? While it may be important, I am not quite sure if it needs to be completed or the debate needs to be begun by 11 May this year.

Mr Upton—I think I would say that I was a little startled by the length of the bill. I think that it is a fair point that the arrival of the bill was telegraphed. My association does not feel as though it was not able to participate in the debate. We, too, have appeared here a number of times. We have certainly made the general views that I outlined at the beginning of our submission known. I think that we would certainly have preferred more time to look at the legislation, because 78 pages of legislation is hardly lightweight in terms of being able to come to grips with the implications of it and trying to understand the various ways in which it relates. Indeed, even if you take the standpoint that you are supportive of the legislation, it is still necessary to try to understand exactly where the implications go, especially when a good deal of the legislation is left to be worked out in the discretionary form of codes.

Senator STOTT DESPOJA—Have members of your association given you any indication as to their actions if this legislation is to be passed in its current form?

Mr Upton—In general, no. Let me qualify that immediately by saying that I am assuming that you are asking me whether they have said that they will or they will not take any particular course of action as a response to—

Senator STOTT DESPOJA—To the legislation.

Mr Upton—I would have to say no. Nobody has said to me, for example, 'We are going to pack up and leave. We are going to stop doing what we are doing.' I have certainly had a considerable amount of concern and endeavours to get background papers and try to understand how the law might work. That has been, I suppose, very much as one would expect. People are trying to come to terms with how this will impact on their businesses. That is the standpoint of most of my corporate members—and I should add that AIIA is for corporate members; it is not for individuals. It is a corporate response, which is the usual corporate response of saying, 'There is likely to be a law here. How does this affect my business? What risks will I now have to manage that I did not have before and that I need to understand to know how they are going to impact exactly on my business?'

Senator STOTT DESPOJA—You were saying in response to one of my questions that you were rehearsing the level of priority issues in relation to e-commerce. I am happy for you to take this on notice but do you have a sense of some of the priority issues that a committee such as this could be dealing with? Are there perhaps other issues affecting associations such as yours that you think should have greater attention?

Mr Upton—I think I would like to take that on notice.

Senator STOTT DESPOJA—Certainly.

Mr Upton—The association generally works by seeking to get the views of its members as fully as we can before taking positions. I would certainly like to do that. The exact question was that we should—

Senator STOTT DESPOJA—Just identify some of the priority areas and issues for your association in relation to information technology generally and the work of a committee such as this. For example, it has been put to this committee that we could examine a reference to do with, say, e-commerce and vilification and defamation or intellectual property laws. Those references have not been adopted by this committee, so I am trying to assess if we are pursuing areas that people consider important.

Mr Upton—Some of those issues are certainly ones which members of the association have raised from time to time. Yes, I will take that on notice.

Senator STOTT DESPOJA—Thank you. Again, touching on resource implications to which Senator Lundy referred in a different context—and, again, I am happy for you to take this on notice—where do you think the financial, administrative or resource burden of this legislation will fall? Is it going to be with the ISPs, or the ICHs? What do you envisage? I know in your opening statements you made some reference to potential costs in relation to certain devices. Do you have any idea of who is going to be hit hard by this and to what extent?

Mr Upton—I think only partially at the moment. I think it is possible to say that if blocking measures took certain forms, they are going to impact on ISPs, but if they took other forms, it may be on the backbone service providers. I think, again, to give a global answer to that question, it would be necessary for me to take it on notice.

Senator STOTT DESPOJA—Thank you.

Senator TIERNEY—You mentioned earlier on about accounts and security of accounts for people under 18 and possible enforcement provisions. Could you explain that concept of how you actually guarantee that people under 18 do not have these accounts?

Mr Upton—I cannot speak in detail for the people who have told me that they have that as a requirement for starting an account. I presume they ask for a licence, an identity card, a passport or some other piece of identification which can be taken as reasonably securely having the person's birth date on it.

Senator TIERNEY—You also mentioned in the code of practice having a code of parental supervision. Could you explain a little further what you meant by that?

Mr Upton—I am taking the words from the bill itself. It talks about giving parents and responsible adults information about how to supervise and control children's access to Internet content. The parliament intends that for both sections of the Internet industry—that is in this context, the Internet industry dealing with home located servers and the Internet industry dealing with servers that are located outside Australia—industry codes and industry standards should deal with a long list of matters. Listed in there is that it should give parents and responsible adults information about how to supervise and control children's access to Internet content.

My comment was that we were endorsing that as a worthy inclusion in codes of conduct. We are giving the bill a tick for that one and saying that the kind of information you would want to give parents would be about technical filtering and blocking devices, both in software and hardware at the user level. I added to that the fact that you could also provide information about what have been described, for want of a better word, as 'white sites' but which are, in a more proper sense, positively identified sites, where there is a positive list of information.

I have heard the names of a number of these. I have not, in fact, had occasion to investigate any of them, but one that has been mentioned to me is called Kid Safe. I also understand that, in the Victoria government's initiative of giving all secondary age children an email address, which is analogous to being plugged in to the World Wide Web, part of that is that the server contract is centrally handled and that central server is, in effect, the filtering and blocking site for the children in Victoria.

By implication, I was saying, I think that one of the things that needs to be drawn home to parents is that these techniques do exist. Parents do not have to feel overwhelmed by the Internet and its free availability—or at least not totally.

Senator TIERNEY—Freely available in Victoria only?

Mr Upton—So far.

Senator TIERNEY—At this stage. Are you aware of other states planning to follow what Victoria has done?

Mr Upton—No, I am not, but to my knowledge, all state governments have certainly got plans to make email and Internet available widely at secondary school level to all students. What I do not know is whether they intend to follow exactly the same road as Victoria.

Senator TIERNEY—This code of parental supervision is mentioned in the bill, but if we go back before the bill came down, we have had a number of inquiries into online services and it was mentioned to us—I am going back two or three years now—that industry associations like yours were working on codes of practice at that stage. I appreciate you cannot finalise them until the bill is in place. But have you done over that time any work on that code of parental supervision? Did you do any work in that area anyway?

Mr Upton—No.

Senator TIERNEY—Nothing at all?

Mr Upton—None whatsoever, and the principal reason is that, as I mentioned before, the broad base of my membership are the providers of the pieces of equipment and the technology, with some Internet service providers and with some content providers. The associated fact was that the Internet Industry Association of Australia was busy drawing up a code.

Senator TIERNEY—Right, so you are leaving that side of it to them. Are you aware that they did anything in that area?

Mr Upton—I would hate to speak for them, but I believe they have a code and I believe that that code has undergone a substantial amount of work with a considerable amount of input from Internet service providers around Australia. I believed—this probably reflected my lack of information on the subject—that the code had been finalised. I believed that it had been accepted and was the industry code for Internet service providers.

Senator TIERNEY—The proposition has been put here tonight that putting restrictions in any form on the Net might drive away business from here to other countries. In terms of cleaning up the Net, what is your view of the effect of that on, say, the booming market of home computers? Would parents feel more confident to come on to the Internet and, therefore, would your people sell more computers and get more business from the home front? Could you just weigh up those arguments for and against?

Mr Upton—I would find that very difficult to answer. The home computer market has certainly not been stagnating in the last little while. I do not recall the exact figures, but I think Australia has certainly the second highest level of computer PC penetration in the home market and certainly the second highest level of Internet usage in the world.

Senator TIERNEY—I was curious you said ‘not stagnating’. I think you mean booming, don’t you?

Mr Upton—Yes. I guess what I find difficult to answer in that is what people see themselves as buying a home computer for. I cannot judge that. All I have is my own experience of having one at home and I use it to type things on, to keep a few household accounts and to handle email at home and occasionally do an Internet search.

Senator TIERNEY—Thank you.

CHAIR—Thank you, Senator Tierney. Senator Harradine.

Senator HARRADINE—I do not have many questions to ask Mr Upton because I am familiar with the AIIA’s views which have been presented and which we have benefited from previously and also because of Mr Upton’s appearance at the committee before. As I understand it, your members are mainly in the hardware, software and interconnecting service industry.

Mr Upton—That is correct. We would define it as hardware, software and services in the computer industry and hardware, software and services in the telecommunications sector, with a range of people who provide services to the industry who are not full members but are affiliated to the association.

Senator HARRADINE—Are you very much involved in the development of interactive multimedia software or do you leave it to Microsoft?

Mr Upton—I personally am not.

Senator HARRADINE—No, but are your members?

Mr Upton—The association has members who are; let me try to quantify that. Probably 15 per cent of our membership is involved in some way in multimedia businesses of various kinds, and that ranges from Microsoft down to relatively small specialist purpose content developers.

Senator HARRADINE—In your position, would you have an opinion as to when there is likely to be a convergence of technology such that would enable television sets to serve as network computers?

Mr Upton—I would have to say that I would probably be the victim of the same sort of stories as the industry tells itself about that. If I believe what the industry says, that convergence is coming and quite soon—three to five years or whatever it is. But also, as the point has been made earlier tonight, it is a question as to what convergence might mean in that way—whether the TV becomes part of the Internet or the Internet becomes part of the TV, because the actual backbones that go behind them are quite different. The result to the viewer is, I presume, what you are driving at—that is, that the convergence operates at the level at which I see it and sit in front of it. That may be quite soon, if I believe the industry. But, personally, I lack the expertise to have a good view on that.

Senator HARRADINE—I do not know whether you could answer this question. It is probably not in your field, but are you aware of the provisions of the legislation in respect of subscription narrowcast services?

Mr Upton—No. I have never made it a study.

Senator HARRADINE—Okay.

Senator CALVERT—Earlier tonight you were talking about a US software provider that was considering coming to Australia. Set me straight if I am wrong, but I think you inferred that because of this bill and regulations there might be something that would stop that happening. Were they a software provider of offensive, illegal or pornographic material, because if they were not, what objection would there be?

Mr Upton—That I do not know. To answer the first part of the question, no, they were not to my knowledge—one always has to say ‘to my knowledge’—providers of pornographic or offensive material. Their mainstream software products seemed to be business products.

They may have been taking an extreme view of the legislation and said, 'I will immediately have to put a blocking and filtering device on whatever web server I am going to put here. That will cause me such maintenance and performance problems that it will become a serious issue for me, because in the kind of business I am in the performance of the Internet is absolutely vital to me.' That, I imagine, would be the line, although I have not had the opportunity to go back to it.

Senator CALVERT—If you look at the outline of the bill, it is quite clear what the government is trying to do. The outline says:

The Government takes seriously its responsibility to provide an effective regime to address the publication of illegal and offensive material on line.

The outline goes on to say that the proposed regulatory framework in the bill should reflect 'wider community concerns in relation to material that is illegal or highly offensive, or may be harmful to children'.

The outline also says:

It is not acceptable to make no attempt at all on the basis that it may be difficult.

The government is not about saying, 'We are going to put these regulations in place to stop e-commerce, email or anything else.' Basically, it is to try to get some sort of codes of practice to make an attempt to stop this highly offensive material.

I noticed today that one of our senators has talked about referring online gambling to us. That might be something else we have to look at. There are going to be all sorts of things that will come up from time to time, but in this particular case our reference is to look at offensive material. The government is trying to put a code of practice in place that is like a glove: perhaps the hand does not fit into it at the moment, but in one or two years time it may well do that and I cannot understand why some members of the industry seem to be worried about it.

I noticed your particular members generate something like \$30 billion and employ 100,000 Australians, so you certainly do not represent an insignificant organisation. I was pleased to hear most of the comments you made tonight, but I was just concerned that perhaps this US company that was thinking of coming here may have been a provider of that sort of material, because if they were not, I do not know what they were worrying about.

Senator LUNDY—You have already heard, Senator Calvert, that Mr Upton has offered to provide the committee with that letter, so to cast that aspersion at this point in time is unwarranted because the committee will have the opportunity to peruse exactly what it was all about.

CHAIR—I think Mr Upton has already agreed to supply that in a document.

Senator LUNDY—That is exactly right. Cheap shot!

CHAIR—Mr Upton, I believe you were here when the previous witness, Mr Freeman, made his presentation. I am interested to know whether you have any comment to make on his early philosophical view that the Internet was preferably an adults' medium?

Mr Upton—I would tend to say that it is a medium in which a responsible parent would want to supervise their child. But I find that the possibilities for educating children and just the sheer amusement, the sheer pleasure, that I see children getting from the sort of information that is freely available on the Net do not make it, in my view, an adult only medium. This is why we have chosen to frame our comments around endorsing the general intention of the bill, that it makes it simply unsafe to leave children to wander around in there unsupervised.

Senator MARK BISHOP—Previous witnesses have also put an argument, by analogy, that the system to regulate online services should be derived from the classification structure that exists for books and magazines. Does your organisation have a view on that submission?

Mr Upton—No. In fact, I made a point in my opening remarks that we do not have a view on the classification regime provided. That has not been the focus of my members' concerns.

Senator MARK BISHOP—Is it right, then, to conclude that you are not concerned with the regime that has been adopted by the government?

Mr Upton—No, that is not the QED. We have some concerns which we will be fleshing out about the time periods that are involved in it—the 24-hour period and the penalty period. We are still thinking through the proposition of whether it should be a hair-trigger referral to the ABA or whether there should be some intermediate and/or buffer mechanisms between the first complaint and the ABA. Those are the sorts of issues that we will be trying to think about more fully. It is not the same as saying that I am totally endorsing the way in which the bill goes about what it is doing.

Senator MARK BISHOP—No, I accept that point. Are you comfortable with the analogy between the Internet and TV as a form of regulation as opposed to the Internet and the book/magazine classification system, or doesn't your organisation have a view?

Mr Upton—We do not have a view, but I would probably retreat to the standing point I made, which was that you ought to get a classification outcome that is broadly similar across all mediums.

CHAIR—Thank you very much, Mr Upton. Your evidence has been appreciated tonight, and we look forward to receiving your written submission in due course.

Proceedings suspended from 10.37 p.m. to 10.47 p.m.

TAYLOR, Mr Gregory Charles, Vice-Chair, Electronic Frontiers Australia

CHAIR—Welcome, Mr Taylor. The committee prefers all evidence to be given in public, but you may at anytime request that your evidence, part of your evidence, or answers to specific questions be given in private—that is, in camera—and the committee will consider any such request. As far as I am aware, you have no submission to present to the committee at this stage. Is that correct?

Mr Taylor—At this stage that is correct. We were aiming for the deadline of this Friday, and we will have the submission to the committee by Friday.

CHAIR—Thank you, Mr Taylor. I now invite you to make an opening statement to the committee, and after that my colleagues and I will ask you some questions.

Mr Taylor—Our thanks to the committee for providing the opportunity for me to appear tonight. Electronic Frontiers Australia is a non-profit national organisation formed to protect and promote the civil liberties of users and operators of computer based communication systems. EFA was formed in 1994. Our major goals are to advocate the amendment of laws and regulations in Australia and elsewhere, both current and proposed, which restrict free speech and unfettered access to information and to educate the community at large about the social, political and civil liberties issues involved in the use of computer based communication systems.

Our view of the proposed online services legislation is simple and to the point. The legislation will achieve no positive outcomes but will impose a tremendous cost burden on the developing information economy in Australia. It will not protect children from objectionable content, since overseas sites are out of the reach of Australian law and the proposed regime can hope to block only a tiny fraction of such content.

It will create congestion and bottlenecks which will impede the flow of Internet traffic. It will increase costs and threaten the economic viability of ISPs. It will reduce the freedom of all adult Australians to choose what they read. It will turn Australia into a paternalistic regime with characteristics on a par with countries like China, Burma and Iran.

The legislation is not wanted by the ISP industry. It is not wanted by the vast majority of Internet users. It is not wanted by the general community. The government has provided insufficient time for community and industry consultation in its rush to pass this legislation.

Although Internet regulation has been expected for some time, the actual proposals are far worse than anyone had expected. The legislation has the potential to swamp the ABA with complaints about material which is not illegal but arbitrarily censored under guidelines appropriate to television—a totally different medium. Blocking of overseas sites by ISPs is a costly and inefficient process which will clog every Internet node in the country as traffic is examined for infringement of the ABA black list. EFA submits that there is some Internet content that is universally condemned, and global agreement on the definition would be an appropriate response by an Australian government intent on making an effective contribution to dealing with criminal content. Content regulation of the Internet should be left to the

police, leaving the ABA with a role in relation to industry issues and education of the community. International agencies such as Interpol have no interest in investigating erotica.

Australia is out of step with the world on this issue. No other democracy has attempted censorship of this nature, and even Malaysia has recently abandoned attempts at local Internet censorship. The Internet was designed to survive a thermonuclear war. It treats censorship as damage and routes around it. EFA would advise the committee to recommend that the government not proceed with this legislation. Instead the government should work with industry and the community to come up with a regulatory regime which is realistic and workable.

CHAIR—Thank you, Mr Taylor. Can I ask you a couple of questions about your membership base? I notice in your introductory remarks you mentioned that you were formed in 1994. Can you tell me how many members you have?

Mr Taylor—Counting our affiliate members, we have about 3,000 throughout Australia. We regard ourselves as something like a political party. We have a small number of paid members but we have a huge volume of support throughout the community.

CHAIR—Would those 3,000 members be individuals or do you have two classes of members, one for corporates?

Mr Taylor—No, we do not have corporate members.

CHAIR—You are obviously a national body. You have members in each state?

Mr Taylor—Yes.

CHAIR—Any particular state? I notice my home state of South Australia is the point of contact for some of your executive. Would it be fair to say that South Australia is the focus for your membership?

Mr Taylor—No, that would not be true. Our membership would be spread very evenly amongst all of the states.

CHAIR—Looking at your web site today, I notice you have described this legislation as draconian. Does this mean that you would prefer the Net stayed as it is now, unregulated?

Mr Taylor—The Internet is a global medium. Australia cannot control the content that is placed there by sites in other countries. All this legislation will do is affect a few Australian sites. It will not protect children from anything. We have to accept that not every country regards erotic material in the same way that Australia does. A lot of other countries have a different attitude altogether to sexual material. We have to move into a global era. We are no longer an isolationist regime. We have to look at the Internet in a global sense.

CHAIR—I notice that you mention China, Burma and Iran; surely you would not want our children to be treated as the children are in those countries?

Mr Taylor—Exactly. That is why we oppose this legislation.

CHAIR—Children in those countries are treated quite differently from the children in this country,.

Mr Taylor—And so are the adults.

CHAIR—Quite so; and I am wondering why you would invoke the names of those countries as being comparative to Australia.

Mr Taylor—Because they have introduced censorship legislation which involves blocking of material from other countries—and Australia has now joined that sort of group.

CHAIR—I will go back to my original question to you, which I do not believe you answered, that is: are you in favour of cleaning up the Net, or do you believe the current operation of the Net—where children have access to sites as and when they desire—is appropriate; and is that the view of your organisation?

Mr Taylor—There are mechanisms to protect children from being exposed to content that parents feel is inappropriate for them. We do not feel that this legislation will in any way have any effect on that.

CHAIR—But you do agree that the Net could be cleaned up—yes or no?

Mr Taylor—It could be cleaned up in the sense that there is a certain amount of illegal material on the Internet that is globally recognised as illegal. We have no problem at all in using existing laws to prosecute that sort of material. That would be the limit we would place on your terms of cleaning up the Internet.

Senator HARRADINE—Does your organisation have much of a membership in Canberra?

Mr Taylor—I do not know the exact figures, but we have members here, yes.

Senator HARRADINE—Is Fiona Patton a member?

Mr Taylor—I do not believe that it is appropriate for us to divulge the names of particular individuals as being members of our organisation.

Senator STOTT DESPOJA—Of course it is not.

Senator HARRADINE—But she is the spokesperson for the Eros Foundation, and they have a vested interest in making sure that there is not the regulation—

Senator LUNDY—Madam Chair, I raise a point of order.

CHAIR—What is your point of order, Senator Lundy?

Senator LUNDY—I am concerned that Senator Harradine's question is actually asking Mr Taylor to breach the privacy of his membership.

CHAIR—I think Mr Taylor can answer the question as and how he wishes.

Senator LUNDY—I do not think it is an appropriate question.

CHAIR—I am sure that is something Mr Taylor will take into account when he answers it.

Senator LUNDY—No, I think it is your role as chair, actually.

CHAIR—I do not believe there is a point of order, Senator Lundy, and I leave it to Mr Taylor to decide how he wants to answer the question, or if he wants to answer the question.

Mr Taylor—I thought I answered the question: I am not prepared to name any of our members.

CHAIR—Quite.

Senator HARRADINE—You say that legislation has the potential to swamp the ABA with complaints about material which is not illegal but arbitrarily censored under guidelines appropriate to television. Have you read the bill that is currently before us?

Mr Taylor—Yes, I have read the bill.

Senator HARRADINE—Why do you make that assertion?

Mr Taylor—Because the bill attempts to limit access to R-rated material through adult verification checks and it proposes to ban X-rated material. X-rated material is not illegal per se.

Senator HARRADINE—But you are talking about it being censored under guidelines appropriate to television. R-rated material is not permitted on broadcast television.

Mr Taylor—That is correct.

Senator HARRADINE—But, under this legislation, it is permitted on the Internet provided that there is age verification.

Mr Taylor—Perhaps the choice of words there is a little loose. What we are really trying to say is that the legislation attempts to treat the Internet as if it is a broadcast medium, and it is not. It is a point to point medium; it is not broadcast from one point to an infinite number of users. A user selects a particular site and that site transmits packets of data from the source to the destination. It is a totally different medium altogether from a broadcast medium.

Senator HARRADINE—Madam Chair, I am not going to ask any more. Clearly, the witness either has not read the bill or does not realise what the bill is about.

Mr Taylor—I object to that statement, Madam Chair.

Senator HARRADINE—I asked the question and the witness has admitted that this was the wrong choice of words. Now the witness is attempting to tell us that there is something different between the provisions under this and the provisions elsewhere. Do you know the provisions of the legislation in respect of subscription narrowcast?

Mr Taylor—I believe that that medium allows R-rated material but not X-rated material.

Senator HARRADINE—That is right. What is the difference between the provisions in this legislation and that? Isn't that the same?

Mr Taylor—My point was not to get down to the nitty-gritty of the particular aspects of that legislation versus television. It was in relation to a censorship regime which is more appropriate to a broadcast or narrowcast medium than to a medium like the Internet.

Senator HARRADINE—But the narrowcast medium is similar to what is being proposed: you do need to have a verification; you do need to have a payment under the narrowcast legislation.

Mr Taylor—Yes, but it is not a point-to-point medium like the Internet and it is not a global medium. It is a local industry that is readily controlled under local law. The Internet is a global medium.

Senator HARRADINE—You are concerned that X material is not to be permitted—if I can use the term broadly—in the Internet in Australia. Is that right?

Mr Taylor—This legislation will not prevent children being exposed to X-rated material.

Senator HARRADINE—But would you agree that it is an attempt?

Mr Taylor—It is a fairly futile attempt. It will affect a handful of sites. What is the point?

Senator HARRADINE—If it could be tightened up so that it was watertight, then you would have no objection to the object of the legislation, that is, to prevent X material? That is one of the objects.

Mr Taylor—You do not need to ban X-rated material outright to prevent children from seeing it. The legislation includes—

Senator HARRADINE—No, I am just talking about the material as such—for example, the interactive material that I referred to earlier when the Australian Computer Society was before us, that type of material. You would see no problem about that?

Mr Taylor—The fact that it may exist?

Senator HARRADINE—Yes, the fact that it may exist and with the development of technology will be improved, as it were.

Mr Taylor—I think that adults should be free to exercise their own choices about such matters in relation to sexual material.

Senator HARRADINE—Even though the material was, say, anti-racial?

Mr Taylor—I indicated earlier that there is a certain class of material that is universally condemned. Child pornography is an obvious example of that. There may be other material of the type that you mentioned that would be universally regarded as unacceptable and subject to prosecution.

Senator HARRADINE—Do you think material which engenders in the minds of habitual viewers callous and manipulative orientation towards women or leads them to view women in general as being highly promiscuous and available and at the demand of men—for example, to demand that a woman strip in a particular way—on the Internet is acceptable or should be permitted?

Mr Taylor—I do not wish to get into a discussion of personal morality. Every person has an individual view on sexual issues, and that is not relevant to this debate at all.

Senator HARRADINE—Do you think racialism is a personal moral question or not?

Mr Taylor—I am not sure I understand the point that you are trying to make.

Senator HARRADINE—No I just asked the question. Do you think that material that promotes a racist attitude is a moral question and something that society should, through its government, address?

Mr Taylor—My personal opinion on different types of material is not relevant. I am saying that there are certain types of material that are globally regarded as unacceptable. I gave examples of that type, and I included racist material, but it would have to depend on the nature of the material.

Senator HARRADINE—But that is a moral judgment, isn't it? It is a judgment as to what is right or wrong.

Mr Taylor—Yes, but there are certain types of material that there is universal abhorrence of; when it comes to sexual material, there is a wide range of different viewpoints.

Senator HARRADINE—We are talking about material that is demeaning to women.

Mr Taylor—I do not see the relevance of that to this debate. We are talking about the impact of this legislation in protecting children from exposure to material that is

unacceptable for children. Our position is that this legislation will have no effect whatsoever on that. Parents will be deceived by this legislation.

Senator HARRADINE—It goes to the question more than that, as a matter of fact. It goes to the question as to whether or not X material should be on the Internet in the first place.

Mr Taylor—X material is on the Internet in the first place.

Senator HARRADINE—It is now, but this legislation—

Mr Taylor—This legislation will not stop it from being on the Internet.

Senator HARRADINE—No, but—

Mr Taylor—Not every country bans X-rated material.

Senator HARRADINE—No, but what you are saying is that one of the reasons that this legislation should be defeated is that it does attempt to control X-rated material on the Internet. Isn't that one of your reasons?

Mr Taylor—No. Our opposition to the legislation is that it restricts X-rated material not just from going to children, which is the objective of the legislation, but to adults. Adults should make their own decision.

Senator HARRADINE—Have you read the legislation? I seriously ask you that. If you are saying that that is the only object of the legislation, clearly you have not read it.

Mr Taylor—No I am not saying it is the only object. It is one of the problem issues with the legislation.

Senator TIERNEY—Mr Taylor, we have a print of what you have said here tonight and in it you talk about this legislation creating a paternalistic regime, putting us in a class with Burma and Iran. Could you explain how we are similar and different from Burma and Iran in terms of this issue?

Mr Taylor—They have implemented national Internet censorship schemes where all material that is accessed by citizens of those countries has to go through proxy servers in which certain material is filtered out. That is exactly what is being proposed by this legislation, that there be filtering and blocking imposed by ISPs.

Senator TIERNEY—And a proxy server like they would set up in Iran. You might want to add Malaysia and Singapore, perhaps.

Mr Taylor—Malaysia recently abandoned all attempts at censoring the Internet.

Senator TIERNEY—I would like to check that point, too, in a minute.

Senator LUNDY—That makes your argument out of order.

Senator TIERNEY—No it does not, actually, because I just want to check a point on it. But that is a total proxy server system that is being set up. Are you suggesting we are doing the same thing?

Mr Taylor—The same effect.

Senator TIERNEY—But it is not the same thing, is it? The way they were setting up in Moslem countries, absolutely everything had to go through a proxy server. We are not advocating that.

Mr Taylor—But it is the same thing. The ABA is going to issue—

Senator TIERNEY—In what way is it the same thing?

Mr Taylor—I am sorry?

Senator TIERNEY—In what way is it identical?

Mr Taylor—It just means that you are distributing the proxy servers: instead of trying to feed it all through one bottleneck, you are feeding it through hundreds of bottlenecks.

Senator TIERNEY—You are aware that we have a provision where things are ‘technically feasible’, for example.

Senator LUNDY—Not in the legislation.

Senator TIERNEY—It is actually mentioned quite a number of times in the legislation, if you have a look, Senator Lundy.

CHAIR—Order, Senator Lundy! Proceed, Senator Tierney.

Senator TIERNEY—It is the extremist nature of some of the language in your submission, like saying that this is exactly like Iran and Burma, that I take objection to.

Mr Taylor—I did not use the word exactly. I am saying that there are not very many countries that attempt to block and filter material under government mandate.

Senator TIERNEY—If you say it is not ‘exactly’, what does ‘on a par’ mean? That is what you said.

Mr Taylor—Choice of words.

Senator TIERNEY—What does ‘par’ mean in golf? It means on exactly the same level, doesn’t it?

Mr Taylor—You can nitpick over the words—

Senator TIERNEY—It is not a matter of nitpicking.

Mr Taylor—but the effect is that Australia is implementing a national censorship regime which imposes mandated blocking and filtering in the same way that those countries do.

Senator TIERNEY—Through a proxy server system.

Mr Taylor—That is not mandated—

Senator TIERNEY—No, exactly, it is not.

Mr Taylor—in the legislation.

Senator TIERNEY—That is right. That is exactly the point I want to get to.

Mr Taylor—That is the only technology that currently might be applied to such a proposal.

Senator TIERNEY—I would put to you that it is considerably different. Back on the Malaysian example, isn't the lifting of restrictions in Malaysia only within Cyber City—the new Internet style city being developed between Kuala Lumpur central and the airport?

Mr Taylor—My understanding was that that change was implemented some years ago. It was only in March this year that they abandoned all attempts at censorship.

Senator TIERNEY—Could you provide us with details of that?

Mr Taylor—Yes, I can.

Senator TIERNEY—Thank you very much. The other thing you mentioned was that this would place a tremendous cost burden on people in the industry. It is just another statement, I suppose, but do you have any evidence or projections to back up that that is actually so, or is it just an assumption?

Mr Taylor—We are hearing from ISPs around the country now who are concerned about the costs. The costs that they nominate are related to equipment to be installed to provide blocking and filtering, the appropriate support staff to manage that equipment and staff to handle take-down orders. There is a 24-hour notice in the legislation. That means that ISPs would have to be able to respond within 24 hours seven days a week, one would assume. There are penalty costs involved in all of that. We have not quantified any of that as yet, but we are getting the feeling from ISPs, who are faced with the potential of this legislation, that they do see it as a major cost threat.

Senator TIERNEY—Industries right across the country, Mr Taylor, have to fulfil a whole range of government requirements that require in the case of, say, steel smelting that they put certain filters on. There are costs in complying with government regulation. I am just wondering why, in a new and very rapidly expanding and profitable industry, you think they should be exempt from provisions that apply to all other industries?

Mr Taylor—Because normally there is some positive society benefit from such legislation; there is no benefit from this legislation. It will not achieve anything.

Senator TIERNEY—You do not think cutting out illegal material is of benefit to society then?

Mr Taylor—This legislation is not needed to cut out illegal material. That can be prosecuted now under 85ZE of the Crimes Act.

Senator TIERNEY—Provided you have some measure of locating where it is. That is the extra difficulty in this medium.

Mr Taylor—You have got that problem anyway.

Senator TIERNEY—But that is the extra difficulty of this medium, and that is why this system of working through the filters is advocated to stop it at that point, because you cannot stop it at the end source—or not very effectively anyway.

Mr Taylor—My understanding of the use of the filters is that it is not to prevent illegal material. It is to prevent what is defined as objectionable material—that is, sites that have been subject to a complaint to the ABA, who have referred it to the OFLC for classification, and they have decided that this is X-rated.

Senator TIERNEY—You are not suggesting that people would not object to illegal material—for example, how to make bombs?

Mr Taylor—No, I am saying that—

Senator TIERNEY—Obviously, it would be in the same category, wouldn't it?

Mr Taylor—Illegal material does not require new legislation.

Senator TIERNEY—Subject to a complaint. That is the key point. I would hope it is illegal material as well as objectionable material. It certainly comes in the same category, surely.

Mr Taylor—There have been cases in Australia of prosecutions for child pornography on Internet sites. Without the benefit of this legislation, those prosecutions have proceeded under 85ZE. Why, therefore, is there any need for new legislation in respect of illegal material?

Senator TIERNEY—Probably because it is not greatly effective, I would have thought.

CHAIR—Senator Tierney, I am conscious of the time and Senator Stott Despoja and Senator Lundy both have questions. Senator Stott Despoja, you can proceed with your questions.

Senator STOTT DESPOJA—Mr Taylor, I begin not by asking you your moral perspective on what should be blocked but by asking you to identify some of the problems with blocking technology. Could you do that for the benefit of the committee? In particular, could you refer to the types of materials that could be blocked, not inappropriately but perhaps inadvertently, as a consequence of this legislation?

Mr Taylor—There have been extensive studies of blocking and filtering technologies which exist out there now and can be applied quite voluntarily either by parents or through optional services offered by ISPs. Those technologies are available; they are not perfect, but they are available. The problem with them, if we want to get down to defining problematical issues, is that they can block material that they are not intended to block and they can miss material that should be blocked. That is a different issue from the mandatory blocking that we are talking about in one aspect of the legislation. Another aspect of the legislation refers to ISPs having a requirement under the code of practice to advise their users of appropriate filtering technologies. That is a voluntary issue that is totally different from the mandatory blocking that is intended to be applied under an ABA order.

Senator STOTT DESPOJA—Obviously, you have dealings on an international level with bodies involved in or engaged in similar work. Has there been enough time to gauge the international perspective or response to the legislation that the Australian government has proposed?

Mr Taylor—We are in contact with organisations in other countries which are similar to our organisation. The universal attitude to this proposal is sheer disbelief that any government would attempt to introduce something like this with any expectation that it might be successful.

Senator STOTT DESPOJA—Feel free to keep us posted on any overseas information that you feel you can pass on, because I think we could benefit from that.

Mr Taylor—I understand that some organisations in other countries will be submitting submissions to this committee.

Senator STOTT DESPOJA—You have had questions about whether or not you support any kind of regulatory framework whatsoever, but the last paragraph of the opening statement you have provided today suggests:

... that the government should not proceed with the legislation as it is. Instead the government should work with industry and the community to come up with a regulatory regime that is realistic and workable.

You are not suggesting that there is no need for regulation whatsoever; you are just suggesting that there could be a more constructive or workable approach.

Mr Taylor—No. The Internet industry, like any other industry, would normally be subject to some kind of government regulation. We believe that is quite appropriate. We do not believe it is appropriate for content regulation to be part of that, but there are many other aspects of regulating ISPs that should be covered under some sort of code of conduct and self-regulatory approach.

Senator STOTT DESPOJA—In those remarks in your opening statement, you referred to the role of the police by saying:

Content regulation of the Internet should be left to the police . . .

I am assuming that was your reference to the current powers under the Crimes Act, that you consider that appropriate or sufficient for dealing with material that is currently illegal. You are not advocating that the police should have different or more extensive powers or a different role in policing Internet content.

Mr Taylor—No. Our view of the Internet is that the only practical regulation in relation to content is a globally accepted definition of illegal material. Any other approach to try to censor material because it is of a sexual nature is purely local; it is not universal and will therefore fail, because such material will be provided in other countries that do not have the same sorts of attitudes to such material.

Senator STOTT DESPOJA—I have just been told this is my last question, so I might give you some questions on notice, if you are prepared to answer them. You have referred to tremendous cost burdens. Do you have any quantity of assessment of the kind of costs involved, and who would be primarily responsible for those costs? I am also interested in your views, as you gathered earlier, on convergence and whether or not you can achieve true convergence between Internet and broadcast media. Perhaps that is something you can take on notice and provide an answer to the committee.

Mr Taylor—On the matter of costs, we are probably not the most appropriate organisation to gather such information. The Internet Industry Association is probably in a better position. We are receiving feedback from ISPs, but we are not primarily an ISP oriented organisation.

Senator LUNDY—My first question goes to the series of analogies that we have heard this evening, and one particularly in relation to Senator Harradine's point about the relationship between what is proposed in the bill and broadcasting. I put to you the notion of hiring a video for the purposes—

Senator HARRADINE—I did not mention broadcasting.

Senator LUNDY—Earlier on, the issue of broadcasting was raised as a comparative point to multipoint—

Senator HARRADINE—I did not mention broadcasting at all; I said subscription narrowcasting.

Senator LUNDY—I am referring to the whole issue of what is equivalent in this bill to either narrowcasting, as described by Senator Harradine, or indeed broadcasting. Where would the activity of someone physically hiring a video and putting that on the television fit into the analogies that your organisation has used in response to Senator Harradine's question? I do not know whether you were here, Mr Taylor, when the Computer Society were before the committee. At this point it seems to be the one activity where material that

has a censorship rating to it is viewed on a television set, albeit its delivery mechanism differs from that of narrowcast or broadcast mechanisms.

Mr Taylor—We have some problems with trying to find an appropriate analogy to say, ‘The Internet is like this.’ The Internet is not like any other medium. It has elements of similarity with books and publications. It has some elements of similarity with narrowcasting. It has some elements of similarity with telephone calls, but it is none of those. It is a totally different medium. It is a global medium. Local attempts to try to censor a global medium are futile, so to pretend in the preamble to this legislation that this will be effective is nonsense. It will not be effective. It will give Australian parents a view that the government is acting in their interests and is protecting their children, but in fact it is not. It is achieving nothing. If we really want to do something to protect children, there are other ways to approach it. This bill is not an appropriate mechanism and it will not achieve anything.

Senator LUNDY—The issue of privacy came up earlier in your submission. What does your organisation see as the implications for the privacy of citizens in an online environment?

Mr Taylor—The requirement for adult verification of R-rated material is a concern. If one goes to an adult video shop in Canberra, one can purchase an X-rated video, and you do not have to identify yourself. Why should you have to identify yourself in order to look at R-rated material on the Internet? It is a privacy issue. Adults should be treated as adults. They should not have to divulge their identity in order to look at material which is perfectly acceptable for adults to look at.

Senator LUNDY—If the proposals in the bill were implemented, is there any legislation that would protect the privacy of adults forced to indicate their identity?

Mr Taylor—Is there any existing legislation?

Senator LUNDY—Is there any existing legislation that would protect the privacy of adults required to identify themselves for the purposes of accessing X-rated material?

Mr Taylor—No. The existing Privacy Act does not cover that. That is another issue on which our organisation has some major concerns.

Senator LUNDY—Are there any other elements relating to privacy that are of immediate concern with respect to this bill?

Mr Taylor—The example I quoted is the only one that comes to mind at the moment.

Senator LUNDY—In your opening statement, you cite insufficient time for community and industry consultation in the rush to pass this legislation. We have heard previously that this committee has apparently been in existence traversing these issues for some time. You state that, although it has been expected for some time, the actual proposals are far worse than anyone expected. Can you give an indication—

Senator HARRADINE—They are worse. Our recommendations were better.

Senator STOTT DESPOJA—Not that we all supported those recommendations.

Senator HARRADINE—Touche.

Senator LUNDY—Can you describe for the committee what your expectations as an organisation were, given your obvious ongoing interest in these matters? It seems to be quite central to your organisation's whole charter.

Mr Taylor—The last indication we had from the government of its direction was the DOCA framework document released in 1997, to which we formulated a response. That document did not give any indication that there was a plan to institute mandatory blocking and filtering. It did have a number of other problems in that it was attempting to involve the state based regulatory system that currently applies to censorship with the Internet regime. We felt that that was totally inappropriate.

In terms of the content of this legislation of introducing blocking and filtering as a mandatory system administered by the ABA, that was certainly not foreshadowed in that document. It has hit the whole industry as a total shock that the government would attempt to impose such a system, particularly when there is no obvious result from the whole thing. It imposes a lot of costs, but it achieves no outcome. The X-rated material will still be there and will still be accessible by children, so why are we doing all of this?

Senator LUNDY—Was the first time you heard of the blocking issue within this legislation when the bill was tabled, or as part of the—

Mr Taylor—No. It was foreshadowed in Senator Alston's media release of about a month ago, I think.

Senator LUNDY—Right, the initial media release. One more question: you say that the legislation has the potential to swamp the ABA with complaints about material. Have you had an opportunity as yet to peruse the evidence provided by the ABA as to what they propose to put in place to actually handle that complaints regime?

Mr Taylor—I was not aware that that was public yet. Is this a recent submission?

Senator LUNDY—We took evidence last night. I am not sure whether the transcript has been distributed. Perhaps you could take on notice, Mr Taylor, to provide the committee with subsequent comment on your organisation's view of the ABA's ability to handle a complaints regime as proposed, given how they described in that evidence how they propose to do it?

Mr Taylor—We will certainly look at that. But if you consider that there are something like 300 million web sites on the Internet, I do not know how many of those would be regarded as sites that would be unacceptable to this government. Let us say it is above 100,000; that is not an unreasonable figure. I do not know how the ABA could possibly cope with any significant number of that magnitude.

Senator LUNDY—Are you familiar with the end-user technology like Net Nanny or software that can be utilised at an individual level to block material?

Mr Taylor—Yes. We have spent a fair bit of time looking at those products in collaboration with other organisations overseas. Our view is that they are imperfect products. They block too much, but they do not block enough. The blocking is entirely controlled by some unknown person. You do not know what the criteria are for blocking. They may provide some comfort for parents who want to use the computer as a babysitter, but we would not particularly recommend them.

Similarly, there are some products that have been offered by ISPs as a filtered service as an option instead of the normal unfiltered service. Again, those products have the same kinds of problems in that a computer program cannot look at a web site and decide whether it is appropriate for children. It can make some guesses based on certain words but it cannot get it right. Needless to say, those services are available now. So if parents feel that the Internet contains material that they do not want their children exposed to, they are quite at liberty to subscribe to those services. It does not require the government to make them mandatory.

Senator LUNDY—How much do those types of remedies cost?

Mr Taylor—For the desktop, they are \$40 or \$50 items.

CHAIR—Thank you very much, Mr Taylor. I appreciate the amount of time you have spent here this evening waiting to give evidence to us. It has been a long night. I thank my colleagues, and also those members of the public who have attended tonight, for their patience.

Committee adjourned at 11.33 p.m.

