

The Committee Secretary  
Senate Environment, Communications, Information Technology and the Arts Committee  
Department of the Senate  
PO Box 6100  
Parliament House  
Canberra ACT 2600  
Australia  
by email: [ecita.sen@aph.gov.au](mailto:ecita.sen@aph.gov.au)

28<sup>th</sup> May 2007

Dear Sir/Madam,

Inquiry into the provisions of the Communications Legislation Amendment  
(Content Services) Bill 2007

We enclose a submission from Electronic Frontiers Australia Inc. in relation to the above Bill.

Enquiries or questions related to the attached submission may be directed to the undersigned.

Yours faithfully,

Greg Taylor  
Board member  
Electronic Frontiers Australia Inc.

Encl: Submission in PDF format.

## **Submission by Electronic Frontiers Australia to the Inquiry into the provisions of the Communications Legislation Amendment (Content Services) Bill 2007**

### **Introduction**

Electronic Frontiers Australia Inc. ("EFA") is a non-profit national organisation representing Internet users concerned with on-line rights and freedoms. EFA was established in 1994, is independent of government and commerce, and is funded by membership subscriptions and donations from individuals and organisations with an altruistic interest in promoting online civil liberties.

In April 1999, EFA lodged a submission to the Senate Select Committee on Information Technologies inquiry into the then proposed Online Services legislation and subsequently presented oral testimony before the Committee. In late 2002, EFA lodged a submission to the *Review of the Operation of Schedule 5 to the Broadcasting Services Act 1992* conducted by the Department of Communications, Information Technology and the Arts ("DCITA"). The DCITA report was tabled in Parliament in May 2004.

EFA's position on the merits and otherwise of the legislation has not changed during this time. While some improvements were made to the initially proposed legislation during its passage through Parliament, in EFA's view, these did not adequately address the many issues and problems raised by EFA and numerous other organisations and individuals. We believe DCITA and the government are already aware of these.

In our submission to the DCITA review, we made the following key points about the scheme, which remain true today:

- There is no evidence or indication in Government reports to support the Minister's claim on 21 August 2002 that the Internet had been made safer as a result of the Government's Internet censorship regime.
- The ABA spent 83% of its Internet censorship efforts investigating content on overseas-hosted websites over which it has no control.
- Approximately half of the prohibited items designated as hosted in Australia were found in world-wide Usenet newsgroups, most likely originated outside Australia, and were not taken down from the Internet.
- The ABA's refusal to provide the URLs or titles of taken-down Australian-hosted web pages, on the ground that such information would enable a person to access prohibited content on the Internet, indicates the ABA believes such content has not been taken down from the Internet.
- Ministerial statements trumpeting the success of the scheme have been, by the Minister's own admission, based on erroneous statistics.
- Misleading statements have been made by the government about the proportion of prohibited content that is actual child pornography.
- The scheme exaggerates the outcomes by claiming newsgroup postings removed from one Usenet newsgroup server as content that has been removed from the Internet.
- The referral of prohibited content to scheduled filter vendors is not followed up to ensure that the vendors add the content to their filter blacklist.
- The application of film classification guidelines to static images and text on the Internet is inappropriate and results in prohibition of content online that is legally available in magazines offline.

- OFLC fees for classification, and review of a classification, of a web page are exorbitant, costing approximately five times the fee for an entire offline magazine.
- Online publishers have less rights in relation to review and appeal of classification decisions than offline publishers.
- The effectiveness or otherwise of the complaints system would be clearer if the outcome of investigations resulting from legislatively valid complaints (i.e. from Australian residents), and information received from other entities such as overseas hotlines, was reported on separately.
- No information has been made available by the government about successful prosecutions, if any, resulting from the scheme.
- The then estimated \$2.7M annual cost of the scheme cannot be justified given the limited outcomes achieved.

The Australian Internet censorship scheme remains today an illogical bureaucratic curiosity in the context of the global Internet. It has almost negligible effect on the material that is available to Australian Internet users and must on any rational grounds be regarded as an expensive policy failure. It is quite astounding that the government now intends to expand this failed scheme to cover newly emerging media delivery systems such as mobile phones.

EFA firmly believes that the system should be scrapped.

## **Protecting Children**

EFA supports measures to prevent publication of material depicting the abuse of children. However, this should properly be a federal police responsibility based on international collaboration and concerned only with internationally-agreed criminal content.

We submit that the present scheme has failed dismally insofar as its alleged objective of making the Internet safer for children is concerned and is totally ineffective in preventing access by children to material that parents may deem unsuitable for them. This conclusion is inevitable given that the current scheme is only able to deal with unsuitable Australian content. EFA supports the availability and use of PC-level filtering because it can be customised to the requirements of individual households. EFA notes with concern that the National Filter Scheme announced over 12 months ago has still not come to fruition and we question whether the government is serious about protecting children. EFA strongly rejects calls made in some quarters for ISP-level filtering as an alternative to PC-level filtering. Such schemes are only found in totalitarian regimes such as China, and they are simply unacceptable in a democracy.

Protection of children on the Internet is a serious community problem, requiring adequate police resources and a commitment to community education, including practical Internet lessons for children and for adults unfamiliar with computer and Internet technology. The Government's Internet censorship scheme has been all fanfare and no substance.

## **Censorship of Adults**

The Explanatory Memorandum to the Bill observes that one of the key principles of the National Classification Code is that *“adults should be able to read, hear and see what they want”*. Yet the Bill enshrines in law the same censorship of adults as the existing legislation, without any explanation whatsoever as to why such censorship should be imposed.

A further principle of the Code is that *“everyone should be protected from exposure to unsolicited material that they find offensive”*, yet the Bill, like the current legislation, fails to deliver on this

principle also. No Australian legislation can possibly make claims about protecting Australians from undesirable content when the vast majority of such content is hosted overseas.

If the government wishes to give genuine effect to the key principles of the National Classification Code it should abandon its futile and clumsy attempts to censor the Internet and move forward with the National Filter Scheme as the most effective means of providing an Internet experience tailored to the needs of all Australians.

EFA submits that the Australian population is quite capable of making up their own minds about what content they wish to access and do not need government to provide nanny-state censorship. Australia still stands alone amongst Western nations in its futile attempt to censor the Internet.

### **Regulation of “Convergent devices”**

The key driver for the Bill is the emergence of new technologies in the form of mobile devices that are capable of delivering Internet and other content. A further driver is the availability of stored and live streaming content to both new and existing devices.

EFA supports the principle that there should be consistent regulation across all media, including the new "convergent devices". However, the proposals go further than the existing regulation covering the Internet and also further than censorship regimes covering other media.

There is no obvious justification for such proposals. New media devices are obviously being targeted by commercial content providers who provide content for a fee. It is highly unlikely that those paying for such services will be other than mature persons capable of making their own decisions about the type of content they wish to receive.

The proposal to limit MA 15+ content on paid services to persons over the age of 18 is quite extraordinary. Content classified as MA 15+ is allowed to be broadcast on free-to-air television so it makes no sense at all to impose a special new censorship regime simply because a new technology device becomes available. The proposal is even more extraordinary when it is considered that we are talking about paid content. One cannot help being reminded of the bizarre requirement that early motor cars were to be preceded by a person carrying a red flag.

EFA acknowledges that content filtering mechanisms for new mobile devices may not yet be available, but they should not be necessary when this content is provided through a paid commercial service and via a delivery system that may also be subject to additional charges for the new types of service. Content delivery is effectively self-regulated through the payment mechanisms in such circumstances.

### **“Links Services”**

EFA submits that the proposal to define and prosecute "links services" is poorly considered. The very term itself is unknown in the Internet community and could only have been dreamed up by a bureaucrat isolated from the real world. The Internet is built upon the concept of hyperlinks, and a site which links to another site cannot have any control over the content on that other site. With the dynamic state of Internet content, it is appallingly bad law to impose such a draconian requirement on all website hosts in Australia. This is a dramatic expansion of the previous regime, the rationale for which has not been properly explained. This proposal should be abandoned.

## **Conclusion**

The existing legislation has failed dismally insofar as its alleged objective of making the Internet safer for children is concerned, and the proposed amendments in relation to new mobile devices and services are totally unnecessary.

While the Australian government will no doubt continue attempting to hoodwink the public, EFA believes that the increasing number of Australian adults who use the Internet means that fewer parents are being lulled into a false sense of security by the government's claims. The government cannot make the global Internet safe, or even 'safer', for children, and the best form of protection is a combination of parental supervision and effective PC-based filters. The government should be held to account for the long delay in implementing the National Filtering Scheme.

The performance of DCITA generally needs to be strongly questioned. The Department took over 18 months to prepare its report on Schedule 5, and the resultant report failed to do any survey of the Internet user population to determine whether the scheme was seen by the public as anything more than a bureaucratic waste of time and money. Given DCITA's failure to provide any government leadership in relation to Australia's broadband infrastructure, the Minister has a lot to answer for.

The existing censorship regime imposed on the Internet is inconsistent with that applied to other media. The government still appears to believe that the Internet needs to be regulated like television, despite the fact that the vast majority of the content is hosted overseas.

The proposed legislation also serves no useful purpose since it is only targeted at censoring Australian content hosts. It will have no effect on the vast majority of Internet streaming content which originates outside Australia.

EFA recommends that the current legislation should not be further considered until a thorough cost-benefit analysis is conducted on the existing legislation.

EFA further recommends that Schedule 5 of the Broadcasting Services Act be repealed and the costly and failed Internet regulatory apparatus be dismantled.