Online regulation: not so ground-breaking

Peter Chen examines the aftermath of the Senate's passing of the Broadcasting Services Amendment (Online Services) Bill 1999

On April 23, when the Minister for Communications, Information Technologies and the Arts introduced a Bill into the Senate to regulate Internet Content, some of the most respected organisations in the computer industry admired the intent but deplored the method of approach. Andrew Freeman of the Australian Computer Society stated that the government "has unrealistic expectations of what technology could achieve". Dr Kate Lance of the Internet Society of Australia said: "The Bill as it stands will do little to restrict children's access to unsuitable material and activities". The CSIRO announced that "blocking access to certain Internet material by Internet Service Providers (ISPs) or 'backbone' providers would be largely ineffective". And the Internet Industry Association (IIA) and Australian Interactive Multimedia Industry Association together said that "the proposed regime will be wasteful of resources and...still result in parents and guardians failing to take proper and effective measures to control access to the Internet by those in their charge".

At the heart of these complaints was the requirement for ISPs to conform to a blacklist of sites maintained by the Australian Broadcasting Authority (ABA) through the use of some form of ISP filtering system. For the industry groups this came as a major surprise as they had been working with government on the belief that a "light touch" regulatory system would be developed that would emphasise self-regulation without attempting universal censoring of the Internet. For industry the original legislation would have imposed substantial financial costs as they would be required to install filtering equipment or purchase prefiltered feeds from other backbone carriers.

While groups like Electronic Frontiers Australia moved to organise street protests against the Bill, the IIA quickly and quietly set about lobbying the government and bureaucracy to amend the proposed legislation, arguing that the Bill's flaws were so severe that the industry would be crippled by the new regulations. While the lobbying effort of the IIA was small (essentially one full time staff member), the effectiveness of this strategy was evident in the fact that the final Bill passed by the Senate on May 27 was substantially different from the original Bill, due to a wide range of government amendments. This also indicates how far Senator Alston's views were from those of his departmental advisers, as the final shape of the Bill significantly returns to the principles for legislation announced in 1997.

Essentially the Bill as amended retains the complaints and take down procedures for X-rated and Refused Classification material hosted within Australia. But the success of the IIA lies with a small set of government amendments that explicitly specify that content blocking must be both technically and commercially feasible and an amendment, number 25, that provides for alternatives to mandatory content blocking from overseas sites. This amendment provides ISPs with the ability to disregard access prevention notices issued by the ABA (the proposed black list of banned overseas sites) if they are adherents of a code of practice that includes an alternative access prevention arrangement approved by the ABA. As such, an arrangement could include the free distribution of filtering software for use at the end-user level (as advocated by the Australian Consumers Association and favoured by the CSIRO) and the industry can comply with the Bill without signifi-

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cant cost or the degradation of Internet performance.

While the industry would not publicly call these amendments a victory, the final Bill is one that it can live with. Indeed many of the larger ISPs already largely comply with the provisions within the legislation. Thus, while the Minister called the legislation "groundbreaking" in its scope and approach, it essentially incorporates regulatory moves that have been implemented or are being considered in Australia: a public complaints mechanism similar to the Internet Watch of the UK, and the mandated provision of end-user filtering software such as is passing through the US legislature.

What has not been addressed by the government in this debate is the social impact of filtering technology being advocated in the legislation. While ISPs will likely adopt a variety of filtering methods to offer to the consumers (and undoubtedly use some of these technologies to market their services as value-added), the minimum condition of end-user software is likely to amount to the use of whatever software package is the least expensive to ISPs competing in a highly competitive environment. Concerns have been raised for several years about the quality of the technology behind the software and its propensity to filter out useful information such as feminist pages, information on breast and prostate cancer, safe sex information, information for young gays and information about the safe use of illegal drugs. Underlying these concerns is that the unthinking adoption of, mainly, US filtering software brings with it the problems of ideological bias and subtle discrimination against political, cultural and social views that may not meet with the approval of mainstream American censors.

From January 1, 2000 Australians will have a censorship system for the Internet that will curtail the use of Australian servers for the distribution of material rated X and RC, and restrict the accessibility of material rated R. But given the nature of the Internet, questionable material will quickly be moved offshore to avoid the compliance regime and the risk of sudden take down, again minimising the work of Australian ISPs obligated to remove material identified by the ABA. The government is now able to claim it has implemented legislation aimed at protecting children from the worst the Internet has to offer.

But the legislation presents a poor picture of policy development in Australia. The initial Bill ignored years of negotiation and discussion with the ISP industry, radicalising a few in the process. The amendment process was fast and sloppy with substantial changes being developed and introduced within the final days of the debate, and the public at large remained largely ignorant of the issue until after the Bill had passed through the Senate.

The Bill, via the significant amendments, is substantially a complex method of achieving industry self regulation for Australian ISPs. The irony of this is that most of the industry would have accepted legislation requiring the implementation of significant codes of practice that meet the requirements of the legislation without having the intense period of political conflict seen over the past two months. Thus the process of presenting such a strict piece of legislation and then backing down was unnecessary for the government, hard pushed on other fronts to advance its second term legislative agenda.

In a way, the industry has only begun to determine the final impact of the legislation as it must now resume negotiations with the ABA to determine what it will accept within the industry code of practice given the shape of the amended Bill. But given the resources available to the Australian Internet industry (which includes Telstra, Cable and Wireless Optus, America Online, OzEmail and Connect.com) the small number of additional staff provided for the ABA in the federal budget may present little real challenge for the industry to quickly co-opt as industry advocates, rather than anti-pornography social conservatives. Given the ABA's limited experience outside the strict broadcasting environment, technical expertise will remain a one-sided affair and in determining what is commercially viable and technically feasible who will the ABA have to rely upon for advice? <

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