



## Chapter 20

# The Government “Downunder” Attempts To Censor The Net

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*In western tradition information ethics has its origins in Athenian democracy. It was characterised by an oral culture and freedom of speech. Later, after a great struggle, freedom of written expression was added. In this age of electronic networks freedom of access to the Internet must be added. Currently, this freedom is under sustained attack worldwide. The Australian Government has joined this attack with the passage of the “Broadcasting Services Amendment (Online Services) Bill 1999. The legislative purpose is to regulate access to content that is offensive to a “reasonable adult” and unsuitable for children. This chapter reports the results of an analysis of the primary sources regarding the Bill. Specifically, it reports on the important issues that were addressed in the parliamentary hearings and debates. It also comments on the success of the legislation after 8 months of operation. Documentation of the Australian experience should inform other countries that are currently attempting to understand and resolve these complex issues, or for those who will attempt to do so in the future.*

## BACKGROUND

Australians claim they live in an open society that guarantees freedom of expression and, by world standards they do. It is however, a society that lacks a Bill of Rights and has no equivalent of the American first amendment. It has a long history of censorship offline that predates the establishment of a federal system of government in 1901. Censorship legislation exists at both the federal and the state/

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territory levels. It differs from state to state. Recently, the federal and state governments turned their attention to the Internet and passed legislation to censor selected material. This legislation also differs from state to state.

On 1 January 2000, the federal government's *Broadcasting Services Amendment (Online Services) Bill 1999* (hereafter the Bill) came into force. The purpose of the Bill is to establish a framework for the regulation of the content of online services. It is this legislation that is the subject of this paper. The Bill seeks to:

1. provide a means of addressing complaints about certain Internet content.
2. restrict access to certain Internet content that is likely to cause offence to a reasonable adult.
3. protect children from exposure to Internet content that is unsuitable for them.

On receiving a complaint about Internet material the Australian Broadcasting Authority (ABA) can require an Internet Service Provider (ISP) to take down X rated or refused classification material (RC) hosted onshore, and, to take all reasonable steps to prevent access to X rated or RC material hosted offshore. In respect to restricted (R) classified onshore content the ABA must be satisfied that restricted access arrangements are in place. No proposal is made in respect to offshore R classified material. The Bill expressly specifies time frames for the take down process and penalties for non-compliance. The Bill expressly does not apply to live Internet content such as news groups, chat channels, or e-mail. A body to monitor online material envisaged by the Bill has been established.

Australia uses a classification system to determine the degree of censorship that is to be applied to a variety of offline media that include films, videotapes, publications, and video games. The Classification Board of the Office of Film and Literature Classification (OLFC) undertake the classification. The state and territory governments also use this. Classification decisions apply criteria that are part of the National Classification Code. The most important "test" that determines a particular classification is the concept of the "reasonable adult." Such a person is defined officially as "possessing common sense and an open mind, and able to balance opinion with generally accepted community standards" (OLFC, 1999b).

## RESEARCH QUESTIONS

The federal government's decision to censor the Internet demands an understanding of, and resolution of, many complex issues. These issues have relevance for government in most countries. These issues are not necessarily new and the experience of other countries in addressing them may differ from Australia. For some countries these remain to be addressed. Documentation of the recent Australian experience in censoring the Internet should inform other countries that are attempting to understand and resolve these complex issues or those who will attempt to do so in the future. Space does not permit detailed reference to other

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