



# Protection of Children from Harmful Internet Content: Case Study – Australia

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## ABSTRACT

*Government and other organizations in Australia have recently expressed concern about the internet. Specifically, this is in regard to the accessibility of content that is illegal or is considered harmful to adults and/ or children. Accordingly Government has responded by enacting legislation to regulate the production, distribution and consumption of such content. This paper reports on the important ethical issue of how to protect children from harmful internet content but also retain the internet as an adult medium. It should inform those of other societies who are or who will need to address this issue.*

## INTRODUCTION

Government in Australia has recently expressed concern about the internet. It is concerned about the accessibility of content that is illegal or harmful to adults and/ or children. Accordingly Government in Australia has responded by enacting legislation to regulate the production, distribution and consumption of such content. In parliamentary debates and hearings, and in official media releases and communiqués the main argument for internet regulation is the need to protect children from harm. In particular, harm from pornography. Government in other countries that are relatively open societies like Australia has made similar responses. The United States, United Kingdom and the European Union are examples.

An elaborate regulatory system for offline media existed in Australia prior to Government concern about the Internet. This system has been applied to the internet. It betrays a lack of understanding by the legislators about the nature and importance of the internet vis-a-vis the offline media. There is a risk that the regulatory framework is unenforceable and ineffective, and therefore unable to protect children from harmful internet content.

This paper reports on the Australian situation in dealing with the important ethical issue of how to protect children from harmful internet content but retain the internet as an adult medium where adults are free to legally read, see and say what they like. This paper should inform those of other societies who are or who will need to address this issue.

## RESEARCH QUESTIONS

The investigation reported in this paper addresses important questions regarding the protection of children from harmful internet content. They are:

- Who are the children requiring protection?
- Are children a homogeneous group requiring the same level of protection?
- Why do children need protection?
- Who decides what internet content is harmful?
- How can children be protected from harmful internet content?
- What protection strategies may be deployed?

## RESEARCH METHOD

In order to address these research questions a literature review and a detailed analysis of primary source documents was undertaken. The literature review concentrated on Australia sources and to a lesser extent other countries. The most important primary source documents analysed are:

- Official Committee Hansard of the Federal and State/ Territory Hearing of submissions concerning proposed legislation
- The House and Senate Hansard (and the State/ Territory equivalents) of the Bills to regulate the Internet
- The Bills of the Federal and State/ Territory parliaments to regulate the internet
- Official Media releases, Communiqués and Reports of regulatory bodies including the Attorney General's Departments

## THE CASE STUDY – AUSTRALIA

### The Regulatory Framework

Australia has a long history of regulation of offline media and concern for protection of children from harmful material. This includes material that is illegal as well as material considered suitable only for adults. It has an elaborate system to regulate the production, distribution and consumption of material both for adults and children. Australia uses classification systems to determine the type of regulation that is to be applied to the offline media that includes films, videotapes, publications and computer games. The internet is treated like a film for regulatory purposes at the Federal level. Television is “self regulated” but uses a similar classification to films. The Classification Board of the Federal Office of Film and Literature Classification (OLFC) undertake classification. The State/ Territory governments also use this. However, differences exist between the States and Territories. Classification decisions about material apply criteria that are part of the National Classification Code. The most important “test” that determines a particular classification is the concept of a “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 1999).

Victoria, Western Australia and the Northern Territory were the first States to regulate online services in 1996 (EFA 2000). This was part of a national framework agreed upon in 1995 by the Standing Committee of Attorney's General. Under such legislation providing unsuitable material to minors is criminalized subject to two defences. First, the accused person did not know that the recipient was a minor and second, that the person took “reasonable steps” to avoid transmitting material to a minor. Some States/ Territories are yet to pass similar legislation. The Federal legislation to regulate the internet came into force on 1 January 2000 (COA 1999). One of its objectives is to protect

children from exposure to internet content that is unsuitable for them. It is a complaints driven system and the Australian Broadcasting Authority (ABA) can require an Internet Service Provider (ISP) to take down or take all reasonable steps to prevent access to X rated (non violent sexually explicit material) and material Refused Classification (RC). The ABA must be satisfied restricted arrangements are in place for material classified R (Restricted). The relevant Minister (Alston) reports every six months on the Co-Regulatory Scheme (COA 2002; 2001; 2000).

The Federal government does not have the power to regulate publications, film, video or computer games. This power is vested with the States/ Territories although most accept the classification codes of the OLFC. The Federal Government has jurisdiction over television and broadcasting under its telecommunications powers and it has legislated on internet content regulations under these powers. However, the Federal government cannot prosecute content providers except for offences, like child pornography, transmission of which is an offence under the Crimes Act.

### Who are Children Requiring Protection?

Who are the children requiring protection from harmful internet content? Are these children an homogeneous group that requires the same kind and level of protection? In terms of Australia law a child is someone under the age of 18 years. However, it is obvious that judgments about the need for protection should take into account the large disparity between say a child of 4 years and one of 17. Again, two children of the same age may require different kinds and levels of protection given differences in their level of emotional maturity and education for instance.

In Australia this is recognized to some extent in the laws relating to regulation of the offline and online media. Films, for instance, may be classified G (General) - suitable for all ages, PG (Parental Guidance recommended) - for children under 15 years, M15+ (Mature Audiences) - for mature audiences 15 years and over and MA15+ (Mature Accompanied) - children under the age of 15 must be accompanied by a parent or adult guardian.

### Why do Children Need Protection?

Most would agree that children need protection from certain internet content because consumption of it may cause harm to them. It may cause emotional trauma for instance. Implicit is an acceptance that a person who has reached their late teens (18+ = adult) is able to exercise a mature choice as to what content to consume compared to someone younger (= child). Also assumed is that if an adult consumes potentially harmful content they are better able to minimize any harm that might be experienced. Without protection there is a greater likelihood that children may be accidentally exposed to harmful content or children may willfully expose themselves to harmful content. The former is most concern for younger children the latter for older children

### Who Decides what Internet Content is Harmful?

Again most would agree that parents or guardians have primary responsibility to regulate their child's access to internet content. The Government can empower parents with education and technology. Relevant industry and professional bodies may also assist parents with responsible behaviour guided by Codes of Conduct. The reality is that legislation may go beyond empowerment of parents and act to constrain decisions about what their children may access on the internet.

The National Classification Code requires that classification decisions are to give effect, as far as possible, to a number of principles. One of these is that minors should be protected from unsuitable material likely to harm or disturb them. This is officially defined (OLFC 1999) as *material that is not appropriate to viewers under 18 years because of its ability to harm (cause development damage) or disturb (cause emotional trauma)*. How then is it decided what is harmful or disturbing? As mentioned previously the most relevant "test" is the standards of morality, decency and propriety accepted by reasonable adults. Another relevant principle is the persons or class of persons, to or amongst

whom, it is published or is intended or likely to be published. To illustrate, the MA15+ Mature Accompanied material is considered likely to be harmful or disturbing to viewers under 15 years according to the OLFC. These guidelines include:

- Generally depictions of violence should not have a high impact, Depictions with a high impact should be infrequent and should not be prolonged or gratuitous.
- Sexual activity may be implied
- Coarse language that is very strong, aggressive or detailed should not be gratuitous
- The treatment of (adult) themes with a high degree of intensity should be discreet
- Drug use may be shown but should not be promoted or encouraged.

Some main differences between MA15+ and R (Restricted - to adults 18 years and over) is that strong depictions of realistic violence may be shown, sexual activity may be realistically simulated, no restrictions on coarse language, adult themes with a very high degree of intensity should not be exploitative and drug use may be shown but not gratuitously detailed.

### What Protection Strategies are Available?

There are two main protection strategies that may be employed to protect children from harmful internet content. First, is that employed by parents and by extension teachers. It is primarily a strategy of effective supervision of what is accessed. This may employ filter software and education about how to deal with potentially harmful and disturbing material. Second, is the legislation of the Government that identifies what is illegal and what is potentially harmful or disturbing to children. It then legislates to make illegal and restrict access by specified groups. The Government can also assist with public awareness and educational programmes and ensuring filter technology is accessible to parents. The Federal Governments community advisory panel called Net Alert has these as part of their mandate. The "internet industry" should also assist with these programmes. As was mentioned previously there is widespread agreement that the best strategy is parental supervision and the use of filter technology and education.

## DISCUSSION - CASE STUDY

### Government Regulation and Reasons for Protection

The classification system used by Government in Australia is portrayed as helpful consumer advice. However, its primary role is censorship. Parental disregard of the "consumer advice" can result in charges being made.

Supporters of censorship legislation agree it is in response to community concern about harm to children. Legislation makes for a safer environment for Australian children (Alston 2001; 2000). Empirical evidence suggests that harm to children, through exposure to pornography for instance is not a major community concern. Instead issues of security, privacy and cost are most important (SSC 260ff; 297-299). The best antidote against potential harm from for children is to educate them about sexuality, violence and adult themes and that they be nurtured in a secure and loving environment. This is the primary responsibility of parents supported by Government, School and Library. The greater the ignorance of the child the more likely the harm will be. Further, censorship acts to promote certain content as "forbidden fruit" increasing its attraction to children. Censorship is thus counterproductive.

In seeking to protect children the regulators betray a lack of understanding about the nature of the internet. The Federal Government treats it like a film but gives regulatory responsibility to the ABA and uses the publications classification system. Aspects of the internet may be likened to certain offline media but it is these and more. Application of a regulatory framework designed for something else is likely to be ineffective or unenforceable. This appears to be the case for Australia (Sandy 2002).

Supporters of legislating to censor the internet claim that its major justification is to protect children from the harmful effects of pornography, with particular attention to child pornography. In practice the concern is not primarily protection of children but with adults who produce, distribute and consume these images. These have long been illegal in Australia and covered by the Crimes Act. What is illegal offline is no less illegal online. Thus there is no need for additional internet legislation (SSC 209).

Opponents of the Federal and State/ Territory legislation argue that it is unenforceable. This is because 90%+ of material that is potentially harmful to children is hosted offshore and beyond Australian jurisdiction (SSC 63ff; HH 7970; SH 5136). Unless Australia is willing to adopt "draconian" controls over the internet this remains the case.

In a relatively open society like Australia if Government legislates to censor internet content then the onus of proof of demonstrable harm of that content rests with it. There is little Australian empirical research about the harm from sexually explicit or violent material for any media. However, studies conducted overseas over many decades suggest that on balance that a causative link between "consuming" sexually explicit images do not lead to acts of sexual violence or worsening attitudes towards women (by men) for instance (Sandy 2001). Many researchers are convinced there is sufficient tentative evidence of harmful effects of violence (with nothing sexually explicit) to warrant caution.

However, the above applies to adults not children. In regard to minors and potential harm from exposure to sexually explicit images there are no reported studies for ethical reasons. In the case of images of paedophilia or images of incest with minors it is widely agreed that these be legislated as illegal by the Government. This is because it is assumed that production of the images involve non-consensual acts.

### Children Requiring Protection

Most would agree that allowance must be made for age differences in regard to the group defined as children in the law. Flexibility is desirable. A person over 18 years may be "harmed" by certain internet content but a child may not be "harmed" by the same content. So long as the classification serves as consumer advice parents can decide about access. Flexibility disappears when the state makes it an offence for the parent to permit a child access to content the state has declared harmful.

In a recent review (Brand 2002) of the classification guidelines for films and computer games it is recommended that a more comprehensive age based system be adopted. This makes a further distinction between children 8 years and over and 12 years and over. This provides a modicum of extra flexibility.

### Decision on Harmful Content

Most agree that parents have primary responsibility for what their children consume on the internet. However, supporters of Government legislation argue there is a need to assist parents in this regard. First, is a concern that computer literate children will deceive their computer illiterate parents and consume content potentially harmful to them (SSC 51; SH 5219; HH 7977). Therefore Government should make decisions on their behalf. A problem is that it is made for all parents not just those who are computer illiterate and is given whether they want it or not. Second, is a concern that parents do not undertake their responsibility to properly supervise their children and so legislation is required to deal with these irresponsible parents (SSC 51; SH 5212, 5219). This is akin to protecting children from their own parents.

Government in classifying content for censorship and consumer advice use the test of the "reasonable adult" and talks in terms of "community standard". Australian society is composed of many communities of widely differing standards in relation to sexuality, gender relations and adult themes. One of Australia's greatest assets is a social structure that is highly pluralistic. In reality the "test" results at best in the majoritarian norm being forced on all communities. At worst it results in a conservative norm forced on the majority. Censorship by Government or any other party and the primary right of parents to decide what their children consume on the internet is largely incompatible.

### Protection Strategies

Government in Australia exhibit trust in the effectiveness of filters for use at home, schools and in libraries. Under the Federal legislation for instance each ISP must make available cheap filters available for service subscribers. However, there is much evidence that filters are notoriously ineffective (CSIRO 2001). They fail to block what they intend to block and block what is not intended to be blocked. The issue here is excessive claims by Government about filters may lull parents into a false sense of security". The misleading rhetoric has the effect of being counterproductive. The adoption of a domain, like .adu, that housed legal sexually explicit material in the United States and Europe would assist Australian regulators to isolate legal material suitable for adults from access by children. It could be mandated that such material be placed on this domain. This is likely to improve the effectiveness of filters. The danger is that it is easier to censor what adults access. Developments like instant messaging and file sharing services may prove more difficult to regulate for the protection of children than the WWW has.

### CONCLUSION

In a relatively open society like Australia all agree that children require protection from internet content that may harm them. Most agree that protection is the primary responsibility of parents. Government can assist by classifying content to provide consumer advice to parents and other persons wishing to consume content. However, the elaborate system to regulate the production, distribution and consumption of internet content in Australia is primarily for censorship of what adults can read, hear and see. A proper role for Government is to empower parents through education and technology to undertake the responsibility of protecting their children. This is of secondary importance in Australia despite protestations to the contrary.

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