



Internet regulation: conflict and compromise

In early July, the Standing Committee of Attorneys-General will discuss Jeff Shaw QC's proposition for a national scheme of regulation for the Internet. The so-called 'Shaw Bill' has been widely criticised by Internet users and advocates of free speech. **Chris Connolly** discusses the Bill in the context of recent US attempts to regulate the content of on-line material, and suggests that the difficulties likely to be encountered in passing such legislation may leave the lawmakers searching for a compromise solution.

A new acronym may soon be added to the blossoming list already employed in communications policy discussion, for the Platform for Internet Content Selection (PICS) is set to become very familiar to members of the Internet community.

PICS is designed to enable supervisors, parents, teachers and other individuals to block access from their computers to certain Internet resources, without censoring what is distributed to other sites. (See the description of PICS).

PICS has grown in recognition as censorship regimes based on criminal sanctions and prohibitions have increasingly found judicial and community disfavour. The first battleground was the United States, where earlier this year the Clinton administration introduced the Communications Decency Act (CDA). Here in Australia, PICS type solutions have gone 'head to head' with proposed State based criminal sanctions and prohibitions.

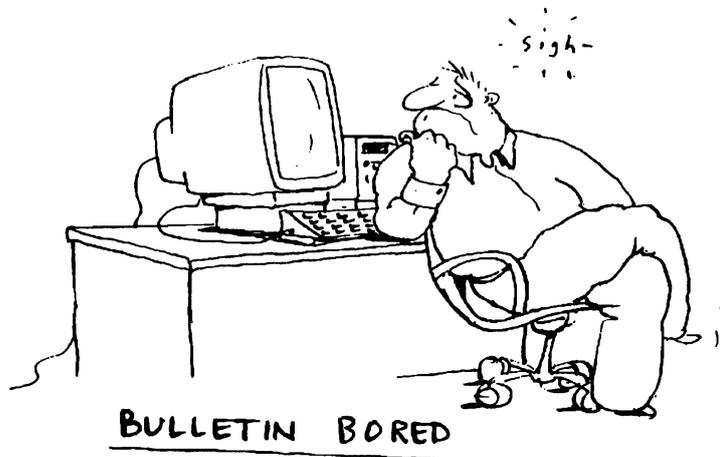
The United States

The CDA makes it an offence to use a telecommunications device to knowingly make or transmit 'indecent' or 'patently offensive' material.

In a remarkable decision, a three judge panel of the US District Court

for the Eastern District of Pennsylvania found the CDA unconstitutional on the grounds that it violated free speech, granting a preliminary injunction on 12 June 1996 - just four months after the CDA's commencement.

The decision itself is an interesting insight into the nature of both



free speech and the Internet. Judge Blackwater expressed the reasons behind the decision in the following terms:

'Cutting through the acronyms and argot that littered the hearing testimony, the Internet may fairly be described as a never-ending worldwide conversation. The Government may not, through the CDA, interrupt that conversation. As the most participatory form of mass speech yet developed, the Internet deserves the highest protection from governmental intrusion'.

Nearly as remarkable was the reaction of President Clinton, who im-

mediately issued a press release which, far from damning the judges and declaring an immediate appeal, contained an almost conciliatory statement:

'I will continue to do everything I can in my Administration to give families every available tool to protect their children from these [offensive] materials.

For example, we vigorously support the development and widespread availability of products that allow both parents and schools to block objectionable materials from reaching computers that children use. We also support the industry's accelerating efforts to rate Internet sites so that they are compatible with these blocking techniques.'

Enter PICS. It seems that while the US went through

the lengthy and expensive process of introducing censorship legislation based on a criminal regime and arguing its legality in the courts, the Internet industry came up with a technological solution of its own - a more sophisticated version of the V chip, which may allow the Government to back down gracefully, and consider a compromise position acceptable to both government and industry.

Australia

In Australia, during the same period, an almost identical scenario was being played out.



PICS - a brief description

The Platform for Internet Content Selection (PICS) is an industry led initiative to develop tools to give Internet users (especially parents) a degree of control over the types of information which can be accessed. Some of these tools include 'self rating' of Internet products, and 'third party' rating by neutral observers - an approach many are finding preferable to the 'prohibition' measures being proposed by state legislators.

PICS began as a collaborative effort by US companies to develop a technical infrastructure which would support the development of a 'labelling' system for material on the internet. PICS does not regulate the content of the labels - that is left to the publishers

of Internet materials or to third parties. The PICS founders describe it as analogous to 'specifying where on a package a label should appear, and in what font it should be printed, without specifying what it should say'.

The basic system interposes 'selection' software between the recipient and the Internet materials. The 'selection' software might be 'SurfWatch' or 'CyberView' (products already available), or any new products which implement the PICS standard.

Labels can come from many sources. Publishers may label products with any text they choose - such as 'suitable for adults only'. Third parties can also label material - for instance, an educational authority might label information it finds

acceptable for use in primary schools, and then issue its own set of selection software to teachers and parents. Children can be protected by the filtering effect of the selection software chosen for them by their parents or teachers. In their simplest form, selection software products can replicate current classifications used for television or film, so that the individual using the computer can get an understanding of the 'rating' of an Internet site before accessing it.

With PICS, no external agency applies their set of standards to what information may or may not *appear* on the Internet. Any information may appear, thus avoiding the adverse effects on free speech likely to be caused by censorship regimes. □

Federal and State censorship officials and ministers began working on a censorship regime for the Internet in early 1995, and in July of that year a short consultation paper on 'The Regulation of On-Line Information Services' was distributed for comment by the Federal Attorney-General's Department and the Department of Communications and the Arts.

This paper contained draft 'offence provisions' relating to the storage and transmission of offensive material on on-line services. The eventual results of this consultation staggered and shocked both the Internet community and the wider community: the paper's proposed offence provisions were adopted by the NSW Attorney-General as the starting point for new State legislation.

In April 1996, Jeff Shaw announced that his Department was preparing a Bill to make it 'an offence to transmit, advertise, permit access to and retrieval of offensive material through on-line services.' His stated intention was to have the Bill accepted as Uniform National Legislation, linked to the National Classification Code which already exists for publications, film,

videos and computer games. The Internet community was perplexed by the possibility that a government would apply such a sweeping censorship regime to the Internet. A copy of the draft legislation was soon leaked to the Electronic Frontiers Association and posted on the Internet. The leaked draft contained provisions banning material considered unsuitable for children (rated MA15 or above) completely, even from private electronic mail. The leaked draft also required Internet Service Providers to 'monitor' both the material being transmitted and the age of the persons accessing material in order to defend themselves against criminal prosecution.

Community outrage

These and other provisions of the leaked draft resulted in widespread outrage amongst the Internet community. The Electronic Frontiers Association labelled the proposed legislative regime 'one of the most repressive censorship systems in the world'. Legal minds turned to consideration of the legality and constitutionality of the proposed offences - a legal minefield

in Australia's complicated state and federal jurisdictions. Free speech was under threat, and there were many prepared to defend it.

In a reply to this growing criticism, Jeff Shaw's office issued a press release in May (perhaps the low point of the entire debate) defending his proposals and stating that the Internet encouraged paedophilia - a claim which naturally caused a great deal of offence in the Internet community.

He stated that he would place the proposed legislation before the next meeting of the Standing Committee of Attorneys-General (SCAG), and if accepted at that meeting, it would be introduced into State Parliaments shortly thereafter. However, as no authorised copies of the proposed Bill were released, concerned parties were left with only the leaked draft to comment on.

During all of this period, the Australian Broadcasting Authority had been conducting its own inquiry into 'The Content of On-Line Services'. The ABA issued a lengthy discussion paper, received hundreds of submissions, attracted wide media coverage and encouraged open debate. The



Communications Law Centre, along with a number of other organisations, lobbied Jeff Shaw's office to postpone consideration of state censorship legislation until the completion of the ABA inquiry. At the time of writing (26 June), the ABA is due to release its final report (imminently), and the Standing Committee of Attorneys-General is due to discuss the 'Shaw Bill' on 11 and 12 July. The ABA conducted a more visible inquiry and received a large number of submissions supporting industry self regulation or no regulation. (See *CU 122* for a summary of the CLC submission). The Chairman of the ABA recently announced that he expected the inquiry to 'report positively on the set of standards being developed for the Platform for Internet Content Selection (PICS)'.

PICS is in essence a technological solution to the classification and description of material on the Internet which hands back control to the end users. It is a far cry from the criminal sanctions and prohibitions outlined in the leaked draft of the Shaw Bill, and something of a 'compromise solution' designed to please a diverse range of interests. PICS is likely to form the heart of any proposed self regulation of the Internet industry in Australia.

Behind the scenes

So how did Australia end up with two opposing regulatory proposals? This, at least, is the appearance when the only information available to the public is a leaked draft Bill together with a bundle of angry press releases from Jeff Shaw's office. But perhaps appearances are deceptive. Just as the Internet is an ever changing and dynamic medium, regulatory policy can also be a moveable feast.

The draft Bill leaked to the Electronic Frontiers Association is a crude

piece of legislative drafting, containing numerous legal and technical errors, which if implemented would result in one of the most extreme and repressive censorship regimes imaginable. It looks and feels out of date. It is unlikely that all of the prohibitions and offences outlined in the leaked draft could survive the extensive drafting and review process which must take place in every state before a uniform national law can be enacted.

The Electronic Frontiers Association labelled the proposed legislative regime 'one of the most repressive censorship systems in the world'

There are indications that the proposed legislation has already been redrafted, and that many of the elements causing concern might no longer exist. In a recent letter to *City Hub* magazine, Jeff Shaw stated: 'I cannot be sure that the 'leaked' copy of the legislation actually reflects the current proposals, as I have not seen it. The draft legislation is confidential because it is still before SCAG. The legislation has not been finalised, and changes may be made'.

Just as the Internet is an ever changing and dynamic medium, regulatory policy can also be a moveable feast

John Dickie, the Director of the Office of Film and Literature Classification, also hinted that the proposed legislation may have changed. Speaking at a recent AIMIA (Australian Interactive Multimedia Industry Association) seminar, Dickie cautioned participants in the debate not to judge the government on rumours that the cut-off standard for the

Internet would be set at MA15. He expressed a personal opinion that this particular requirement would not survive even the second draft of the legislation.

The Agenda for the SCAG meeting on 11 and 12 July is in itself informative. The ABA report is to be discussed before the proposed State legislation is considered, and there is a particular emphasis on developing a consistent approach.

Just as Bill Clinton found that a possible technological solution overtook his Administration's censorship regime, so too may the State Attorneys-General find that technological solutions combined with strong ABA backing for industry self regulation may overtake their own legislative proposals. Indeed, Jeff Shaw's most recent comment on the debate appeared to favour solutions such as PICS over criminal sanctions and prohibitions:

'I agree with Bill Gates that technology can provide a much more effective safeguard without restricting the free flow of ideas. The idea behind the legislation is to ensure that this occurs' (*City Hub* 20 June 1995).

If PICS is considered as an instrument of regulatory policy, it is to be hoped that the ABA's report incorporates a careful consideration of the strengths and limitations of technological solutions to censorship issues. Given the borderless character of on-line communications, any effective deployment of technological tools must eventually consider the international standardisation of classification systems concerning visual and printed material.

In any case, it is to be hoped that 'the idea behind the legislation' receives a more prominent place in the debate, and that the repressive regime as outlined in the leaked draft Bill is allocated to *its* proper place - the wastepaper basket. □

Chris Connolly