

Will PICS Torch Free Speech on the Internet?

Irene Graham of Electronic Frontiers Australia examines the widely endorsed PICS proposals for Internet content labelling and the underlying censorship implications

Rating and labelling of Internet content has been widely hailed as the ideal means of empowering parents to control their children's access to Internet content, without restricting adults' freedom of speech and freedom to read. Whether this is true or not has become one of the most hotly argued topics in the Internet censorship debate.

In mid 1995, with the black cloud of the US *Communications Decency Act* ('CDA') hanging over the Internet, the World Wide Web Consortium ('W3C') began developing an Internet content labelling and selection platform. Their stated goal was to empower people worldwide to control access to online content and thereby reduce the risk of global censorship of the Internet. They announced the result of their endeavors, the Platform for Internet Content Selection ('PICS'), in September 1995.¹

PICS - promoted as "Internet Access Controls Without Censorship" with emphasis on a multiplicity of rating systems, voluntary self-rating by content providers and blocking software on home computers - was enthusiastically welcomed by the Internet community.

Few people paused to consider that technological tools which empower parents to control the access of their children, equally empower totalitarian and paternalistic governments to control the access of their adult populace. Few people realised that PICS-compatible systems could be installed on upstream network equipment, well beyond the control of end-users.

PICS was, in fact, developed to further empower any person or entity with the power to control other peoples' access to Internet content. This includes parents, schools, universities, employers, Internet service providers ('ISPs') and governments.

Since the first two PICS-compatible rating systems became available two years ago, few community groups, commercial organisations or individuals have evidenced interest in developing rating systems. However, governments have

shown great interest in PICS, particularly the Australian Government.

GOVERNMENTS HIJACK PICS

Less than twelve months after PICS was announced, the first indications that governments would be unable to resist the beckoning of PICS - facilitated censorship systems were seen.

In early June 1996, Mr Peter Webb, then Chairman of the Australian Broadcasting Authority ('ABA'), stated:

"An obligation to utilise PICS-type systems, and I don't wish to imply that the ABA is endorsing the PICS system to the exclusion of any other similar or superior system, might have to be enforced."

A month later, the ABA released their report on the "Investigation into the Content of On-line Services".² The ABA recommended, among other things, the development of a single on-line classification/rating scheme compatible with the PICS standards, for use by Australian content providers and consumers. The writers remarked that:

"The support which the on-line community has expressed for the PICS system indicates that it is likely that the PICS protocol or system (or a similar protocol) will be widely and readily adopted by the Australian on-line industry and on-line users."

Unreserved support for PICS systems, then, was hardly surprising. PICS was announced just five months before submissions to the ABA inquiry closed. The first PICS compatible rating and blocking systems were not launched until after the closing date. For most, perhaps all, respondents to the ABA inquiry, PICS was merely a concept; examples of the tools it enables were not available for public scrutiny.

In September 1996, Demon Internet, the largest ISP in the UK, announced they

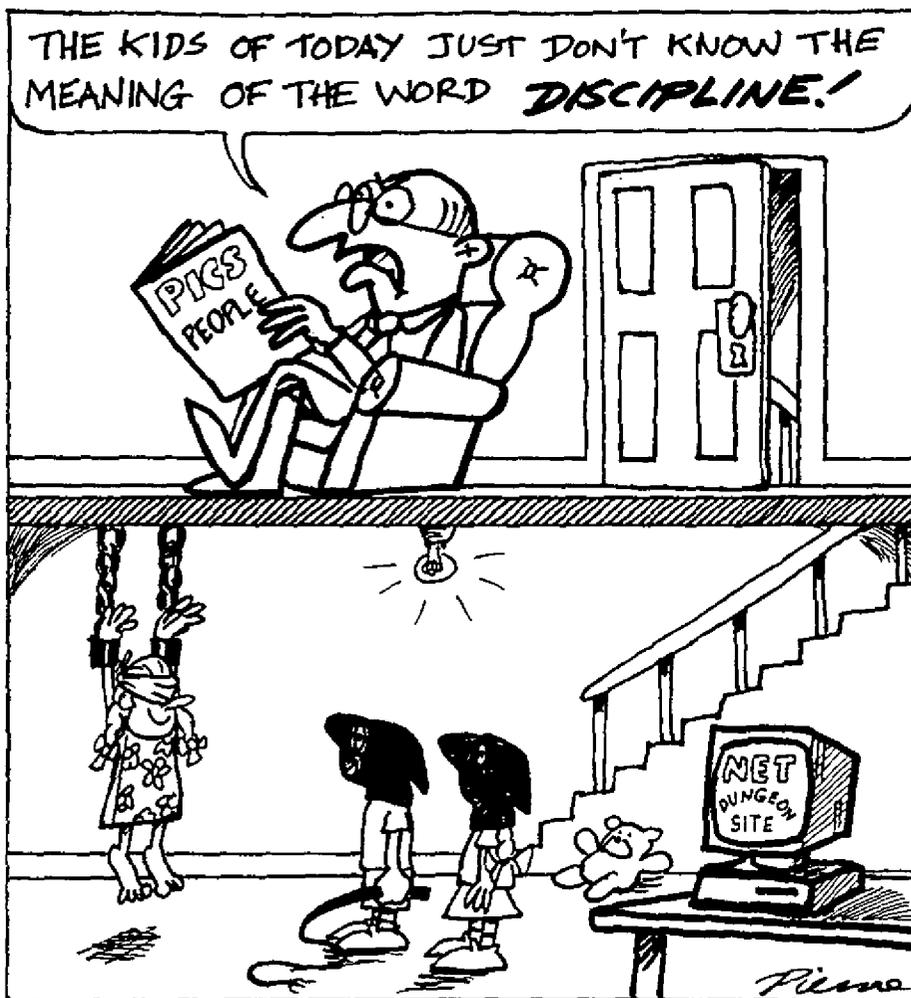
would require all their users to rate their web pages using the RSACi rating system by the end of the year⁴. Three weeks later the "R3 Safety-Net" proposal⁵, endorsed by Internet industry associations and the UK Government, was announced. Under this scheme, ISPs would require all their customers to label their web pages using the RSACi rating system⁶ and ISPs would remove web pages hosted on their servers which were "persistently and deliberately mis-rated".

The R3 Safety Net scheme appears to have been dropped following wide opposition to mandatory labelling and criticism of the RSACi rating system. However, in October 1997 the Internet Watch Foundation (formerly the Safety Net Foundation) announced that a large group of industry and government representatives had formed to develop a worldwide rating system.⁷ The group includes the Australian Broadcasting Authority and the Recreational Software Advisory Council ('RSAC') in the USA.

The prospect of mandatory self-rating and labelling heralded the beginning of a shift in attitude towards PICS. Internet users began considering a wide range of associated issues. Clearly, self-rating cannot be compelled without the application of penalties, potentially criminal penalties, for failure to rate and mis-rating. The purpose of mandating rating, and the ease of rating information correctly, therefore became relevant.

LABELLING DOES NOT PROTECT CHILDREN

While many people believe that material unsuitable for children must be labelled to prevent access, this is in fact false, because PICS systems work the other way around. PICS-compatible blocking programs allow access to unlabelled material, *unless* the user or administrator of the blocking program has set the controls to block access to unlabelled material.



If every document originating in every country in the world which could be deemed unsuitable for children is labelled, then allowing children to access unlabelled material would be practical. However, this is not foreseeable. Not only is it unlikely that every government will mandate labelling, criminals are unlikely to comply with such laws.

Therefore, to protect children from unsuitable material, the blocking program must be set to deny access to all unlabelled material. Otherwise, children are likely to access unsuitable content. Mandating that, for example, Playboy label photos displaying nudity is therefore pointless. Properly configured blocking programs will block access to unlabelled content anyway.

In other words, the sole purpose of labelling, with regard to children's access, is to make material available to children who are using blocking programs, not to block it. Labelling information which is suitable for children, and which publishers wish to make available to those using blocking programs, clearly has greater merit.

MANDATORY LABELLING IS A CENSORSHIP TOOL

Mandatory labelling has the potential to result in censorship by stealth.

Many providers of large quantities of information, including voluntary organisations, community groups and individuals, do not have sufficient staff or time to rate all content. These publishers would be compelled to choose between publishing less information than they otherwise would, or rating all content at a highly restricted level, knowing that content so labelled will be invisible to many people using blocking programs.

Content providers would also be likely to use more restrictive ratings than necessary because Internet rating systems are inherently subjective. For example, the RSACi system requires content providers to guess what a "reasonable" person would think, eg. "clothing on a male or female which a reasonable person would consider to be sexually suggestive and alluring".

Of course, content providers subject to penalties for mis-rating are likely to avail

themselves of web hosting services in countries which do not mandate labelling. Similarly, those opposed to pejoratively rating their own work, using someone else's values, may also take their business off-shore.

TO RATE OR NOT TO RATE

Whether or not governments mandate labelling, widespread usage of rating and blocking systems is likely to banish a vast range of valuable information to the fringes of cyberspace.

Rating systems claimed to be objective, such as the RSACi system, make no allowance for information of artistic, literary, scientific or educational merit. These systems require that information be rated using criteria applicable to blatant pornography and gratuitous violence. For example, a photo of Michelangelo's David, pictorial instructions on conducting breast examinations and information about safe sex, must be rated using the same criteria as applicable to photos in *Hustler* magazine.

Rating news reports presents similar problems. As Joshua Quittner, of *The Netly News*, comments:

*"How would you "rate" news sites, after all? News often deals with violent situations, and occasionally with sexual themes and even adult language. How do you rate that? Do you rate every story? On deadline? Or just rate your entire site as off-limits, since sometimes you'll be covering treacherous terrain?"*³

This conundrum led a group of news organisations in the USA, the Internet Content Coalition, to consider an "N" rating for use by "bona fide" news sites. News sites would rate all content with the "N" label thus enabling parents to choose whether to allow their children access to news. There was just one problem. Who would be given the power to decide who was a "bona fide" news site? Subsequently, in August 1997, representatives from about twenty-five news organisations, including the New York Times, Time Incorporated, the Wall Street Journal Interactive Edition, and the Associated Press, voted not only to drop the plan to create a news label, but went on record opposing Internet ratings for news sites.⁹

While flat refusal to self-rate may be viable for well-known sites, it may not

be practical for those whose sites are generally found by using search engines.

INDUSTRY SELF-REGULATION CAUSES ALARM

Shortly after the US Supreme Court struck down the CDA in June 1997, the US President convened a White House summit on Internet censorship to encourage "self-regulation" of the Internet.

At this meeting, four of the major search engine organisations announced a plan to exclude unrated sites from search results. The president of Lycos was reported to have "thrown down the gauntlet" to the other three. Safesurf, marketers of a PICS-compatible blocking program and creators of a PICS rating system, proposed an "Online Cooperative Publishing Act". Under this Act, any parent who felt their child was harmed by "negligent" publishing could sue publishers who fail to rate or mis-rate material. Parents would not be required to prove actual harm, only that the material could reasonably be required to have had a warning label or a more restrictive label.

Civil liberties organisations in several countries, including the USA, UK and France, have subsequently issued reports cautioning against ill-considered enthusiasm for PICS-facilitated systems. In a paper titled "Fahrenheit 451.2: Is Cyberspace Burning?", the American Civil Liberties Union ('ACLU') stated that they and other civil liberties organisations were "genuinely alarmed by the tenor of the White House summit and the unabashed enthusiasm for technological fixes that will make it easier to block or render invisible controversial speech". The ACLU warned:

"What may be the result? The Internet will become bland and homogenized. The major commercial sites will still be readily available they will have the resources and inclination to self-rate, and third-party rating services will be inclined to give them acceptable ratings. People who disseminate quirky and idiosyncratic speech, create individual home pages, or post to controversial news groups, will be

*among the first Internet users blocked by filters and made invisible by the search engines. Controversial speech will still exist, but will only be visible to those with the tools and know-how to penetrate the dense smokescreen of industry "self-regulation." "*¹⁰

Undaunted by growing opposition to PICS, in November 1997 the W3C proposed an addition to the PICS standards called 'PICSRules'¹¹. PICSRules is a language for writing filtering rules that allow or block access to web sites. The developers envisage that individuals and organisations will develop filtering preference profiles. Internet users will then be able to select pre-configured PICS settings and install them with one click of the mouse button. In addition, PICSRules will help search engines tailor their output. Links to sites which do not meet profile criteria will be invisible to users of the profile. However, given the complexity of the PICSRules language and the few rating systems developed by individuals and organisations, it seems more likely that preference profiles will be developed by governments and installed on upstream computing equipment well beyond the control of Internet users.

During the month in which the PICS Rules specification was open for public comment, members of the Global Internet Liberty Campaign ('GILC') asked W3C to reject the proposals of the PICSRules Working Group, stating:

*"...we oppose the proposed adoption of PICSRules 1.1 on the grounds that they will provide a tool for widespread global censorship, which will conflict with W3C's mission to "realize the full potential of the Web...as an efficient human-human communications medium." "*¹²

Despite the concerns raised, the W3C approved PICSRules.

W3C representatives defend PICS and PICSRules on the ground that they are merely technical standards. They express the view that it is the role of others to ensure that PICS technologies are not used to control societies. PICS critics contend that PICS is more than a mere technical standard; it is a standard developed with the express purpose of making the architecture of the Internet

ensor friendly. As such, PICS technologies raise fundamental issues about free speech which should be debated in public. W3C, an organisation of industry and government representatives, readily acknowledge that they have not adopted the position that unrestricted access to information is a fundamental human right that transcends national sovereignty.

For many years, the Net community has proclaimed that the Net treats censorship as damage and routes around it. Until a means of routing around PICS becomes widely available, people concerned about threats to free speech would be well advised to shine the hot light of public scrutiny on W3C and governments interested in PICS. PICS, like the CDA that kindled it, threatens to torch a large segment of the Internet community.

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1 PICS Created, W3C Media Release <http://www.w3.org/PICS/950911_Announce/pics-pr.html>

2 Speech by Peter Webb, Asian Mass Communications Research and Information Centre Conference, Singapore, 1-3 June 1996 <<http://www.dca.gov.au/aba/amic.htm>>

3 ABA Report <<http://www.dca.gov.au/aba/olsrprt.htm>>

4 Demon Internet UK announcement <<http://www.demon.net/news/features/censor.html>>

5 R3 Safety Net Proposal <<http://dtiinfo1.dti.gov.uk/safety-net/r3.htm>>

6 RSAC <<http://www.rsac.org>>

7 Media Release: Worldwide Internet Content Labelling Development <<http://www.internetwatch.org.uk/press.html>>

8 Dis-Content Coalition, Joshua Quittner, The Netly News, 13 December 1996 <<http://pathfinder.com/Netly/daily/961213.html>>

9 RSAC shelves news rating, Tim Clark and Courtney Macavinta, News.com, 10 September 1997 <<http://www.news.com/News/Item/0,4,14139,00.html>>

X-Rated Ratings?, J.D. Lasica, American Journalism Review, October 1997 <<http://www.newslink.org/ajrjdl21.html>>

10 Fahrenheit 451.2: Is Cyberspace Burning? How Rating and Blocking Proposals, May Torch Free Speech on the Internet, ACLU, August 1997 <<http://www.aclu.org/issues/cyber/burning.html>>

11 PICSRules W3C Media Release, November 1997 <http://www.w3.org/Press/Internet_Summit>

12 GILC submission to W3C on PICSRules, December 1997 <<http://www.gilc.org/speech/ratings/gilc-pics-submission.html>>