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AUSTRALIA AND THE QUESTION OF INTERNET CONTROL

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Abstract

The Australian Federal Government is concerned about the impact of the Internet on Australian society and has been considering ways to protect the Australian public against the “darker” elements of the Internet. The Federal Government has proposed a new model whereby Internet Service Provider’s (ISP’s) level the filtering of overseas hosted Internet material classified as Refused Classification (RC) under the National Classification Scheme. This paper will describe the historical development of this strategy and will analyse the outcome of the public consultation of the proposed Australian Federal Government proposals.

1. Introduction

Australia as a part of the global information society has had to deal with a number of ethical issues in relation to the Internet and its usage; particularly, the distribution of illegal material and the impact of Web 2.0 on Australian society. In the Oceania region of the world there are 20.8 million Internet users, which represents 60% of the region’s population (InternetWorld, 2009); this clearly demonstrates the strong popularity of the Internet in Australia.

Historically, the initial focus of the Internet was the distribution of information in a static manner, but over time and through the development of technology the Internet has now developed into Web 2.0 (DiMeco and Millen, 2007).

The Web is no longer a collection of static pages of HTML that describe something in the world; increasingly, the Web is the world. Everything and everyone in the world exists an “information shadow,” an aura of data which, when captured and processed intelligently, offers extraordinary opportunity and mind-bending implications (O’Reilly and Battelle, 2009). In recent years the emergence of Web 2.0 and related Internet sites, such as Facebook have had a major impact upon the Internet (Shuen, 2008).

The paper will review and analyse the proposals put forward by the Australian Federal Government in regards to Internet content control.

2. Australian Government Strategies

One of the proposals put forward by the Australian Federal Government to deal with the concerns of the Internet is the introduction of mandatory Internet filtering; Internet Service Provider’s (ISPs) will run the mandatory Internet filtering system on behalf of the Australian Federal Government. The overall aim is to ensure that Australian Internet users have no access to any information that is considered illegal under Australian law.

As a part of the process, in 2010 the Australian Federal Government via the Department of Broadband, Communications and the Digital Economy sought public views regarding how to deal with illegal content via the Internet. This paper analyses this public feedback and reflects on current trends that exist within that data.

The chronological time frame for the public consultation process is at follows

2009 – Initial National Debate

The Australian Minister for Broadband, Communications and the Digital Economy (Senator Conroy) announced measures to require Internet Service Provider’s (ISP’s) to implement the filtering of Internet material classified Refused Classification (RC) under the National Classification Scheme that is hosted overseas. Such material includes child sexual abuse imagery, bestiality, sexual violence, instructions on how to perpetrate criminal acts related to violence or drug use and/or material that advocates the commission of a terrorist act (Australian Government, 2009).
The government also aimed to introduce legislation which would enable the creation of an RC overseas prohibited content list but existing arrangements for Australian-hosted prohibited content would remain in place. The ACMA (Australian Communications and Media Authority) blacklist of content that is provided to PC filter vendors would also continue.

As part of this process public comments were sought on the proposed additional measures to increase transparency and accountability. The Federal Government proposed six options for public consultation, which were (Australian Government, 2009):

**Option one: Refer all material to the Classification Board**

The ACMA would refer all complaints initially assessed as containing potential RC content to the Classification Board for classification to check that the ACMA assessment was correct. Material assessed by the ACMA as potentially containing RC content would be placed on the RC content list for filtering whilst the Classification Board made its classification decision. The ACMA would be bound by the decision of the Classification Board.

**Option two: ACMA notification procedure**

Then prohibited content was hosted in Australia and became the subject of a complaint the ACMA would notify the content owner; as under existing laws the owner is required to remove or restrict access to the content for Australian users.

However, there may be some concern that owners of content hosted overseas may not know that their content was contained on the RC content list. To address this, it was proposed that in circumstances where the owner of overseas-hosted content that is the subject of a complaint to the ACMA is readily identifiable and contactable, the ACMA will notify the owner that a URL associated with their content (for instance, a specific webpage) was added to the RC content list. This would give the relevant content owner an opportunity to voluntarily remove the content or to seek a classification from the Classification Board if the owner believes the ACMA decision is not correct.

In this case, the ACMA would ask the Classification Board to give priority to its classification of that content. Where the Classification Board has already made its classification decision, the content owner could seek a review by the Classification Review Board and provide arguments or evidence to support the review.

However, no notice would be given where the content owner is not identifiable or contactable, or the content is the subject of a police investigation and the Australian Federal Police requests the ACMA not to notify the owner.

**Option three: Blocking notifications page and appeal mechanism**

The introduction of a standardised 'block' page would advise end-users that the content they have attempted to access is blocked by the filter because it is on the RC content list. The page could:

- state that the user's Internet browser has attempted to access content that is blocked based on the nature of the content; and
- provide information on how to seek a review of this if the user believes that the decision to add the content to the RC content list has been incorrectly made.

The block page notification would apply to the entire RC content list regardless of whether the content was included as a result of a complaint to the ACMA or through the incorporation of international lists from highly reputable overseas agencies.

Content owners whom the ACMA cannot readily identify and contact may therefore also be alerted through this process that parts of their website are included on the RC content list. If they consider that the relevant URL (*Uniform Resource Locator*) does not provide access to RC content, they could then seek a review of the decision.

The ACMA would refer any reasonable request for classification to the Classification Board where the ACMA has added content to the RC content list (where the ACMA has made the initial assessment and the Classification Board has not yet made its classification decision under option one above, if that option is also adopted), or to the Classification Review Board (where the Classification Board has made its classification decision under option one above) provided the person requesting the review supplies contact details including their name and address. In these circumstances the ACMA would request that the Classification Board make the assessment a priority. The ACMA would then be bound by the decision of the Classification Board or Classification Review Board.

The ACMA would advise the person seeking the review of the outcome of the process when it had been completed.
Option four: Incorporation of content from international lists

Material added to the RC content list through incorporation of international lists of overseas-agencies would occur only following a detailed assessment by the ACMA of the processes used to compile those lists.

Another possible measure is for the ACMA to provide a regular, representative sample of content added from the international lists to the Classification Board for classification, with the ACMA being bound by their decisions. This may require legislative change and amendments to existing industry codes of practice.

Option five: Review by an independent expert and report to Minister and Parliament

An independent expert (most likely a person with extensive experience in classification matters) could undertake an annual review of the outcomes of the processes described in option four above as well as the processes used by the ACMA to initially assess content. This would include timeliness in dealing with complaints and requests for review of content added to the list. The independent expert would then report to the Minister with that report tabled in Federal Parliament, possibly for consideration by a Parliamentary Committee.

Option six: Review by industry group of RC content list classification processes

Formation of an industry group to consider the administrative arrangements that the ACMA and/or the Classification Board have in place to assess complaints/classify applications relating to online content. This would not involve the group looking at items on the RC content list itself, but reviewing the ACMA processes that are followed when investigating Internet content complaints. The industry would provide feedback to the ACMA and produce an annual report to the Minister that would be subsequently tabled in Parliament.

2010 - Public Consultation

A process of public consultation was undertaken, with the aim of receiving feedback from the Australian general public, corporations, charities and non-profit organisations. The public consultation process was undertaken between the 15th December 2009 and 12th February 2010.

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Table 1: Analysis of Public Feedback
The Department of Broadband, Communications and the Digital Economy received 174 submissions from a cross-section of the community, including individuals, industry and community organisations. Thirty-six submissions were identified by their authors as being confidential, and one submission was not published as it promoted a commercial product (Australian Government, 2010). The Department did not publish the submissions received which had been marked as confidential.

One hundred and thirty seven public submissions were used by the Australian Government to gain insight and determine the views of the Australian public. In terms of this research, of the 137 submissions, 18% of the submissions as these submissions did not answer the questions that public consultation was sought on, in some cases the submissions were academic papers, others were political essays. This left a sample of 112 submissions to be analysed. This analysis is presented in Table 1.

In terms of the analysis, the null values refer to public feedback that was recorded as either being please select or not applicable. In terms of the six options, not one of these options was supported at the end of the public consultation process, based upon the analysis of responses (the majority did not any of the options).

Interestingly, the Australian Government did not include any quantitative analysis from the consultative process in their public feedback report. The Australian Federal Government instead focused on the qualitative submissions and feedback and cited supportive qualitative quotes from the following submissions:

Google; The Australian Christian Lobby; Electronic Frontiers Australia; Telstra; Professors Lamby Green and Hartley and Family Voice Australia.

Following the public review, the Australian Federal Government put forward the following recommendations (Australian Government, 2010):

**Measure 1: All Internet content complaints to the ACMA that are assessed as being potentially RC will be classified by the Classification Board.**

The Australian Communications and Media Authority (ACMA) will refer all complaints it assesses as potentially containing RC content to the Classification Board for classification.

**Measure 2: ACMA notification process.**

Where material has been assessed by the ACMA as potentially RC, and the owner of the material or the content service provider is readily contactable and identifiable, the ACMA will provide that content owner or content service provider with brief reasons as to why the material has been assessed as potentially RC.

**Measure 3: Blocking notification page and appeal mechanism.**

A standardised ‘block’ page will be used to advise people trying to access a filtered URL, including end users, content owners, or content service providers. This will inform them that the content they have attempted to access is blocked by the filter because it is on the RC Content List.

**Measure 4: Access to information regarding the list.**

The ACMA would regularly publish on its website an up to date ‘high-level’ breakdown of the RC content list by category.

**Measure 5: Avenues for appeal and review.**

Formal procedures to be set to provide for reviews of the classification of content requested by ‘aggrieved persons’ both under the National Classification Scheme and the Broadcasting Services Act 1992.

**Measure 6: Incorporation of URLs of child sexual abuse imagery from international lists.**

The ACMA will strengthen the RC Content List through the incorporation of lists of URLs of child sexual abuse imagery obtained from highly reputable overseas agencies, following a detailed assessment by the ACMA of the processes used by the agencies to compile those lists.

**Measure 7: Review by an Independent Expert and report to Parliament.**

An independent expert (possibly a retired judge) would undertake an annual review of the processes that lead to the inclusion of URLs on the RC Content List.

**Measure 8: Industry review of technical aspects of filtering.**

The Department and the ACMA will develop means by which ISP’s and other industry organisations can raise technical issues relating to ISP filtering. This could be done for example through the
establishment of a Departmental email address which would allow ISP’s to submit any concerns or queries they have on technical matters.

Measure 9: Reporting against service standards and statutory requirements

The ACMA and the Classification Board would publish and report against service standards and statutory requirements under the new scheme.

2010 – After the Public Consultation Process

On the 9th July 2010, the Australian Minister for Broadband, Communications and the Digital Economy, Senator Stephen Conroy announced a number of new measures, including (Conroy, 2010):

- An annual review of the RC Content list by an independent expert who will be appointed in consultation with industry;
- Clear avenues for appeal of classification decisions;
- That all content identified on the basis of a public complaint be classified by the Classification Board under the National Classification Scheme; and
- That affected parties have the ability to have decisions reviewed by the Classification Review Board.

On the 21st August 2010, a national election was held in Australia and the ruling majority Labor government was reduced to a minority Labor Government; they were able to form government with the support of the Green Party as well as other independent members of parliament (ABC, 2010).

Senator Stephen Conroy announced that there would be a delay to the introduction of the mandatory Internet filtering scheme. Instead, legislation would be introduced in 2012, that would require all ISP’s to filter Internet content based on the RC content list. Once the legislation has passed it is likely that the implementation of the web filtering plan would take another 12 months (2013-14).

In the meantime (2010), three of Australia’s largest ISP’s (Telstra, Optus and Primus) agreed to block a list of child abuse URLs compiled by the Australian Communications and Media Authority (ACMA) (The Australian, 2010).

3. Conclusion

The paper has undertaken the first analysis of the public consultation process undertaken by the Australian Federal Government to increase accountability and transparency for refused classification material. The paper has shown, based upon the analysis of the consultation that there was no public support for any of the measures put forward, but the Australian Federal Government in its response has not recognised this feedback and instead has only utilised some of the qualitative feedback obtained through the public consultation process to try to justify its case to proceed with its proposals.

The paper has followed closely the process initiated by the Australian Federal Government in 2009 to its current stalled state (in 2011). Only time will tell whether Australia will move ahead with its plan to implement a mandatory Internet filtering system or whether the idea will disappear into the annals of history.

References


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