



# Watch on censorship

*The Senate Committee recommends stricter controls for on-line services*

*'The interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of censorship.'*<sup>1</sup>

On the same day that the US Supreme Court ruled the Communications Decency Act (CDA) unconstitutional, the Senate Select Committee on Community Standards Relevant to the Supply of Services Utilising Electronic Technologies tabled its latest report on regulation of on-line services.<sup>2</sup>

The former event was warmly welcomed by civil libertarians in the US as an affirmation of free speech values, whereas the latter is creating ripples of unease in Australia. Indeed, some of its recommendations echo the legislation rejected in the US.

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## Freedom of Internet communication

While some of the fifteen recommendations made by the Committee (see box) are both commendable and practical (for example, the suggested public education campaigns to familiarise parents with ways of controlling children's access to unsuitable material and to familiarise users with their obligations under existing laws), others, if adopted, are likely to result in Australians being less able to freely utilise the extended communications capabilities of the Internet.

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## Majority report

The majority of the Committee has made recommendations that would result in material that is legal in other media illegal if it is made available through an on-line service. Further, while commercial users and providers of on-line services might have the resources to implement and administer the suggested regulatory structure, ordinary users may well find it difficult or impossible to comply.

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Anyone who sends or receives email, corresponds with a newsgroup or sets up their own homepage is capable of falling foul of the legislation suggested in recommendations 1 and 8 or otherwise breaching a code (maximum fine \$100,000). Given the possible breadth of 'material unsuitable for minors' it is not impossible to imagine that ordinary and otherwise law-abiding citizens might unintentionally become law breakers able to be detected in the suggested police random audit (Rec 9). Minority reports by senators Denman and Reynolds (Labor), and Stott Despoja (Democrat) have rejected these and other proposals.

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## A broadcasting medium?

Unlike the US Supreme Court, which recognised that the Internet was not like broadcasting, in that it was not as 'invasive' as radio and television and had one-to-one characteristics, the majority of the Committee saw more similarities than differences, resulting in its recommendations to treat on-line material as something suitable for a classification and censorship regime similar to that currently applying to film and broadcasts.

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## CLC submission

In its submission to the Committee, the Centre noted that recent research did not reveal that children were being exposed to any significant extent to undesirable material (however defined). The Centre was not convinced that Australian citizens should be prevented from accessing material merely because it was unsuitable for children when technological and educative solutions were currently available to protect children.

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### Summary of recommendations

1. Commonwealth, state and territory legislation to create an offence to 'use a computer service' to transmit, obtain possession of, demonstrate, advertise or request the transmission of material which is or is likely to be refused classification or to be in a restricted category under the National Classification Code
2. Establishment of independent complaints handling body, overseen by the ABA or another government body, based on the Telephone Information Services Standards Council (TISSC)
3. Introduction of legislation modelled on the *Broadcasting Services Act 1992* requiring 'participants in the on-line industry' to develop and register codes of practice
4. Provision for financial penalties of up to \$100,000 to be imposed for breaches of such codes
5. Protection from prosecution for Internet Service Providers (ISPs) who choose in good faith to restrict access to legal material that 'could cause offence'
6. Mandatory for suppliers of restricted material to require PIN (available only on proof of age) before granting access to restricted material
7. ABA to investigate the development of reliable age verification procedures
8. Uniform Classification/Censorship legislation covering 'transmission of material unsuitable for minors' and making it an offence to 'transmit objectionable material'. Standard definition of 'objectionable material' to be adopted
9. Designated state and territory police units to conduct random audits of on-line material for illegal activities on enactment of above legislation.
10. Funding for an on-line advertising campaign accompanying any regulatory measures to provide information for Internet users to make them aware of existing legislation and their legal obligations
11. Codes of practice should also require retailers and service providers to give customers information on methods available to manage child access (eg blocking and filtering devices)
12. Community education campaign should include an aim to make parents and those responsible for children aware of the pros and cons of various blocking devices.
13. On-line labelling Task Force to be convened to design a scheme for labelling content that takes into account Australian cultural values and principles governing the existing classification scheme
14. Establishment of an e-mail, phone and fax hotline to receive information from Internet users about possible illegal material (including paedophilic material and child pornography)
15. Government to pursue the international Agreements to facilitate pursuit of those involved in criminal activities using on-line services

The majority of the Committee appear relatively unimpressed by arguments about the limited amount of illegal material (in essence, child pornography and paedophile-related material) available on-line and the utility of existing legislation to deal with the situation. Also, and again unlike the Supreme Court<sup>3</sup>, the Committee appears to be of a view that the potential harm to children from exposure to unsuitable material is so great that it is preferable to restrict availability of material much more generally.

It remains to be seen which, if any, of the recommendations will be adopted by government. One thing is certain, the controversy over Internet regulation is not going away. □

#### Lucy York

<sup>1</sup> *Reno, Attorney General of the US et al v American Civil Liberties Union et al per Justice Stevens for the majority. Text available at [http://www.ciec.org/SC\\_appeal/opinion.shtml](http://www.ciec.org/SC_appeal/opinion.shtml)*

<sup>2</sup> *Report on Regulation of On-line Services Part 3, available at <http://www.senate.apf.gov.au/committee/reports.html>*

<sup>3</sup> *The US Court had noted that while government has an interest in protecting children from potentially harmful material, the CDA pursued that interest by suppressing a large amount of material that adults had a right to send and receive. This was unacceptable if less restrictive alternatives would be at least as effective. The Court was also concerned with the vagueness of the legislation and the effect on non commercial "speakers" who would have difficulty verifying ages etc.*