VAPOURS AND MIRRORS

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Politicians pretend there is a problem and industry pretends there is a solution
- Professor Nadine Strossen, American Civil Liberties Union

I. BACKGROUND TO THE ACT

The *Broadcasting Services Amendment (Online Services) Act* 1999 (Cth) ("*Online Services Act*") is the unhappy outcome of over six years of government and Internet industry debate over Internet content regulation. Since the 1993 Federal Government investigation of computer bulletin boards, the governments of Australia have been attempting to develop laws to regulate transmissions over computer networks, with a particular focus on restricting the availability of pornographic material due to the efforts of moral campaigners such as Senator Brian Harradine.[1]

In 1994, the Federal Government released a Department of Communications and the Arts ("DCA") report which offered two alternative options for regulating the Internet: the banning of 'adult' material from bulletin board systems; or a rating system, akin to movie classifications, permitting 'R' and 'X' rated content (subject to State and Territory laws).[2] A review of State and Territory legislation was recommended, with the Federal Government providing a consistent classification standard. Although a consultation paper with proposed offences and an apparent intent to regulate rather than ban 'adult' material was released in

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1 The history of online censorship is detailed on EFA's website at <http://www.efa.org.au/Issues/Censor/cens1.html#hist> at 1 February 2000 (Copy on file with author).

2 *Report on Regulation of Computer Bulletin Board Systems*, 8 August 1994.

1995,[3] no subsequent report on the findings from public submissions to the DCA was ever made public.

In 1996, the Australian Broadcasting Authority ("ABA") produced a report recommending that the Internet be regulated in a like manner to other Australian media, by rating Internet content consistently with other media.[4] This resulted in a Federal Government discussion paper stating the Government's intention to regulate Internet content by placing the onus on content providers to rate content before online publication.[5] The industry reaction was critical. For 18 months, the Government ceased to press for Internet regulation. The Minister for Communications, Information Technology and the Arts, Senator Alston, stated on national television in 1998 that the Government had decided not to regulate online content in isolation from international developments, and was considering the impact of such legislation upon the emergent Australian Internet industries.[6]

International developments during that period included the demise of legislation regulating Internet content in the USA due to the free speech protections under the First Amendment,[7] the Canadian Government's determination not to attempt to censor the Internet,[8] and the relaxation of regulations applying to Internet content in Malaysia and Singapore.[9] Within Australia, diverse Internet groups were formulating codes of practice and establishing prosecution procedures with regulatory authorities, the latter development leading to successful prosecutions of Internet child pornographers, frauds, copyright violations and threatening behaviour under laws of general application.[10]

Then, just before the debate over the goods and services tax bills, the Federal Government rushed through Parliament wide-ranging legislation regulating the Internet more severely than pay-television, and imposing massive penalties on

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3 DCA, *Consultation Paper on the Regulation of Online Services*, July 1995.

4 *Investigation into the Content of Online Services*, July 1996.

5 Joint Statement by the DCA and the Federal Attorney-General, *Principles for a Regulatory Framework for Online Services in the Broadcasting Services Act 1992*, July 1997.

6 "Today Tonight" *ABC Television*, October 1998.

7 *Reno v American Civil Liberties Union* 117 S Ct. 2329 (1997).

8 The Canadian Government decided to call for extensive public consultation in a discussion paper. G Sanson, "Illegal and Offensive Content on the Information Highways", 19 June 1995, Electronic Frontiers Canada, <http:insight.mcmaster.ca/org/efc/pages/doc/offensive.html> at 1 February 2000 (Copy on file with author). This was followed by a detailed report from the Canadian Radio-Television and Telecommunications Commission in May 1999 that recommended against government regulation of the Internet. Canadian Radio-Television and Telecommunications Commission, "CRTC Won't Regulate the Internet", Media Release, 17 May 1999, available at <http://www.crtc.gc.ca/ENG/NEWS/RELEASES/1999/R990517e.htm> at 1 February 2000 (Copy on file with author).

9 "Singapore to Relax Censorship Laws as it Seeks to Expand Internet Access" *Wall Street Journal*, 1 September 1999.

10 Criminal prosecutions for possession of child pornography were commonplace in all Australian jurisdictions. The Brisbane Sunday Mail reported on 24 March 1996: "A man has been fined almost $10, 000 in the Gladstone District Court for possessing child abuse computer games in the first significant test of Queensland's computer pornography laws".

Internet service providers ("ISPs") who breach its provisions.[11] The Broadcasting Services Amendment (Online Services) Bill 1999 (Cth) ("the Bill") was a transparent attempt to win the vote of Independent Senator Brian Harradine in favour of the Government's tax reform program. While the Bill failed to secure Harradine's support for tax reform, Senator Alston had backed the Government into a corner by scorning technical criticism of the Bill, although last-minute amendments introduced some face-saving loopholes.[12] The Government had become caught in its own rhetoric, decrying critics for condoning illegal activities and claiming the high moral ground.

Consequently, the Bill was enacted. Since 1 January 2000, Australia has had legislation that not only requires ISPs to take down prohibited material, but also seeks to somehow stop Australians accessing the same material from overseas sites.

The technical and ethical failings of the law have been debated at length elsewhere, and I do not propose to canvass them in detail here. Briefly, the law rates the various multimedia available through the Internet as if it were entertainment media such as film or television, and purports to make the ABA the arbiter of the legality of content from all over the world. To mitigate against the compliance and enforcement costs of such an ambitious enterprise, the *Online Services Act* requires the ABA to exercise its powers only if a genuine complaint is made and provides a loophole against liability for ISPs who offer filtering systems to end-users to block content at large.[13]

While enforcement relies on a complaint-based service, the ABA is required to administer an industry co-regulation scheme that has as a centrepiece an industry content code for ISPs and Internet content hosts ("ICHs"). These industry codes require ISPs and ICHs to find technical means of fulfilling the Government's aim of censoring the Internet and will represent a privatised censorship more severe than the complaint-based public face of the censorship regime.

The Government has recently appointed a committee called NetAlert, unsurprisingly based in Tasmania, which includes three members of the pro-legislation Internet Industry Association ("IIA").[14] Clearly, it was the Government's intention that the committee approve the IIA Codes of Practice for ISPs and ICHs, and to thereby require the 91 per cent of the ISP industry that are not IIA members to abide by a "self-regulated" censorship regime. With the threat of Federal Court orders and daily penalties of $27 500 for failing to abide

11 *Broadcasting Services Act* 1992 (Cth), Schedule 5, Part 6, especially ss 82 and 85 (as amended by the *Online Services Act*).

12 See the amendments to the *Broadcasting Services Amendment (Online Services) Bill* 1999 outlined in red, at<http://www.ozemail.com/~mbaker/amended.html> at 1 February 2000 (Copy on file with author). The IIA claimed credit for forcing a series of amendments which considerably softened the impact of the new laws. See IIA, <http://www.iia.net.au/news/990611.html> at 1 February 2000 (Copy on file with author).

13 Note 11 *supra*, ss 26(2), 40(4) and 60(3).

14 The full composition of the NetAlert committee is detailed on Irene Graham's website at<http://reme.efa.org.au/liberty/debateld.html> at 1 February 2000 (Copy on file with author).

by an industry code,[15] it is EFA's view that this is merely an outsourcing of Government regulation at a level of severity unprecedented in other media.

II. MODELS FOR REGULATION OF THE INTERNET

The recent Internet Content Summit held in Munich[16] canvassed the views of Internet experts from around the world in relation to possible models for the regulation of Internet content. At one extreme, in relation to child pornography, all governments are agreed that police prosecution is the only appropriate enforcement policy, though many governments see value in industry-backed hotlines and education campaigns. The controversial issue, however, relates to so-called 'harmful' material; that is, content that may be legal for adults in other media but is traditionally restricted from access by minors.

The issue is complicated by different cultural views as to what constitutes 'harmful' content. For example, restrictions on nudity and extreme political views vary markedly from jurisdiction to jurisdiction. While Australian censors ban naked breasts from display in magazines and billboards, in Europe such nudity is considered neither harmful to children nor offensive to reasonable adults. Similarly, displaying a Nazi flag, while a prison offence in Germany, is a common form of political protest or even a fashion item elsewhere.

Governments in the USA have abandoned attempts to ban constitutionally-protected material, and have adopted a truly self-regulated system where end-users themselves determine what material may be accessed in the home. This policy is partly pragmatic, since American courts have struck down the last two attempts by Congress to censor the Internet, being the *Communications Decency Act* 1996 (USA)[17] and the *Children's Online Protection Act* 1998 (USA).[18]

In the USA, the potential for a child to see certain material is not a sufficient reason to ban it. The Australian censorship regulations, however, provide for the prohibition of the unrestricted display of publications that may be unsuitable for children. While the Australian Government appears to be smugly proud that the First Amendment is no barrier to the 'nanny state' in Australia, its complacency is misplaced. Since the Internet does not acknowledge national boundaries, anything that is legal in the USA is available to Australians online. Furthermore, anything that is not actually prosecuted in the country in which the Internet server is located is world-readable. Thus, if material is not banned by every jurisdiction it cannot be effectively blocked by any jurisdiction.

In contrast to the approaches taken in Australia and the USA, the European response to the question of Internet regulation has been coloured by the view that

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15 This is the daily penalty for a corporation. Note 11 *supra*, s 83.

16 The summit was hosted by the Bertelsmann Foundation. For further information see <http://www.stiftung.bertelsmann.de/internetcontent/english/frameset.htm?content/c2200.htm>.

17 Note 7 *supra*.

18 See *ACLU v Reno II* (Unreported, Pennsylvania District Court, 1 February 1999) <http://www.eff/org/pb/Legal/Cases/ACLU_v_Reno_II/HTML/19990201_injunction_order.html> at 1 February 2000 (Copy on file with author).

prosecutions for offences against public morals are a police matter. The French Government bans the online sale of aspirin and has attempted to enforce the use of the French language on the Internet,[19] while Germany has engaged in several prosecutions of foreign content-providers.[20] Other European Union countries are unlikely to exercise the patience required to allow the emergence of self-regulation. With the exception of certain contentious telecommunications regulations, such as those requiring ISPs to give monitoring capability to police,[21] the European response to the Internet has been characterised by the firm enforcement of laws of general application rather than by the framing of new laws to tackle a global medium.

III. THE *ONLINE SERVICES ACT*

The *Online Services Act* acknowledges the jurisdictional obstacle to Internet regulation by differentiating between overseas Internet sites and local Internet sites in relation to R-rated material. Under the legislation, overseas sites hosting material with the mild 'adult themes' considered suitable for an Australian 'R'-rating are exempt from the provisions of the Act.[22] However, an Australian site hosting the same material is required, under regulations released by the ABA, to obtain the full name and address of anyone wishing to view the material, together with independent verification of age and identity by credit card, passport, digital signature or similar proof.[23] This is a simple model to implement for commercial pornographers. However, the ordinary ISP or ICH is unlikely to be able to meet the compliance costs involved, and many will either close the site or move offshore.

It is tragic that the legislation does not acknowledge that to move content 'offshore' is a trivial matter and that the mirroring of controversial content is a regular occurrence on the Internet. For example, the recent prosecution of the

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19 The French Minister for Culture, Jack Lang, was strongly in favour of the French language being promoted by regulation and the French Government made a submission to the G7 group in 1995 proposing that 'linguistic diversity' be acknowledged by member states. See "G7 on the Information Society. French Contribution", Electronic Frontier Foundation, <http//www.eff.org.pub/Misc/Publications/Declan-McCullagh/www/global/g7-1995/France/ANGLAIS.ASC> at 1 February 2000 (Copy on file with author).

20 For example, the 1998 prosecution of Compuserve. See Cyber Rights & Cyber Liberties (UK), "Felix Somm Decision in English is Now Available", Media Release, 14 September 1998.

21 This is known as the ENFOPOL plan. The plan involves European Union nations jointly sharing monitoring capabilities for police and censorship purposes.

22 Schedule 5, s 10(2) of the *Broadcasting Services Act* 1992 (Cth) (as amended by the *Online Services* Act) provides that, unlike Australian-hosted content, content hosted overseas that would be classified 'R' is not prohibited content.

23 *Restricted Access Systems Declaration 1999 (No 1)*, tabled in Parliament on 7 December 1999. The ABA's regulations for the operation of "restricted access" sites are available on the ABA website at www.aba.gov.au/about/public_relations/newrel_99/130nr99.htm> at 1 February 2000 (Copy on file with author).

editors of Rabelais[24] immediately resulted in the disputed article being made available online in a dozen locations within Australia and overseas – most ironically (eventually) as a Federal Court law report.[25] There are many jurisdictions with no practical controls over Internet content, and others, such as the USA and the Netherlands, which place a higher value on free speech than Australia. Any country can host Internet content, and to the Australian Internet user there is no greater cost or difficulty in obtaining Internet content from a foreign site as opposed to an Australian site. The Government's "roadblocks on the information superhighway"[26] are at best speed-bumps, and at worst a pointless detour.

IV. INDUSTRY CODES OF PRACTICE

Three industry associations have produced industry codes of practice relating to the obligations of ISPs and ICHs. The first was that of the Western Australian Internet Association ("WAIA"), designed in consultation with the Western Australian State Government for registration under the *Censorship Act* 1996 (WA).[27] The second was produced by the South Australian Internet Association ("SAIA") and endorsed by the South Australian Government as a means of controlling Internet content without the need for new laws.[28] Between them, WAIA and SAIA represent the majority of ISPs in their States and approximately 10 per cent of the ISP industry nationwide.

A group of Sydney businesses, including ISPs, established the IIA in 1996 and quickly obtained funding from Telstra and other large industry members, and the ear of the Federal Government. After amalgamating with the Australian Internet Alliance, a grass-roots organisation of ISPs opposed to timed local calls, IIA developed a code of practice for ISPs and ICHs ("the IIA Code"), at first to forestall legislation, and more recently to complement it. The IIA Code has repeatedly come under criticism from other Internet groups, and the current version is presently registered as an industry code pursuant to the *Online Services Act*. Version 6, available online at the IIA website,[29] offers the Government a form of privatised censorship, with the IIA policing its members

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24 The Rabelais case involved student editors at La Trobe University being charged with criminal offences under the *Classification of Films and Publications Act* 1900 (Vic) for publishing an article on shoplifting. Following a series of appeals, the charges against the editors were eventually dropped. *Michael Brown & Ors v Members of the Classification Review Board of the Office of Film and Literature* [1998] 319 FCA.

25 Available at <http://www.austlii.edu.au/au/cases/cth/federal_ct/1998/319.html> at 1 February 2000.

26 Senator Tierney, Chairperson of the Senate Select Committee Investigating Computer Technologies on "Dateline" *SBS*, April 1999.

27 WAIA, "WAIA Code of Conduct", WAIA, <http://www.waia.asn.au/Documents/CodeOfConduct.html> at 1 February 2000 (Copy on file with author).

28 SAIA, "Code of Ethics and Conduct", SAIA, <http://www.saia.asn.au/Documents/CodeOfConduct.html> at 1 February 2000 (Copy on file with author).

29 Available at <http://www.iia.net.au/code.html> at 1 February 2000 (Copy on file with author).

and proscribing measures to comply with the Government's censorship policy. Among several self-censorship requirements, the IIA Code obliges ISPs to "provide for use" to all users one or more of a number of filtering services, whether desired or not.[30]

V. STATE AND TERRITORY 'MATCHING' LEGISLATION

In order for the Federal Government's prohibitions on certain Internet content to be truly national, the States and Territories would have to place similar restrictions on those who possess or transmit such material. The Standing Committee of Attorneys-General ("SCAG") recently considered a draft model State and Territory bill[31] to outlaw material prohibited under the *Online Services Act*, but no agreement could be reached. Jurisdictions such as Western Australian and the Australian Capital Territory, which expressly permit 'X'-rated Internet sites, are unlikely to criminalise such material solely for the purpose of national conformity.

VI. RATING THE INTERNET AS A FILM

Of all the fallacies that illustrate the Australian Government's misunderstandings of Internet content, the most tragic is that the Government has used the analogy of broadcast television/film classifications as a starting point. Internet content is not always entertainment, it is rarely commercial, and it is almost never a 90-minute audiovisual presentation to a passive audience. A movie dealing with 'adult themes' will be rated 'R' in Australia even if it deals with subject-matter quite apart from 'highly-offensive material', such as child pornography.

The ABA has taken a strict view of its responsibilities to stop children accessing Australian websites that may be unsuitable for children of "any age".[32] As mentioned earlier, websites within Australia that deal with 'adult themes' may be required by the ABA to institute a scheme of age-verification requiring visitors to the site to provide proof of age and identity before entering – a significant disincentive to a visitor. By making the rules so strict, the ABA is encouraging potentially controversial sites to move outside Australia. Already, sites as diverse as a classified advertisements site, a search engine, a women's health site and EFA have moved offshore as a precaution against being required to register visitors. As the short-lived 0051 'adult' phonelines plan showed,[33]

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30 Content Code 2, cl 6.2(a).

31 Australian Capital Territory Government, "Draft Enforcement Provisions", Australian Capital Territory Government, <http://www.dpa.act.gov.au/ag/Reports/consult/draft1.html> at 1 February 2000 (Copy on file with author).

32 ABA, "Online Services Content Regulation. Restricted Access Systems", ABA, <http://www.aba.gov.au/what/online/restricted.htm> at 1 February 2000 (Copy on file with author).

33 The 0051 numbers were a short-lived attempt to restrict the use of 'adult' telephone services previously accessed through the 0055 pay-for-use system. The 0051 numbers were blocked unless an adult had

people will not pre-register for 'adult' material for fear of being included in a 'perverts database' with a consequent risk of exposure, blackmail and commercial exploitation.

The ABA has apparently decided to police Usenet[34] content as well as websites, with the online complaint form requesting details of Usenet material, without reference to ISPs.[35] This appears to be contrary to the Minister's statement that peripheral media, such as newsgroups,[36] would not be covered by the *Online Services Act*,[37] although the ABA has not in this case sought details of the particular ISP that hosted the offending Usenet article.[38] One conclusion is that the ABA intends to treat the title of the newsgroup as if it were a film – banning newsgroups by title rather than according to the content of the articles. When German authorities attempted this method of censorship, the outcome was that new newsgroups were formed almost immediately to carry the same material and, in a few cases, disgruntled Usenet users posted pornography to other, uncensored newsgroups in protest.[39]

VII. RATING AND LABELLING TECHNOLOGIES

It has been suggested that regulation of the Internet could be aided by using meta-tags, or labels, which would filter content received by users according to pre-set parameters. Typically, these parameters are based on the Platform for Internet Content Selection ("PICS") rules which rate for nudity, sex, violence and coarse language. Over approximately four years, the PICS-based system

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registered as a user. The facilities were removed due to lack of registrants. However, the Government has announced plans to do the same for 1900 numbers. See the Eros Foundation, "Phone Sex: Pick Up the Phone John Howard", the Eros Foundation, <http://www.eros.com.au/issues-moment.htm> at 1 February 2000 (Copy on file with author).

34 Usenet is a subset of Internet content distributed through newsgroups. It boasts over 100 000 special-interest chat forums resembling email but publicly available. The newsgroup 'articles' may be plain text, or encoded files such as pictures. These articles amount to over 100 gigabytes per day. Consequently, ISPs make them available on a 'news spool' that expires 'stale' articles after several days. The topics of newsgroups range from serious academic study, through all forms of recreational activity to material that would be illegal if hosted online.

35 The ABA's online complaint form is available on the ABA website at <http://www.aba.gov.au/what/online/complaints/index.html> at 1 February 2000 (Copy on file with author).

36 A newsgroup is an online discussion forum, accessed with a 'newsreader' such as Freeagent, through an online news reader such as 'tin' or on a web-based archive site, such as www.dejanews.com. The messages or 'articles' are posted by the millions of users of the Internet and usually expire after a few days. There is no feasible way for any ISP to 'filter' newsgroup articles, and with a daily newsfeed of over 100 gigabytes, no one could possibly read and classify them.

37 Second Reading Speech, Australian, Senate 1999, Debates, vol S196, p 5218.

38 Note 36 *supra*.

39 The German attempt was followed by *Wired* as an important test of the ability of national governments to 'control' Usenet. See D Lazarus, "CompuServe to Fight German Porn Charges" (1997) *Wired* <http://www.wired.com/news/news/business/story/3218.html>. See also Reuters, "Net Porn Conviction Overturned", 17 November 1999 <http://www.wired.com/news/reuters/0,1349,32609,00.html> at 1 February (Copy on file with author).

RSACi has rated less than 100 000 of the estimated 800 000 000 sites online.[40] Like all rating and cataloguing systems, it has been failing to keep up with the explosive growth of Internet content. At its current level of utilisation, to enable PICS-filtering of content is to block out 99 per cent of the Internet; therefore, it cannot be seriously considered as an alternative to supervising children. Similarly, filtering systems based on the analysis of ISP web proxy requests ("proxy filters") rely on either a blacklist of banned sites of dubious currency or filtering by keyword, which gives amusing results as websites are banned merely for the presence of a proscribed word. Serious study of such software proxy filtering methods has been highly critical of the quality and reliability of the filtering. Criticism points not only to the proxy filtering software's blocking of innocuous or protected material, but also to its failure to block content unsuitable for children or illegal for adults to view.[41] The rapid endorsement of existing technologies by the Senate Select Committee went against the weight of evidence presented to the Committee, and resulted in the Senate endorsing a software program that blocked the National Party website and many other unobjectionable websites.[42] Consequently, the particular software proxy filters described in Schedule 1 to the IIA Code are neither solutions to offensive content, nor reliable filters of such content. One such proxy filter, EyeGuard, cannot block anything but pictures containing a certain percentage of flesh tones.

Moreover, while the *Online Services Act* attempts to include all forms of Internet content under Australian content laws, the available filtering technology only affects pages on the World Wide Web. The use of a web browser to access Internet content may be commonplace, but anything accessed in such a fashion can also be accessed using an FTP program that bypasses the filters.[43] Therefore, one possible consequence of the legislation is a movement towards other ways of accessing the Internet, especially as there are several available technologies currently unable to be censored by the use of filter software.[44]

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40 RSACi (Recreational Software Advisory Council on the Internet) was formed in September 1994 as a computer games rating system. In December 1995, RSACi released an Internet rating system called RSACi. By September 1998, the system had rated 85 000 sites and claimed to be rating sites at the rate of 4000 per month. See RSACi, "About RSACi", RSACi, <http://www.rsac.org> at 1 February 2000 (Copy on file with author). However, RSACi and similar rating organisations have been unable to keep up with the growth of the Internet.

41 See, for example, <http://www.peacefire.org> and <http://censorware.org/censorware> at 1 February 2000 (Copy on file with author).

42 I Graham, *Report – Clairview Internet Sheriff – An Independent Review*, June 1999, available at <http://www.efa.org.au/Publish/report_isheriff.html> at 1 February 2000 (Copy on file with author).

43 FTP (File Transfer Protocol) the Internet standard for transferring files between network computers. Many programs are available for users to visit FTP sites and download files as they choose. These FTP sites are also accessible in many cases by a web browser program, such as Internet Explorer or Netscape Navigator.

44 The alt.2600 newsgroup and website lists a variety of tools for evading censorship products. See webmaster@2600.org.au, "Evading the Broadcasting Services Amendment (Online Services) Act 1999", xoom.com, <http://members.xoom.com/2600aus/censorship-evasion.html> at 1 February 2000 (Copy on file with author).

VIII. IMPACT ON FREEDOM OF EXPRESSION AND E-COMMERCE

The United States model of regulation, which prosecutes criminals and leaves the control of 'adult' material for end-users, is a consequence of the First Amendment. However, freedom of speech is not the only reason for acknowledging that the Internet should not be treated like conventional media. The highly participatory nature of publishing material to the Internet invites a different treatment to that accorded to commercial media, as the material tends to be of the nature of personal expression rather than commercial sales. The state does not regulate communications within the home, or personal use of the telephone, with any particular rigour. By contrast, commercial entities are subject to laws of general application within the jurisdiction of location, and are subject to normal regulation and commercial considerations including compliance costs. Further, the global nature of the Internet frustrates regulators attempting to enforce any form of national censorship, taxation or mail order rules.[46] The Internet is also used differently by end-users: a university computer network may contain research materials unsuited to public entertainment, just as every computer connected to the Internet may contain material unsuitable for transmission under the laws or customs of any particular nation.

Thus, the Internet does not admit to a 'one size fits all' censorship regime. To pretend that the regulation of the Internet is easy or simply a matter of global consensus is misleading, and wiser heads than the Australian Government approach the censorship of the Internet with caution. That sectors of the Internet industry are prepared to pledge industry support for the censorship regime is similarly misleading, since even if every Australian ISP complied, users could effortlessly bypass the filtering method. Further, those end-users who wish to limit their own exposure to unwanted material have a variety of self-help resources online, and it is with such resources that parents and educators can commence to understand filtering and its limits.[47]

Whether it is a matter of personal regret or relief, the fact is that the Internet, and Australia's access to the global networks comprising it, will be unchanged by the Australian laws. In the short run, the only effect of the *Online Services Act* will be to damage the emerging Australian e-commerce industry. Australian enterprises such as auction houses, search engines, women's health services and movie sites have already moved offshore, and unnecessary regulations and an embarrassing Government hamper the Australian Internet industry.

The *Online Services Act* and the IIA Code present two faces to the public: first, that the Government has the power to shut down any Australian website that it considers unsuitable for children and to block Australians from seeing

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45 The Internet represents a unique opportunity for political action as is exemplified by the anti-McDonalds website, McSpotlight, available at <http://www.mcspotlight.org/home.html> at 1 February 2000.

46 For example, the Internet contains bookshops as diverse as <http://www.amazon.com> and <http://www.loompanics.com>.

47 For example, see <http://www.getnetwise.org/tools/proscons.shtml> or, for a local perspective, <http://www.waia.asn.au/Issues/ChildSafety/index.html>.

similar material on foreign servers; and second, that users are empowered to make their own decisions using client filter software. Neither of these propositions survives technical scrutiny.