

**Child Online Protection Act
Commission**

Globalisation Panel

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Australia's Co-regulatory Scheme
for Internet Content

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Introduction

Australia's co-regulatory scheme for Internet content commenced operation on 1 January 2000. The scheme is administered by the Australian Broadcasting Authority (ABA) and aims to address community concerns about the Internet in a way which also encourages growth of the Internet and its adoption by Australian households.

The scheme is a comprehensive strategy comprised of industry, government and community initiatives. Viewed as a package, these measures provide an effective framework within which Australians can make informed choices about Internet usage.

This paper, presented for the information of the Child Online Protection Act Commission, explains the rationale for introducing the scheme, describes the scope and elements of it and provides information on how the scheme has operated in its first six months of operation.

Australian context

Traditional media

The co-regulatory scheme draws on three key concepts that are familiar to Australian consumers as features of the media regulation landscape, and which have broad community support:

- The 'light touch' co-regulatory approach. Since 1992, television and radio content have been regulated largely through codes of practice, developed by the industry, in consultation with the community, and presented to the ABA for registration. While the ABA investigates breaches of the codes, the industry peak bodies promote and facilitate adoption of the code amongst industry members.
- The provision of consumer advice. Films, videotapes, adult publications and some computer games are classified by the Classification Board at the Office of Film and Literature Classification (OFLC)ⁱ. The classifications are age-based and the guidelines for classification are developed through a process of community consultation, to help ensure that they reflect community attitudes. Consumer advice about the content of a film, game or publication accompanies any classification above General Exhibition (G), to help consumers make informed choices for themselves and their children. This system is also used in the classification of television programs and is incorporated in the codes of practice for that industry.
- The importance of parental guidance. Classification decisions, as far as possible, give effect to the following principles:
 - adults should be able to read, see and hear what they want;
 - minors should be protected from material which is likely to harm or disturb them; and
 - everyone should be protected from exposure to unsolicited material that they find offensive.

Internet usage in Australia

Some 30 per cent of Australian homes have access to the Internet. Investigations undertaken by the ABA since 1995 have consistently identified community concerns about online content, particularly the problem of children accessing content which is unsuitable or harmful. In 1999, the ABA commissioned research in conjunction with the Bertelsmann Foundation.

well as appreciating the benefits of using the Internet, people were aware of the risks, with around 80 per cent of respondents saying they would block certain types of content – including pornography – if able to do so. Labelling, hotlines and filters were all viewed as useful means of addressing these concernsⁱⁱ.

Basis for the scheme

Against this background, the *Broadcasting Services Act 1992*, which established the ABA, was amended in 1999 to establish a co-regulatory scheme for Internet content. In establishing the scheme, Schedule 5 of the *Broadcasting Services Act 1992*:

- defines certain types of Internet content as prohibited content (or potential prohibited content);
- provides for the development of industry codes of practice for Internet service providers (ISPs) and Internet content hosts (ICHs);
- creates a mechanism through which members of the public may complain to the ABA about Internet content which they believe is, or may be, prohibited content;
- empowers the ABA to investigate such complaints and, where appropriate, issue notices to ICHs/ISPs directing them to take action in relation to such content; and
- makes non-compliance with a notice an offence.

It is important to note that while the Act provides a legislative framework and a ‘safety net’ for regulation, the scheme gives prominence to measures developed by industry for addressing the availability of illegal, offensive and harmful material.

Scope of scheme

The Act defines Internet content as stored information which is accessed over an Internet carriage service, including material on the World Wide Web, postings on newsgroups and bulletin boards, and other files that can be downloaded from an archive or library.

For the purpose of the scheme, Internet content is treated as though it were a film, using the R, X and RC classifications already familiar to and accepted by the community as reference points. With reference to the Classification Board’s guidelines for the classification of films and videotapes, the following categories of Internet content are prohibited:

- Content which is classified RC or X, which includes:
 - material containing detailed instruction in crime, violence or drug use;
 - child pornography;
 - bestiality;
 - excessively violent or sexually violent material; and
 - real depictions of actual sexual activity.
- Content hosted in Australia, which is classified R and not subject to a restricted access system which complies with criteria determined by the ABA. Content classified R is not considered suitable for minors and includes:
 - material containing excessive and/or strong violence or sexual violence;
 - material containing implied or simulated sexual activity; and
 - material which deals with issues or contains depictions which require an adult perspective.

Elements of the scheme

The co-regulatory scheme involves participation by Government, industry and the community, and employs a range of measures to assist people to manage their Internet access. Accordingly, when considering the impact of the scheme, it is important to consider the provisions of the Act in conjunction with the terms of the code of practice, the operation of the complaint mechanism and other supporting measures.

Industry code of practice

For its part, the Internet industry, through the Internet Industry Association, has developed a code of practice for its membersⁱⁱⁱ. The registered code (Attachment A) applies to all ISPs and ICHs and the ABA may direct an industry participant to comply with the code.

The code had been in development for some time prior to the commencement of the co-regulatory scheme, and was subsequently registered by the ABA on 16 December 1999^{iv}. The code contains a range of measures to assist end-users to manage access to Internet content for themselves and their children, and a specific provision for dealing with prohibited content hosted outside Australia.

A key element of the code is the requirement for ISPs to provide each end-user with one of the approved filtering software products (approved filters) listed in the Schedule^v of the code. The code provides flexibility in how approved filters are provided, but gives examples processes that would be consistent with the code's requirements. These are:

- in the case of a new end-user, including in the registration process a step which requires the end-user to indicate whether they need to obtain from the ISP an approved filter (recognising that some end-users may already have and use an approved filter); and**
- in the case of existing end-users, an email notification which explains how approved filters may be used and provides links manufacturer's websites, from which the software can be downloaded, and instructions for installation and configuration.**

Filtering products

Filtering products perform a dual role in the scheme. Firstly, they perform a general role in assisting end-users to manage access to Internet content. Secondly, and of particular relevance to the operation of the code of practice, they form part of the arrangements for dealing with Internet content hosted outside Australia, about which the ABA receives a complaint. Following a investigation of the complaint.

URL) are notified to the makers of the approved filters, who have agreed to review and update their products to take account of these notifications. This process obviates the need for ISPs themselves to filter prohibited content, as would have been required had a code not been registered.

Prior to registration of the code, the Internet industry was invited to submit filtering products for inclusion in the code. These were assessed by the Commonwealth Scientific and Industrial Research Organisation (CSIRO) according to a range of criteria, including:

- **ease of installation;**
- **ease of use;**
- **configurability;**
- **availability of support; and**
- **capacity to receive notifications from the ABA about prohibited content^{vi}.**

Sixteen approved filters are listed in the code Schedule. They include user installable software and those which involve filtering by the ISP. The code includes a mechanism for adding further products when they become available, subject to them meeting the same criteria. The ABA and NetAlert have commissioned the Australian Consumers Association to conduct further research on usability of filtering software and the appropriateness of particular products to specific user requirements.

The ABA has sought information from major Australian ISPs about the range of approved filters offered to their end-users. Based on this information, the ABA estimates that an approved filter has been offered to some 80 per cent of Australian Internet users.

While the ABA appreciates the limitations of filtering products, in conjunction with education and appropriate supervision they nonetheless remain a useful tool for managing access to Internet content, particularly for children.

Complaints

The investigation of Internet content under the scheme is primarily complaint driven and the ABA does not actively search for or monitor content. To support the investigation of complaints about Internet content, and facilitate efficient lodgement of complaints, an online complaint lodgement and management system was developed. A key feature of the system is the online capture of complaints via the ABA's website^{vii}. Using the complaint form on the website, someone who comes across objectionable material online can make a complaint to the ABA while online.

The ABA investigates all valid complaints. If the content is hosted in Australia and is prohibited, or is likely to be prohibited, the ABA will direct the Internet content host to remove the content from their service. If the content is not hosted in Australia and is prohibited, or is likely to be prohibited, the ABA will notify the content to the suppliers of approved filters in accordance with the IIA's code of practice. If the content is also sufficiently serious (for example, illegal material such as child pornography), the ABA may refer the material to the appropriate law enforcement agency. As part of an investigation, the ABA may request the Classification Board to classify the content according to the Board's Guidelines for the Classification of Films and Videotapes.

At 30 June, the ABA had received just over 200 complaints about Internet content.

The majority of complaints concerned content on the World Wide Web, with the remainder being concerned with content in Usenet newsgroups.

In cases where prohibited content has been located, around one-third of complaints related to content which was found to be hosted in Australia. This included content hosted in Usenet newsgroups, which is treated as content hosted in Australia if the complainant has accessed the content from their ISP's newsgroup server. The remaining two-thirds of complaints concerned content that was hosted outside Australia. As a result of investigations, around 100 items of content hosted outside Australia have been notified to the makers of approved filters and some 60 items have been the subject of take-down notices issued to ICHs.

Around 80 per cent of the prohibited content found to be hosted in Australia was concerned with depiction of a child or minor in an offensive way, or paedophile activity. Around half of the prohibited content hosted outside Australia was of this nature.

Liaison with law enforcement agencies

If the ABA considers that Internet content which is the subject of a complaint is of a sufficiently serious nature, such as child pornography, it must notify the content to an Australian police force. The ABA also has discretion in some circumstances to defer action about prohibited content or potential prohibited content, whether hosted in Australia or outside Australia. These circumstances include where a member of an Australian police force satisfies the ABA that action should be deferred for a specified period in order to avoid prejudicing a criminal investigation.

At 30 June 2000, the ABA had referred 51 items of Internet content hosted outside Australia to the Australian Federal Police and 44 items of Australian-hosted serious Internet content to the relevant State or Territory police service. Some items were referred to two or more agencies.

Community education

The ABA has taken an active role in providing advice and assistance to Internet users for several years. Its Australian Families Guide to the Internet web site^{viii} predates the ABA's official role in Internet content regulation. Developed as part of the ABA's work in relation to the Ministerial directions to investigate approached to Internet content

regulation, the web site was launched on Online Australia Day, 27 November 1998.

The ABA designed the web site to encourage families to use and benefit from the Internet. The site is a starter kit for parents: it contains information on risks, parenting tips, suggested rules and technical tools that are available. It also has pages on laws relevant to the Internet and online content regulation.

The site includes information on how to find things online, explanations of common technical terms and ideas on how to support children's education using this technology. It also has numerous links to web sites for children, which were selected on the basis of their appropriateness for children within specified age groups. These links are updated on a regular basis following the submission of sites by members of the public and other interested parties.

The Government has also established the community advisory body NetAlert, comprised of representatives of industry and the community, to complement the ABA's regulatory role and to facilitate community participation in the scheme. NetAlert has developed a program of community education activities to be undertaken during 2000-01, with a focus on promoting the use of labelling and filtering as a means of managing access to Internet content. It will be officially launched in September 2000.

Research

Development of the co-regulatory scheme and subsequent implementation by the ABA has been underpinned by Australian and international research.

The ABA is currently conducting research on Internet usage in Australian homes. The project will build on the findings of the Bertelsmann Foundation/ABA international study, to provide a comprehensive picture of the current status of online services usage in Australian homes, in particular in homes with children.

The study will enhance the ABA's understanding of the online environment and will assist the Authority, and industry, to implement appropriate and effective strategies to inform and educate Australians about online services. It will also inform the Authority's monitoring of the Internet Industry Association's codes of practice and feed into the review of these codes, to be conducted by June 2001 .

The study is expected to be completed by December 2000.

1. The Internet has tremendous benefits and great potential to improve all our lives.
2. However, there are also some risks and just as in the real world, children tend to be more vulnerable to these risks.
3. A lot of the same risks that exist in the real world also exist online, e.g. stranger danger, credit card fraud and exposure to upsetting material.
4. A lot of the same mechanisms available in the real world for managing children's access to media content, also apply online, e.g. setting rules around the amount of use or time of use, identification of boundaries as to acceptable and unacceptable content or services, active involvement in children's use of the Internet, etc.
5. In addition, there are tools including filtering software, that are designed to help manage access, either by limiting access to certain types of content or by tracking the content that is being accessed.
6. These tools are not foolproof and are not a substitute for parental supervision, however, they can play a part in helping to make the Internet a safer place for children to be.
7. The industry also has a part to play and under registered industry codes of practice, ISPs are required to offer a filtering software product to their subscribers.
8. These codes of practice detail a range of obligations that ISPs have in relation to their subscribers, including obligations that relate to unsolicited email otherwise known as SPAM.
9. Despite the best efforts of users to protect children, there may be times when they come across illegal or highly offensive content and in these circumstances, there is a central location where complaints can be lodged and investigated.
10. In the end, it is up to individual users to actively manage their own use and that of the young people in their care, in order to make their online experience as rewarding and productive as possible.

ⁱ The OFLC's website can be found at <http://www.oflc.gov.au>. The Classification Board's Guidelines for Classification of Films and Videotapes can be found at <http://www.oflc.gov.au/PDFs/FilmVideoGuides.pdf>

ⁱⁱ Details of research conducted or commissioned by the ABA can be found on the ABA's website at <http://www.aba.gov.au/what/online/research.htm>

ⁱⁱⁱ The IIA's code of practice can be found on the IIA's website at <http://www.iaa.net.au/code6.html>

^{iv} Criteria for registration of a code of practice are set out in clause 60 of Schedule 5 of the *Broadcasting Services Act 1992* (see <http://scaleplus.law.gov.au/html/pasteact/0/136/top.htm>).

^v <http://www.iaa.net.au/code6.html#8>

^{vi} The CSIRO's assessment of filtering products can be found on the CSIRO website at <http://www.cmis.csiro.au/projects+sectors/blocking.pdf>

^{vii} <http://www.aba.gov.au/what/online/complaints.htm>