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Woe Ahead for South Oz' Pornies

Stewart Taggart  03.12.01 | 2:00 AM

SYDNEY, Australia -- South Australians are among the world's keenest online pornography consumers. But soon, they may be subject to one of the world's harshest online content laws.

South Australian Attorney General Trevor Griffin is proposing legislation to provide state police wide discretion in prosecuting individuals for spreading "offensive" Internet content. Defendants would then bear a greater burden of proving the police wrong.

Online activists fear the legislation will make South Australia's Internet scene as barren as the Outback. And that would further disadvantage a state already situated far from Australia's major population centers.

"Our first and foremost concern is that this kind of legislation just doesn't work," says Kitty Davis, executive secretary of the South Australian Internet Association. "Our second worry is that it'll merely drive people away from South Australia."

Davis says her organization, composed of people working in the Internet industry, was never consulted or informed about the proposed bill, and that their requests for information from Griffin's office were only tardily met.

Under the proposed law, state police can initiate prosecution against individuals who upload content if police believe the content would be deemed obscene or offensive if submitted for formal classification under Australia's content rating system. This rating system forms the backbone of a controversial national law that treats Internet content like it does movies and books.

Under the national law, the Australian Broadcasting Authority (ABA) can order Internet material housed on servers in Australia to be taken down if the material is rated "X" (Sexually Explicit) or "RC" (Refused Classification -- i.e., excessively violent) by the national Office of Film and Literature Classification (OFLC).

Material rated "R" (Restricted to those 18 years and older) must be placed behind an adult verification mechanism once the content host is notified by the ABA.

For its part, the ABA only responds to public complaints about Internet content. If a complaint is deemed to have merit, the ABA will have the content rated by the national Office of Film and Literature Classification. Only then, if it is deemed to be "X" or "RC," can the ABA legally order the ISP or Internet Content Host -- if located in Australia -- to take down the material or suffer legal consequences.

But under the proposed South Australia law, police could begin a prosecution against a provider based on a presumption of any material's likely classification.

In other words, the federal law requires classification first, legal action second. The proposed state law would allow legal action first, official classification later.

To Katherine O'Neill, an aide to Attorney General Griffin, it's just an efficiency measure.

"It's aimed at saving everyone time and money," she said.

In fact, one feature of the proposed law allows content providers to simply agree with police about a piece of content's classification, she said.

"If they don't agree, they can always require that the material be classified," Ms. O'Neill said, sounding rather incredulous that anyone would want a second opinion apart from that of police.

To Irene Graham, executive director of Electronic Frontiers Australia (EFA), the legislation may criminalize unwary content creators who will never be sure how South Australian police might view their content. She noted that the OFLC has itself had trouble defining categories of content in specific cases.

Thus, the only way South Australians could be sure of not running afoul of the legislation would be to reduce all visible exchanges of information on the Internet in the state to a "lowest common denominator" of material suitable for viewing by children, Graham says.

South Australian attorney general Trevor Griffin says opponents just have it wrong. "I just don't think they understand the proposed law," he said. "Our state law is really just a carryover of federal legislation."

Clearly, the larger issue at stake here and elsewhere is whether national or local laws can control a raging sea of Internet content sloshing across and leaking through the ramparts of any nation's information dikes. Can governments control the flood?

"Leaking is not an argument for just doing nothing," Griffin said. "If you believed that, you would just also just sit on your hands and do nothing about Internet frauds and scams."

This was the same explanation given at the federal level one year ago, when a national online content law went into effect that applied the movie- and book-rating system to Internet content. For Sasha Grebe, spokesman for Australian Communications Minister Richard Alston, the rapid increase of Internet use in Australia is evidence the federal law is working.

"The Internet is becoming ubiquitous and is being recognized as an important tool in families," he says.

"If we're going to broaden the appeal of the Internet, the majority of people need to have confidence in it."

But for Graham the law has -- at best -- shifted content from one part of the world to another.

"All it has done is succeed in moving Australian content offshore," she says. "In terms of protecting children, it's achieved nothing."

Interestingly, figures from Internet audience measurement firm Media Metrix appear to show a strong interest among Australians for access to adult material.

In December, for instance, an estimated 33 percent of Australia's Web surfers accessed adult websites from their homes -- a performance matched only by Canada. The United States stood at 31 percent; while other countries such as England, France and Germany registered between 25 to 29 percent, and Japan registered 22 percent.

The numbers, however, are highly volatile. The countries mentioned above often change places month by month, but each remains in the 25 to 33 percent range, according to Media Metrix Australia Chief Executive David Stewart-Hunter.