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## Oz Censor Law Still Confuses

Stewart  
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SYDNEY, Australia -- Two years after online censorship laws took effect here, no one -- apart from the censors themselves -- has much of an idea what's being taken offline.

Opponents say the regime is becoming unaccountable. The censors say secrecy is vital to fighting child pornography.

On Jan. 1, 2000, the Australian Broadcasting Authority (ABA) gained powers to order Australian Internet content hosts to remove material deemed overly sexually explicit or violent.

In February 2000, Electronic Frontiers Australia (EFA) filed a Freedom of Information Act seeking details of the Internet content "take-down" orders issued in Australia, among other things. Five months later, the EFA received partially blacked-out documents providing little information about the specific sites taken down, or their content, said EFA Executive Director Irene Graham.

The EFA has asked Australia's Administrative Appeals Tribunal, an independent review board, to evaluate the ABA's use of the black pen. The tribunal heard EFA's appeal last July, but a decision has yet to be issued. Meanwhile, the online censorship system continues with virtually no outside checks or balances, Graham said.

"This is an unaccountable regime," Graham said. "Unless it is made more accountable, there is no way to know whether the ABA is implementing the law properly."

The purpose of the online content law was to create a uniform system under which Internet content joined offline content such as movies, books and computer games in being subject to a rating system administered by the government's Office of Film and Literature Classification (OFLC).

Under the online content law, the ABA -- responding to complaints -- can order the removal from Internet servers in Australia of any content that the OLFC rates "X" (sexually explicit) or "RC" ("refused classification" -- usually applied to excessively violent material). Access to Internet content housed in Australia rated "R" (restricted to adults over 18) must require some form of adult verification for access.

For content hosted overseas, the ABA can do little but tell content-filtering software makers about it.

For films, publications and video games, the OFLC routinely makes available details of decisions. But the ABA, in keeping details of removed content confidential, is treating online material different than offline material, Graham said. That's in conflict with the intent of the law, she added.

But David Flint, chairman of the Australian Broadcasting Authority, defends the ABA's position. He says that when it comes to child pornography, the Internet is indeed different from other media.

"While there are obvious practical and legal difficulties in obtaining access to a censored film, an Internet access allows and even invites access," Flint said. "Many of these proscribed sites show the most appalling abuse of children, sometimes very young."

By making such URLs public, the ABA would jeopardize cooperation with organizations in other countries that currently cooperate with the ABA, since the ABA would be seen as promoting access to the sites, he says.

"They would not be prepared to share information with an organization that publishes and therefore promotes sites which depict activity, which is clearly in breach of their criminal laws," Flint said.

But Graham says the ABA is using child pornography as an all-encompassing cloak.

For instance, regarding Internet content hosted in Australia, disclosing a defunct URL could hardly be deemed a "promotion" because the material no longer exists there, she said. And even if clamping down on child pornography is the primary goal of the ABA's censorship, that doesn't explain the ABA's refusal to provide information about sites that appear to have nothing to do with child porn, she says.

"For instance, they've refused to even give us information about materials classified 'R,' which is not illegal for adults to access," she said.

Without any system of checks or balances or challenges from outside, the EFA worries that the ABA may engage in overzealous actions.

"At this point, the public is not even being allowed to know what the ABA is censoring," she said. "If no one tries to make them accountable, they could become more and more draconian."

Andre Wright, director of industry performance and review for the ABA, said the EFA has a right to raise the issues it has.

But she said focusing exclusively on take-down notices obscures the other successes of the online content law over the past two years, including the creation of an Internet industry code of conduct, the encouragement of home installation of content filters and their public awareness campaigns.

These elements of the online content regulations in Australia have meant the ABA's "second-level" powers (such as take-down notices) largely haven't been needed. But Wright wouldn't comment directly on the EFA's Freedom of Information Act efforts, saying it was ABA policy not to comment upon pending legal actions.

Therefore, the next move is likely to occur when the appeals tribunal issues its decision, which could come at any time.

Meanwhile, Communications Minister Richard Alston is now long overdue to release the latest biannual report on the online content efforts, promised as part of legislative efforts in 1999 to get the new law passed. The last report he issued was in mid-2001.

Alston's spokesman, Sascha Grebe, acknowledges a new report is overdue. But Grebe said the recent Australian federal election -- held in November -- has held up release of the report.