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Oz Takes Censor Laws to People

Stewart Taggart  06.20.01 | 2:00 AM

ADELAIDE, South Australia -- Proposed state laws expanding police powers to prosecute Internet content providers for obscenity will be subject to wider public consultation, the result of public opposition to the regulations.

Critics say the proposed laws would provide authorities greater control over what people can read, write and view on the Internet in South Australia. Supporters say the state laws merely reinforce the principle that uniform standards should apply to all content -- whether it's online, offline, on film or on paper.

Australia's federal law and South Australia's proposed state laws are based upon the idea of applying a rating regime for Internet content similar to what's already in place for books, movies and computer games.

Nationally, the Office of Film and Literature Classification (OFLC) rates these in a variety of categories. Among these are X (Sexually Explicit) or RC (Refused Classification --- usually applied to excessively violent content) and R (Restricted to those 18 years and older).

Under Australia's national laws, the Australian Broadcasting Authority (ABA) responds only to public complaints about Internet content. Upon receipt of a specific complaint, the ABA can request that the OFLC rate a particular piece of Internet content.

If the OFLC deems the content to be rated either X or RC, the ABA can legally order the content taken down if it is housed in Australia.

If the content is housed outside Australia, the ABA can do little but notify domestic content filter makers of the site's URL. If the OFLC deems a site's content to be rated R, the ABA can require the site to have an adult verification mechanism in place if the content is housed in Australia. If it's located outside Australia, there's little the ABA can do.

Online rights activists don't like the law, but admit its practical impact has been minimal since it took effect Jan. 1, 2000. That's because the ABA responds only to complaints, and there haven't been a huge number of those.

But South Australia's laws would go further. They'd enable South Australian police to initiate prosecution against a local content provider based upon their guess as to how a piece of content might be rated if submitted to the OFLC. It would then be up to the content provider to prove police wrong.

To opponents, this means police could --- at the extreme -- orchestrate a campaign of harassment and financial attrition against a content provider by subjecting them to costly and spurious prosecutions.

"Relying on the courts to sort it out later is cold comfort for small businesses," says Brenda Aynsley, chairman of the South Australian branch of the Australian Computer Society.

"Business people would lose time and money defending themselves."

Kitty Davis, executive secretary of the South Australian Internet Association, agrees.

"The legislation hinges upon the views of the police, government and courts of the day, and it's no good assuring people that it won't be used to stop certain things," Davis said. "We have no idea how attitudes may change."

In January, South Australian police confiscated a book from a bookstore that contained photographs taken by American photographic artist Robert Mapplethorpe. Subsequent OFLC rating of the material determined the book didn't warrant the confiscation. Opponents cite the case to show how police get things wrong, and claim that providing police more power creates a political "time bomb" for the future.

"We live in a civilized country, so it's unlikely anyone is going to be immediately disenfranchised or thrown in jail because of this," says Simon Hackett, managing director of InterNode professional access, a business-focused South Australian ISP.

"But it just means we end up with just another bad law on the books that in 10 years time comes back to bite somebody," he says. "It's a hostage to fortune."

But Attorney General Trevor Griffin heartily disagrees.

"There are some pretty clear guidelines (regarding when enforcement action can be taken), so I think (the police abuse argument) is a red herring," Griffin said. "I just don't accept that argument."

Griffin says content providers have adequate recourse in that they are clearly entitled to seek a rating of material if they disagree with police.

Griffin says expanding police powers to initiate prosecutions before official ratings are handed down is merely intended as an efficiency measure to save everyone time and money. In addition to the police powers issue, which makes opponents uneasy, the new laws also extend a federal law riddled with inconsistencies, opponents say.

"For instance, if I give the OFLC a printed copy of a Web page, they'd classify it as they would a book, but if I gave the material to them on a floppy disk or CD, they'd classify it as they would a game or movie," she said. "This says to me there still is no effective classification system for Web content."

What's more, many Web pages are generated on the fly in response to a Web surfer's request, making any comprehensive pre-posting classification virtually impossible.

"The very value of the Web is in its dynamism, rather than in any static nature of information," she said. "Clearly, this law attempts to apply an old paradigm to a new medium."

After opposition belatedly grew to portions of the proposed new state law, Griffin placed some sections of it into a new bill before parliament, which now will be examined by a five-member committee Griffin heads.

The committee will take public comment until June 28. The two bills are then set to be considered by the state parliament during July.