



CI 1174 Electronic Frontier Foundation

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The Electronic Frontier Foundation would like to specifically address the question of online content controls as they pertain to the National Classification Scheme Review. Due to our late timing, our comments are limited to just a subset of the issues raised by the Review, but our failure to address an issue contained within the Review should not be interpreted as our agreement or disagreement with any of the issues addressed.

In respect to **Question 3**, we would like to argue that the Internet is a unique medium and cannot be addressed in the same vein as other media, such as film and television.

In his recent report to the United Nations General Assembly's Human Rights Council, Rapporteur on the promotion and protection of the right to freedom of opinion and expression Frank La Rue addressed the need for regulation to be tailored to the Internet, stating:

"Approaches to regulation developed for other means of communication -- such as telephony or broadcasting -- cannot simply be transferred to the internet but, rather, need to be specifically designed for it."

While perhaps content classifications would ideally be consistent across platforms, the nature of the Internet is such that content that can, offline, be restricted for sale to minors or hid in opaque packaging, cannot be dealt with in the same way online. Therefore, any filtering mechanism designed to limit access to children—unless implemented privately inside the home, by parents—will effectively limit access to content that is perfectly legal under Australian law for adult consumption.

More broadly, in response to **Question 12**, we would like to express grave concerns about the intent to limit the free flow of information in Australia by placing controls on online content.

Filtering, even when aimed at illegal content, is both ineffective and poses grave risks to free expression. It is an expensive and highly flawed mechanism of content restriction. Filtering systems either require consistent and intensive upkeep (for example, when websites are blocked by URL), or tend toward overblocking, filtering perfectly legal or innocuous content alongside that which was intended to be banned.

Filtering is also largely ineffective. As we've seen in China and Iran, where authorities filter online content pervasively using sophisticated methods, users intent on access certain information find ways to do so utilizing widely available circumvention tools.

There is no method of blocking websites that is effective, both in terms of implementation and in terms of cost, and no state has ever managed to implement a perfect system of filtering.

In response to **Question 13**, we feel that the best solution for controlling children's access to content is in the home. There are myriad commercially available filtering products that can be purchased or download at little cost and which can be tailored to suit the needs of individual families.

Finally, in respect to **Question 24**, we believe that governments should seek to limit controls to online content to that which pose a threat to network security (such as malware) and should seek to avoid, at all costs, restricting access to online content.

Furthermore, there are other mechanisms possible for dealing with content that is truly illegal that would minimize the possibility of chilling effects, such as the incidental blocking of innocuous sites as occurred during the initial filtering trial.

The 'Refused Classification' guidelines are vague at best, and their use in determining what should be prohibited online is problematic, particularly when the process lacks transparency and governmental oversight. Online content that is illegal in Australia and *hosted* in Australia can be dealt with through legal processes other than filtering, and while content hosted outside of Australia is outside of Australia's jurisdiction and thus its control. This is an important principle that ultimately helps Australians, since applied universally, it means that Australian content hosted in Australia cannot be arbitrarily blocked by other governments.

Ultimately, we believe that preserving the Internet's open architecture is critical to sustaining free speech and filtering online content presents a threat to that architecture.