

Liberty Victoria

POSITION PAPER ON INTERNET CENSORSHIP

1. The Federal Government has announced its intention to implement a system of internet filtering which would enable it to censor child pornography. The details of the Federal Government's proposal remain unclear and Liberty's position will require reconsideration when those details are released. In the meantime this paper sets out its interim position on this issue.
2. Liberty supports free speech and, in principle, opposes censorship for infringing this important human right. Freedom of expression is protected by art 19 of the International Covenant on Civil and Political Rights (ICCPR) to which Australia is a signatory. However, as art 19 recognises, the right to free speech is not absolute and Liberty accepts that censorship is justifiable in certain areas.
3. Liberty accepts that censorship of child pornography is justifiable in principle. While adults should be free to read and watch adult pornography, child pornography is different. The production of child pornography involves the commission of serious criminal offences and ought to be discouraged by all means possible. One way to discourage it is to criminalise the watching of child pornography. Liberty supports this.
4. In principle therefore, internet filtering which effectively blocks child pornography and has no other consequences for the operation of the internet, would merit Liberty's support. The crucial question is whether such a system of filtering is possible. Expert advice to Liberty says that it is not.
5. According to that advice, there are broadly three approaches to filtering internet web traffic: blocking specific websites, blocking specific URLs within websites, and blocking specific content. None of those approaches offers an effective way of blocking child pornography. All three approaches suffer from "false positives", i.e blocking innocuous sites and content, especially the entire website and content filtering approaches. All three approaches also suffer from "false negatives", i.e they fail to block targeted sites and content, especially the specific URL and content filtering approaches.
6. All of the above approaches focus on web traffic only, which does not account for the majority of internet traffic today. The documented evidence about other illicit uses of the internet, such as copyright piracy, suggests that HTTP traffic accounts for only a small proportion of child pornography usage. Therefore, filtering only HTTP traffic is unlikely to be effective in preventing the use of the internet for child pornography. Attempts to block other modes of traffic (e.g ftp) are just as susceptible to false positives and false negatives.
7. From a civil liberties point of view, the most serious shortcoming of internet filtering is that it is based on the maintenance of a secret register of blocked sites.

The register must be kept secret or else it would be open to abuse by the people whose access it is designed to block; yet the lack of any oversight of the register leaves it open to abuse by Government. This gives rise to the possibility of breaches of art 19 of the ICCPR (freedom to receive information) and art 25 (freedom to engage in public life). Even without abuse by the Government, such filtering would greatly diminish access to information and opinion on the internet without effectively limiting access to child pornography.

8. Furthermore, there are many ways, most of which are easy to implement, by which an internet filter can be circumvented. Content providers can regularly change URLs to stay ahead of the register, can use encryption and can use unfiltered protocols. Content consumers can establish encrypted Virtual Private Networks (VPNs) to unfiltered jurisdictions. Placing any restrictions on the use of encryption would seriously inhibit the lawful use of the internet.
9. In addition, the use of any mandatory ISP-level internet filtering technology would add noticeable latency to every internet connection in Australia, thereby degrading internet performance for all users within Australia.
10. In the light of these shortcomings to known filtering systems, Liberty considers the Government's proposal to censor the internet to block child pornography should not proceed. Instead more resources should be dedicated to catching the producers and consumers of child pornography by traditional methods.

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