



**United Nations Youth Association of Australia**  
**Internet Censorship Blue Paper, December 2008**

### **Introduction**

Before the 2007 Federal Election the Australian Labor Party launched its policy platform on cyber-safety and education, *Labor's Plan for Cyber-safety*. It outlined the internet-based threats to Australians, particularly young people, and nominated a number of solutions. These included greater cyber-education, a Youth Advisory Group to advise the Government on issues affecting young people (aged 12-18), and a Joint Parliamentary Standing Committee on Cyber-safety. It also included a proposal for a "mandatory 'clean-feed' internet service for all homes, schools and public computers that are used by Australian children".<sup>1</sup>

As one of Australia's premier youth-run non-government organisations, the United Nations Youth Association of Australia (UNYA) is committed to public policy that provides thoroughly debated and considered outcomes for Australia's young people. UNYA is also committed to strengthening Australia's democratic processes and the recognition and protection of the rights of all Australians. We strongly support the Government in its efforts to prevent access to, especially by young people, illegal material such as child pornography. We are, however, concerned by the lack of clarity around what constitutes the "harmful and inappropriate"<sup>2</sup> material the Government is also seeking to ban access to with its mandatory ISP-level filtering.

---

<sup>1</sup> *Labor's Plan for Cyber-Safety*, [http://www.alp.org.au/download/now/labors\\_plan\\_for\\_cyber\\_safety.pdf](http://www.alp.org.au/download/now/labors_plan_for_cyber_safety.pdf), 2007, p. 2

<sup>2</sup> *Ibid*, p. 2

This paper is designed as a broad commentary on those issues of content and the technology used to siphon it. One of UNYA's primary roles is to seek to strengthen observation of and respect for our fundamental rights and some of these will be examined in the context of internet censorship. This paper will also consider the need to protect people's freedom of speech and expression to choose what they look at in their homes, within the bounds of the law.

UNYA believes that better internet education offers the best possible opportunities to limit the potential harm of dangerous online material.

## **Rights**

The most fundamental rights enjoyed by all people include freedom of opinion and expression, association and education. The Universal Declaration of Human Rights (UDHR) makes clear these are all inalienable human rights that "should be protected by the rule of law". The right to freedom of opinion and expression, according to the UDHR, is to be free "to seek, receive and impart information and ideas through any media".<sup>3</sup>

In a representative democracy like Australia, exercising these freedoms is dependent upon access to independent and balanced information about decisions made in the political sphere and, ultimately, to help citizens decide who to vote for. As traditional sources of media move online they join an increasingly important location for modern political discourse; the internet. The Government itself recognises how important the internet is to modern political participation and mobilisation by advertising and campaigning online. Australians also recognise its importance and increasingly exercise their freedoms by expressing opinions, associating and educating themselves online; Government should actively protect, not curtail, these rights.

---

<sup>3</sup> <http://www.un.org/Overview/rights.html>; freedom of opinion and expression (art. 19), association (art. 20), education (art. 26).

### **Banning access to ‘harmful and inappropriate’ material**

There can be little doubt what constitutes ‘illegal’ content. Frequently used examples include child pornography, material related to terrorism, suicide, and instruction in or the promotion of crimes of violence.<sup>4</sup> What constitutes ‘prohibited’ content is also settled; National Classification Board guidelines are used to classify internet content in the same way as films or computer games under the *Classification (Publications, Films and Computer Games) Act 1995*. Under these guidelines, prohibited content is material classified RC or X by the Classification Board for the Australian Communication and Media Authority (ACMA).<sup>5</sup>

The Government also wants to ban harmful and inappropriate material. What constitutes ‘harmful and inappropriate’ material is much less clear. At this stage, harmful and inappropriate is a category of content that has no clear definition or classification and has been used almost interchangeably with illegal and prohibited content. As such, it is not clear if these categories need to be supplemented in this manner. The Government’s *Plan for Cyber-safety* suggests that the AMCA’s blacklist of banned websites will be substantially expanded to restrict access to this sort of material.

It has also been suggested this ban be used to prevent all access to pornographic material<sup>6</sup> and internationally hosted gambling sites.<sup>7</sup> Other possible inclusions on the blacklist could be euthanasia-related material. Where does this stop? Decisions about the types of material that should be included on the blacklist must be more thoroughly debated. The leaking of the current ACMA blacklist through wikileaks in August 2008 reveals serious deficiencies in the current system. The blacklist mostly included sites Australians would expect to

---

<sup>4</sup> Environment, Communications & the Arts Budget Estimates for 2008-09 (Canberra; Supplementary hearings), 20 October 2008

<sup>5</sup> *Broadcasting Services Act 1992, Schedule 7, Part 1 (1)*

<sup>6</sup> Family First, ‘Protecting children from pornography,’ [http://www.familyfirst.org.au/policy/policy\\_pornography.pdf](http://www.familyfirst.org.au/policy/policy_pornography.pdf)

<sup>7</sup> Crickey.com.au, ‘ISP filtering: who’s exploiting the kids?,’ <http://www.crikey.com.au/Politics/20081104-ISP-filtering-whos-exploiting-the-kids.html>

be banned, such as child pornography, but it also included, for example, a Queensland dentist. If such innocuous content can be blacklisted by accident, it raises serious questions about the possibility of other legal and legitimate material being permanently banned for no good reason under the Government's proposed ISP-level system which will be more pervasive and have the potential to ban many more sites. The wikileaks further demonstrates a strong argument for an appeals process to be added into the current and any future system, as well as the need for public consultation regarding the content of any future blacklist.

Without a clear definition, banning sites on the uncertain grounds that they host harmful and inappropriate material seems open to abuse. A definition should lead to strict guidelines as to what can and cannot be banned. What can and cannot be banned should also match community expectations about what they should be free to choose to access within the law.

UNYA believes that:

1. The Government must explain why a 'harmful and inappropriate material' category is necessary and provide an unambiguous definition of 'harmful and inappropriate'
2. ACMA's blacklisting process must be subject to a transparent review and appeals system.

### **ISP-level filtering can undermine our rights**

The Government is seeking to implement a two-tiered system of mandatory ISP-level filtering. The first tier of this system would be used to block access to sites on ACMA's blacklist of illegal and prohibited content. The second tier would be a so-called 'clean-feed' that covers other harmful and inappropriate content, such as pornography, that households can opt-out of if they choose to. ACMA completed a laboratory trial of existing ISP-level filtering technology in late 2008.

On 10 November a so-called 'live pilot' began in a partnership between industry actors and the Government.<sup>8</sup>

UNYA foresees two problems with implementing ISP-level filtering. The first of these is with the technology available to implement such an arrangement on a wide scale. Given that the internet contains an ever-changing and increasing landscape of sites that the Government will attempt to prohibit access to, a filter would undoubtedly have to exist on a massive scale to work as desired. ACMA reported in February this year that ISP filters are most likely to have an adverse impact on internet speeds when large numbers of websites and/or intricate analyses of content need to be undertaken as part of the filter.<sup>9</sup> Such conditions would surely be met with the Government's current plan to massively expand the blacklist and become worse as the blacklist was expanded over time. If the filter were used to ban all harmful and inappropriate material, or employed to catch a wider number of sites, the impact on internet speeds would be heavily compounded. This seems to directly contradict the Government's claim that its proposal will not slow internet speeds and cause 'network degradation'.<sup>10</sup> The roll out of broadband to schools and access to information technologies forms a substantial element of the Rudd Government's 'education revolution' (and of the Rudd Government's 2009 Budget commitments); UNYA believes the implementation of ISP-level filtering is inconsistent with the aspirations of these policies, and will generate negative outcomes for students and young people and, indeed, all other Australians who stand to benefit from improved broadband services.

There is also the issue of how to maintain a comprehensive and updated list of sites hosting illegal or prohibited content. The laboratory testing undertaken by

---

<sup>8</sup> Department of Broadband, Communications and the Digital Economy, *Internet Service Provider (ISP) Filtering*, [http://www.dbcde.gov.au/communications\\_for\\_consumers/funding\\_programs\\_\\_and\\_\\_support/cyber-safety\\_plan/internet\\_service\\_provider\\_isp\\_filtering](http://www.dbcde.gov.au/communications_for_consumers/funding_programs__and__support/cyber-safety_plan/internet_service_provider_isp_filtering), 2008

<sup>9</sup> Australian Communications and Media Authority, *Developments in internet filtering technologies and other measures for promoting online safety*, 2008, p. 33

<sup>10</sup> ABC Online, 'Conroy announces mandatory internet filters to protect children', <http://www.abc.net.au/news/stories/2007/12/31/2129471.htm>, 31 December 2007

ACMA showed improvements in mitigating the network degradation caused by existing filtering technology. UNYA is eagerly awaiting the publication of the results from the live pilot and hopes that as technology continues to improve, the negative impacts on internet access to Australians will continue to be reduced. Hopefully these results will also address the problems of 'over-blocking' where the filtering technology inadvertently restricts access to legal material.

ACMA's February report also concludes that individuals are better able to "bring a more complex range of factors into consideration when assessing distinctions between inappropriate and appropriate content",<sup>11</sup> and that user self-filtering (such as parents for children), is more effective than artificial intelligence-reliant filters. This suggests that there is a strong case for maintaining user- (or parent/teacher) level filters and, as such, preserving an individual's right to choose. This could occur in tandem with minimal ISP filtering (for example, for illegal material). Further, since the "filters that most effectively block inappropriate content also block the highest levels of innocuous content",<sup>12</sup> the Government runs the very real risk of creating a self-perpetuating encroachment on the right of Australians to enjoy their rights to freedom of speech and association.

Another possibility is the expansion of classification schemes for online content, like the film and literature classification system, to enable more informed choices by internet users. The ACMA report identifies how this 'content labelling' system already exists and can be improved, such as by greater user contributions and self-labelling.<sup>16</sup> UNYA defers to ACMA's recommendations in this area.

The Government must empower parents to take responsibility for their children, and empower young people to make responsible decisions when it comes to internet content and their online relationships and dealings. It must protect an internet user's freedom of choice and association. This does not mean leaving

---

<sup>11</sup> Australian Communications and Media Authority, *Ibid*, 2008, p. 43

<sup>12</sup> Australian Communications and Media Authority, *Ibid*, 2008, p. 43

<sup>16</sup> Australian Communications and Media Authority, *Ibid*, 2008, p. 48

people free to trawl for child pornography or other illegal or prohibited content. UNYA congratulates the Australian Federal Police on the success of its efforts with international law enforcement agencies to break child pornography rings and bring those responsible to trial. However terrible the crimes organised and/or committed by a minority online, restricting access to illegal or prohibited content must be balanced with protecting internet user's right to choose what is harmful and inappropriate for themselves and their families. This would be a responsible compromise to improve the current policy's flawed assumption that one type of filter suits all people, of all ages.

ACMA's report also explains that there are numerous simple methods of circumventing any type of filtering, either remotely or user based, including 'anonymisers' and 'mirrors'.<sup>17</sup> The ISP filtering will also fail to restrict peer-to-peer (P2P) networks, which could account for up to two-thirds of internet traffic.<sup>18</sup> To UNYA the ease with which any filter can be rendered useless suggests both another fundamental flaw in the plan to use ISP-level filtering and that cyber-education must play a greater part in the implementation of the Government's policy.

The provision of greater cyber-safety and general cyber education is suggested in the Government's original election policy platform. UNYA supports the Government's efforts to ensure young people are "empowered to be responsible cyber-citizens".<sup>19</sup>

Further, UNYA emphasises the need to protect the right of Australians to education, which will also be jeopardised by technical issues such as 'over-blocking'. It is also a right that could be compromised if the filtering system blocks

---

<sup>17</sup> Australian Communications and Media Authority, *Ibid*, 2008, p. 44

<sup>18</sup> BBC News Online, 'Australia trials national net filters', <http://news.bbc.co.uk/2/hi/technology/7689964.stm>, 25 October 2008

<sup>19</sup> *Labor's Plan for Cyber-Safety*, 2007, p. 5

contentious sources of information, for example, blogs written by dissident foreign journalists or information on terrorist organisations.

UNYA believes that:

1. It would only ever be appropriate to introduce ISP-level filtering when the technology causes no or only negligible network degradation.
2. ISP-level filtering should be used to enforce bans on blacklisted (i.e. illegal or prohibited) material but users should be empowered to decide for themselves what is harmful and inappropriate. This means either self-filtering or opting-in to the Government's clean-feed.
3. Emphasis needs to be shifted on to better cyber-safety and general cyber education for both young people and parents.

## **Conclusion**

The Government committed \$125.8m to implementing its *Plan for Cyber-Safety* and has declared that it is happy to have an "open debate" about "technical issues".<sup>20</sup> UNYA welcomes that declaration and encourages the Government to make every effort to now raise the profile of the issues related to its *Plan* and engage in a wider public debate. We also encourage the Government to engage in a wider public debate of the ethical issues, such as over an unambiguous definition of what constitutes harmful and inappropriate content and about what latitude individuals require to remain autonomous in their internet use and free from interference with the rights they exercise over the internet.

ACMA's report in February 2008 also identified that internet risk is shifting from "static content" (hosted illegal material) to "communication risks"<sup>21</sup> associated with online relationships and interaction (such as email scams or on social networking sites). This is yet to be the subject of much public debate or consideration by the Government and this must change. It is important to

---

<sup>20</sup> Senate Question Time, Senator Scott Ludlam, 'Mandatory internet censorship', 12 November 2008, <http://greensmps.org.au/content/question/mandatory-internet-censorship>

<sup>21</sup> Australian Communications and Media Authority, *Ibid*, 2008, p. 1, 89-92

educate internet users, especially young people, about the nature of these threats so they can resolve them as individuals - unless the Government plans to filter every email account and MySpace page, which would be a more intrusive system than any where else in the world, including China and Iran.

A lot of uncertainty remains about how restricted content will be banned and divided between the mandatory, ISP-level filter and the opt-out clean-feed filter. Uncertainty also remains as to whether the technology can provide filtering that doesn't degrade Australian's access to the internet. If the Government's own regulator thinks that existing ISP-filters tend towards 'over-blocking' and are less effective than user-based filters, but more destructive to Australian's rights, this clearly demonstrates the ISP-level filtering is a flawed technology and policy.

UNYA looks forward to a greater public debate and the clarification of the technical and ethical ambiguities in the Government's policy. We hope an outcome that represents a balance of rights as well as sufficient levels of protection for Australian internet users, particularly young people, will be found. To do this the solution must be as much about user empowerment through education as about censorship.

UNYA believes that:

1. The Government should provide full and frank reporting of its its completed and any future live pilots. The Government should also disclose the objectives outlined for the pilot and the circumstances in which the pilot is being completed.
2. The Government must clarify the future of its plans for internet censorship to allow for greater public debate of the issues surrounding its policy.
3. Internet censorship can threaten human rights, rights Australia is obligated to guarantee under international law. Education to ensure

that Australians can make responsible and informed choices is a better approach to reducing potential harm than censorship.