Filtering Pilot and ACMA Blacklist - Not just "illegal" material

Filtering the blacklist

As the Government's plans for Internet filtering move forward, the new details we learn do little to dampen concerns about the scheme. The technical issues remain as acute as ever, but to many of us the implications for Government control of speech on the Internet are just as significant. Yet the Government has consistently (some would say monotonously) referred to stamping out child pornography when defending its scheme to the public, and to the Parliament.

This is hardly a goal anyone could object to, but it has always been a disingenuous representation of a plan that has been sold as a cyber-safety measure. Nobody seriously suggested that children were looking at child porn. But could the Government be sincere when it says it only wants to "enforce existing laws?"

This intention has been belied by the Government's own rhetoric. As recently as this Tuesday, the 11th November, Senator Conroy said, in answer to a question from Greens Senator Scott Ludlam:

> The pilot will test filtering specifically against the ACMA blacklist of prohibited internet content, which is mostly child pornography, *as well as filtering of other unwanted content.*

Not a few eyebrows are raised by that phrase; not many Australians trust a Government department to decide what information is "wanted" and what is not.

The terms of the pilot itself refer many times to the ACMA blacklist. So what is this blacklist? Is it the ultimate child-porn fighting tool used by the Australian Federal Police?

The current censorship regime

The Australian Communications and Media Authority (ACMA) is the Government's media regulating body. They are separate from the Classification Board, which

rates our movies, books and games, and not affiliated with a law enforcement agency. They aren't a censorship agency per se. They are however, charged, under the Broadcasting Services Act, with regulating prohibited online content using a complaints based mechanism. What is prohibited is defined as:

- Any online content that is classified RC or X 18+ by the Classification Board. This includes child pornography, but also material that is X-rated pornography, violence, instruction in crime, drug use, or terrorism.
- Content which is classified R 18+ and not subject to a restricted access system that prevents access by children.
- Content which is classified MA 15+, provided by a mobile premium service or a service that provides audio or video content upon payment of a fee and that is not subject to a restricted access system.

As you can see, although child pornography would of course be prohibited, these criteria cover all pornography and very much more. (How many R18+ sites, especially those not dealing with sexuality, have an age-restriction mechanism in place?) When the ACMA receives a complaint from the public, they assess it against these criteria. If it matches, or they believe it probably would match if rated by the classification board, it goes on the blacklist. If the material is hosted in Australia, they can be sent a takedown notice. If the material is hosted overseas, it simply stays on the list, which is provided to commercial filter vendors.

Makeup of the blacklist

This is the tool that the Government plans to use as the basis of their mandatory, Internet-wide censorship scheme. The contents of the list are secret - it cannot even be obtained under Freedom of Information thanks to modifications to the FOI Act.

Although we don't know what's on it, the ACMA does publish some statistics on what is blocked and why. In the ACMA's last report[1], 781 overseas sites were added to the list. Of these, 3 were pedophilia related, and 410 fell under the heading "RC - Child - Depiction." The rest, 368 sites, were mostly X-rated (251) and other legal material, including some prohibited for nudity, violence, crime or even "sexual fantasy". Previous years showed similar statistics. We also know there are around 1300 URLs total on the blacklist at the moment. (See Appendix I for a

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[1] http://www.acma.gov.au/WEB/STANDARD/1001/pc=PC_100770

summary of blacklisting activity over the last 3 years when detailed reports were available.)

Only 3 sites were blocked for "pedophilia - promotion/instruction". What constitutes a depiction of a child is not entirely clear. We can safely give the ACMA the benefit of the doubt that it is really child abuse material, but we know that in other circumstances, photographs of children that would be otherwise considered innocuous can be considered obscene when placed in a context where they may be viewed for unsavoury purposes.

As content becomes inaccessible, it is eventually removed from the list. Given that child pornography is illegal in every jurisdiction around the world, and is actively policed, it seems a logical assumption that these pages are far more likely to become inaccessible than the legal content on the list. Looking at the last 3 years worth of data, if we add the the last three year's blacklists together, then subtract the "child-depiction" sites from previous years, we get about 1200 sites, close to the current list's size. Under this assumption, the blacklist would be between a third and a half child-related material - certainly not the master list of child pornography it has been represented as.

Expanding the blacklist

Currently, the ACMA does not have a mandate to go searching for prohibited material. A site only comes to their notice when they receive a complaint. Given this fact, and the small size of the blacklist, it's hard to see how it would be a useful tool even were it technically feasible to block access to its contents. It seems safe to assume that the Government intends to expand the blacklist and make the search for prohibited content more proactive than waiting for complaints.

It's clear from above that if they did go looking for material, the overwhelming majority of it would be legal in the R18+ and X18+ range. Child pornography, because of its illegality around the world, is not even primarily distributed using the web and represents a miniscule fraction of total web content.

The Government is yet to explain under what terms the list will be expanded, who will decide what goes on it, and what mechanism will be available to correct errors. Unlike other forms of media, Internet censorship decisions are secret and not subject to review. Under these circumstances, we should urgently demand that the Government explain its reasons for introducing internet filtering. No compelling reason has so far been provided.

Appendix I: Summary of ACMA blacklisting 2004-2008

Year	URLs added	Illegal material*	RC - other	R18+	X18+	Total: Legal
2005-06	706	446	89	0	171	260
2006-07	494	365	41	0	88	129
2007-08	781	413	108	9	251	368

*"Illegal material" is here defined as material refused classification for "Paedophilia – promotion/ instruction" or "Child - depiction". The definition of child pornography differs significantly in jurisdictions around Australia.

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