



Australian Government

**Department of Broadband,
Communications and the Digital Economy**

**Outcome of public consultation on measures
to increase accountability and transparency
for refused classification material**

July 2010

Transparency and accountability public consultation

As part of the introduction of mandatory internet service provider (ISP)-level filtering of Refused Classification (RC) rated overseas content, the Government undertook a public consultation process on measures to improve the accountability and transparency of processes that lead to material being placed on the RC Content List. The consultation process was based on a paper that canvassed six options to improve accountability and transparency for RC content subject to ISP filtering and sought suggestions for other possible measures. The period for lodging submissions began on 15 December 2009 and closed on 12 February 2010.

The Department of Broadband, Communications and the Digital Economy received 174 submissions from a cross-section of the community, including individuals, industry and community organisations. Thirty-six submissions were identified by their authors as confidential, and one submission was not published as it promotes a commercial product. All other submissions are available at www.dbcde.gov.au/funding_and_programs/cybersafety_plan/transparency_measures

The outcomes of the consultation process indicate strong support for robust accountability and transparency measures. For instance, Google stressed the need for transparency because:

Transparency for a site owner is particularly important given that many site owners ... simply cannot be aware of content posted to their sites until a reasonable period after they are put on notice as to unacceptable content; and transparency to the content owner and site owner is also important because the user has no way to know that the blackout has been imposed, or why, unless the user is so informed. If full transparency cannot be effected for content uploaders where they are users of social networking or user generated content sites, it becomes even more critical to achieve it on the site owner side.

The Australian Christian Lobby stated that:

The successful implementation and administration of the mandatory filtering policy relies upon an open and transparent process of placing material on the RC Content List. The public must be assured that the processes adopted do not lead to outcomes that undermine the entire policy, such as inadvertently placing innocuous material on the RC Content List.

Electronic Frontiers Australia, while stating their opposition to the ISP filtering policy, acknowledge that:

In order for Australians to be confident that mandatory filtering is not being used in a way that is inimical to the interests of liberal democratic society, secrecy should be limited to the least possible amount that is required. To the greatest extent possible, any secret banned list must be independently audited, regularly internally reviewed and readily externally reviewable, and carried out by an accountable public authority that is independent from the political process.

Telstra stated in its submission:

Telstra strongly supports all measures that improve the transparency and accountability of the RC Content List where those measures have no countervailing negative consequences.

Professors Lumby, Green and Hartley comment in their joint submission that:

Given the breadth of material that exists online and is potentially caught by the prohibited content provisions it seems to us, imperative, that at the very least the Federal Government commits to a clear system of appeal and judicial review of decisions and that there is transparency about what is put onto such a blacklist with rare exceptions.

However, some of the transparency options proposed were not considered necessary, for example Family Voice Australia stated that:

Both ACMA and the Classification Board are already subject to parliamentary scrutiny through the tabling of annual reports and through appearances as witnesses at estimates committees. There is no need to add additional layers of accountability such as independent reviewers or industry group review.

Following consideration of the full range of suggestions, the Government has decided that the following suite of accountability and transparency measures will apply with respect to the listing of overseas-hosted material on the RC Content List.

A separate process is being developed where the material is on an identified high-traffic site. Details of this will be made available once consultations with high-usage sites are complete.

Measure 1: All internet content complaints to the ACMA that are assessed as being potentially RC will be classified by the Classification Board

The Australian Communications and Media Authority (ACMA) will refer all complaints it assesses as potential RC content to the Classification Board for classification.

Material assessed by the ACMA as potential RC material will be immediately placed on the RC Content List for filtering while it is being classified by the Classification Board. The ACMA would then act on the decision of the Classification Board.

Measure 2: ACMA notification process

Where material has been assessed by the ACMA as potentially RC, and the owner of the material or the content service provider is readily contactable and identifiable, the ACMA will provide that content owner or content service provider with brief reasons why the material has been assessed as potentially RC. The content service provider and/or the content owner would be able to voluntarily take down the identified material without waiting for the outcome of the Classification Board decision.

The ACMA will provide the Classification Board's report to readily contactable and identifiable content service providers and/or content owners.

No notice would be given by the ACMA to the content owner or content service provider where the material in question is the subject of a police investigation and the Australian Federal Police requests the ACMA not to provide notification.

Measure 3: Blocking notification page and appeal mechanism

A standardised ‘block’ page will be used to advise people trying to access a filtered URL, including end users, content owners, or content service providers, that the content they have attempted to access is blocked by the filter because it is on the RC Content List.

The block page notification would apply to the entire RC Content List, regardless of whether included as the result of a complaint to ACMA, or through the incorporation of international lists from highly reputable overseas agencies.

The block page will provide a link to the relevant part of the ACMA website that will give users detail about:

- the classification system and how it applies to the internet
- avenues for appeal or review
- statistics and information on the current composition of the RC Content List.

Measure 4: Access to information regarding the list

The ACMA would regularly publish on its website an up to date ‘high-level’ breakdown of the RC Content List by category.

As stated above in Measure 2, where material has been assessed by the ACMA as potentially RC, and the owner of the material or the content service provider is readily contactable and identifiable, the ACMA will provide that content owner or content service provider with brief reasons as to why the material has been assessed as potentially RC. Once the Classification Board has made a decision on content referred by the ACMA, content owners and service providers will also be entitled to request a copy of the Classification Board’s report from the ACMA (if they have not already received it).

The ACMA will also provide upon request to end users resident in Australia, high-level reasons as to why a particular URL is on the RC Content List. Such a request might be made by the end user after encountering the ‘block page’ notification which will indicate how such a request can be made. End users will also have the ability to seek access to Classification Board reports in relation to a blocked URL under Freedom of Information legislation.

Measure 5: Avenues for appeal and review

Long-standing arrangements have been in place which provide for the review by ‘aggrieved persons’ of the classification of content both under the National Classification Scheme and the *Broadcasting Services Act 1992*. Under this approach, the range of ‘aggrieved persons’ will include the complainant, the content owner, content service provider, and the ACMA. It may also include individuals or organisations whose activities/purpose relate to the contentious aspects of the theme or subject matter of the content concerned.

‘Aggrieved persons’ will have standing to seek a review of a classification decision of the Classification Board. For example, a content owner or content service provider may seek a review where they believe material has been wrongly classified as being RC and therefore wrongly included on the RC Content List. Subject to payment of applicable fees, such parties will be able to seek review of Classification Board decisions by the Classification Review Board.

In addition, the Independent Expert (appointed under Measure 7 below) will be given standing to seek a review of Classification Board decisions by the Classification Review Board. The Minister for Broadband, Communications and the Digital Economy would also have standing to seek a review.

Measure 6: Incorporation of URLs of child sexual abuse imagery from international lists

The ACMA will strengthen the RC Content List through the incorporation of lists of URLs of only child sexual abuse imagery obtained from highly reputable overseas agencies, following a detailed assessment by the ACMA of the processes used to compile those lists. The ACMA will provide a regular, random sample of the content sourced from the international lists to the Classification Board for classification.

The ACMA will identify on its website a list of those overseas agencies whose lists have been included in the RC Content List. The processes for incorporation of these lists into the RC Content List will also be subject to the processes described at Measure 7.

Measure 7: Review by an Independent Expert and report to Parliament

An Independent Expert (possibly a retired judge) would undertake an annual review of the processes leading to placement of URLs on the RC Content List.

The Independent Expert review will focus on providing assurance to Parliament and the community that the processes for placing URLs on the RC Content List as outlined in legislation and relevant guidelines had been correctly followed, that this was done in a robust and efficient manner, and that there was no inappropriate interference in the decision-making processes by any external person. This process would not duplicate the merits review process that already exists through the Classification Review Board and the existence of other judicial review mechanisms such as Administrative Decisions Judicial Review.

The Independent Expert would therefore not undertake any formal assessment or classification of content but could, however, seek a review of a classification decision by the Classification Review Board as noted in measure 5 above. The Independent Expert could also request to see the content of any URL placed on the RC Content List and would also be able to perform random checks of URLs on the RC Content List.

Measure 8: Industry review of technical aspects of filtering

The Department and the ACMA will develop means by which ISPs and other industry organisations can raise technical issues relating to ISP filtering. This could be done for example through the establishment of a Departmental email address which would allow ISPs to submit any concerns or queries they have on technical matters. In responding to such queries, the Department and the ACMA would have access to technical expertise.

Measure 9: Reporting against service standards and statutory requirements

The ACMA and the Classification Board would publish and report against service standards and statutory requirements under the new scheme.