



Policy Statement

The impact of Internet content regulation

Prepared by the Commission on E-Business, IT and Telecoms

Introduction

Internet content regulations are increasingly prevalent. For example, Reporters Sans Frontieres noted that at least 59 countries impose limits on the freedom of information online. Excessive domestic regulation of Internet content creates significant uncertainties for business operating on this global medium, and has a chilling effect on commercial communication.

The International Chamber of Commerce (ICC) represents global business. ICC's membership includes companies of all sizes, in all sectors, and is geographically diverse. ICC has national committees, groups and direct members in over 130 countries around the world.

This ICC policy statement aims to provide governments, regulatory authorities and courts with a business perspective regarding the effect of content regulations on the Internet and electronic commerce.

Internet content regulation defined:

Internet content regulation refers to any type of legislation by governments or regulatory authorities directed at:

- censoring information and communication on the Internet based on its subject matter, and,
- controlling, or attempting to control, access to Internet sites based on subject matter.

Why is global business concerned about Internet content regulation?

The Internet continues to be a growing, vibrant and important medium for conducting business. Indeed, the Internet and e-commerce facilitate international trade. Given the benefits of increased trade for society, governments should refrain from imposing unnecessary restrictions on Internet content.



It is important to note, that ICC recognizes legitimate public policy objectives such as protecting the general public, and particularly children, from objectionable Internet content and prohibiting the use of the Internet for criminal activity and information that could be prejudicial to global security. We believe that such regulations should be kept to a minimum so as not to restrict the free flow of information.

Business' recommendations to governments

ICC proposes the following principles and strategies be considered by legislatures, regulatory bodies, and courts in making determinations regarding regulation of content on the Internet:

1. Allow self-regulation to demonstrate its efficacy --- Filtering, labelling and self-regulation on the Internet should be carefully considered as alternatives to legislation

Self-regulatory mechanisms should be carefully considered as compelling alternatives to legislation, mandatory filtering or additional content restrictions. The market offers a number of rating and labelling services and filtering software, many of which are based on The World Wide Web Consortium's Platform for Internet Content Selection (PICS) that enables labels to be associated with Internet content. A model example is the Internet Content Rating Association (ICRA) that provides free label schemes and filter software.

Business can and does provide users, particularly parents, with the means to filter Internet content while at the same time protecting the rights of adults to express themselves freely. ICC believes that a model, where users can filter out harmful or objectionable content by configuring their software, provides a flexible, balanced and effective self-regulatory mechanism to protect children on the Internet without violating the rights of Internet publishers and other users. Further, the utility of this model should be strengthened by educational programs, aimed at parents, teachers and key personnel in workplaces, to alert users to the availability of such self-regulatory mechanisms.

Any attempt to block communication at some point in the network, including at the Internet Service Provider (ISP), can be bypassed by a variety of means. Thus, regulations that assume an actual ability to block or monitor the flow of information completely are highly inflexible, ineffective and counterproductive.

Transmission of communications through the Internet is highly decentralized and effective control can thus only be reasonably implemented at the two ends (i.e. the host and/or the user) but not in between. Given the availability of encryption, caching and anonymization services¹, attempts to filter between the two extremities are both

¹ Online anonymization service helps users hide their IP address. The service retrieves the pages on the remote server visited and then sends them to the user, so that log files of the remote server will show the IP number of the anonymization service, not the users' IP address.

expensive and largely ineffective. This means that mandatory filtering imposed on Internet service providers and websites is technically and economically unfeasible.

Another fundamental problem involves customer use of anonymization services or proxy servers² abroad. When these services are used, no information about surfed sites is available. Thus, as the table below illustrates, labelling and client-side³ filtering software is more suitable than legislative attempts to limit all access to certain material.

Objective	Possible using self-regulation ?	Possible using legislation ?
Enable adults to protect children from unsuitable material	Yes	No
Enable adults to control their own access to material they do not wish to see	Yes	No
Prevent communication of material which is illegal to possess	No	No

ICC encourages governments and legislators to cooperate with business to address these important issues.

- When necessary, regulation should be kept to a minimum and only deal with specific, observed abuses, taking account of existing technologies

Over-regulation of commercial communications is an impediment to trade and, therefore, economic growth. Unnecessary regulation of Internet content creates legal and operational barriers for business, which inevitably has a chilling effect on the integration of the Internet as a tool for business and for promoting economic development. Unrestricted access to information on the Internet plays an important role in business growth in many developing economies, especially in the IT and software industries. Restriction of commercial communications tends to protect domestic or otherwise well-established manufacturers from new competitors. These opportunities should not be jeopardized by unnecessary regulation of the Internet.

- When necessary, laws and regulations should be clear, precise and narrowly tailored

Delivery of Internet content to users involves a number of actors, such as authors, publishers, hosters and other service providers, telecommunication operators, Internet access providers and users, acting within a highly technical and essentially borderless environment. Imprecise laws, regulations and case law create confusion among these Internet actors, which inhibits further development of the Internet.

² When using a proxy server web pages are retrieved by the proxy server rather than by the person actually browsing the Internet. Proxy servers conceal the users' IP-address.

³ Client-side software is software that is installed on the user's computer (the client) as opposed to software that runs on the server (server-side).

When regulation is required, attention should be paid to the following considerations:

- a) the domestic and international consequences of the proposed regulation in terms of cost and impact on the development of the Internet and e-commerce;
- b) the underlying technical issues and the precise responsibilities of each of the relevant Internet actors;
- c) an assurance that potential criminal actions are described in clear and objective terminology;
- d) recognition that developing technologies can generate unique observed abuses, relevant regulations should endeavour to be as technology-neutral as possible.

To ensure the quality and clarity of regulation, ICC strongly encourages a transparent, inclusive consultative process, including regular exchange of information between the public and the private sectors.

4. Legislation should not place additional costs and burdens on business

Where content regulation exists, it is the role of the appropriate law enforcement authority to enforce the law. Legislation and regulation should not place additional costs and burdens on business.

New legislation that would place additional costs and operational burdens on business would risk distorting competition and fetter Internet development.

5. Jurisdiction and applicable law mechanisms should not plague business with the risks of unexpectedly being subjected to laws and judgments in other countries

Internet pages can be viewed anywhere in the world, making all business and consumer users potentially subject to the sometimes conflicting laws and jurisdiction of every country. To avoid this aspect of Internet communications from becoming a deterrent to business and other users of the Internet, authorities should exercise the greatest restraint in imposing their national laws or finding jurisdiction on the sole basis that an Internet page may simply be viewed within its borders. Instead, laws and regulations of a particular country should apply where content is specifically directed to the country in question. For example, does the site solicit, either directly or by its degree of interactive content, an exchange of information with the users in a particular jurisdiction.

6. Provisions dealing with liability should limit the liability of technical service providers and carefully balance the interests of all stakeholders in the electronic environment

The role of access providers and data carriers is to provide other Internet actors with the technical means of implementing Internet communications. Given their role and the high volume of Internet communication, these actors are rarely in a position to control content, and should not, as a general rule, be held liable when content violates applicable



laws and regulations. This is consistent with, for example, the general approach of the EU Electronic Commerce Directive.

The same should be true of hosting providers, except when a hosting provider performs a publishing or editorial function, or otherwise has or should reasonably have, actual knowledge of a violation of applicable laws and regulations. In determining the responsibility of hosting providers, lawmakers should take account of the high volume of content involved and the follow-on costs and impact on competition of implementing envisaged laws and regulation.

Any legislation that deals with the issue of liability should limit the liability of service providers in a manner that balances the interests of all interested parties including copyright owners, communications service providers and users. The US Digital Millennium Copyright Act, EU Copyright Directive and the EU Directive on certain legal aspects of information society services are good examples of an appropriate balance in limiting liability of service providers for copyright infringements of third parties.

Lawmakers are encouraged to consider the effects articulated in this policy statement and engage in critical dialogue with businesses worldwide to ensure the continued growth and vigour of the Internet by providing legal certainties with the least possible burdens and constraints.

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