



Watch on censorship

Utopian visions of cyberspace have defeated the Communications Decency Act, reports Jenny Mullaly

The American government's much decried attempt to regulate Internet content via the Communications Decency Act (CDA) has been ruled unconstitutional by the Supreme Court in *Reno v American Civil Liberties Union*. The First Amendment guarantee of freedom of speech was central to the decision, but the regard paid by the Court to the uniqueness of this new medium, its measured assessment of the availability of sexually explicit material and its balancing of the communication rights of adults against the need to protect children hopefully will reverberate elsewhere, including Australia.

Invoking cherished images of free speech from a pre-mass media age, the US Supreme Court was clearly influenced by the 'utopian' vision of the Internet as a multifaceted medium offering unprecedented scope for mass communication:

'Through the use of chat rooms, any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox. Through the use of Web pages, mail exploders, and newsgroups, the same individual can become a pamphleteer.'

Not akin to broadcasting

The Court distinguished the Internet from broadcast media, which traditionally have been regulated extensively. The Internet is not subject to spectrum scarcity and is not as invasive as radio and television, whose broadcasts enter the home with the turn of a dial. Whereas Australian media continue to give credence to the line that 'Internet pornography is

only a moment away', the Court assessed as slim the risk of encountering accidentally sexually explicit material on the Internet.

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The CDA contained two provisions that prohibited the knowing transmission of obscene or indecent messages to any recipient under 18 years of age and the knowing sending or displaying to a person under 18 of any message that 'depicts or describes, in terms patently offensive as measured by contemporary community standards, sexual or excretory activities or organs'.

'Chilling' effects

The Court acknowledged the legitimacy of the government's goal - the protection of children from harmful material - but found that the CDA's unnecessarily broad suppression of speech was unconstitutional: 'In order to deny minors access to potentially harmful speech, the CDA effectively suppresses a large amount of speech that adults have a constitutional right to receive and to address to one another. That burden on adult speech is unacceptable if less restrictive alternatives would be at least as effective in achieving the legitimate purpose that the statute was enacted to serve.'

The Court said that the terms 'indecent' and 'patently offensive' were vague and ambiguous, and that uncertainty as to their scope could chill speech. Without any exceptions for speech of societal value, the provisions could potentially extend to discussion of issues such as birth control, homosexuality, prison rape and safe sexual practices, as well as artistic images. The possibility of conviction and penalty for breach of the CDA could further chill speech. The CDA made no provision for parental choice. It could extend to a parent who allows her 17 year old to use a computer to access material that the parent deems appropriate or a parent who sends material to the 17 year old via e-mail that others might consider indecent or patently offensive. The defences, requiring effective actions to restrict access by minors and age verification procedures, did not limit sufficiently the scope of the restriction on speech.

'The interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of censorship'

In response to the government's argument that the unregulated availability of offensive material on the Internet could jeopardise its development, the Court displayed appropriate scepticism of well-intended censorship: 'The interest in encouraging freedom of expression in a democratic society outweighs any theoretical but unproven benefit of censorship'.