

## Regulation and the internet

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We are being consulted about new legislation for an integrated communications regulator (Ofcom). This is required because of convergence. Convergence is taking place between telecommunications and broadcasting, and among activities in these industries, for example network operation, service provision and content provision. The internet is the prime example of convergence and a clear focus of public concern, especially about child safety. Yet the internet is little mentioned in the consultation papers, and their main intention for the internet is to exclude it from Ofcom's remit.

Excluding the BBC from Ofcom's remit has attracted much attention. By comparison, excluding the internet has been unremarked. This paper explains why the internet should be within Ofcom's remit. It is in four parts:

- **Misunderstandings** identifies some misunderstandings which may underlie the government's current approach.
- **Unexplained policy intentions** examines what the references to the internet in the draft Bill, the Policy Document and the White Paper seem to be trying to achieve.
- **Arguments against internet content regulation** shows how the usual arguments against regulating internet content are flawed.
- **A better way** suggests a co-regulatory approach and outlines some of its benefits.

### Misunderstandings

The current situation appears to result from confusion and misunderstanding about the meaning of the internet and of regulation, the feasibility of regulating the internet, and the likely future role of the Internet Watch Foundation.

*Meaning of "internet"*

It is not surprising that “the internet” gets misunderstood, as it is almost impossible to define in watertight terms. The draft Bill itself has run into trouble trying to do just that. But from the White Paper it appears that the policy has been formed around a notion of the internet as a niche up-market medium. This may have applied in the early days of thinking about Ofcom, but it is already out of date, and will become more so as the years pass.

### *Meaning of “regulation”*

“Regulation”, too, is a complex term. We have to distinguish formal (statutory) regulation from co-regulation, industry self-regulation (which may apply to the whole industry, a voluntary subset of the industry, or individual companies), and even consumer self-regulation (the simplest form of which is exercising the off switch). Then there is the distinction between delivery and the content which is delivered. Economic regulation of delivery, the traditional preserve of Oftel, seems to be relatively well provided for in the draft Bill, though its boundaries are not entirely clear - navigation aids, for example, occupy an increasingly important middle ground<sup>1</sup>. Content regulation is divided between “positive” regulation (which makes sure good things are provided) and “negative” regulation (which avoids bad things being put about).

For the internet, positive content regulation might reasonably be thought unnecessary at present, given the superabundance of free content of practically every kind. The BBC’s contribution should however be noted here, as must some companies’ view that the BBC should not use licence fees to undermine their markets<sup>2</sup> - and free high-quality content cannot last for ever. But there have been many calls for negative content regulation, and especially for the protection of children and young people from predators or simply from commercial exploitation.

### *Feasibility of regulation*

The government has been advised to leave the internet unregulated by industry experts whose short-term interests are best served by minimising regulation. They have encouraged the view that the internet cannot be regulated. This is plainly not true. The law does apply equally online as it does offline. There is new EU legislation on e-commerce<sup>3</sup> and a range of initiatives which help to ensure that the internet works (such as the rules for domain name allocation).

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<sup>1</sup> Security and privacy, including issues surrounding hacking, spamming, denial of service attacks and of course official surveillance, are other topics peripheral to carriage regulation which are receiving attention outside the Bill.

<sup>2</sup> <http://www.guardian.co.uk/internetnews/story/0,7369,721251,00.html> 24 May 2002, “Rivals threaten BBC with court for £150m online learning push”

<sup>3</sup>The UK implementation of this legislation is explained at

[http://www.dti.gov.uk/cii/ecommerce/europeanpolicy/ecommerce\\_directive.shtml](http://www.dti.gov.uk/cii/ecommerce/europeanpolicy/ecommerce_directive.shtml)

Alternative approaches are possible which could better safeguard consumers without stifling either growth or individual freedoms.

### *Unrealistic expectations*

For the internet, the government appears to be plumping for an industry self-regulatory set-up which does not exist, and which there is no reason to expect to come about spontaneously. In particular, the White Paper's expectations of the Internet Watch Foundation (IWF) are completely unrealistic unless that body is transformed beyond recognition with a new remit and new forms of funding. The IWF does good work in reducing illegal child pornography on the UK internet, but it is currently having troubling financing even this limited activity<sup>4</sup>. It is now reviewing its remit, but there seems little chance of significant expansion.

### **Unexplained policy intentions**

Annex 1 to this paper reproduces the only sections of the Policy Document which explicitly refer to the internet.

The first of these sections, 3.2, says that the Government is committed to self- and co-regulatory approaches "that have proved so successful". This comment may refer to the Internet Watch Foundation (IWF), but, as is discussed below, this body has worked only in an extremely limited area and to date has been operational rather than self-regulatory. Membership and financial contributions are entirely voluntary, there is no code of practice and no way of enforcing recommendations. Maybe the passage refers to ICSTIS or the Advertising Standards Authority, which are mentioned in 4.4.3 as bodies with which Ofcom should "establish suitable links".

### *Technical difficulty of excluding the internet*

The second passage, 8.3.3, touches on the technical difficulty of excluding the internet from Ofcom's remit. This is done through the definition of "available for reception by members of the general public". This plainly would include internet content, but subclauses (3) and (4) of clause 155 of the draft Bill are presumably designed to exclude the internet by using the notion of "two-way service". This should also exclude video-on-demand. The consequences of excluding video-on-demand are discussed in 8.3.3.3 of the policy paper. To avoid intervention in video-on-demand, the government requires the industry to enable parents to restrict their children's viewing. Strangely, the consequences of excluding the internet are not mentioned at all.

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<sup>4</sup> <http://www.iwf.org.uk/about/minsbd14-05-02.htm>

The industry, which originated and supports the idea of excluding the internet from the legislation, is doubtful whether these clauses will have that effect<sup>5</sup>. Certainly, it is hard to see how they could do so without at the same time excluding interactive digital television services which are meant to be included. Equally, being two-way is not evidently in itself a characteristic which makes regulation less desirable. Whatever policy is adopted regarding internet regulation, further work is needed on its legal realisation.

### *Media literacy*

The third passage deals with Ofcom's remit of promoting media literacy, which is supposed to include the internet. This is by a long way the most helpful aspect of these proposals where consumers and the internet are concerned, and is much welcomed. It is good to see this standing prominently in clause 10 of the draft Bill as a function of Ofcom (even if it is only one of 8 miscellaneous general functions). However, nothing is yet known about how this function will be carried out - in co-operation with whom, with what budgets, and with what back-up.

It is unfortunate that clause 10 twice uses the term "regulating access" (and twice "controlling what is received"). From the context, it looks as if we are talking about individuals' actions in relation to material available to themselves or to their families, rather than to anything done by the authorities. This use of the word "regulation" helps to maintain confusion.

### *The internet is a mass medium*

Notably missing from the Policy Document is any explanation of the government's line on the internet. A great deal, however, is said about the continuing importance of television content regulation even in an era of multiple television channels. Reading between the lines, the document seems to imply that the internet can safely be overlooked because it is a niche medium accessed only by a minority of relatively well-off and well-informed enthusiasts. This may have been true some years ago, but it is no longer the case. Earlier this year, 46% of UK households had internet access at home<sup>6</sup>, and 90% of full-time students at their place of study<sup>7</sup>. The internet is becoming ever more pervasive. Within the life of this legislation, a majority of the population could be relying on personal internet devices for their primary source of news. The accuracy, balance and impartiality of these sources will then become of great concern, as will the diversity and openness of the sites where consumers and citizens access the sources.

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<sup>5</sup> See, for example, submissions to the Joint Scrutiny Committee hearing held on 13 June 2002 at <http://www.publications.parliament.uk/pa/jt200102/jtselect/jtcom/876/2061301.htm>

<sup>6</sup> <http://www.oftel.gov.uk/publications/research/2002/q8intr0402.htm#ch2>

<sup>7</sup> [http://www.continentalresearch.com/reports/rep\\_fr.htm](http://www.continentalresearch.com/reports/rep_fr.htm)

Another reason for ensuring at least basic regulation of internet content is that without this, public confidence in television could be undermined. Convergence means that people will view television programmes on the internet and access the internet through a television. How is the consumer then to differentiate between broadcast regulated content and internet unregulated content? Television, well regulated from its start, is a trusted medium; but this trust could be eroded as new unlicensed services become available on television screens.

### *User views*

Consulting the White Paper fails to improve understanding of the government's position, though more page space is devoted to internet access and content there. The main references are reproduced as Annex 2. The only grounds advanced against third-party regulation are some results of market research carried out early in 2000 by the BSC and ITC showing that most users favour the use of rating and filtering software over third-party regulation. It is good to see user views being taken into account. However, other research suggests that most users would like to see some regulation of internet content<sup>8</sup>. That same BSC/ITC research also confirmed that viewers found it near-impossible to anticipate future changes in the media environment, indicating little realisation of what unregulated content might include and so calling into question the particular judgements they offered.

### *IWF – limited remit*

The rest of this passage from the White Paper shows a misplaced faith in how well rating and filtering mechanisms work (or can possibly work). It also displays a complete misconception of the role and activities of the Internet Watch Foundation. The IWF currently aims to remove illegal images of child abuse<sup>9</sup>. It does not ask for the removal of, for example:

- The generality of content fostering criminal or dangerous activity, even though many people mistakenly believe this to be illegal;
- text (rather than images) relating to child abuse, or many images which complainants suspect of illegality but which fall short of the IWF's criteria (for example, because the age of the children involved is unclear);
- legal pornography that many parents would judge inappropriate for children, including plenty which in the physical world would be confined to premises licensed for over-18s only.

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<sup>8</sup> Annex 3 provides references to a broader range of research results.

<sup>9</sup> According to IWF's Annual Review for 2001, in 2001 the IWF received 11357 reports of which it took action on 2930 or 26%. Of the actioned reports, 2920 were child pornography, 9 non-consensual adult pornography and 1 criminal racial abuse.

Although the IWF's website makes its limited remit quite clear, already three-quarters of the reports it receives get no action. In future, with growing use of the internet, the public will want to know to whom to complain about material they find problematic, and what redress or other useful outcome is possible.

### **Arguments against internet content regulation**

The main usual arguments against internet content regulation are that it is:

- **Infeasible:** because the internet is a global phenomenon, and because anyone can put information onto the internet, it is impossible to control what appears on it, particularly when the source lies outside the UK.
- **Repressive:** internet content regulation would be likely to restrict freedom of speech.
- **Unnecessary:** there is no real or serious problem with internet content (apart from child pornography which is dealt with by the Internet Watch Foundation).
- **Already solved:** internet rating and filtering software provide an effective, accessible and appropriate way of blocking unwanted content.
- **Too expensive:** internet service provision in the UK is a fledgling industry whose precarious existence is threatened by suggestions that ISPs should be responsible for content accessed through their services.

We look at each in turn.

#### *Infeasible?*

First, it is true that internet content is difficult to control and that it presents new challenges. But even if complete control is impossible, this is hardly an argument for making no effort in this direction. In fact, there is no reason why self-regulation could not encompass material judged harmful or offensive, as well as that judged illegal. Successful efforts to combat child pornography in many countries illustrate what can be done internationally if the will is there. The much-studied Nazi memorabilia case (involving Yahoo in France) also shows how national preferences can prevail in a Western culture<sup>10</sup>. In fact, most UK users spend most of their online time visiting a relatively small number of popular websites. Focusing on these would make obvious sense. What is more, technical developments will extend what is possible, for example by making it easier to identify the country of origin and/or of receipt of a transmission.

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<sup>10</sup> See, for example, *Fighting nazi and anti-semitic material on the internet: the yahoo! case and its global implications*, Benoît Frydman and Isabelle Rorive, <http://pcmlp.socleg.ox.ac.uk/YahooConference/>. The PCMLP (Programme for Comparative Media Law and Policy at Oxford University) website contains, and links to, much other relevant material.

### *Repressive?*

The second argument, on freedom of speech, is also true, but is equally true of regulation of content in other media. Freedom of speech is not an absolute value but one that must be balanced against other values, taking into account both what content is at issue and who is likely to access this content. The characteristics of the medium are crucial. "The normal law of the land applies", on its own, has never been seen as enough for television. Broadcasters are expected to devise and adhere to detailed codes of practice. These include, for example, avoiding giving publicity to techniques which make it easier to commit crimes. The internet brings such information to anyone capable of finding a terminal and typing a few words into a search engine. There must be at least an equivalent case for limiting access to such techniques on the internet as on television. This is not the same as finding the material in the reserve collection of a university library.

The government has declared its intention of making the internet universally accessible, and indeed is seeking that the internet should be a prime tool for education, employment, civic participation and interaction with officialdom. The more the government succeeds in these goals, the more responsibility it must accept for ensuring that such pursuits are not impeded by intrusive, exploitative or offensive incidents. Media literacy is part, but only part, of the story here.

Free speech is an important value to support. But the internet service provider industry has a commercial interest in similar outcomes. The freedom to make money is often at the root of calls for other freedoms.

In the physical world, we find ways of preserving certain freedoms for some without impinging on the well-being of others. Licensed premises have already been mentioned. Another analogy is zoning – houses may not be built in a green belt, nor factories in a residential district; but each is acceptable in its proper place. On the internet, the idea of "walled gardens" for children (areas with only suitable content, lacking outside links) is well-known. We also have internet "shopping malls" with only trustworthy retail outlets, vouched for by the manager of the mall. Why not internet "country parks", offering the general public a wide range of attractive content while excluding what they are likely to find offensive?

### *Unnecessary?*

As for the third argument, we are short on facts as to whether there are "real problems". Anecdotally, it seems that most internet users have a story to tell of the problems they or members of their family have run into online. Simply asserting the absence or presence of problems is not helpful. What constitutes a serious problem is always a matter of judgement.

An elaboration of this argument says that internet users choose the content they are exposed to, in contrast with broadcasting where they have to take what is available (“pull” rather than “push” technology). Again there is some truth in this, but the picture is oversimplified and the difference between the internet and broadcasting will decrease as choice of broadcast content increases. Already internet users are often exposed to content they have not chosen, for example through “pop-ups”, typing errors and mousetrapping (preventing a user from leaving a website).

To bring substance to this debate, an analysis of user complaints made to ISPs and elsewhere would be of great value in identifying current and emerging concerns and providing guidance on priorities. So too would properly funded and publicly disseminated longitudinal tracking research on children, young people and their parents as users of internet content. In principle the research requirement on Ofcom could be of significant assistance here, if properly funded. Sadly, draft Clause 12 on Customer Research appears to be worded so as to prevent Ofcom from engaging in this useful activity.

#### *Already solved?*

Rating and filtering software certainly have an important part to play in helping users to achieve their preferred internet experience. But their development and take-up (of rating by websites and of filtering by users) are still at early stages. We cannot rely only on this relatively new technology. Stories abound of misplaced barring – such as Essex or Sussex residents barred from their county council websites – and of objectionable material still slipping through<sup>11</sup>. Only a small (though growing) percentage of websites currently carry a recognised rating. And at present, many parents are unaware of filtering software or unclear how to use it, raising the question of responsibility in cases of failure. We do not simply state that pedestrians who fail to cross a road carefully are responsible for their own loss of life. We also have road safety training, pedestrian crossings, speed limits, and penalties for dangerous driving.

#### *Too expensive?*

Of the five arguments against internet regulation listed above, the last has been the most powerful force in bringing about the current state of affairs. The government is keen to promote the UK as a good place for ISPs to bring their business, and does not want to disadvantage it by imposing regulatory regimes that are more burdensome than those of rival countries. ISPs above all want to limit their exposure to legal liability for content and to establish their status as “mere conduits” (even though many of them sell their services on content rather than on delivery). The industry, in financial crisis, says that regulation is an unsupportable cost.

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<sup>11</sup> See, for example, an article on internet filters in *Computing Which*, September 2001, straplined “If you’re worried what websites children may come across, don’t rely on filters”.

An alternative viewpoint is that costs of regulation are not usually very great compared with the many other costs of running a business. A sensibly run self- or co-regulatory arrangement for the UK internet should not prove to be a significant burden on the industry. And eventually, it could well pay for itself through inspiring greater consumer confidence in the internet-based services, leading to greater take-up to the benefit of service providers. So far from scaring investors away from the UK, it could actually strengthen the UK's competitive advantage.

### **A better way**

We argue that the approach to internet regulation displayed in the draft Bill and related materials is unsound, unsupported, and unsustainable, based as it is on a mistaken assumption that the "internet cannot be regulated". What new approach should be put in its place?

First, whatever approach is taken, it should be designed to meet actual needs for regulation. Regular consumer research is needed to find out what problems people are running into when using the internet, whether these are resolved, and if so, how, by whom, and how satisfactorily. It may be that no action is required for the time being. But the misplaced attempt to exclude the internet from the draft Bill takes no account of technological convergence - the very reason Ofcom is being created. This attempt should be abandoned. The draft Bill is intended to provide an enabling framework for regulation over the long term, not to prevent regulation from happening where it is needed.

The internet should be included – like all other electronic media – and specific reference should be made to how its regulation is to be handled.

We do not know what consumer research will find, but we can say confidently that the experience of consumers will keep changing. A flexible approach will be needed to providing protection. This is an argument against statutory regulation, which cannot react fast enough. However, UK experience to date strongly suggests that simply expecting the internet industry to self-regulate will not be enough either. An industry in financial crisis has priorities other than the protection of the public interest. The answer is co-regulation – self-regulation within a statutory framework that requires effective self-regulation across the industry (rather than on the present voluntary, opt-in basis), and where Ofcom can step in if effective self-regulation does not come about when it is needed.

One way of implementing this would be, through a General Condition of Entitlement<sup>12</sup>, to require Internet Service Providers to support relevant industry

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<sup>12</sup>See Oftel's current consultation at <http://www.oftel.gov.uk/publications/licensing/2002/enti0502.htm>

bodies<sup>13</sup>. There is already a parallel draft condition underpinning ICSTIS, the regulatory body for premium rate services – a very much smaller and less influential industry, with a vastly better resourced and more effective regulatory body.

How would the UK internet change if it had an effective self-regulatory body or bodies<sup>14</sup>? Here are some examples of what we might see:

- a code of practice dealing with limitation of access to harmful, as well as to plainly illegal, material (with suitable provision for determining what is harmful)<sup>15</sup>;
- liaison among ISP associations in different countries, aiming at consistent standards and helping with enforcement;
- responsible internet service providers requiring that all their users abide by an Acceptable Use policy which includes avoiding behavior likely to offend their fellows<sup>16</sup>;
- search engines which make it clear whether, and if so how, commercial factors influence the results of a search;
- specification of both minimum (obligatory) and Best Practice (desirable) standards<sup>17</sup>, aiming to move the industry towards Best Practice;
- inclusion in these standards of website accessibility to people with disabilities;
- most consumer ISPs joining the Telecoms Ombudsman scheme, which will deal with a range of complaints fast and effectively at no charge to the complainant;
- better resourced and promoted development of rating and filtering software, with a much higher proportion of rated websites, and much simpler user interfaces for filtering purposes;
- domain names which are less vulnerable to unfortunate misrouting through common typing mistakes;

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<sup>13</sup> Providers of portals and search engines should also support similar initiatives.

<sup>14</sup> Nominet's study of a Code of Practice for domain names (reported at [http://www.incop.org.uk/report\\_summary.html](http://www.incop.org.uk/report_summary.html)) produced an agreed Code but no system for introducing or running such a Code. It could well be efficient to combine this with other industry functions.

<sup>15</sup> This could still recognize that ISP's are "mere conduits" for the purpose of the E-Commerce Regulations (being implemented in August 2002).

<sup>16</sup> The Irish seem to have adopted an approach of this kind – see <http://www.iab.ie/Publications/Reports/d33.PDF>

<sup>17</sup> Again this is done in the Irish code.

- safe chatrooms which young people would actually prefer to use;
- a telephone helpline for the confused or worried internet user.

Readers may have additional ideas. Last, but not least, we might see growth in the internet market as more potential users are reassured and sign up to surf the web.

## **Annex 1      References to Internet in Policy Document**

### **3.2 The Internet**

**3.2.1** As a global network the World Wide Web offers tremendous opportunities for society and presents legislators and regulators with some complex challenges.

**3.2.2** The normal law of the land, of course, applies online as much as it does offline. But the Communications Bill will not give Ofcom any powers of regulation over content on the Internet (see 8.3.3 for a fuller explanation). Instead, the Government remains committed to self and co-regulatory approaches that have proved to be so successful. Ofcom will work alongside industry in developing systems that continue to safeguard children, citizens and business.

#### **Extracts from 8.3.3 Licensable content on cable and satellite**

**8.3.3.1** explains that television programming using terrestrial digital, satellite and cable technologies will continue to require licensing, which will mean satisfying at least "certain minimum standards as to the content of its programmes".

**8.3.3.2** The Government has made it clear that it is not the intention for the draft Bill to extend regulation into the Internet. It is not a simple matter to give effect to this policy in statutory form. The draft Bill is designed to do so through the way that "available for reception by members of the general public" is defined. The definition in the draft Bill has the effect that some services that are currently regulated, notably video-on-demand, would not be licensable in future.

**8.3.3.3** The draft Bill does, however, grant the Secretary of State the power to amend the definition of what is licensable through secondary legislation to take account of such matters as the expectations of the public about content, and child protection issues, as well as technological change. Ministers are minded to use this power, to bring in video-on-demand when the Communications Bill comes into force, unless they receive industry-wide assurance, by Autumn 2002, that providers of the video-on-demand service would put in place and maintain adequate means of protecting children. We envisage such an assurance would incorporate a binding code whereby all UK video-on-demand providers would be signed up to putting in place, promoting and operating effective child protection measures.

### **8.6.5 Media Literacy**

**8.6.5.1** The Communications White Paper also outlined our commitment to media literacy. Under the draft Bill Ofcom will be given the function to help people develop a better understanding of the different types of media service, both licensable and non-licensable and in particular the Internet. This has the aim of enabling people to make more informed choices about what they and their children see and hear and, importantly, to think critically about viewing.

**8.6.5.2** Ofcom will also have a function to promote a better public understanding of the systems that regulate access to media content, these include filtering and rating systems and other technological devices such as PIN based systems to control viewing. Ofcom will promote the use of such systems and encourage the development of better versions. Ofcom will also work with bodies such as the Internet Watch Foundation both in the UK and at an EU level to strengthen ways of identifying suitable and unsuitable content on the Internet with the aim of giving parents greater control over what their children watch.

**8.6.5.3** To promote media literacy Ofcom may carry out a range of activities such as providing (or encouraging others to provide) information about the nature of material which people are accessing and information on the types of tools which people use to manage access to such material. Ofcom may also conduct research into media literacy. Together with the Department for Education and Skills, schools and other interested parties Ofcom may participate in developing media literacy through course materials for use in formal education.

## Annex 2 Main references to internet content in White Paper

### 6.10 Internet Content

- Ofcom should ensure continuing and effective mechanisms for tackling illegal material on the Internet, such as those being pursued under the auspices of the Internet Watch Foundation. It will also promote rating and filtering systems that help Internet users control the content they and their children will see.

**6.10.1** The Government sees enormous benefits in promoting new media, especially the Internet. But it is important that there are effective ways of tackling illegal material on the Internet and that users are aware of the tools available, such as rating and filtering systems, that help them control what they and their children will see on the Internet. Research suggests that this is what people want in relation to the Internet, rather than third party regulation.

#### **How parents can protect their children from seeing unsuitable content**

Many parents wish to prevent their children from gaining access to certain types of material, which may have a sexual or violent theme that is only suitable for adults. The Government is committed to giving parents information about particular pieces of content that allows them to make an informed judgement about whether it would be suitable for their children. This applies both to existing media and to the emerging digital media.

For example, free-to-air television already separates material into pre- and post-Watershed. It is accepted that pre-Watershed material should be suitable for all, while post-Watershed material may contain adult content. The BBC and Independent Television Commission place restrictions on the sort of material that can be shown at particular times, especially for violent or sexual content, underpinned by the Broadcasting Standards Commission's research and codes.

Films, whether in the cinema or on video, have a more detailed rating system based on the minimum legal age of the audience. Some material that is not age-restricted is nevertheless marked as 'PG- Parental Guidance', informing parents that it may contain themes that are unsuitable for very young children, or that may need some explanation from parents. This system is administered by the British Board of Film Classification (BBFC). It is also used by many subscription and pay-per-view channels as a well-understood method of informing viewers what sort of material the film contains.

As well as the existing requirements on television providers, some digital TV providers have gone a stage further. They have configured their equipment so that parents can control what their children are watching by using a password or PIN number. This allows parents to block access to unsuitable material even when not present to supervise their children's viewing.

The process of rating is further refined for Internet content. A number of proprietary rating and filtering systems exist to manage access to Internet content. The more basic simply bar access to all but a pre-defined list of sites, or ban access to a 'black list' of unsuitable sites. Some systems attempt to block material based on unsuitable words or phrases in the text, although this is not foolproof since the systems cannot distinguish the context of the material. The systems used in modern browsers can be set to block material that has been rated - on a scale measuring violence, sexual content and bad language - by the site itself or a third party. This system allows a greater degree of control by parents, who can choose - based on their own values - to give a higher importance to blocking violent content than bad language or indeed vice versa. Not all sites are rated using these systems, and much unrated material may be unsuitable for children. For this reason, the browsers allow parents to block access to all unrated sites.

The Government supports these initiatives to give parents control over what their children watch. Ofcom will work with the IWF in the UK and at an EU level to strengthen these ways of identifying suitable and unsuitable content on the Internet.

**6.10.2** The Internet offers huge legitimate benefits, rewriting the rules about how we communicate with each other. But alongside these legitimate opportunities come powerful opportunities for criminals to abuse modern technologies for their own ends. 'On-' and 'off-line', the Government places a high priority on tackling the menace of sex offences against children, ensuring the police have the powers to detect and pursue offenders, and the courts have the powers to deal with them severely. The Internet industry as a whole has a social responsibility to co-operate with the police in their efforts to tackle the dangers posed by paedophiles misusing the Internet and is taking further measures to improve child safety. The Government wishes to build on this relationship with the industry to combat such misuse.

**6.10.3** The UK has led the field in this area, using the strength of UK criminal law and effective international co-operation, through organisations such as the Internet Watch Foundation (IWF). The IWF, which is regarded as a model internationally, was set up in 1996 by Internet Service Providers to enable members of the public, via a hotline, to report child pornography or other illegal material on the Internet. When the IWF receives a report, it reviews the material and decides whether it is potentially illegal. If it is, it then tries to determine the origin of the material and notifies the UK police or appropriate overseas law enforcement agency. It also notifies UK ISPs that they should take the material down from their servers; if they do not, they risk prosecution. The Government will continue to encourage and support this work.

**6.10.4** The IWF has also done much to promote approaches and tools, such as rating and filtering systems, that help Internet users control what they and their children will see on the Internet. Research conducted by the Broadcasting Standards Commission and the Independent Television Commission earlier this year suggested a wide degree of support for such approaches. During the project, participants turned away from the notion of relying on third party regulation and towards the belief that users could and should be empowered to decide what they and their children would experience on the Internet.

**6.10.5** Parents must have these tools, and they must be both easy to use and robust. We will work with the IWF and industry to drive forward their development, to promote understanding of them and their use, and to ensure clear signalling when users move from one environment, say television, to another, such as the Internet.

**6.10.6** Because much of the Internet's content comes from overseas, we will also continue to work within Europe and internationally to secure from our overseas partners the necessary co-operation to maximise the effectiveness of rating and filtering. In Europe for example, the European Commission, through the Internet Action Plan, has funded work on how to make rating and filtering systems more effective. Much work in this area has already been done by the Internet Content Rating Organisation. And the INCORE (Internet Content Rating for Europe) report published in June recommended a number of steps based on a combination of self-rating and rating by a trusted third party.

**6.10.7** We are also addressing concerns about children's use of the Internet through agreed child safety messages. These can be found on the Government portal UK online. Further help is available through DfES's parents' online initiative.

**6.10.8** This approach to providing confidence in Internet use will complement the Government's initiatives to ensure confidence in doing business online, such as the co-regulatory TrustUK scheme and the Electronic Communications Act 2000.

### **Annex 3: Some relevant consumer research findings**

**KPMG/Denton Hall 1999.** Omnibus survey commissioned for DTI Review of IWF found low awareness of IWF but ~70% of internet users interested in using its services “if appropriate”.

**Which Online Annual Internet Survey, 2001** <http://www.which.net/surveys/intro.htm>

Key relevant findings:

- 3 in 5 adults and 72% of internet users feel that fraudulent activity is a key threat posed by the Internet, whereas over half believe that it undermines the morality of the nation by making certain types of material (including pornography) freely accessible.
- When prompted, 7 in 10 British adults do believe that the Internet should be regulated. This depth of feeling has remained consistent over time and is felt equally by both users and non-users.
- Online experience reduces the sense of need for regulation to some extent. Just over a quarter of users with 3 or more years experience do not want regulation as opposed to 1 in 10 new users (up to 12 months online). However, the majority of people within all subgroups still feel it would be beneficial.
- When asked for the main reason they are not online, 5% say “I don't approve of some of the information you find on it being freely accessible”.

2002 survey now available at <http://www.which.net/surveys/survey2002.pdf>

**Computing Which, November 2001:** Some 40% of internet users have come across pornography accidentally when surfing, according to a survey of 7,000 readers.

#### **ERICA research 2001**

Extract from press release, more information at

<http://www.net-consumers.org/erica/children.htm>

Children are still finding "rude, violent, nasty and upsetting" material on the Internet, mostly by accident, new surveys by European Research into Consumer Affairs in the UK, and Media Education Institute at the Landesakademie show. Three out of four UK kids aged 11 - 14 years find harmful material on-line. But they are starting to recognise safety guidelines like ERICA's. Surveys conducted over the Spring and Summer with the support of the EU and, in the UK, also the Broadcasting Standards Commission, found that over three quarters of children in Austria and over eight out of ten in UK surf the Internet (at least sometimes) alone.

Of a total 715 in UK and 673 in Austria of 11 - 14 year olds, almost two fifths found nasty sites with a further two out of five in the UK and nearly a third in Austria saying that they had found violent sites. Around two fifths of children in both countries found gambling sites and well over half 'rude' ones.

The children themselves think they should be protected. When asked what younger children should be protected from, UK kids said rude pictures (over 80%), violence and gambling (both over three quarters). But less than a third thought they needed to be protected from Internet shopping. Nearly 60% of the British children had seen guidelines like ERICA's advising them not to meet people from the Internet etc. But many children were not following the advice to report nasty material. If they told anyone, it was likely to be a friend.

Around a quarter of UK children and a sixth of Austrian had bought something or paid for games or entertainment over the Internet. Of these, over seven children in ten in UK and nearly three in ten in Austria used their parents' credit cards. In Austria, 16 of these said that they did not have

their parent's permission while, in the UK, around one quarter of children said they did it without any help, implying some possible use without permission.

### **Independent Television Commission (ITC)**

The first (1999), and still most thorough, though now dated, investigation: *Internet Regulation: The Way Forward?* carried out in collaboration with BSC (see below). Two current IWF Board members were also involved. Shows shift of opinion away from formal regulation and towards rating/filtering systems after briefing. <http://www.itc.org.uk/documents/itcinter.pdf>

### **Broadcasting Standards Commission reports**

#### **1 Adapted extract from BSC Update 4, 1999 *Regulating the Internet***

A pilot study conducted by Network Research and Marketing Ltd for the Commission (October 1999) showed that nearly half (46%) of respondents said children now had access, still mainly through school.

The prime concern in all of this is a desire to protect minors from illegal or harmful material. The pilot study asked if parents always knew what their children were doing on the Internet. While the sample size of parents is small, the anecdotal evidence would back up the finding that most (64%) did not. There was a strong feeling that the Internet should be regulated: 73% said yes; 16% said they did not know, and only 11% said it should not. But even those thinking regulation was necessary were unsure how it could be done (33% said it would be impossible).

The Bertelsmann Foundation in Germany, with the Australian Broadcasting Authority, conducted a study among samples in Germany, Australia and America. Both the UK study and the Bertelsmann study asked what sort of content might be inappropriate. In the UK pilot, those who felt the Internet should be regulated were most likely to say racist messages should be blocked (77% of this sample). This echoes the findings from the cross-country study where racism was most often identified as a problem.

The studies also asked who should regulate the Internet. In the UK pilot, the majority of the sample was split between an independent organisation regulating the Internet and the online providers. However citizens' juries commissioned in Britain from Opinion Leader Research by the ITC and the Broadcasting Standards Commission showed that, once people became knowledgeable about the issues surrounding the Internet and its control, respondents were more likely to say users should be responsible for the supervision of content themselves.

The Bertelsmann study found that respondents in the more 'knowledgeable' countries (Australia and America) also felt that users should regulate what can be accessed. In Germany, there was a greater reliance on outside agencies.

**2 The BSC's April 2001 report *Reflecting Community Values: Public Attitudes to Broadcast Regulation*** includes a short passage which refers to the internet. The report draws on the findings of focus groups in which approaches to broadcast regulation were discussed. In this context it says:

"One of the strongest indications that the public is broadly pro-regulation is the outrage expressed in the focus groups about occasions when regulation was not properly practised. Two examples of this were discussed during the groups. The first was the 'Name and Shame' campaign, where the respondents expressed disgust that it had 'been allowed to happen'. The second was the Internet, where concern was raised about the damage that uncontrolled access could do among vulnerable groups, especially children."

- 3 **The BSC's September 2001 report *Viewers and Family Viewing Policy*** includes a chapter on the internet which reproduces qualitative material from focus groups. See chapter 9 of <http://www.bsc.org.uk/pdfs/research/familyviewingpolicy.pdf>
- 4 **The BSC's May 2001 report *Concerning regulation*** includes the following passage, drawing on survey research. Relevant information is provided from Table 13 onwards of <http://www.bsc.org.uk/pdfs/research/concerning.pdf>

Most of those (71%) who have access to the Internet say they have not come across anything offensive, while 28% say they have. Of this 28% the most common content mentioned (by 80% of this sample) is sexual or pornographic material. Although the exposure among respondents to these sites is low, most of those with access to the Internet (84%) think there are sites which have inappropriate content for children. Most respondents (whether or not they have access to the Internet) think the medium should be regulated, although substantial percentages feel this would be impossible.

**Table 16: Regulate the Internet?**

|  | With Internet access | Without Internet access |
|--|----------------------|-------------------------|
|  | %                    | %                       |
| Internet should be regulated                   | 41)                  | 39)                     |
| Internet should be regulated, but not possible | 39) 80               | 25) 64                  |
| Internet should not be regulated               | 13                   | 5                       |
| Don't know                                     | 8                    | 30                      |

When asked who should regulate the Internet, unlike broadcasting, many respondents think it should be laid at the door of the provider of the service: 45% say the ISP should be responsible, while 34% talk of an independent organisation. Again, unlike broadcasting, and perhaps reflecting uncertainty about this still new medium, a quarter of respondents (26%) mention some sort of governmental regulation.

There are certain issues that concern people and those who felt that the Internet should be regulated were asked to give their views on different types of potentially offensive content.

**Table 17: Blocking of material**

|                            | Block always | Block in certain circumstances | Do not block | <i>Don't know</i> |
|----------------------------|--------------|--------------------------------|--------------|-------------------|
|                            | %            | %                              | %            | %                 |
| Racist messages            | 81           | 12                             | 5            | 2                 |
| Sex scenes                 | 48           | 43                             | 7            | 2                 |
| Violence                   | 47           | 44                             | 7            | 2                 |
| Obscene language           | 46           | 37                             | 15           | 2                 |
| Nudity                     | 33           | 45                             | 20           | 2                 |
| Extreme political opinions | 24           | 35                             | 35           | 6                 |

Base: All who feel the Internet should be regulated

There are some differences between those who have access to the Internet and those who do not. Those with access are less likely to say that nudity, violence and obscene language should always be blocked but are more likely to say that such material should be blocked 'in certain circumstances'. In other areas, there were no significant differences between the samples.

