

## **iExpress – Legal Position Analysis**

### **The Legal Position**

Because there is no explicit right to ‘freedom of speech’ in Australian, the government has had to invoke its “communications power” under section 51(v) of the Australian Constitution<sup>1</sup> to effectively enable regulation of internet content. In Australia, internet content is regulated at both Commonwealth and State/Territory levels. It is a co-regulatory system, whereby the internet industry and the community are involved in the process.<sup>2</sup> The *Broadcasting Services Amendment (Online Services) Bill 1999*, an amendment to the *Broadcasting Services Act 1992*, establishes the authority of the Australian Communications and Media Authority (ACMA) to regulate Internet content.<sup>3</sup>

This is largely done via a public complaints procedure. Legislation enacted by States and Territories enables prosecution of Internet users for making available material that is deemed "objectionable" or "unsuitable for minors".<sup>4</sup> Any person can complain about material they believe to be objectionable, and the ACMA is empowered to look into complaints from Australians about offensive content on the Internet and issue takedown notices.<sup>5</sup> However, for such content to be subject to a take-down request, the content must be hosted in Australia, and must be defined as “prohibited content”.

None of the materials posted on behalf of prisoners by Justice Action on iExpress fall within the required definition of ‘prohibited content’ that concerns materials that are R18, X18 or a ‘Refused Classification’, which includes content that cannot be legally hosted on an Australian internet website (such as child pornography, detailed instruction on crime, drug misuse, crime and violence in a way that offends against the standards of reasonable adults etc).

Additionally, Commonwealth law criminalises cyber-harassment, and section 474.17 of the *Criminal Code Act 1995* (Cth) applies a penalty of three years imprisonment for using a carriage service to "menace, harass or cause offence". Thus, iExpress strictly prohibits any statements that are defamatory or show ill will, and does not allow prisoners to discuss any specifics regarding their defences relating to their offences. As evident on the *iExpress* website, the core principles of the system clearly state that any material that is defamatory, aggressive, or showing ill will, will not be published, and your concern that that we would “support offenders who display distorted cognitions in relation to their offending”, will not occur.

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<sup>1</sup> Section 51(v) of the document gives Parliament power to “make laws for the peace, order, and good government of the Commonwealth with respect to: (v) postal, telegraphic, telephonic, and other like services.”

<sup>2</sup> *Law Handbook.org* → <http://www.lawhandbook.org.au/handbook/ch10s04s06.php>

<sup>3</sup> <https://opennet.net/research/regions/australia-and-new-zealand>

<sup>4</sup> See ss 45C and 45D, *Classification (Publications, Films and Computer Games) Enforcement Amendment Bill 2001* (NSW).

<sup>5</sup> <https://opennet.net/research/regions/australia-and-new-zealand>