

The following extract is taken from the paper to ABA staff presented by Janet Henderson, Rights Strategy Manager BT Multimedia Services UK, in November 1997.

Internet content — can self-regulation work?

The UK industry experience

There is a growing trend to allow industry practices and procedures to crystallise before 'codifying' them in legislation, thereby effectively freezing them in time and forcing them into a rigid regulatory framework. We have applied the same principle to the ISPA¹ Code of Practice, allowing, for example, the hotline procedure with the Internet Watch Foundation to first take shape and find its optimum *modus operandi*. The intention now is to incorporate this procedure into the code and thereby formalise it. I am currently forming an ISPA Working Group to conduct a thorough review of the code. There is also a sub-working group on data protection, as there is increasing call for self-regulatory measures in this area and the findings of this working group will feed into the main code also.

The overarching questions of the enforceability of the code, in other words the sanctions which may be imposed for violation of the code and any appeal procedure prior to enforcement of those sanctions, remain unresolved. Here we may look to existing self-regulatory models for some guidance; for example the ICSTIS² model has proved that a self-regulatory system can nonetheless have teeth. In the meantime, however, the code continues to operate largely on the basis of the goodwill of the ISP

industry and, speaking candidly, it currently works without teeth because it is very much in the interests of the service provider industry to act responsibly. They currently have a window of opportunity to prove to regulators and governments, and indeed to society as a whole, that there is presently no need for government intervention.

Much can also be done contractually to ensure that a standard and consistent approach throughout the industry is taken to both harmful and illegal content respectively. ISPs can incorporate, in their terms and conditions with their customers, certain responsibilities and obligations about the type of content they place on the Internet. They can also seek to clarify liability issues by clearly ascribing primary liability to the person responsible for initiating an illegal act. BT has such language in its own terms and conditions. There would be much merit in ISPA producing some standard clauses which all its members could incorporate.

Finally, the ongoing issue for the Internet Watch Foundation is funding. Currently IWF is funded by certain big industry players and both the main UK Trade Associations, ISPA and Linx. IWF has a management board with 15 seats and each seat can be purchased for £6000. For the avoidance of doubt, to ensure that IWF is a neutral organisation which makes decisions in the best interests of the industry and users as a whole, IWF has a totally independent and neutral policy board comprising predominantly non-industry members.

Therefore there is no question of the industry buying influence over IWF.

Now, while this arrangement has produced adequate funding in the short term, in reality IWF has a woefully small budget for the broad range of issues and ambitious scope of the work which it is attempting to undertake — and which government is encouraging it to undertake.

At international level

I think it is fair to say that the work in the UK on self-regulation of Internet content has been ground breaking and pioneering — and more importantly — it has had a ripple effect at European Union level and beyond. Shortly after the SafetyNet agreement was published, DGXIII of the European Commission set up a working party on harmful and illegal Internet content. BT participated in a working party which produced a concise and practical report on the short to medium term measures, both self-regulatory and regulatory, which could be undertaken to resolve this issue. This document, together with the European Commission's Communication issued at around the same time, clearly embodied the original tenets of the R3 proposal. It urged all the member states of the Community to start addressing the issue in similar ways.

In December 1997, the Commission issued an action plan in which it made some formal recommendations regarding how the member states should proceed. The European Commission is in a good position to attempt to harmonise these self-regulatory measures

1 Internet Service Provider Association

2 The Independent Commission for the Supervision of Standards Telephone Information Services

across the European Union. They would much rather harmonise self-regulatory measures than undertake the Herculean task of attempting to harmonise laws relating to illegal content, for example. To this end, the so-called Third Pillar of the European Commission, which deals with justice and home affairs issues for member states, is funding a project on international cooperation between law enforcement agencies in tracing illegal content and its perpetrators.

In 1997, the ISPA spearheaded the creation of Euro ISPA, a European trade association which has as its members ISPA's equivalent trade associations from nine member states. The Commission has welcomed the formation of Euro ISPA. It hopes that some of the myriad issues affecting this seamless, borderless, multi-jurisdictional medium will be aired, debated and possibly even resolved 'organically' so that the Commission will be presented with, and approve, workable solutions. I think that most initiatives undertaken at European level will require the organisational infrastructure and administration which a body such as the European Commission can provide and also the funding. The Commission has announced that it is making 30 million ECU available over four years and this is very encouraging. However the first of this money will not be available until the end of 1998 and is unlikely to be more than a fraction of the funds required over that period. In the meantime, industry initiatives will founder and opportunities to make some early headway in relation to growing problems will be lost.

The likely key to the long term viability of rating harmful content will be the development of an internationally recognised and workable rating system. To this end, a number of pioneering organisations, including the ABA, the IWF, Childnet International, ECO (the German equivalent to ISPA) and the Recreational Software Advisory Council (RSAC) in the USA, have joined forces to create the International Content Rating Group. The key objective of the group is to devise a rating scheme which would be comprehensible and easy to use in any country and which could accommodate the plethora of

cultures, morals, values and traditions around the globe. The work is well underway and the technology and software to make this possible are already available.

Conclusion

I will therefore conclude by outlining three interlinking themes which I believe will continue to shape the on-line content debate this year and beyond.

The first is a co-regulatory approach — an expression which I first heard used by the ABA in November 1997. It seems to sum up very neatly the collaboration and cooperation which will increasingly be required from all the players — governments, service and content providers, law enforcement




agencies and users — and seems to implicitly endorse the concept of joint responsibility for the development and implementation of viable and credible on-line policies. Also, we are witnessing technological developments of a magnitude and speed which is totally unprecedented. I therefore predict a gradual change in emphasis in the way in which policies and regulations are formulated, with the private sector being accorded a more influential role. But, until the calls from government for the private sector to be proactive are matched with the necessary funding, the industry will be severely handicapped in pursuing valuable initiatives.

Second is the internationalisation of such initiatives. There is some ambitious work already being undertaken at international level on issues such as

rating and cooperation between hotlines. Furthermore, it was suggested by the Secretary General of Interpol, at the Internet On-line Summit held in Washington DC in December 1997, that there should be an international code of good practice in relation to paedophilia. To set this in the wider context of the challenges raised by the transborder nature of the Internet, the European Commission has unveiled a proposal for a global Internet charter which would provide an international framework or clearinghouse for cooperation on Internet issues. The aim is to promote multi-lateral understanding on a method of coordination to remove obstacles for the global electronic marketplace. Legally non-binding, it would recognise the work of existing international organisations, promote the participation of private sector and relevant social groups and contribute to more regulatory transparency.

Finally, I believe we will see increasing cross-fertilisation of regulatory policies and principles with self-regulatory practices. For example the European Commission's forthcoming Horizontal Liability Directive will seek to distil some common principles on on-line liability from the experiences and lessons already learnt in areas where the thinking is well advanced and there are analogies to be drawn. For example the 'notice and take down' approach which has developed in relation to illegal content, and the consequent clarification of ISP responsibility for such content, may form the basis for a similar approach to other issues such as defamation or data protection.

In an attempt to espouse all of the above principles, BT is currently adopting this approach in relation to copyright. It is seeking to adapt the illegal content hotline model to copyright infringements: preliminary discussions with copyright owners have been extremely encouraging. This type of pioneering initiative can work — as IWF has shown. I therefore urge the industry to seize the opportunity and rise to this unprecedented challenge. 

For the full text of this speech, contact Kaaren Koomen, ABA Manager, On-line Services, on (02) 9334 7700.