



A co-regulatory scheme for Internet content: the Australian approach

Gareth Grainger, ABA Deputy Chairman, addressed the policy session of the Internet Content Summit in Munich on the 10 September 1999. The following is an abbreviated extract from his speech.

One of the major inputs to this summit is the excellent international research conducted by the Bertelsmann Foundation into attitudes to Internet content regulatory initiatives in three countries – Germany, the USA and the Australia. The ABA was very happy to contribute to the Australian component of the study and I'd like to touch on a couple of the major findings in relation to Australia.

There is a high level of public perception in Australia that, along with the many advantages of the Internet, there are also some risks for users. The research shows widespread community support for a range of regulatory responses to these risks, including content labelling and reporting hotlines. It also shows that many Australians would block certain types of content if they were able to do so.

The co-regulatory scheme established by the *Broadcasting Services Amendment (Online Services) Act 1999* addresses risks associated with illegal con-

tent and with content that is unsuitable for children, and does so through a range of regulatory responses.

The scheme is based on the development of codes of practice by the Internet industry and the operation of a complaints hotline by the ABA. It is quite clear from the work done in this process for the Munich Summit that this use of coregulation fits properly within the range of approaches described as 'self-regulation'.

Much has been written and said about the regulatory scheme that Australia has introduced and, I have to say, much of it has been misinformed. I'd like to take this opportunity to outline the main elements of the co-regulatory scheme and to describe the way in which the ABA is approaching the task of working with industry and community on implementing the scheme.

Indeed, while the legislation for the Australian scheme was finalised prior to the completion of the summit's memorandum, I see the memorandum as

being consistent with the Australian scheme in most respects.

The Australian regulatory scheme

There are a number of key concepts which inform our approach:

- co-regulation;
- partnership between government, industry and the community;
- guided by legislative principles of minimising burdens on industry and maintaining Internet performance standards; and
- a complaints-based regulatory scheme.

A co-regulatory scheme for Internet content

The ABA is implementing the co-regulatory scheme for Internet content regulation in partnership with industry and the community.

Parliament intends that Internet content hosted in Australia, and Internet carriage services supplied to end users, are regulated in a manner that: ►

(a) enables public interest considerations to be addressed without imposing unnecessary financial and administrative burdens on Internet content hosts and Internet service providers;

(b) will readily accommodate technological change; and

(c) encourages:

(i) the development of Internet technologies and their application; and

(ii) the provision of services made practicable by those technologies to the Australian community; and

(iii) the supply of Internet carriage services at performance standards that reasonably meet the social, industrial and commercial needs of the Australian community.

The scheme applies to the activities of Internet service providers and Internet content hosts only.

Complaints

The regime is complaints-based: it establishes a framework in which people who are concerned about particular Internet content can make a complaint and have that complaint investigated. The ABA will operate a complaints hotline from 1 January 2000 and will commence investigating complaints from that date.

It is important to note at this point that ABA decisions under the regulatory scheme are subject to administrative judicial review processes, e.g. Administrative Appeals Tribunal and Federal Court review. While industry bears the costs of compliance it does not bear the costs of classification.

Codes of practice

Codes of practice are being developed by industry to govern the activities of Internet service providers and Internet content hosts. The will ABA register these codes if it is satisfied that industry has undertaken appropriate community consultation and that the codes contain appropriate community safeguards.

Blocking overseas content

The ABA recognises that the legislation's provisions relating to the block-

ing of prohibited content hosted overseas are controversial. However, the ABA notes that in the first instance, this matter is to be dealt with by industry codes of practice providing appropriate community safeguards.

It is only if industry codes of practice are not developed that the ABA will need to develop an industry standard and, in the interim, to issue access-prevention notices.

Community advisory body

The scheme also involves the establishment of a community advisory body that will (among other things) monitor material and advise the public about options such as filtering software. Internet industry, and perhaps enforcement agencies such as child protection units and community-based organisations such as ECPAT (End Child Prostitution and Trafficking) may be represented on the advisory body.

The Australian scheme and the memorandum

I'd now like to come back to the the summit memorandum.

On the whole, the memorandum and the key recommendations provide a valuable guide to the difficult task of responding to concerns about Internet content.

Recommendation 7 discusses the need to balance the protection of children with the need to respect freedom of speech. This implies that freedom of expression is not absolute. It is up to nations and democratically-elected governments to decide on the appropriate balance for their citizens.

Article 19 of the International Covenant on Civil and Political Rights (ICCPR), to which Australia is a signatory, recognises this balance:

1. Everyone shall have the right to hold opinions without interference.
2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

3. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (order public), or of public health or morals.

While the recommendations provide a guide to nations, in the end it is up to each nation to decide the specifics of how they implement them. The recommendations should not improperly fetter the discretion of democratically-elected governments to strike the balance where they see fit.

I'd like to quote briefly from Patricia Aufderheide's *Communications Policy and the Public Interest* which lists a number of principles for 'technorealism', including that government has an important role to play on the electronic frontier:

Contrary to some claims, cyberspace is not formally a place or jurisdiction separate from Earth. While governments should respect the rules and customs that have arisen in cyberspace, and should not stifle this new world with inefficient regulation or censorship, it is foolish to say that the public has no sovereignty over what an errant citizen or fraudulent corporation does online. As the representative of the people and the guardian of democratic values, the state has the right and responsibility to help integrate cyberspace and conventional society.

The ABA will have the memorandum at the forefront of its awareness as it works with industry and the community to implement to Australia's co-regulatory scheme.

The full text of this speech can be found on the ABA's web site <www.aba.gov.au>. The Internet Content Summit memorandum can be found at <www.stiftung.bertelsmann.de>

