Peter Coroneos, Executive Director, Internet Industry Association, talks about the new codes of practice for the Internet industry.

Q&A Codes of practice for the Internet industry

The Internet Industry Association has been developing a code of practice for its members which covers matters such as privacy, spamming, content regulation and consumer rights.

The ABA is the regulator for Internet content, and on 16 December 1999, registered three codes of practice for the Internet industry. Two codes govern the activities of Internet service providers and one the activities of Internet content hosts. The ABA registered the codes as it was satisfied that the industry had undertaken appropriate consultation and the codes contained appropriate community safeguards.

From 1 January 2000, the ABA is the first point of contact for people wishing to complain about prohibited or potentially prohibitied content on the Internet.

These three codes are components of the broader IIA code of practice, scheduled for completion by mid-year.

internet industry association

What is the background to the IIA codes?

The Internet industy was looking at content regulation before the Government took it up: work on our codes started in 1995.

We identified market evidence of consumer resistance to the uptake of the Internet. Consumers were concerned about what they might encounter on the Net, such as content that might be unsuitable for children. So this was an industry issue which accorded with that of the broader community: protection of children.

It was always apparent to us that, provided we could have a sufficiently informed dialogue with the policy makers, then the industry would support providing some workable protection.

Events moved pretty quickly after March 1999 when the Government foreshadowed it would enact legislation that would impose obligations on the industry.

We had been calling for framework legislation to support our industry, in part because we had almost reached a point where we couldn't get industry buy-in while potential liability issues were unresolved. In our view, the best way to resolve those was to have statutory indemnities for Internet service providers and Internet companies that agreed to abide by the code of practice.

We envisaged a co-regulatory solution working as the industry setting some rules for itself, according to what it saw as practicable. There would need to be a relevant authority (we considered the ABA to be the appropriate one) which would both monitor and help enforce the code. The law that came in provides both the

▷

framework for that to occur and the statutory indemnity we considered essential.

However, the expression of intent from the Minister for Communications, Information Technology and the Arts to impose obligations on Internet service providers with regard to content sourced *outside* Australia, was highly contentious from the industry's viewpoint. There were serious concerns about the practicality of requiring them to block off-shore content and the criminal sanctions that were attached when an Internet service provider failed to make an adequate response to a request to take reasonable steps to block content.

> *'The issue here is that governments are facing fundamental challenges to their ability to control access to information in a way that has probably never occurred before'*

So, while we supported framework legislation, there were some areas that clearly were not going to be acceptable to industry. In our view, no reasonable steps could be taken to prevent access to content which in some cases was quite legal in other countries where it was hosted. Our members also raised concerns about the impact on the broader information economy, on e-commerce and on network performance. At one stage there were suggestions that Internet service providers would be required to filter all content entering Australia. At the Senate committee hearings we argued that, in its then proposed form, the legislation requiring blocking of offshore content by Australian Internet service providers was likely to be unworkable.

As a result of our representations, the Government amended the legislation to provide for an industry-developed solution as an alternative to the default provision in the legislation: in other words, a code of practice. Once the amendments were in place, we felt very confident to pick up our code again, to develop it to the point where it could be registered and form the basis of industry obligations.

We were already working on this in the broader code of practice which covers many other areas of concern, e-commerce, privacy and spam (unsolicited email), and used industry-developed rules as benchmarks. It was important to us that the industry was perceived as being responsible.

We think that probably what we will end up with will be the most comprehensive set of industry developed guidelines in the world.

How many members do you have?

We now have well over two hundred member companies — all the major Internet players in this country and a good many smaller and medium sized companies.

Our membership covers the full range of commercial online activity and more than 80 per cent of the traffic. We have sufficient depth and breadth in our membership to allow us to represent the issues. As well as Internet servicer providers, well over half our members comprise content providers, content developers, publishers, banks, insurance companies and e-commerce providers.

What support do you provide for your members?

At the moment we provide informational support: unbiased, objective, accurate, timely information, as to what their obligations are — so we are empowering them with information. We do this online and offline through seminars.

We also provide representation and advocacy at the political level and have developed such things as an industry insurance scheme.

What has been the reaction by industry to the three codes of practice?

One of great relief, given the alternative which could have resulted. The feedback is positive — the members are happy, they didn't think it was possible to recover from what would have been particularly onerous provisions backed by criminal sanctions.

The relief is mixed with a sense of reassurance that the industry is capable of taking control of its destiny in the light of what are clear political pressures and still produce an outcome that gives meaningful protection to users.

How have the consumers responded?

There are two kinds of consumers in Australia, those who are on the Net, and the majority who are not. I think the majority who are not using the Internet either are unaware of the code or

think it has no relevance to them. The ones who are using the Internet would still largely be basing their views on what we consider very inaccurate, and in some cases, mischievous media reporting, so we have put together an online fact sheet to help them better understand their rights and responsibilities.

When will the entire code be ready?

Now it is time to revisit the other areas which are almost complete: we had completed public consultation on our fifth draft version. The feedback from that has given us enough confidence to say that that we think the level of acceptance will be high and the obligations in there will be capable of being achieved. They will be finalised certainly by the middle of the year, but probably before then.

How well do you think the content codes are working?

It is too early to say, but they are starting to work. We are seeing Internet service providers offering their filter products. We have seen take-down notices occur in Australia when the content is legal outside Australia.

This will lead to a migration of adult-rated content off-shore and out of the control of both the industry and Government in Australia, which is an unfortunate outcome. I think anytime you drive something underground you have less ability to influence how it is accessed. While the political pressures may be there to be doing something, sometimes there are unintended consequences.

The issue here is that governments are facing fundamental challenges to their ability to control access to information in a way that has probably never occurred before.

How are you promoting the code?

Primarily online, supplemented by seminars around the country.

Generally the small players have the greatest difficulty in understanding the issues — we have to bridge the gap for them.

How do other countries approach regulation of Internet content?

Different governments in different countries are dealing with that in different ways, some have attempted to outlaw unauthorised, or unapproved content, others have allowed the market to determine the outcome, still others have not even addressed the issue.

Some parts of government appreciate that the paradigm has changed forever and it is now meaningless to approach this new technology using the old tools of statutory control. Technology has rendered the old tools of government obsolete. There may be other reasons why governments may want to use the old tools, but they are likely to become less and less effective.

Is this the best model for regulating the Internet?

Yes. I believe the co-regulatory model we have in Australia provides us with the ability to be a leading innovator. This is our perspective after participating in international discussion with other countries and their industry bodies.

The strength of co-regulation is that it has the advantage of flexibility: industry is helping to craft the rules according to what is achievable. When Government stands behind those rules, there is security and confidence for the industry.

In the USA, for both constitutional and cultural reasons the situation is very laissez-faire. Market-driven solutions are not always effective because there are no sanctions.

The European approach is much more interventionist. Because it is such a rapidly developing and changing environment, this approach is ill-suited to the Internet because the policy and law-making government processes are, by their nature, quite slow, therefore the laws are outdated.

So you need a solution flexible enough and credible enough to work.

> *'We think that probably what we will end up with will be the most comprehensive set of industry developed guidelines in the world.'*

For more information about the Internet Industry Association (IIA), contact the association at:

PO Box 74
Red Hill ACT 2603
Tel: 02 6232 6900
Fax: 02 6232 6513
Email: info@iia.net.au
Web site: www.iia.net.au

internet industry association