

If you're going to use the Internet, you'd better know the road rules

by *Evan Bromiley*

Whenever a new technology arrives there is always an initial honeymoon period as everyone excitedly examines the possibilities. So it was when the first automobiles noisily churned the dust on quiet country roads, and heralded the end for the horse and buggy. In time of course the roads were sealed, a traffic code developed, drink driving was outlawed and cars were fitted with anti-pollution controls. The information superhighway, in contrast, is still in its early days.

However, it is never too early to begin planning precautionary measures. While it is true that no Australian parliament has yet acted to introduce laws specifically designed to cover the Internet, the law as it currently stands cannot be ignored. It is simply not the case that users of the Internet can happily proceed as if they had some form of *cyber-immunity*. On the contrary existing laws apply to affect many aspects of Internet use. Quite simply, on the information superhighway, the same speed limits apply.

To become an Internet user it is first necessary to subscribe to a service provider. Their role is analogous to that of a phone company in allowing users to link up with their phone lines and hence everyone in the world who owns a phone. Instead an Internet service provider can link you to millions of global Internet users, whether you intend to make friends, seek out information or even do business. And if you do want to do business, what if the system crashes just as you're about to close a deal? Could you sue your service provider for the money lost? Under the general law of contract

and negligence there is no reason why not, although this has not yet been done. Indeed the *Trade Practices Act* requires services to be provided with due care and skill and ensures that liability cannot be totally avoided.

'If you can't say something nice about someone then you shouldn't say anything at all.' This has long been the lament of those sued in defamation, including a bulletin board user who was forced to pay \$40,000 in damages last year by the Western Australian Supreme Court. But it's not just Internet users who could be sued for publishing defamatory material on the Internet. For years it has been possible to sue newspapers or TV stations who publish such statements, so why not sue the service provider or bulletin board operator? Once again this hasn't yet been attempted but it could certainly be attractive to a potential litigant. After all, service providers are easily accessible business enterprises, whereas bulletin board users can contribute anonymously and escape liability.

One area of law which is basically keeping up with the changes is copyright. Under the law, copyright exists as soon as a piece of work (including software) is created, and downloading any material from the Internet, without permission, is clearly a breach of copyright. Of course the same law theoretically should protect videotaped movies and recorded music from being pirated. The real problem with copyright relates to enforcing it particularly in all parts of the globe. Mind you, the owner of pirated software or other material may have an

easier task tracing theft on the Internet at least as regards the operators of Internet systems where stolen material is accumulated and later sourced. Already major software companies have started pursuing copyright wrongdoers both in the US and Australia.

If you want it badly enough you can find anything on the Internet. The range of material extends beyond useful educational resources, to pornography and instructions on how to make a bomb or to get away with rape. Currently there is no system available to practically restrict access although it is still necessary to make a deliberate effort to actually seek out this material. In time it may be necessary to install a cyber-equivalent of the brown paper bag, by pre-warning users about such material or encrypting information for the exclusive use of those with an electronic decoder. In either case, global enforcement is again a problem as is the potential for breaching decency laws wherever material is up or downloaded.

Increasingly the Internet will be drawn into the commercial sector. Most of the new converts are companies keen to access data, forge alliances and make business contacts. The wheels of commerce could turn all the more quickly if an agreement could be thrashed out on the Net and immediately put into action, if necessary by using new digital signature technology. But if this is done between countries or states it may be difficult to know which legal system applies. Furthermore some laws require that certain agreements, such as for the sale of land, must be reduced to writing and signed; and

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that other documents must be witnessed, such as wills.

The time has come to get serious about the Internet. Initially it was a place for a leisurely Sunday drive but now is increasingly crowded with Superhighway hoons and backstreet ratrunners. It is a mistake to wait for a magical legal solution to the problems that have arisen, because

the law evolves slowly over time. But it is equally unwise to rush forward blindly assuming that the law has no role to play. The solution for the time being is to learn the road rules, drive responsibly and make sure you fasten your safety belt.

A forum, DataLaw '95, held in Sydney on the 28th of July at the Sheraton Wentworth Hotel aimed to

address the legal, security, educational and commercial issues facing the Internet.

For more information about the forum or a copy of the papers please contact DataLegal on (07) 839 2296 for details.

Evan Bromiley is a public relations officer with DataLegal Publications Pty Ltd.

