The ABA On-line Services Investigation

Kaaren Koomen summarises the findings and recommendations of the Australian Broadcasting Authority's report on regulating on-line services.

The Internet and other on-line services provide the infrastructure for communications and information services used by millions of individuals and organisations around the world. The connection of networks of computers makes possible the exchange of ideas and information in a manner not possible via traditional electronic and print media, resulting in an astounding diversity of content.

These networks are not centrally controlled or owned and the functions performed by the participants in the on-line environment are not as fixed as in existing publications and broadcasting models. Most significantly, any person can create material and make it available on-line.

Terms of Reference

With the growth in the use of on-line services as a new communications medium, community concerns were raised about the content of some of these services. Of particular concern was the perceived ease of access to material which may be 'offensive' or harmful. Responding to this concern, the Federal Minister for Communications and the Arts directed the ABA to conduct an investigation into:

- the content of on-line information and entertainment services, including services on the Internet, and to consider the appropriateness of developing codes of practice for on-line services which, as far as possible, are in accordance with community standards.

- technological advances and service trends in the provision of on-line information and entertainment services by the broadcasting industry; and

- the extent to which these services are accommodated by the *Broadcasting Services Act 1992* ('the Act).

In conducting the investigation the ABA placed a high priority on understanding the technology and services underpinning the Internet, and the manner in which on-line services are being introduced into homes and schools. The ABA sought to ensure that any proposals for the development of a regulatory framework for on-line services are practical and appropriate to the on-line environment and addressed identifiable community needs.

To achieve this the ABA consulted widely with representatives of the on-line community, including on-line service providers, content providers and users, businesses, government departments, academics, educational and community organisations and individuals.

The Investigation also developed a strategy aimed to increase public awareness of the project and disseminate

information about the Investigation. This included establishing a Web site and an email address. (The ABA's Web address is:
http://www.dca.gov.au/aba/hpcov.htm.
Its email address is online@aba.gov.au)

In December 1995 the ABA released an Issues Paper which sought to provide a basis for interested parties to make submissions to the Investigation. At the close of submissions 219 formal submissions were received by the ABA, many of which were received on-line.

The On-Line Services Report

On 1 July 1996 the ABA delivered its Report to the Minister for Communications and the Arts, Senator Richard Alston. The report was publicly released on 5 July 1996. The Report totals 212 pages and is available at the ABA's Web page or from the ABA's Sydney office. Outlined below are some of the key findings and recommendations.

MAIN FINDINGS

The nature of on-line services

The Investigation into the Content of On-Line Services identified the range and nature of on-line services available

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now, and those anticipated in the foreseeable future. Existing services included the world wide web, newsgroups and Internet Relay Chat, to name a few. The ABA also found that as technology converges and services are accessible on a number of hardware platforms, the demarcation between services which are currently delivered on personal computers as opposed to television sets and radios is likely to fade.

Significantly, the ABA found overwhelming support in the community for on-line services and for the opportunities they present for enhanced communication, information and entertainment.

The ABA acknowledged that services available on-line may be intended for both public and private communications. The ABA took the view that essentially private communications, such as e-mail, should be exempt from any new regulatory regime.

Where on-line services deliver content which is in the form of television and radio programs delivered in 'real time' the ABA found that these may fall within the regime applicable to services under the *Broadcasting Services Act 1992* ("the Act"). However, the ABA found that the majority of on-line services are not accommodated by the Act.

The Nature of Content on-Line

As a source of content, the ABA found that on-line services offer users an unprecedented level of variety, as well as quantity, of information from all over the world.

The ABA's investigation into the presence of material which would be refused classification under the current National Classification Code ("objectionable material") confirmed that it is available and that this is a matter of serious concern. However, the ABA also found that the chance of being involuntarily exposed to such material is low.

In relation to material which would be restricted to adults under the National Classification Code ("unsuitable material") the ABA found that this can be more easily located, particularly by the motivated searcher, but is often accompanied by warnings and/or

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requires the provision of credit card or other details.

The ABA investigation identified a range of community concerns about on-line services which will need to be addressed by the on-line community if these new services are to be used in the most productive and effective manner. The concerns identified went beyond concerns about objectionable and unsuitable material and included other content issues such as the potential for vilification, discrimination and harassment, and consumer issues such as standards of service, billing and credit management, and privacy.

The ABA recognises that on-line services are a global phenomenon, however, the ABA believes that there is much that codes of practice can achieve in the domestic arena.

MAIN RECOMMENDATIONS

A Self-Regulatory Regime for On-Line Services

The ABA considers that codes of practice, developed within a self regulatory framework, would facilitate the productive use of on-line services by the Australian community.

It has recommended that industry codes of practice should be developed by on-line service providers. This emerging industry group provides an important intermediary function in the on-line environment and can achieve much in terms of finding practical and workable solutions to address community concerns. The main elements of the proposed regulatory framework are:

- the identification of matters which should be included in codes of practice for service providers, which provide appropriate community safeguards, including complaints handling procedures;

- the registration by the ABA of such codes of practice, developed by service providers after a process of public consultation; and

- the monitoring of the codes of practice, and their effectiveness, by the ABA.

Codes of Practice

The ABA identified a range of matters which service providers will need to address in the codes of practice. These include:

- Age Verification Procedures
  In relation to unsuitable material the ABA has recommended that service providers include in codes of practice reasonable age verification procedures which aim to limit the holding of an open on-line account to persons over the age of 18. This aims to prevent children's access to open on-line services without some adult supervision.

It should be noted that this does not seek to impose on service providers an obligation to *guarantee* that potential account holders are over the age of 18 but seeks to encourage the adoption of reasonable steps which aim to achieve this result. Appropriate exemptions for educational institutions has also been recommended.

- Reasonable Procedures to deal with objectionable material
  The ABA has recommended that service providers include in codes of practice any practical steps which can be taken in respect of objectionable material once a service provider is been made aware of that material. The ABA recognises however that in some circumstances

the measures which service providers can take in relation to this material are limited.

- Information for users and content providers on legislation which may be relevant in an on-line environment

The ABA recognises that one of the compelling features of on-line services is that it provides the opportunity for many individuals to communicate and make content available to others in a way which has not been previously possible. The ABA also recognises that, unlike traditional media outlets who are accustomed to obtaining legal advice in respect of providing content, many participants in the on-line community do not have this same level of knowledge of the laws which may apply to them.

Accordingly, the ABA has recommended that codes of practice play an educative role by including some information about the laws of defamation, copyright, and any vilification or criminal offence provisions which may be relevant on-line. However, this is not intended to render a service provider liable for any breach of civil or criminal laws for which it would not otherwise be liable.

- Consumer Issues
  The ABA has also recommended that a number of consumer issues should be addressed by codes of practice, such as billing, support services, privacy and credit management. The ABA took the view that if appropriate practices and safeguards are introduced for these matters then Australians will be encouraged to pursue the benefits offered by on-line services with greater confidence. The adoption of such consumer safeguards may also make the services offered by Australian service providers more attractive in the international marketplace.

Criminal Offence Provisions

At the time of writing its Final Report the ABA was aware of moves to introduce specific criminal offence provisions for on-line services. These related to objectionable material and the making available to minors of material which may be unsuitable for them. The model criminal offence provisions which had been drafted for the State and Territory Censorship Ministers referred to a number of defences which would be available to a service provider in a

prosecution. These include compliance with an applicable industry code of practice. The ABA took the view that any codes of practice referred to in the model criminal offence provisions should be the same codes which are registered by the ABA to ensure that the codes operate as part of a co-ordinated regulatory and enforcement strategy applicable to the on-line industry.

A Labelling Scheme for On-Line Services

In considering strategies to limit children's access to material which is unsuitable for them the ABA recognises the difficulties in attempting to apply on-line the existing classification models for television, films, videos and other publications. In the ABA's view a new approach to limiting children's access is required.

Many submissions advised that available filter software products, combined with parental supervision could provide parents and other supervisors with a degree of control over childrens use of on-line services. However, filter software can restrict access to an amount of valuable material and does not allow for the consistent application of Australian community standards and cultural values.

Recent developments with content and selection software have provided the technology for labelling of on-line material. This technology is called the Platform for Internet Content Selection (PICS) and, although emerging late in the investigation, it has strong support from the industry and on-line community. PICS is an Internet Protocol which can support the labelling of Internet Content. PICS itself is value neutral and does not establish the labelling standards. However, it does provide the infrastructure for others to label content.

Labelling can be applied directly by content providers when creating and distributing material on the Internet or it can be applied by a third party in accordance with an established labelling system. Once material has been labelled, any PICS compatible selection software or browser can read the labels. This will empower users to choose which types of labelled material they wish to view and which types of material they wish to block. For example, a user may wish to block out any Internet material which has been labelled in a way to indicate that it contains violent material.

It is likely that different labelling schemes will develop world wide to reflect different community and cultural values.

The PICS system gives Australia the opportunity to develop a labelling scheme for on-line content which incorporates Australian community values and standards. To this end the ABA has recommended that it convene an On-line Labelling Task Force, with all relevant parties, including the Office of Film and Literature Classification and the on-line industry to develop a labelling system which can be used by Australian content providers and consumers. The ABA also recommends that Australia participate in the PICS development process in the international arena, and collaborate with relevant expert bodies to maximise Australian labelling consistency with overseas ratings schemes.

Other Recommendations

The Report makes a number of recommendations which seek to promote the productive use of on-line services in Australia and encourage the development of Australian content on-line. The ABA has also recognised that community understanding of on-line services, codes of practice and the implementation of labelling schemes will be critical to their success and has recommended that a co-operative approach to community education by government, industry and consumer groups be adopted.

In view of the dynamic nature of on-line services the ABA has also noted the need to monitor developments to ensure that the proposed regulatory regime remains effective and appropriate and encourages the productive use of on-line services in Australia.

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Satellites - the Information Superskyway?

Chris Deacon argues that the role for satellites in the global information infrastructure should not be under-estimated.

It is well accepted now that satellites can play a unique role in a number of communications scenarios.

For example, satellites are often appropriate for rural or remote regions that are poorly served by existing terrestrial fixed wired or wireless technology, or mobile cellular. They are particularly well suited to point to multi-point (and vice versa) applications where many users are widely dispersed and for mobile and fixed users requiring reliable services without geographic or terrain restrictions.

Despite initial skepticism, satellites have now become a widely accepted vehicle to provide virtually "instant" networks for business and entertainment broadcasting applications, including direct to private homes. In many respects, Australia led the way with its outback Homestead and Community Broadcasting Satellite Service that began on the AUSSAT system a decade ago.

But satellites are often forgotten when it comes to debate about the so-called "information superhighway." The purpose of this article is to shed some light on recent developments that could lead to satellites providing broadband "information skyways" direct to homes and businesses spanning the globe. This may actually happen before much of the world's population gets within cooee of terrestrial fibre.

Although it would not seem immediately obvious in Australia now, a quiet revolution is taking place in the satellite communications industry worldwide. Apart from the range of new creative ventures and changing business support relationships that have emerged recently, there is an increasing awareness of satellite system solutions. More bandwidth is being made accessible by more people in more places than ever before.

Apart from the new generation of global mobile personal communication satellite systems (such as Iridium, Globalstar and Odyssey) which promise to support levels of mobility ranging from local to global, new satellites are presently being designed to be capable of the advanced features of fibre and wired networks, and more. These systems avoid the extensive terrestrial infrastructure associated with cables. They are capable of providing ubiquitous coverage the day they are brought on stream and will bring broadband services associated with high capacity optical fibre to users at a fraction of the cost and in far less time. Some are proposed to be in place by the end of this decade.

By contrast, attempts to bring interactive broadband services to the home via fibre are only just beginning. In many countries, access will not be available to many areas until well into the next century at estimated costs of hundreds of billions of dollars.

The Information Superhighway

The "Information Superhighway" concept erroneously suggests a concept that is purely land-based, such as fibre. Satellites, however, are already playing a major role in the global information infrastructure and are destined to play an even greater role in future. There are several reasons why I believe this will happen.

First, they will play an increasingly important, complementary role to terrestrial fibre and wireless delivery systems. Secondly, it seems likely that they will be able to fulfil universal access policies. Importantly, satellites are acting as a catalyst to reduce, if not eliminate, the historic barriers between the different segments of the communications supply industry and many of the traditional regulatory barriers that have restrained the development of competitive international telecommunications.