

Ireland is seeking to control mobile content with Vodafone and two other mobile networks taking part in a trial of content-blocking applications that aims to prevent children from accessing adult content on their mobiles, and denies access to blacklisted web sites and filters images based on skin tones, body positions and other relevant factors. The success of such filtering is yet to be documented.

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## CONCLUSION

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In Australia, the absence of a single set of rules that govern mobile content is yet another example of how the regulation of convergent services can give rise to a confusing regulatory environment for consumers and content providers. The ACA's Second Draft Principles aim to regulate the novel and previously unregulated area of premium mobile content. However, the current regulatory framework can be confusing and lacks legislative clout. Sections of

the population are calling for regulators to lay down an enforceable set of technology-neutral laws that govern content effectively so that minors are prevented from accessing inappropriate content whether it be via mobile phone, PDA or personal computer irrespective of the protocol or technology used.

At the same time, though, parents who provide children with mobile phones should take steps to ensure that they are providing mobile phones that have limited or no access to sources that might contain inappropriate content such as the world wide web. Most parents cite safety as the primary reason for providing mobile phones to children. After speaking with a number of mobile phone companies, it is clear that there are several options available to parents so that functionality of a mobile phone is limited to receiving and making calls to mobiles or fixed phones, thereby reducing the risk of children viewing inappropriate mobile content.

(Endnotes)

<sup>1</sup> Hutchison 3G Australia Pty Ltd, *Playboy – Premier content service on 3* <<http://www.three.com.au/index.cfm?pid=2217&pageid=2103&sid=2237>> accessed 18 June 2004.

<sup>2</sup> *Telecommunications Amendment Regulations 2002 (No 3)*

<sup>3</sup> Schedule to the *Classification (Publications, Films and Computer Games) Act 1995*

<sup>4</sup> Background Statement to the ACA Interim Consumer Protection Principles and Procedures for Premium Rate and Intranet Services, (Second Draft Principles)

<sup>5</sup> Submission by Australasian Performing Right Association Limited & Australasian Mechanical Copyright Ownership Society Limited dated September 2004.

<sup>6</sup> Submission by Hutchison Telecoms to DCITA Review dated 3 September 2004.

<sup>7</sup> Department of Communications, Information Technology and the Arts Issues Paper,

*A review of the operation of Schedule 5 to the Broadcasting Services Act 1993*, Canberra September 2002.

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# Looking Forward: Challenges for Telecommunications Regulation

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**Holly Raiche looks at the themes and outcomes of the ACA Self-Regulation Summit held recently in Sydney<sup>1</sup>.**

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The overall theme of the Summit was straight forward: what will future telecommunications systems and services look like, and what needs to be done – if anything – to the current regulatory framework to accommodate a new telecommunications environment. Fittingly, the conference had two hosts: the telecommunications regulator, the Australian Communications Authority (ACA) and the major telecommunications industry organization, the Australian Communications Industry Forum (ACIF). Also fittingly, there were two keynote addresses by the heads of both the ACA and ACIF.

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## TELECOMS PAST AND FUTURE

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Dr Bob Horton, Acting Chairman of the ACA, looked both forward and backward. The achievements of the last seven years have included a range of industry codes providing both

operational rules for industry and significant protections for consumers. With the achievements have come lessons in the time and resources taken to develop those codes and, because of that, the fact that smaller players simply cannot afford to sit at the table. He also briefly looked forward, towards a greater emphasis on industry compliance with the rules, and a new converged environment (including the convergence of the ACA with the Australian Broadcasting Authority to form ACMA). The real challenge, looking forward, is to ensure that self-regulation matures, adapts and responds to the changing environment in a way which reflects and fulfils the needs of all the parties.

ACIF CEO Anne Hurley started very firmly in the future - 2011 to be exact – and looked back to tell how we got there. There were clear agreed goals with a converged regulator: participation of all stakeholders, a cost effective process, with open and

transparent processes. Interestingly, Part XIB and XIC had been removed from Trade Practices Act, suggesting the arrival of a truly competitive market. Compliance had been successfully addressed by industry, working together with the TIO to identify and address issues behind complaints data. Importantly, consumers had been trained and funded to play a significant role in the self-regulatory regime. Perhaps more controversially, Hurley foresaw a regime where the new regulator no longer mandates the development of codes and standards by industry, and there is be no back up regulatory powers by the new regulator to enforce codes, or develop an industry standard if a code fails. Clearly, the compliance strategy will have worked.

Third on the agenda, and an equally important part of looking forward, were the presentations by Paul Roberts from the ACA on the ACA Vision 20/20 Project, and by Peter Darling, who managed the ACIF Next Generation

Network (NGN) project.

The first point to be made is that the future is here. Australia is already using packet switched networks in many areas of the network, and new services using new technologies are already on the market. What we can look forward to are new ways in which services are developed and delivered. The underlying networks will become 'dumber' as more of the intelligence is provided by applications providers, equipment manufacturers and software providers. The issue will be to identify what policy objectives remain constant and identify where regulation needs to be adapted to the new scenario of differing networks, applications, equipment and service providers in order to preserve those objectives. Roberts suggested the future of telecommunications is not necessarily settled and not necessarily rosy. He painted at least five possible future telecommunications scenarios, ranging from a Sensitive New Age Future characterised by seamless connectivity, global networks, open standards and wireless networks, with a strong private sector governance framework, to a Scenario characterised by high turbulence, geo-political instability, radiofrequency identification of individuals, large global companies, little trust and a culture of fear, and the emergence of niche markets. The lessons: there cannot simply be 'more of the same'. The challenges will be to manage the continuing transmission - balancing the legacy framework to adapt to new categories of players and services, balance the opportunities and risk of new players and services, balance the changing roles of market versus regulation in a competitive market, and ensure consumer protection outcomes.

## INDUSTRY PERSPECTIVES

The afternoon was devoted to the perspectives of consumers, industry/industry organisations and government/regulators on the future of self-regulation.

### Consumer Perspectives<sup>2</sup>

Britton led with a discussion of the ACA project on Consumer Driven Communications: Strategies for Better Representation<sup>3</sup>. The aim of the project is to develop strategies to



empower consumers to be at the centre rather than the periphery of the market. Britton talked to a 'representational cycle', setting out the various stages at which an issue is addressed, beginning at issue identification, through the development of rules, through to monitoring compliance. In Britton's model, consumers are involved at every stage. Britton then talked to a Regulatory Pyramid – a pyramid showing the levels at which rules of behaviour are set. At the top is law, moving down to standards, through enforceable codes and voluntary codes to competition, consumer education, community pressures and the fact that most people most of the time do what they believe to be the right thing. Britton said the layers were not necessarily discrete, that there is interaction between the layers, and that behaviour setting can use more than one level of rule making. It was a pyramid that was referred to the rest of the day.

### Carriers/CSPs/Industry Associations<sup>4</sup>

There were a number of themes that emerged from this session. An important one was to question the role

of regulation in the industry. As Coronoes pointed out, ISPs look at the morass of legislation, and the co-regulatory/self regulatory structures in confusion and horror. What motivates them to become involved in co-regulatory and self-regulatory structures is their fear that Government imposed regulations would be far worse; self-regulation and compliance are adopted in defence. Peter Stiffe supported a self regulatory approach. Self regulation is more than simply participation in ACIF processes; it is imposing rules of behaviour on your own organisation because the organisation values its customers. He referred to the bottom rung of Britton's Regulatory Pyramid: organisations will also do what they believe to be right for their customers. Both Paterson and Smith also supported consumer participation in the process of self regulation as a necessary component in any effective self regulatory regime. Chalker echoed Horton's earlier point in reminding the audience that regulation – including self-regulation comes at a cost in time and resources for those who participate.

## Regulators<sup>5</sup>

The regulators were a bit more cautious of self regulation without the safety net of enforceable regulation – as they said moving up a bit on the Britton Regulatory Pyramid. For Pinnock, the current safety net should be higher; the industry still needs to demonstrate compliance with the current legislation and codes before it can argue for more self regulation. Cosgrave reminded the audience that a couple of the examples given in the seminar of successful industry self regulation – the ACIF Mobile Number Portability and Commercial Churn Codes – were in fact developed at regulatory insistence. And Horton repeated his earlier view that it would be a step backwards if

the industry moves away from the self regulatory regime. The challenge for all stakeholders will be consumer involvement and industry compliance. For Hurley, the way forward is with the shared goals of the ACA and ACIF towards an effective and inclusive self regulatory regime for the telecommunications industry.

(Endnotes)

<sup>1</sup> ACA Self-Regulation Summit, held in Sydney on 11 August 2004

<sup>2</sup> Members of the Consumer Perspectives panel included Charles Britton, Australian Consumers' Association, Teresa Corbin, Consumers Telecommunications Network, Dr. Christopher Newell, the ACIF Disability Advisory Body, Derek Wilding, Communications Law Centre, Ewan Brown, Small Enterprises Telecommunications Centre and Rosemary Sinclair Australian Telecommunications Users Group.

<sup>3</sup> Consumer organisations participating in the project include the Australian Consumers' Association, the Communications Law Centre, the Consumers' Telecommunications Network, Council on the Ageing National Seniors, Legal Aid Queensland, Small Enterprises Telecommunications Centre and the Telecommunications and Disability Consumer Representation.

<sup>4</sup> Members of the Industry Panel included Paul Paterson, Telstra, Gary Smith, Optus, David Havyatt, AAPT, Peter Stiffe, Vodafone, Matt Healy, Macquarie Corporate Telecommunications, Roger Bunch, FreeTV, Peter Coroneos, Internet Association, Jennifer Liston, AEEMA, Graham Chalker, AMTA, and Deb Richards, ASTRA.

<sup>5</sup> The Members of panel included John Pinnock, TIO, Colin Lyons, DCITA, Michael Cosgrave, ACCC, Bob Horton, ACA and Anne Hurley, ACIF.

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# Media ownership laws – What change?

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**Raani Costelloe looks at the Howard government's pre-election position on changes to media ownership legislation with a view to what might be coming up**

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## INTRODUCTION

The Howard government has been attempting to change the foreign ownership and cross-ownership laws relating to media since 1996 but has been unable to secure Senate approval.

Following the October 2004 federal election, the Coalition will have a majority in the Senate which will be effective from July 2005. The question now seems to be what form the amendments to the existing laws will take rather than whether change will occur.

Over the last 3 years, the government has attempted to negotiate the passage of media ownership legislation through the Senate with the result that the most recent but unsuccessful attempt, the *Broadcasting Services Amendment (Media Ownership) Bill [No. 2] 2002* (the **Bill**), was the product of significant compromise with non-Coalition Senate members.

It is uncertain whether the government will significantly change the Bill by removing the aspects of compromise or, alternatively, reintroduce the Bill in a

relatively unchanged form. The interests of the National Party Senators are likely to take greater prominence given that they must also accept the amending legislation primarily driven by the Liberal Party members of the Coalition.

Another possibility is that the government will re-open negotiations with non-Coalition Senators and attempt to pass amending legislation before July 2005. It has been reported that Communications Minister Senator Coonan will hold talks with outgoing minor party Senators who previously opposed the Bill.

It is not clear what future change would involve, but elements it is likely to include are as follow.

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## REMOVAL OF SPECIFIC FOREIGN OWNERSHIP LIMITS RELATING TO MEDIA

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It is likely that the restrictions in the *Broadcasting Services Act 1992* (the **BSA**) on foreign control of commercial television broadcasting licences (15% company interests for an individual and 20% foreign company interests in aggregate) will be removed.

It is also likely that the more liberal foreign ownership limits on subscription television broadcasting licences (20% company interests for an individual and 35% foreign company interests in aggregate) will be removed.

There are no specific foreign ownership restrictions on commercial radio licences in the BSA.

In addition, the general media investment rules under foreign investment rules are likely to be removed with the result that all investment in media will be subject only to the general foreign ownership laws that take account of national interest concerns.

Under current foreign investment rules, all direct foreign media investment (and all portfolio investment over 5%) requires prior approval from the Treasurer. For newspapers, the maximum permitted aggregate foreign (non-portfolio) interests in national and metropolitan newspapers is 30%, with a 25% limit on any single foreign shareholder. The aggregate non-portfolio limit for provincial and suburban newspapers is 50%.