Senate Select Committee on Information Technologies

SELF-REGULATION IN THE INFORMATION AND COMMUNICATIONS INDUSTRIES

Minority Report
by
Senator Stott Despoja
Australian Democrats

1. Role of the Senate Select Committee on Information Technology

I have expressed my concerns regarding the use of the Senate Committee process to pursue the broad self-regulation issues in the information and communications industries of this inquiry from the outset.

I had hoped that the Senate Select Committee on Information Technology (hereafter referred to as 'the Committee') would focus on and consider more pressing issues pertaining specifically to information technology. This kind of analysis is vital if Australia is to participate effectively and successfully in the new information society.

The term 'Information Society' does not only span the economic and trade potential of internet interactions, but brings attention to the cultural and public interest and good issues surrounding the use and regulation of the internet.

I believe that the betterment of the Information Society should be the focus of the work of the Committee. In my opinion, the self-regulation inquiries terms of reference were too wide to further this objective.

The Committee has undertaken to examine part (b) of the Terms of Reference: to 'evaluate the development of self-regulatory codes in the information industries'.

The Committee then sought:

> 'to evaluate the appropriateness, effectiveness and privacy of the existing self-regulatory framework in relation to the information and communications industries and, in particular, the inadequacy of the complaints regime'.

This Committee undertook a review of self-regulation, although the focus has not been on online services.

I reiterate my understanding of the term 'information technology' to include the use of computers, telecommunications and broadcasting for the processing

and distribution of information in digital, audio, video and other electronic forms. Such a focus should have been undertaken by the Committee rather than a broad reference which included every aspect of the media.

I acknowledge the Convergence phenomenon and the ever increasing interrelatedness of media delivery mediums. However, I maintain that the broad ranging pursuit of self-regulation in the information and communications industries was an inappropriate inquiry for the Committee.

Possible topics of inquiry that I have taken to the Senate Select Committee on Information Technologies have included:

(a) Government responses to previous reports;

(b) evaluation of self regulation:

  (i) benefits of self regulation;

  (ii) detriments of self regulation; and

  (iii) how should Government undertake developing (self) regulation?

(c) encryption:

  (i) need for uniform minimum standards;

  (ii) impacts of encryption on consumer confidence;

  (iii) international encryption standards; and

  (iv) benefits of encryption for the development of future technologies (for example, on-line transmission of sound recordings);

(d) the international electronic economy:

  (i) What is the electronic economy?

  (ii) Australia's various roles in this economy;

  (iii) opportunities for Australia to increase its role in the beneficial aspects of this economy; and

  (iv) the educational, employment and entertainment aspects of this economy;

(e) domination of the information society:

  (i) Is the information society being dominated?

  (ii) How can this domination be addresses to ensure Australian culture is sustained, developed and promoted?

(iii) What measures should Australia adopt to ensure Australia's participation in the international information society?

(f) equity and justice:

(i) Australians access to the information society;

(ii) relative justice for difference sectors of the Australian community;

(iii) the role of Government is fostering technology equity and justice;

(iv) barriers in the information society to access equity and justice; and

(v) the role of education in the information society;

(g) intellectual property laws:

(i) review recent decisions showing problems in our IP laws;

(ii) the role of international agreements in Australia's IP laws; and

(iii) the adequacy of the existing IP laws in Australia and determining Australia's international interests;

(h) adverse effects of the information society;

(i) detriments of introducing new technology into the community (for example, restructuring work, casualisation of the work force, re-inventing competitiveness, re-defining work, etc.); and

(j) information poverty;

as stated in my 'IT Committee Terms of Reference suggestions', 29 October 1997.

Self-regulation requires examination, however, the broad ranging aspects of the Self-Regulation in the Information and Communications Industries has, I fear, focused more on general issues of media inquiry which are of specific concern to individual Senators.

I would argue that the photography of Senators and other general privacy issues in traditional media is best pursued in other more appropriate forums.

I recognise that the debate surrounding several of the above suggestions has progressed since this time. However, several of the above issues remain

unaddressed or inadequately addressed by the Parliament, or in public and policy debates.

The following recent domestic and international events exemplify the need for the Senate Select Committee on Information Technology to pursue inquiries more pressing and specific to issues surrounding information technology and the emerging information society:

a) *E-procurement and expansion of e-commerce*

The Government's *Investing in Growth* announcement December 1997 recognised the importance of the information economy. Subsequent Government undertakings include *the Strategic Framework for the Information Economy,* December 1998, which identified key issues and priorities for action to facilitate e-commerce, particularly:

(i) facilitating industry and consumer take-up;

(ii) implementing an appropriate legal and regulatory framework; and,

(iii) providing appropriate services online.[1]

The Government's electronic procurement strategy and policy objective to bring all appropriate government services online by 2001 also brings new urgency to appropriate investigation of e-security and cyberspace privacy.

The primary role of the private sector in achieving the goal of transferring Government business to an e-commerce procurement system is central.

Uniform e-provider standards must be established to facilitate the Australian e-commerce industry, as recognised by the Chair's report on the *NetBets* online gambling inquiry.

Provision of appropriate encryption and privacy measures to ensure consumer confidence is essential. Therefore pursuit of encryption and Internet privacy issues by the Committee is of sustained relevance and could be argued to be of greater relevance the issues latterly pursued by the Committee.

The failure to properly address issues of security and encryption has been one of the most serious impediments to the growth of the online economy worldwide. Users remain sceptical of electronic commerce services without secure systems.

b) *Microsoft monopolisation*

---

[1] Department of Communications Information Technology and the Arts, *Commonwealth Electronic Procurement – implementation strategy,* April 2000 at page 5.

On Monday 3 April 2000 the United States District Court of Columbia's recognised Microsoft Corporation's possession of monopoly power[2] in the PC operating systems market and its harm on consumers.[3] The Corporation was charged with a broad range of anti-trust violations that were upheld.

The implications for such market monopolisation by an international company on the domestic Australian market must be considered. Therefore my recommendation that the Committee reconsider the pursuit of internet monopolisation issues.

The Microsoft announcement at the 2000 Windows World Conference to pursue the hardware market, specifically wireless devices and 'internet devices' demonstrates the need for Governments to address the issue of monopolisation and vertical integration specifically in the information technology sector.

The Chair's report recognises the growing regulatory issues surrounding the convergence in Australia's and the global information and communications industries, that it is an emerging field with various uncertain issues.[4]

I recognise the Committee's recommendation to note the outcome of the Commonwealth Department of Communications, Information Technology and the Arts Convergence Review before consideration of the issue. However I would argue with current international developments, issues of convergence with specific reference to monopolisation require immediate address.

c) *President Clinton's Digital Divide call to Action*

President Clinton announced on Tuesday 4 April the signing by over 400 companies and non-profit organisations a 'National Call to Action' to facilitate digital opportunity to young people, families and communities.

The initiative represents an acknowledgment by both the public and private sectors of America that access to technology and the ability to 'get connected' is essential.

The Clinton-Gore announcement recognises the growing evidence of a 'digital divide' between those individuals and communities that have access to Information Age tools and those who do not. This is of specific concern to ethnic minority and indigenous groups and rural communities.[5]

---

2 Microsoft is reported to hold a plus 90% market share for PC operating systems.

3 United States of America v. Microsoft Corporation, C.A. 98-1232 State of New York, *ex rel.* Eliot Spitzer, *et al., v.* Microsoft Corporation, C.A. 98-1233 http://usvms.gpo.gov/

4 Self-regulation in the Information and Communications Industries Chair's Report, at paragraph 1.60.

5 The White House Office of the Press Secretary, 'The Clinton-Gore Administration: A National Call to Action to Close the Digital divide, http://www.whitehouse.gov/WH/New/html/20000404.html.

I recommend that that Senate Select Committee on Information Technologies reconsider the issue of domination of the information society specifically to ensure Australian culture is sustained, developed and promoted and Australia's participation in the international information society is facilitated.

3. Self-regulation and Enforceability

The Australian Democrats are sceptical of any regulation by self-regulation and question this approach to the regulation of privacy in the information society. Privacy regulation by self-regulation does not provide the certainty and guarantee of protection necessary to safeguard personal information.

The Australian Democrats maintain that privacy should be an enforceable right. The appropriateness of self-regulation to ensure customer and user privacy is questionable.

Evidence before the Senate Legal and Constitutional References Committee, *Inquiry into Privacy and the Private Sector*, suggested, in almost every instance, voluntary self-regulation fails for lack of an effective complaints, investigations and enforcement process.

Self-regulation may only be effective if specific industries are bound to their codes ie: co-regulation.

However, the Australian Democrats have outlined our concerns about the role of self-regulation and co-regulation in aspects of regulating the internet to date. We remain concerned that self-regulation leads to the significant possibility of privatised law enforcement and the protection of industry interests before the interests of customers and users.

We maintain that the Internet is a dynamic communications medium which should not be stifled by unnecessary government intervention and regulation. However, guaranteed privacy is recognised as essential in facilitating a dynamic Australian e-commerce industry and promoting online activity in Australia.

4. Recommendations of the Chairs Report

Recommendations 1-4:

The establishment of an independent statutory body, the Media Complaints Commission (MCC) to protect privacy and receive complaints regarding the information and communications industry.

The MCC is to operate as a one-stop shop with the power to impose additional non-pecuniary sanctions to current sanctions and is to report to the Parliament annually.

Issues of enforceability of current complaints about the press are valid. I hold serious concerns about the effectiveness of current peer review procedures to maintain ethical and privacy standards in the media.

There is a balance to be struck between the public's right to freedom of information and the right to privacy.

Non-invasive regulation of the Internet is essential for facilitation of the unique attributes of the medium. However, this must be balanced with the protection of personal privacy.

Privacy must be protected by enforceable determinations. I hold reservations about an overarching body that is charged with more effective enforcement of a self-regulatory codes.

A regulatory 'one stop shop' is a positive initiative to address regulation of the converging media industries. However the structure of the proposed MCC does not address the challenges of the emerging new media.

Co-regulation is a seemingly viable form of regulation for the internet and traditional medias. However the current co-regulatory proposal, the MCC, is inadequate to guarantee appropriate ethical and privacy standards in the media.

Co-regulation can range from simple endorsement of industry self regulation, to providing legislative backing to privately defined rules when industry lacks sufficient sanctions to ensure compliance, thus bordering on traditional regulation.

The current proposal does not address the problems of peer review of the Press Council and the lack of appropriate authority of the Australian Broadcasting Authority (ABA).

Privacy requires enforceable remedy and redress options which includes pecuniary sanctions.

Recommendation 5

The amendment of section 148(c) (i) of the Broadcasting Services Act 1992 be amended so that complaints about a broadcast can be addressed to the ABA 30 days after the original complaint to the broadcasting service operator.

I support the recommendation to amend the *Broadcasting Services Act 1992* to reduce the time of response time to a complaint from 60 to 30 days.

Persons who have not received a response within 30 days after making a response to the relevant industry code of practice will be eligible to make a complaint to the ABA on the matter.

Such an amendment would act to facilitate responsiveness of the ABA to registered complaints and aid in guarding against effective endorsement of complaint matters through delay or postponement.

However I hold reservations for reductions in response clauses for community members under industry Codes of Practice which limit the response time for individuals to lodge a complaint unreasonably. For example I hold reservations about limiting complaints pertaining to a specific radio-broadcast to 30 days from the broadcast, as is currently stipulated under radio industry codes of practice which are endorsed by the ABA. I believe a three to six month cooling period would be more appropriate.

_____

Natasha Stott Despoja
Deputy Leader of the Australian Democrats
Senator for South Australia

10 April 2000