The Australian Legal Framework for Internet Content Control

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Overview

1. Regulatory frameworks for other media
2. Internet Content - Broadcasting Services Act
   a) Schedule 5
   b) Schedule 7
3. Other criminal provisions
   a) Criminal Code Act 1995 (Cth)
   b) State Crimes Acts
4. Constitutional limitation?
Regulatory frameworks for other media

   • Plus complimentary state/territory legislation
   • Regulates:
     – Publications
     – Films
     – Computer games
   • “Pre-vetting” system
Regulatory frameworks (cont)

2. Broadcasting Services Act 1992 (Cth)
   - Codes of Practice (BSA, s 123)
     - Commercial Television Code of Practice
     - Commercial Radio Codes of Practice
     - ASTRA Codes of Practice
Regulatory frameworks (cont)

3. ABC/SBS
   - ABC Code of Practice under ABC Act 1983 (Cth)
   - SBS Code of Practice under SBS Act 1991 (Cth)
Internet content - BSA

• Schedule 5
  – Originally:
    • ISPs and ICHs
    • Origin of content - inside/outside Australia
    • Notice and take-down regime
  – Now:
    • Only ISPs
    • Only content originating outside Australia
    • “Reasonable steps to prevent end-users from accessing the content”: Sch 5, cl 40(1)(c)
    • Role of IIA Codes of Practice: Sch 5, cl 40(1)(b)
Internet content - BSA (cont)

• Schedule 7
  – Regulates “content services”
    • Hosting service
    • Live content service
    • Links service
    • Commercial content service
  – (Largely) notice and take-down regime
Internet content - BSA (cont)

• IIA Code of Practice
  – “Pre-vetting” of content by commercial content service providers

• RAS Declaration 2008
Criminal Code Act 1995 (Cth)

- **Child pornography offences:**
  - s474.19/22: use of carriage service for child pornography/child abuse material
  - s474.20/23: possession/supply of child pornography/child abuse material using carriage service
  - s474.25: obligation on ISPs/ICHs to refer to AFP if aware service can be used to access particular material that ISP/ICH has reasonable grounds to believe is child pornography/child abuse

- **Stalking/grooming offences**
Other criminal provisions

• Publication of obscene/indecent material
  – Eg Crimes Act 1900 (NSW), s578C
• Possession/distribution of child pornography
  – Eg Crimes Act 1900 (NSW), s 91H
• Law of blasphemy?
Constitutional limitations?

- Communications power - no need for reciprocal legislation
- Implied freedom of political communication
  - Theophanous (1994)/Lange (1997)
  - The Rabelais case (1997)
  - Catch the Fire Ministries (2006)
  - Council for Civil Liberties v CRB (2007)
- Compare US position
  - Reno v ACLU (1997); ACLU v Reno (1999)