

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

1. Classification (Publication, Films and Computer Games) Act 1995 (Cth)
 - 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)