# Internet Filtering

John Selby
Macquarie University
john.selby@law.mq.edu.au

# Senator Conroy's Proposal

- Is *just* a proposal: Like all potential policies, it has benefits and costs
- Evidence-based policy development is input for the Regulatory Impact Assessment process which involves Cost-Benefit Analysis
- Rigorous, transparent Cost-Benefit Analysis of Senator Conroy's proposal is required
- Rigorous, transparent Cost-Benefit Analyses of *alternative* policies to Senator Conroy's proposal are necessary

# Cost-Benefit Analysis

- Internet regulation is not just about technology
- Cost-Benefit Analysis needs to be done in the following areas:
  - Technical
  - Economic
  - Social
  - Political
  - Legal
- Each policy alternative will have different strengths and weaknesses in those areas
- Different stakeholders will place different weights on those areas

# Modalities of Regulation

- Law
- Architecture – software code
- Norms
- Markets
- Transaction Costs

# Transaction Costs

- Ex ante: Search, selection, negotiation
- Ex post: Enforcement
- Transactions only occur when the benefits of the transaction are greater than the transaction costs incurred to do so
- The Internet massively lowers certain transaction costs, particularly search costs for content that *wants* to be found

# Static vs Dynamic Efficiency

- Static Efficiency is what we usually think of as “efficiency”, ie building a system which can produce the most of “X” in a period of time with the fewest inputs
- Static efficiency is innately conservative: optimising the production of “X” makes it hard to switch to producing “Y”
- Dynamic efficiency is innately progressive: it focuses not only on producing “X” today, but on being able to efficiently switch to producing “Y” tomorrow and “Z” the day after

# Internet filtering

- Internet filtering is a relatively static form of regulation
- Compare the transaction costs of the filter operator vs the target
- The target: low TCs to change ISP, IP address, register a new domain name, rename files, adopt or build new Internet protocols
- The operator: high TCs to respond to the Target's behaviour
- Static policies are ineffective at resolving dynamic problems: they can't win the arms race over time and just fall further behind (ie require more and more money)

# Internet regulation

- Truly “protecting the children” requires more than symbolic ineffective gestures
- If you are going to spend this much money on any policy:
  1) define explicitly what the policy is designed to achieve;
  2) do Regulatory Impact Assessments and Cost-Benefit Analysis of a range of policy alternatives
  3) understand the difference between static- and dynamic-efficiency regulatory alternatives

# Australia's Maginot Line?

| | **France's Maginot Line** | **Senator Conroy's proposed Internet Filter** |
|---|---|---|
| **Expensive to build** | Over $1 Billion; rest of military weakened | $$$; money better spent on police investigations and user education |
| **Built to fight yesterday's war** | WW1 trenches: defence = fewer casualties | Customs interdiction of prohibited content at border |
| **Beloved by private industries for $$$ construction & maintenance contracts** | Concrete, Artillery, Munitions | Computer Hardware & Filtering Software companies |
| **Ignored Δ Transaction Costs caused by new technologies** | Moving many troops over broken ground | Use of new protocols by users and suppliers, etc |
| **Once built, critical infrastructure became national security risk** | French overconfidence / Germans bypassed forts | Monoculture ecosystem = single point of failure / In crisis, foreign hackers / govts seize control of filters or DDoS |
| **Static or Dynamically efficient?** | Static | Relatively static |
| **Defeated / Outmoded by:** | Blitzkrieg: lightning war on ground and air | Internet users adopting new protocols / technologies |
| **Symbolic or truly capable of achieving policy objective?** | Symbolic - French citizenry not protected | Symbolic - Australian citizenry unlikely to be truly protected |