



# Outline

## Regulation

- ✦ Lessig and Code
- ✦ Social media regulation
- ✦ Technological changes 1.0, 2.0
- ✦ Legal disconnects
- ✦ Common carriers mutate
- ✦ Censorship and filtering
- ✦ The urge to monitor
- ✦ A 'wicked problem'?

## 'Filtering'

- ✦ Impact of Web 2.0
- ✦ Decentralisation
- ✦ Filter plans vD
- ✦ v1 2007 'Prohibited'
- ✦ v2 2009 RC
- ✦ v3 2011 Interpol PC
- ✦ Challenges for regulation
- ✦ Where are we left?

# Lawrence Lessig's Code

✦ Lessig identifies possible sources of regulation  
(*Code and other laws of cyberspace* - 200)

<http://codev2.cc/>

✦ Law (old filter obligation?)

✦ Technology itself a.k.a. 'Code' (filtering, DPI, surveillance)

✦ Social norms (netiquette, socially enforced good practice?)

✦ Business practice (the new filter obligation?)



# Background to online media regulation



Tech changes

Legal changes

# Technological changes underlying

- ✦ Offline world was nice and simple, for regulators
- ✦ Web 1.0: global publication, old media/publish models
- ✦ Web 2.0: social networking, user generated content
  - ✦ Convergence of producer and consumer, + distributor
- ✦ Web 3.0?: mass personalisation, semantic web
  - ✦ It's not just your friends who know you and what you mean
- ✦ Attack of the killer toddlers – we are so old
  - ✦ Hackers retire at 15, kids turning filter tables on parents, slash
  - ✦ Facebook does not enforce own rule of at least 13 yrs old

# Legal disconnects

- ✦ Cyberlibertarian fantasies still delude and excite
- ✦ Reality: Jurisdiction out of control, hyper liability (for you)
- ✦ Intensification not escape from jurisdiction (revenge of the States)
- ✦ Or, no care, and no responsibility? (for the cloud)
- ✦ Your data and business go offshore, but not legal protection
- ✦ The rise of the sub-human: minors at the frontier
  - ✦ Deficit in consequences: cognitive development: paternalism?
  - ✦ Under the age of 18 or appears to be under 18
- ✦ The fall of the 'common carrier' ISPs: change masters?
  - ✦ Agents of a foreign power, or a hostile litigant interest?
  - ✦ Enforced discipline of their customers, on pain of sharing liability.

# History

- \* No legal right to free speech in Aust, cf US Const 1<sup>st</sup> Amndt
- \* US CDA, 1996 COPA 1998 etc. (finally defeated 2010?)
- \* Oz censorship
- \* Alton and Harradine (v0)
- \* Hamilton and poem
- \* 2007 changes
- \* 2007 policy (v1) - land grab
- \* 2009 retreat (v2)
- \* 2010 H1 sidestep (v3)

# the scope of the content domain

## ★ Quantity

- ★ Google: 1 trillion items; 10-60bn change/month?

## ★ Transience

- ★ Fast flux injectors, normal five turnover

## ★ Protocols

- ★ Very large number, roll your own

## ★ Content types

- ★ Convergence: consumers become producers

# Why online content control might be a 'wicked problem'

- ★ Scope is unmanageable?
- ★ Classification model unviable? Urge to 'filter' terminology
- ★ Design philosophy of the net - under attack?
- ★ Moral panic - 'The Panic Button' as solution?
- ★ Real targets are parents? Wishful thinking?
- ★ Supposed beneficiaries also main perpetrators?
- ★ Tempting topic for 'policy-based evidence'?
- ★ Constant evolution of technology and practices

# Censorship & ISP-level Internet filtering

- ✦ 1,000 items in 1,000,000,000,000, no checking
- ✦ 10 billion change per month
- ✦ Appalling spin and shifting goals for the magic box
- ✦ Appeasing the swinging fundamentalists?
- ✦ Real child protectors: What risks? Does filtering work?
- ✦ Parents want to be rescued. Panic Button is for them
- ✦ Cargo cult mentality, denial, and hope of a saviour
- ✦ Does not address real problems: resilience, detection of criminals, communication with techno-kids
- ✦ Sexting, 'slash' fiction and innocents on the loose

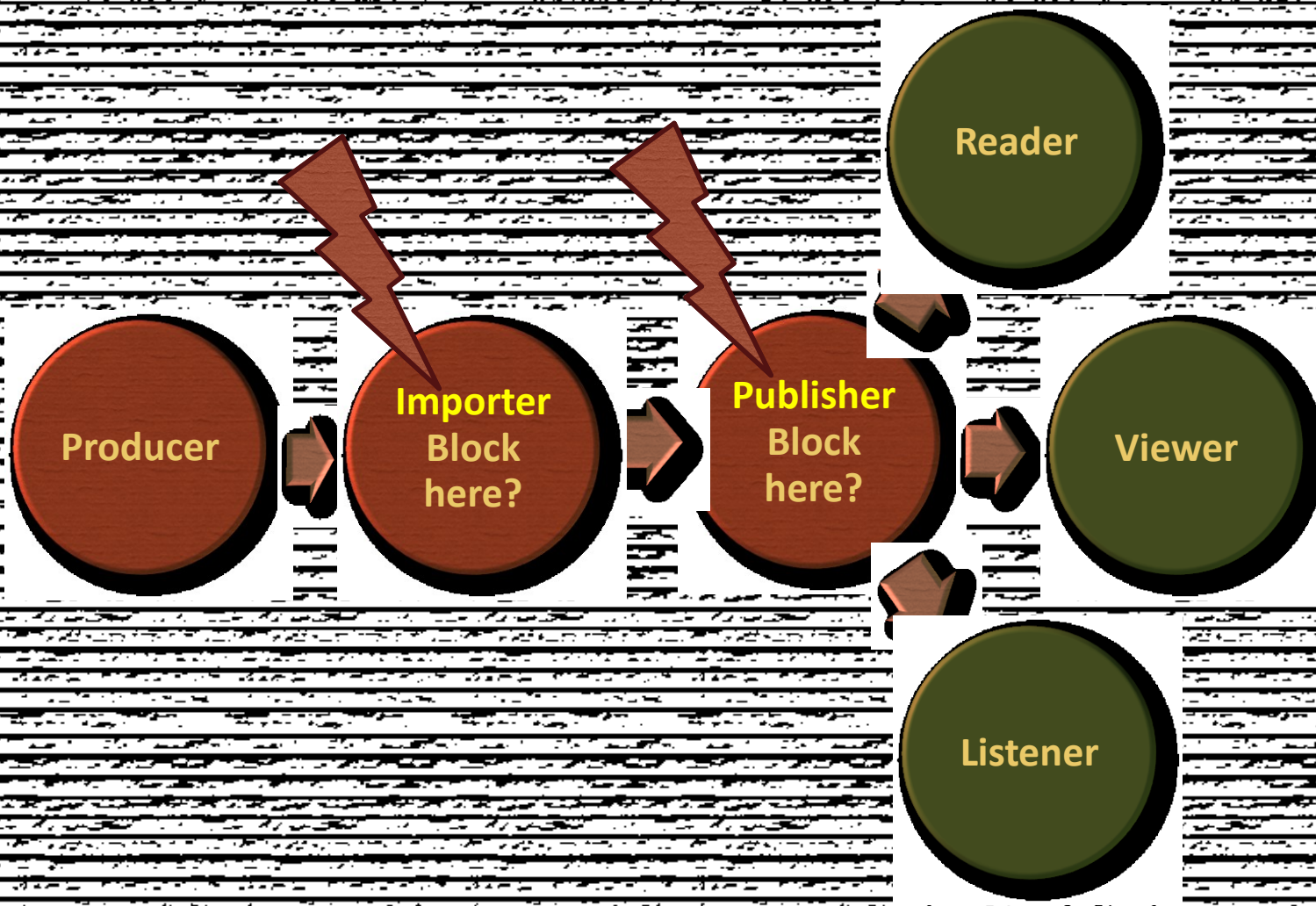
# The struggle for censors to keep up

- ✦ Surely it is censorship?
- ✦ Offline model: centralised distribution, choke points
- ✦ Web 1.0: more distributors, easier importation
- ✦ Web 2.0: everyone is a creator, (re-)publisher, exporter
- ✦ Web 3.0: the cloud knows what you like, and makes it?
- ✦ Encryption and roll-your-own protocols already in use
- ✦ The long cyber war: endless arms race between the strategists and those seeking to avoid the blocks?
- ✦ When is publication not publication?
- ✦ Chinese solution: you never know the Panopticon (no one home, but you self-censor)

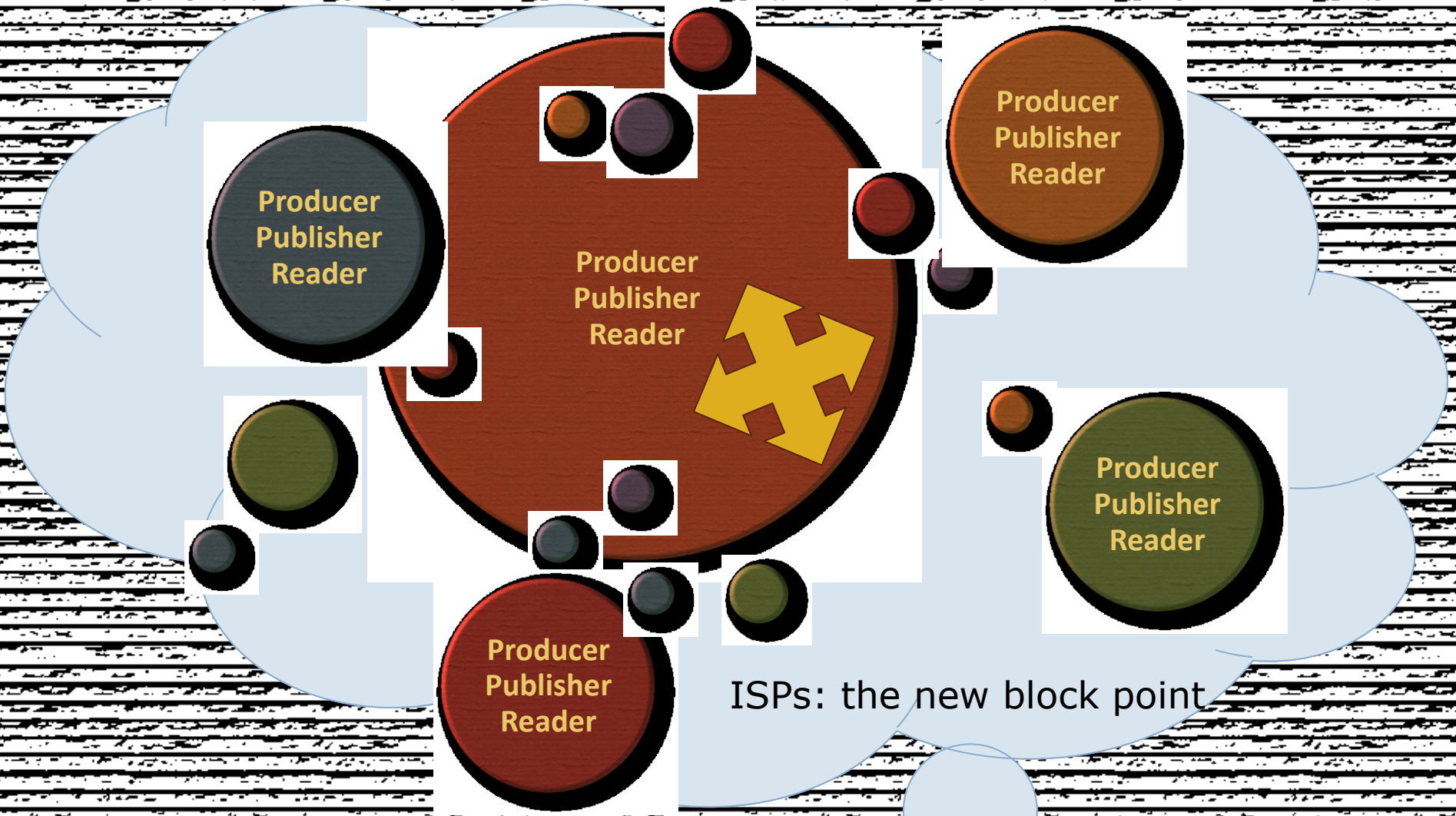
# And then there was 2.0

- ★ Social networking, user-generated content, degenerate narcissism
- ★ Blurs boundary: Publishing of Personal Communications
- ★ From centralised one-to-many topology to distributed network
- ★ Everyone is both consumer and producer ("prosumer")
- ★ Everyone is a permanent global publisher
- ★ Every device is an endless movie source: deluge of data
- ★ No editorial brain involved (both users and ISPs)? No selection?
- ★ ISP replaces Publisher as censor point - very significant? *li/Net*

# The Olde Worlde (2006)



# New fangled (SNS/UGC)





# net-vol: voluntary PC-based filters

- ★ Promoted by Senator Harradine, Telstra sale deal price of vote
- ★ Conveniently ignored by many, but came back to haunt
- ★ Set the principle, without proper scrutiny you can censor the net
- ★ PC-based operation an issue for setup and avoidance
- ★ NetAler scheme
- ★ Howard government - small regulation model? Voluntary
- ★ Replaced by Labor's 2007 election campaign junked

# Mandatory ISP Blacklist

## 'Prohibited'

- ✦ "Prohibited or potentially prohibited content" (CB or ACMA)
- ✦ Classification Scheme: See the Tables in the National Code
  - ✦ RC (what is RC? CP, terror, crime, gross, ...)
  - ✦ X18+
  - ✦ R18+
  - ✦ Some MA15+ (OK on TV, as AV15+ - non-neutral models)
- ✦ Only on complaint, then ACMA blacklist
- ✦ Entirely within fed govt - avoids state based partners
- ✦ What would have been blocked? Mosquito net?

# Australian of international content

- ✦ Key difficulties for censorship: the reason for filter?
- ✦ Extraterritoriality: jurisdiction limits (out of country)
- ✦ Inside: Notices (Take down content, Link deletion, stream cessation) for items hosted in Australia
  - ✦ Directed not at author or owner but ICH intermediary
  - ✦ No motive to resist? Or seek actual classification
  - ✦ Not obligation to get content classified (cf. Film, Game, Pub)
- ✦ 'Prohibited' (CB) or 'Potentially prohibited' (ACMA decm)
  - ✦ Refused Classification, X18+ all (See [refs](#))
  - ✦ R18+ if no age verification service
  - ✦ MA15+ no AVS for profit, not text or image
- ✦ Offshore: ACMA secret blacklist based on complaint too

# Mandatory ISP blacklist

- ✦ Illegal or RC (CB or ACMA)
- ✦ Classification Scheme: See the Tables in the National Code
  - ✦ RC (what is RC? CP, terror, crime, gross, ...)
  - ✦ Only on complaint, then ACMA blacklist
- ✦ Entirely within fed govt - avoids state based partners
- ✦ mid-2009 - quiet and unannounced abandonment of v1



# Voluntary' ISP blacklist

- ✦ International child porn list (2 members Interpol)
- ✦ No Classification Scheme
- ✦ No RC
- ✦ Not clear how a page gets on list
- ✦ Entirely outside fed govt - but enforced by 'persuasion'?
- ✦ Not require legislation (doomed)
- ✦ No oversight?
- ✦ Voluntary: Telstra, Optus, most customers

# Challenges for regulation

- ✦ Impossible to treat online content same as offline mass media
  - ✦ Human classification: orders too expensive
  - ✦ Machine classification: intrinsically ineffective
  - ✦ Transparency and accountability v secrecy
- ✦ Complaints/reporting as a visible response... Then what?
- ✦ No ambition to classify all - but what to say to parents?
- ✦ Real regulation v rhetorical regulation?  
(Chatham House breach)

# Other issues

- ✦ Classification is not censorship
  - ✦ Edge of classification/censorship, in and out (Frene Graham)
  - ✦ Discourses of disconnection: Disjuncted debates  
free speech uber alles v. think of the little children
  - ✦ Non censoring classification?
- ✦ Filter Side effects: security? HTTPS, issues about viability
- ✦ Other uses content, Brilliant Digital, Speck/Burmeister
  - ✦ Recent: APF to intervene in uNet case

# Where does this leave us?

- ★ Minister still wants to deliver on promise
- ★ What stopped v1 and v2?
- ★ Is v3 better or worse?
- ★ Will it make any difference?
- ★ The politics of gesture
- ★ Wide scope of RC
- ★ Legitimate concerns of eg parents? (3 options, [seminar 1](#))
- ★ Will we ever have a proper discussion of needs of young pp?



# Questions?

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