

The Regulatory Framework for Media, Communications and the Internet

Based on material by John Corker,
revised and updated David Vaile 2016

Who is regulated?*

- ▶ Owners and controllers of media and communications organisations
 - Print Media
 - Broadcasters
 - Telecommunication carriers
 - Telecommunication service providers
 - 'Internet service providers'
 - 'Internet content hosts'
- ▶ Creators and Producers of Content
- ▶ Individual end-users
- ▶ **This is the traditional 'media' regulation model: It slowly adapts to Internet – but being left behind?*

Rationales for regulation

- ▶ Broadcasting's role of disseminating news and information
- ▶ Community Standards
 - On availability and labelling of content
 - Acceptable social behaviour
- ▶ Competition Policy for access to telecommunications services
- ▶ Scarcity of radiofrequency spectrum
- ▶ Setting standards for consumer protection
- ▶ Desire to maintain a diversity of views and opinions
- ▶ Protection of 'Intellectual Property', esp. Copyright
- ▶ Restrictions on Free Speech, Hate Speech
- ▶ Protection of Privacy

What is regulated?

- ▶ Media Content
 - Prohibitions
 - Labelling
 - Guidelines
 - Ethics
- ▶ 'Carriage' (what telcos and ISPs sell is 'carriage service')
 - Who can carry/broadcast/transmit
 - Access to telecommunications infrastructure and services
 - Obligated to retain metadata (assist surveillance and interception)
 - Restrict access to domains or sites (censorship)
- ▶ Consumer Protection
 - Minimum standards for equipment
 - Service provider behaviour

Methods of regulation

- ▶ Direct regulation: laws/Acts, regulators, regulations, Standards, licences with conditions)
- ▶ Co-regulation: Codes of Practice, can be approved/endorsed by government or regulator
- ▶ Self Regulation (Codes of Practice endorsed by industry alone)
- ▶ Economic & technological means (Lessig's 'Code' is computer code, not a Code of Practice)

Challenges to regulation

- ▶ Changes in Technology
 - Growth of personal computers, mobile devices, IoT and clever software
 - Better, cheaper content production equipment, now in every pocket
 - Optic fibre, satellites, wireless, other broadband infrastructure
 - Digitisation of content, digital transmission, transmission over internet
 - New mobile devices and services, constant convergence and change
- ▶ Growth of use of the Internet, no sign of slowing rate of growth
- ▶ Liberalisation of telco markets
- ▶ Infrastructure monopolies (NBN, copper phone, ocean cables)
- ▶ Changes in the method of delivery
- ▶ Growth of niche media
- ▶ Interactivity of media, user generated content
- ▶ The ease of publication and distribution by individuals (DIY media)
- ▶ Development of content models based on clickbait, not real content

Some key regulatory concepts

- ▶ One to many 1:m (broadcasting)
- ▶ One to one 1:1 (voice telephony)
- ▶ Many to many m:m (social media, P2P, BitCoin)
- ▶ Public space/Private space
- ▶ Connectivity and Convergence (all aspects merging)
- ▶ The 'Public Interest', cf. 'what public is interested in'
- ▶ Degree of influence, manipulation
- ▶ Creator's Rights v Fair Use of Ideas

Some Regulators

- ▶ 'State' regulators
 - Australian Communications and Media Authority (ACMA)
 - Australian Competition and Consumer Commission (ACCC)
 - Privacy Commissioner/Office of Aust. Info. Commissioner (OAIC)
 - Classification Board in Dept Communications and Arts
- ▶ Industry regulators (required by law)
 - Telecommunications Industry Ombudsman (TIO)
- ▶ Industry self regulators
 - Australian Press Council – news media, especially papers
 - Communications Alliance Ltd – telecommunications vendors
 - Australian Association of National Advertisers (AANA)
 - Free TV Australia – free to air TV broadcasters
 - .au Domain Administration (auDA) – domain names
 - Internet Australia (formerly ISocAU) – standards, user input

Examples of Direct Regulation

► Industry Regulation

- The Commonwealth has power to make laws with respect to postal, telegraphic, telephonic and “other like services” under s 51(v) of *Australian Constitution 1901*:
- *Broadcasting Services Act 1992* (Cth) – Schedules 5, 7
- *Telecommunications Act 1997* (Cth)
- *Radiocommunications Act 1992* (Cth)
- *Consumer and Competition Act 2010* (Cth) and the Australia Consumer Law embedded in it.
- Secondary regulation – eg, ‘cash for comment’ licence conditions on radio 2UE, and Standards which apply to all commercial radio broadcasters

Direct Regulation (cont.)

- ▶ Classification of publications
 - Offensive publications – 'Refused Classification' classification
 - Sedition, racial vilification - s18C *Racial Discrimination Act 1975* (Cth)
- ▶ Copyright laws (civil law) – *Copyright Act 1968* (Cth)
- ▶ Defamation laws (civil law) – *Defamation Act 2005* (NSW)
- ▶ Contempt of Court (criminal law)
- ▶ Tobacco Advertising (civil penalties)

Examples of co-regulation (with ACMA, ACCC, OAIC etc.)

- ▶ Commercial television industry Code of Practice
- ▶ Commercial radio code of practice
- ▶ Australian Communications Industry Forum consumer codes/billing code
- ▶ IIA Content Code of Practice (defunct)
- ▶ AMSRO Market and Social Research Privacy Code
- ▶ Telecoms Consumer Protection Code
- ▶ ePayments Code
- ▶ See *Drowning in Codes* for more details

Examples of Self Regulation

- ▶ AANA Code of ethics includes a code for advertising for children
- ▶ MEAA Code of ethics for journalists
- ▶ Advertising Standards Board hears complaints about advertisements
- ▶ Australian Record Industry Association governs a code of practice for explicit lyrics
- ▶ Alcoholic beverages code

Summary

- ▶ Diverse and rapidly changing industries.
- ▶ Rationales for traditional approach to regulation are breaking down in a converging environment
- ▶ Think of “regulatory networks” that apply to specific media and communications activities, rather than just laws.
- ▶ Four major regulatory approaches
 - Civil law rights and remedies
 - State regulation
 - Co-Regulation
 - Self` regulation