

Motivation for the Establishment of a Wireless Content Industry Association



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WASPA Formation
Meeting
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Agenda

- ECT Act
 - Possible liability
 - Chapter XI – Liability of Service Providers
 - Other issues
 - Spam
 - Consumer protection
- Other legal issues
 - Film and Publications
 - Interception
- Ethical and advertising – code of conduct
- Lobbying and Compliance
- Role of the Future Foundation

Electronic Communications and Transactions Act





Relevant Definitions

- “transaction”
 - commercial or non-commercial nature
 - includes the provision of information
- “data message”
 - any electronic data
 - voice, where the voice is used in an *automated transaction*; and
 - a stored record.
- Act applies to “data message” whether it is used in a “transaction” or not
- Chapter XI “service provider” means any person providing information system services



Potential Liability

- Criminal, civil, common law and statutory
- NOT only ECT Act
- Defamation
 - Author liable **AND**
 - Publisher and distributor also liable
- Copyright
 - Copier liable **AND** distributor
- Child pornography
 - Strict liability – no need for intention
 - Mere possession



Chapter XI – Service Provider Liability

- Follows international precedent
- Requires an industry representative body recognised by the Minister
 - members are subject to a code of conduct;
 - membership is subject to adequate criteria;
 - the code of conduct requires continued adherence to adequate standards of conduct; and
 - the representative body is capable of monitoring and enforcing its code of conduct adequately.
- Implemented Code of Conduct



Chapter XI cont

- Indemnity – mere conduit
 - not liable for providing access to or for operating facilities OR information systems FOR transmitting, routing or storage of data messages via an information system under its control, as long as the service provider –
 - does not initiate the transmission;
 - does not select the addressee;
 - performs the functions in an automatic, technical manner without selection of the data; and
 - does not modify the data contained in the transmission.
 - The acts of transmission, routing and of provision of access include the automatic, intermediate and transient storage of the information transmitted in so far as this takes place -
 - for the sole purpose of carrying out the transmission in the information system;
 - in a manner that makes it ordinarily inaccessible to anyone other than anticipated recipients; and
 - for a period no longer than is reasonably necessary for the transmission.



Chapter XI cont

- **A service provider that transmits data provided by a recipient of the service via an information system under its control is not liable for the automatic, intermediate and temporary storage of that data, where the purpose of storing such data is to make the onward transmission of the data more efficient to other recipients of the service upon their request, as long as the service provider**
 - does not modify the data;
 - complies with conditions on access to the data;
 - complies with rules regarding the updating of the data, specified in a manner widely recognised and used by industry;
 - does not interfere with the lawful use of technology, widely recognised and used by industry, to obtain information on the use of the data; and
 - removes or disables access to the data it has stored upon receiving a take-down notice.



Chapter XI cont

- A service provider that provides a service that consists of the storage of data provided by a recipient of the service, is not liable for damages arising from data stored at the request of the recipient of the service, as long as the service provider -
 - does not have actual knowledge that the data message or an activity relating to the data message is infringing the rights of a third party; or
 - is not aware of facts or circumstances from which the infringing activity or the infringing nature of the data message is apparent; and
 - upon receipt of a take-down notification referred to in section 77, acts expeditiously to remove or to disable access to the data.
- The limitations on liability established by this section do not apply to a service provider unless it has designated an agent to receive notifications of infringement and has provided through its services, including on its web sites in locations accessible to the public, the name, address, phone number and e-mail address of the agent.



Other Issues

- SPAM
- Consumer Issues
 - Excludes time regulated (perishables, travel, entertainment etc), financial services, auctions, bespoke etc
 - Detailed info must be provided by the supplier AND
 - Opportunity for consumer to review, correct and withdraw before transaction finalised OR
 - Consumer can cancel within 14 days of receipt
 - Supplier MUST use appropriate technology
 - Additional 7 day “cooling off” period

Other Legal Issues





Other Legal Issues

- Film & Publications
 - Adult content
 - Child porn
 - Looking to expand to mobile content
- Interception
 - Obligation to retain information
 - Mobile content NOT specifically covered

Ethical & Advertising: The Code of Conduct





Ethical & Advertising: The Code of Conduct

- ASA
- DMA
- Existing SMS code
- Expand code of conduct –
 - By industry players
 - Self-regulation
 - Accepted experts
 - Dispute resolution

Lobbying and Compliance





Lobbying and Compliance

- Government welcomes industry self-regulation
 - Privacy legislation
 - Film & Publications
 - Lottery and competitions
- Lobby
- Legal advice
- Compliance assistance

Role of the Future Foundation





Role of the Future Foundation

- Administer ISPA (DIMA, ISOC-ZA, ICANN Cape Town, Internet Week etc)
- ISPA Code of conduct
- Regulatory
- Finance
- Web site, mailing lists, minutes, reminders, conference calls, notices etc
- Incubator role
 - Future role determined by ManCo

Thank you



Questions?