



Australian Communications Consumer Action Network

(ACCAN)

Future Consumer

**Emerging Consumer Issues in Telecommunications and
Convergent Communications and Media**

Ryan Sengara, Sal Humphreys, Jock Given, Marion McCutcheon and Claire Milne

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1. ABOUT THE REPORT

1.1. A scoping study

This report was commissioned by the Australian Communications Consumer Action Network (ACCAN) as part of its mandate to conduct research on matters related to Australian communications consumers. *Future Consumer* is a scoping study which aims to inform ACCAN's strategic direction and the wider policy arena by:

- identifying key emerging issues for consumers in telecommunications and the converging communications and media environment;
- analysing current or future policy models and service options to address these issues, including possible partnerships and advocacy strategies;

The report consists of four case studies: Telecommunications and Mobiles; The Internet; Broadcasting; and Affordability. Though the breadth of the report is wide, there is great value in the originality of pulling together and beginning to cross-reference consumer issues and expertise across areas of converging communications and media that traditionally have been segmented.

In their approach to the studies, the researchers conducted literature reviews of policy and best practice in Australia and internationally, conducted stakeholder and expert interviews, and conducted a half-day consumer workshop in Sydney on 21 May 2009. The research team was counselled by a committee consisting of members of the ACCAN board, government, academia and industry. A notable constraint of this project was an abbreviated timeline that prompted a focus on identifying top-level issues. Comprehensive research is recommended across the issue areas prioritised by ACCAN.

1.2. About the researchers

Ryan Sengara is an independent researcher who previously has worked at the Consumers' Telecommunications Network, the former peak communications consumer body. Ryan has also worked in research in the University of Sydney's Media and Communications Department and in the private sector. He holds a Master of Arts (Centre for Cultural Research, University of Western Sydney) and a Bachelor of Commerce from McGill University in Canada. Ryan is lead researcher and the author of the Telecommunications and Mobiles study.

Sal Humphreys works as a lecturer and researcher at the University of Adelaide. Her main research interests lie in the areas of digital media, social networking sites and online games. She has worked for three years as an ARC Post-doctoral Fellow on a community media and the Internet project and has an abiding interest in the organisation of the rights of users in online environments. Sal is the author of the Internet study.

Jock Given is Professor of Media and Communications at Swinburne University's Institute for Social Research and author of *Turning Off the Television: Broadcasting's Uncertain Future* (UNSW Press, 2003). He was previously Director of the Communications Law Centre and Policy Adviser at the Australian Film Commission. In 1996–97, he chaired a review of universal service arrangements in Australia. Jock is a co-author of the Broadcasting study.

Marion McCutcheon is a communications economist and policy analyst who has worked for the Australian Broadcasting Authority, the Department of Communications, Information Technology and the Arts and the Bureau of Transport and Communications Economics. Marion is a co-author of the Broadcasting study.

Claire Milne is an independent consultant based in London who has worked for many years at the interface of consumer affairs and telecommunications policy. She is also a Visiting Fellow at media@LSE and Chair of Ofcom's Consumer Forum for Communications. Along with other aspects of universal service and universal access, affordability of telecommunications (in both developing and developed countries) has been a long-standing special interest. Claire is the author of the Affordability study.

1.3. Acknowledgments

This project was funded by the Commonwealth government through the Department of Broadband, Communications and the Digital Economy (DBCDE) as part of its support for the establishment of ACCAN. The researchers would like to thank the project's Advisory Committee, chaired by Professor Gerard Goggin (ACCAN Board, University of New South Wales), including Sue McIntosh (DBCDE), Nan Bosler (Australian Seniors Computer Clubs Association, ACCAN Board), Lesley Osborne (Australian Communications and Media Authority), Paul Budde (Paul Budde Communication Pty Ltd), and Professor Julian Thomas (Swinburne University of Technology). We'd also like to thank the staff of the Consumers' Telecommunications Network, especially Danielle Notara as Secretariat for the project, and Teresa Corbin. Finally, we'd like to thank the participants of the project workshop and interviews, who so generously gave their time and views.

1.4. Key findings

The roles that information and communications technologies (ICTs) are playing in the lives of consumers and in the realms of policy are changing. We are witnessing tremendous growth in consumer use of ICTs, and increasing levels of focus on using ICTs to drive economic and social goals.

Traditionally segmented areas of communications and media are evolving towards a landscape that is Internet or digitally based, with greater mobile functionality and greater user interactivity. There are also major developments in communications policy in Australia, with renewed attention on consumer voices, including the launch of the Australian Communications Consumer Action Network (ACCAN).

Against this backdrop, the *Future Consumer* project was commissioned to scope key emerging consumer issues to inform ACCAN's strategic direction, and the wider policy arena.

For perhaps the first time, the report brings together consumer-focused case studies across telecommunications and mobiles, the Internet, affordability and broadcasting. This collection of fundamental consumer issues and policy analyses sketches out the field of play for consumer advocacy moving forwards.

- In the Telecommunications and Mobile area – perhaps the backbone of a converged communications space – nine issue areas are identified: consumer protection and policy arrangements; information provision and decision-making; availability of

services; accessibility of services; inclusion and integration with lifestyle; relationships with service providers; security and privacy; using content; and ICTs and the environment.

- The Internet study, discussing a shift towards consumers as producers, raises the issues of: copyright and intellectual property; privacy; trust and risk management; contracts; social and cultural capital access and rights; content regulation; and cross-jurisdictional issues.
- In the Affordability study, cost is identified as a key factor in the take-up and use of ICTs. Attention is directed towards defining concepts of affordability, and towards appropriate affordability provisions around next-generation broadband and mobile services, especially amid economic crisis.
- Finally, noting the switchover from analogue to digital television, the introduction of digital radio and the growth of audio and video on demand, the Broadcasting study raises issues about service coverage, service delivery methods – including accessibility – and advertising and program content.

There are sites of crossover between these areas that stand out. These include siloed policy frameworks, a need to connect to international policy work, non-discriminatory access to services, the use of personal information, copyright, content regulation and environmental impact. With a future-looking gaze, though, it may prove useful to further delineate issues into three themes that span different technologies:

- *Access to underlying networks.* Are they available to all, open access, non-discriminatory, affordable, environmentally sustainable and reliable?
- *Service delivery.* Are consumers informed? Is there appropriate safety and privacy? Are there fair and effective relationships between consumers and service providers?
- *Content and services delivered over networks.* Are they accessible and easily usable? Do they meet the diverse needs of users and support users as creators? Do they deal fairly and consistently with content regulation and content use?

Three main areas of policy and advocacy priorities then surface for consideration:

- *Developing more sustainable consumer protection and communications policy frameworks to balance consumer rights with innovation in services.* This is a vast area which might include a focus on concepts of consumer empowerment, key consumer rights and responsibilities, reform of self-regulation, increased functionality in policy participation and relationships with industry, and connections to international policy work. A commitment to consumer-centred research is also central here.
- *Developing consumer skills and literacies.* The main goal here is to help consumers better use, understand and create media and communications. There appears to be a great deal of work to be done in defining these skills and in honing the approaches and roles required to foster them. Information disclosure arrangements, especially around contracts, connect to this area.
- *Access to next-generation networks (NGNs).* Specifically, this refers to the National Broadband Network (NBN), digital TV and radio, and services using vacated analogue spectrum. Policy processes are already in train here that have the potential to impact consumers for a significant period of time.

With these key findings in place, further more detailed strategic work is recommended to shape ACCAN's role and tasks.

2. INTRODUCTION

To provide context for a discussion of emerging consumers issues in telecommunications and converging communications and media, we must underline the ever-increasing role of these information and communications technologies (ICTs) in the everyday lives of consumers, and in the fabric of modern society. Although ICTs have been important to consumers in different forms for some time, presently there is a focus on using them in ways members of the general public have rarely talked about before – as perhaps *the* tool we use in our day-to-day lives, in our work and in our development as a nation. As ICTs become more Internet and digitally based, mobile and interactive, the issues consumers face are converging as well. In this current environment, and for the foreseeable future, effective consumer advocacy will be critical.

2.1. The growing importance of information and communications technology

Essential consumer utilities?

In Australia and worldwide, consumer use of ICTs is growing significantly. Most Australian family households are media rich, with televisions, computers, mobile phones, DVD players and the Internet (ACMA 2008a). Mobile phone services in Australia are outnumbering the population (ACMA 2009a), the majority of Australians are logging on to the Internet during any one month (ACMA 2009c) and broadband connections of various speeds are steadily increasing (ACMA 2008b). Young people in Australia are spending around half of their discretionary time on electronic media and communications activities, for an average of four hours a day (ACMA 2008c). Broadband is one of the fastest diffusing technologies in OECD countries, with its use almost quadrupling over the past five years, leading the OECD to label broadband networks an integral part of the economy (OECD 2008a).

Behind the growth in use of ICTs are real consumer benefits, with the most important of these being fuller participation in modern life. Consumers in Australia are using ICTs for such vital functions as communicating (with people important to us and to make new social connections), for safety and security (always keeping a mobile phone handy), for accessing information (especially news, health and education), as a financial tool (banking, e-commerce), to interact with public services (e-government), for entertainment and to facilitate creativity (CCi Digital Futures 2008; ACMA 2008b). Internationally, across OECD countries, the story appears much the same, with a growth in Internet use accelerating new opportunities for services and relationships, producing significant impacts on people's lives (OECD 2008d).

Considering the rapid growth in use of ICTs, and the rapid acceleration of key services offered through ICTs, a strong case can be made for considering some of these technologies essential consumer utilities. Traditionally the fixed landline has been considered to be in this category, but increasingly it is broadband and mobile services.

A 'digital economy'

In Australia and in many other countries, ICTs are at the centre of economic and social policy discussions. ICTs are reported to be a major driver of growth and productivity, opening new market opportunities and stimulating innovation (OECD 2008d; DCITA

2007). In Australia, the government uses the term ‘digital economy’ to describe its vision of using ICTs for higher productivity growth and community participation:

The ‘digital economy’ refers to the global network of economic and social activities enabled by ICTs, particularly the Internet. It includes commercial transactions, personal dialogue, information, entertainment and delivery of services. The term is often used interchangeably with ‘Internet economy’ and ‘information society’. (DBCDE 2008)

Australia is in the early stages of policy work in this area (the government is scheduled to release a *Digital Economy Future Directions* paper some time in 2009), but others are further along this track. Britain is developing its *Digital Britain* strategy, which recognises that a key driver behind such policy is that ‘the digital economy is the most dynamic sector in the world and as the global recession bites, it is essential to nurture those parts of the economy that can generate growth potential and jobs’ (DCMS & DBERR 2009). The OECD’s landmark document to date on the matter is the *Seoul Declaration for the Future of the Digital Economy*, to which Australia is a signatory:

We share a vision that the Internet Economy, which covers the full range of our economic, social and cultural activities supported by the Internet and related information and communications technologies (ICT), will strengthen our capacity to improve the quality of life for all our citizens. (OECD 2008c)

Clearly, there is national and international momentum behind the notion of a digital or Internet economy.

2.2. Internet-based, mobile and interactive: The technology horizon

Information and communications technologies are continually evolving, providing consumers with more choices over what communications and media services they consume, and how they consume them (ACMA 2009b). The converging nature of telecommunications, broadcasting and the Internet, then, provides the background to the converged sets of issues and policy discussions facing consumers.

The next five years

Based on a range of data available, Figure 1 sketches out the emerging consumer ICT landscape over roughly the next five years, including potential access technologies, devices and content themes. The clear themes that emerge are that ICTs are becoming more Internet-based, are providing greater mobile functionality, and are developing new types of interactivity between users and content. This is not to say that legacy technologies will not continue to be important parts of consumer experiences, but trends point towards a substitution of fixed lines by mobiles, Internet Protocol (IP)/digital networks, and interactive applications (ACMA 2009b).¹

The types of access technologies talked about more often than others are fibre to the home (at the centre of the National Broadband Network proposal) and 3G or higher mobile networks. These access technologies provide the capacity over which a wide range of voice (VoIP), video (video calls, streaming media), e-commerce (including mobile commerce and

1 Consider the vast array of applications available for the iPhone: <<http://www.apple.com/iphone/appstore>>.

e-wallets, where one can use a mobile device to engage in financial transactions), location-based services and other interactive applications can run. It is also vital to note the switchover of television in Australia from analogue to digital by the end of 2013.

A good example of the convergence of consumer ICTs is mobile phones, which are able to not only make voice and video calls, but can also access the Internet, broadcast television, run applications and capture data (Spurgeon & Goggin 2007). The complexity of this convergence can present challenges to consumer advocacy, something articulated by Consumer Focus in the United Kingdom in describing its recent mobile phone research:

Mobile phones have gone from a relatively rare phenomenon to an ever-present mode of communication in a little over ten years. Because of the short history of the mobile phone sector ... the issues affecting consumers are not well established. Unlike some other markets, in which consumer organisations fight their battles along entrenched issue lines, the problems that mobile consumers face are new, developing, quickly changing and often unfamiliar. There are connections to make too beyond the communications market – we see opportunities to learn from consumer solutions and business innovation in other markets. (Consumer Focus 2009)

Beyond

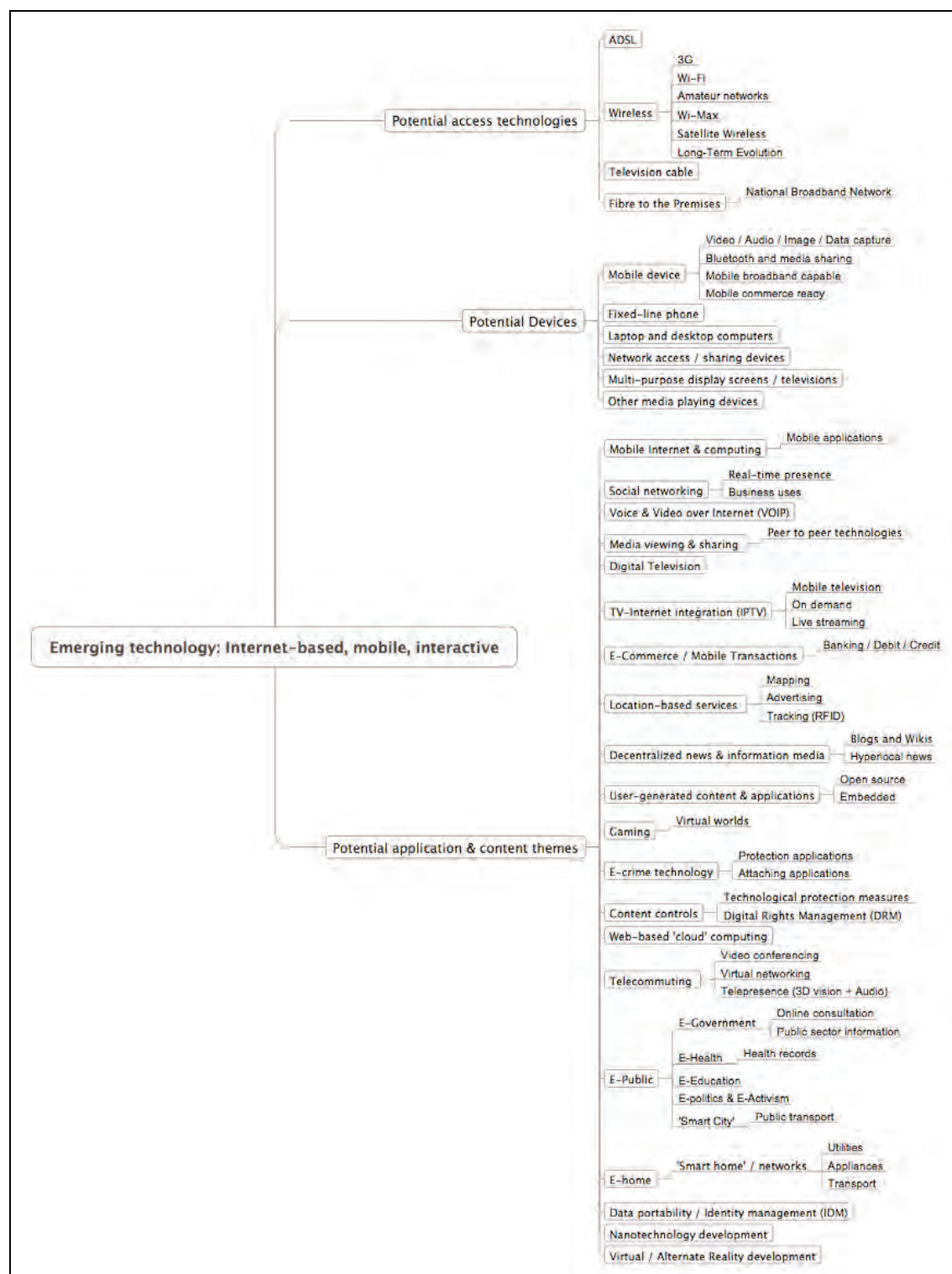
There are many differing views of what the consumer ICT landscape will look like in the long run.² On a holistic level, some foresee strong crossover into other sectors through open networks, with the emergence of e-health initiatives³ (especially electronic patient records and remote care), energy-smart grids (using ICTs to regulate and operate the electricity system), e-education and more (Budde 2009). In this type of view, applications are central to consumer experiences.

Some see the mobile device evolving into a primary connection to the Internet, along with interactive touch and voice-recognition technology and a much more customised Internet experience – a semantic web, or ‘Web 3.0’ (Quitney & Rainie 2008). This last point connects to the notion of an ‘Internet of things’, in which small sensor devices (nanotechnology) embedded in objects might allow for a high level of interconnectivity through wireless networks, enabling users to interact between physical and virtual worlds (OECD 2008b). One of the strong considerations for consumers here is identity-management software, which might enable users to have some control over their personal information across different services.

² See the many views expressed, for example, at the project *imaginingtheInternet*: <www.imaginingtheInternet.org>.

³ See Australia Health Ministers’ Conference (2008).

Figure 1: Emerging communications and media technology landscape for consumers



2.3. A window of opportunity for consumer advocacy

Unlike any time in the past decade, now is a time of change and opportunity in the communications and media consumer advocacy space. With the launch of ACCAN, consumers will have a better-resourced advocacy body. Equally important, though, is

focused government attention on communications policy, and consumer policy in general. At once we have the NBN proposal, regulatory review with an eye towards more in 2011⁴ and the build-up towards the digital television switchover. There has been an Australian Consumer Law proposed, and a focus on consumer advocacy and research functions across all sectors.⁵ There appears to be scope for significant gains for the consumer movement, but efficient, well-thought-out strategies will be needed to maximise the opportunities available.

2.4. References

- ACMA, 2009a. *Australian Household Consumers' Take-up and Use of Voice Communications Services*, ACMA, Canberra.
- ACMA, 2009b. *Trends in Communications and Media Technology, Applications and Use*, ACMA, Canberra.
- ACMA, 2009c. *Trust and Confidence*, ACMA, Canberra.
- ACMA, 2008a. *Access to the Internet, Broadband and Mobile Phones in Family Households*, ACMA, Canberra.
- ACMA, 2008b. *Internet Activity and Content*, ACMA, Canberra.
- ACMA, 2008c. *Media Use by Girls and Boys*, ACMA, Canberra.
- Australian Health Ministers' Conference, 2008. *National E-Health Strategy*, Victorian Department of Human Services, Melbourne.
- Budde, P., 2009. Submission to the Government's Paper on the Future Directions of the Digital Economy: Strategies for the Digital Economy.
- Consumer Focus, 2009. *Mobile: What's the Problem? Consumer Priorities in the Mobile Phone Sector*, Consumer Focus, London.
- Department of Broadband, Communications and the Digital Economy (DBCDE), 2008. *Digital Economy Future Directions Consultation Paper*, DBCDE, Canberra.
- DBCDE, 2009. *National Broadband Network: Regulatory Reform for 21st Century Broadband*, DBCDE, Canberra.
- Department for Culture, Media and Sport (DCMS) and Department for Business, Enterprise and Regulatory Reform (DBERR), 2009. *Digital Britain: The Interim Report*, The Crown, London.
- Department of Communications, Information Technology and the Arts (DCITA), 2007. *ICT and Productivity: Summary of DCITA Publications*, DCITA, Canberra.
- Ewing, S., Thomas, J. & Schiessl, J., 2008. *CCi Digital Future Report: The Internet in Australia*, Swinburne University of Technology, Melbourne.
- Goggin, G. & Spurgeon, C., 2007. 'Premium Rate Culture: The New Business of Mobile Interactivity'. *New Media & Society*, 9(4), pp. 753–70.
- OECD, 2008a. *Information Technology Outlook 2008*, OECD, Paris.
- OECD, 2008b. *Policy Brief: The Future of the Internet Economy*, OECD, Paris.
- OECD, 2008c. *Seoul Declaration for the Future of the Digital Economy*, OECD, Paris.
- OECD, 2008d. *The Future of the Internet Economy: A Statistical Profile*, OECD, Paris.
- Quitney, J. & Rainie, L., 2008. *The Future of the Internet III*, Pew Internet and American Life Project, Washington, DC.
- Spurgeon, C. & Goggin, G., 2007. 'Mobiles into Media: Premium Rate SMS and the Adaptation of Television to Interactive Communication Cultures', *Continuum: Journal of Media and Cultural Studies* 21(2), pp. 317–29.
- Treasury, 2009. *Consumer Voices: Sustaining Advocacy and Research in Australia's New Consumer Policy Framework*, Treasury, Canberra.

⁴ See DBCDE 2009

⁵ See Treasury 2009

3. TELECOMMUNICATIONS AND MOBILES CASE STUDY

Ryan Sengara

3.1. Summary

Consistent with the larger goals of the *Future Consumer* project, this study of consumer issues in the telecommunications and mobile space illustrates the ever-increasing crossover with Internet and broadcasting spaces, and the need to thoughtfully transition into a new era in consumer policy and advocacy. It is important to note that this case study does not examine the subject of affordability, which is covered in more depth in a separate study in the report (see Section 6).

The study identifies nine areas of key emerging consumer issues in telecommunications and mobiles:

- consumer protection and consumer policy arrangements;
- information provision and decision-making;
- availability of high-quality communications services;
- accessibility of communications and media technologies;
- inclusion and integration with lifestyle;
- relationships with service providers;
- security and privacy;
- consuming, creating and using content; and
- ICTs and the environment.

These issues can be distilled further into the themes of: troubles navigating the marketplace; challenges securing appropriate access to services; and challenges to successfully using these services. Issues around access, content and privacy are currently crossing policy boundaries the most, though ultimately the legacy of the telecommunications and mobiles space may be its grounding as the underlying layer on which many types of services might flow.

Consumer policy, then, might prioritise developing responsive yet sustainable protection and participation arrangements (especially consumer rights and responsibilities, relationships with industry and groups across sectors, and international engagement), and access to next-generation networks (fostering open access, network neutrality and inclusiveness for all). Behind this there is key work to be done in the provision of effective information and education initiatives across a wide range of areas, and in reliable consumer-centred research to guide policy and advocacy. There are many stakeholders with which ACCAN might develop relationships with in these areas, and a preliminary listing and mapping of these is presented in Appendixes 3.1 and 3.2 of the study.

Figure 2: Summary of key emerging consumer issues – telecommunications and mobiles



Figure 3: Summary of highlighted policy options – telecommunications and mobiles



3.2. Consumer protection and policy arrangements

The issues raised in the rest of this case study all combine to point, in one way or another, to a consumer protection and policy framework that is not working at an optimal level.

Current mechanisms are unsustainable

There are clear signs that the consumer experience in the communications market is highly variable. Major stakeholders agree that there are many consumers experiencing detriment – financially, emotionally or socially. In 2008, the Telecommunications Industry Ombudsman experienced a 50 per cent increase in complaints, up to 150,000 – its largest jump in 10 years (TIO 2008). The Australian Competition and Consumer Commission (ACCC) has spoken of a rising number of investigations and complaints, and a growing perception that the communications industry is not consumer friendly, going so far as to put the industry on notice of the risks of its behaviour:

The risk is, if this continues, the industry's reputation with consumers may be irretrievably damaged. The provision of telecommunications services is so important to society and the Australian economy, consumers should be able to trust their providers, receive high quality customer service and be accurately informed about products and services. (Samuel 2009)

Minister Stephen Conroy has echoed the ACCC's concerns in a recent speech, asserting that the co-regulatory consumer protection framework has not lived up to expectations: it is too slow to respond to emerging technologies; consumers aren't heard enough; codes are not always complied with by industry; and enforcement mechanisms are inadequate (Conroy 2009). The minister's criticisms of the self-regulatory scheme are supported by research by consumer organisation Choice, which published a report comparing consumer protections in communications with other sectors, which concluded that the 'current legislative scheme, consumer advocacy arrangements and code development culture are not working based on co-regulation', and that it 'falls well short of best practice for a co-regulatory system' (Galexia 2008). In addition to the points raised by the minister, the report also cites legislation that falls silent on consumer protection issues, and inconsistent monitoring and enforcement.

These trends are compounded by a lack of direction in consumer protection around emerging technologies. Even the regulator, the Australian Communications and Media Authority (ACMA), says that 'key regulatory elements are being conceptually stretched and pulled', with technologies such as VoIP bringing up a variety of issues around consumer protection policies already in place (ACMA 2008e). There are predictions that communications will evolve into a more open environment, with relationships changing between consumer and providers – perhaps with much more responsibility placed in the hands of consumers (Foster & Kiedrowski 2006). If there is no proper protection in place as technology continues to evolve, this does not bode well for consumers.

There is also some concern around the general effectiveness of regulation. A recent Choice report concluded that there is no agreed measure of what counts as good consumer protection enforcement, and no consistent approach to reporting how well agencies are doing (Choice 2008b). The report stressed the importance of effective regulation by saying that, 'when push comes to shove, a rules-based system cannot work without effective application of sanctions. Efficient markets delivering high-quality outcomes for consumers depend on effective enforcement by regulators with appropriate powers, resources and practices.' (Choice 2008b)

Expanding on the experience of consumer representation and participation, legislation and policy arrangements in the industry are very complex, making effective participation very challenging. Consumer advocacy has also been traditionally under-resourced to perform the many duties asked of it, often relying on volunteers, and unable to sufficiently train representatives. With recent commitments to ACCAN, it is hoped that this dynamic is now changing. Regardless, however, low levels of resourcing have made engaging the public a difficult task, leading to questionable levels of awareness and engagement in formal communications consumer advocacy movements. Additionally, communications consumer advocates have long been frustrated by consultation mechanisms that are not interactive enough, especially a lack of real-time dialogue and formal feedback to submissions and policy suggestions.

The consumer experience with mobile premium services is a good example of many of the points made above regarding protection and participation arrangements. In the case of these services, consumers have been subjected to issues around unfair billing arrangements, poor information disclosure, poor customer service and breaches of privacy for some time (CTN 2009a). Furthermore, the self-regulatory process was extremely challenging for consumer representatives (Goggin & Spurgeon 2005), and the solution that was eventually developed fell well short of what was needed in the eyes of consumers, prompting ACMA to step in with prescribed regulation (ACMA 2009a).

The final issue here concerns the research available on consumer issues. Aside from TIO statistics and broad ACMA research, there is not a great deal of consumer-focused research on how consumers are faring in the market, particularly in relation to protections that are in place.

Engagement in international policy and enforcement work is needed

Undeniably, considering how many services are being offered via the Internet and mobile phones by companies outside of Australia, there is a strong international element to consumer protection and empowerment arrangements – a theme that will be repeated through this report:

There is likely to be a shift from narrow nationally focused policies and regulation, to an environment where the implications of global technology adoption as well as cross border policy and business decisions become more important. This will require policy makers not only to take an increasingly international perspective in their decision making, but also to make choices about the appropriate level of engagement with regional and global institutions. (Foster & Kiedrowski 2006)

Is Australia doing enough to engage with international policy development, including standard-setting? Is it doing enough to forge international relationships? To ensure Australian consumers are protected internationally? These are important questions to answer if Australian consumers are to be provided with adequate protections as the communications environment becomes more global. There is a feeling that more can be done to coordinate and forge a strong Australian presence in many international bodies. Already there are concerns that, on the whole, consumers are not adequately involved in important international policy work such as control over Internet neutrality and copyright agreements (Choice 2008a).

The policy environment

Table 1: Policy environment – consumer protection arrangements

Key government policy works	
<i>Telecommunications Act 1997</i> <i>Telecommunications (Consumer Protection) Act 1997</i> <i>Telecommunications Consumer Protection Code (TCP)</i> <i>Mobile Premium Services Code and ACMA Service Provider Determination</i> (in effect from 1 July 2009) <i>Broadcasting Services Act 1991</i> <i>Trade Practices Act 1974</i> Code development through the Communications Alliance Regulation by ACMA, ACCC Consumer representation grants through section 593 of the <i>Telecommunications Act 1997</i> ACMA Consumer Consultative Forum UN Convention on Human Rights (signatory)	
Government policy reform and development works	Key elements
DBCDE, <i>Regulatory Reform for 21st Century Broadband Discussion Paper</i> (April 2009)	<ul style="list-style-type: none"> • Facilitation of NBN rollout • Discussion of strengthening some protections and discussion of new protection options • New powers for ACMA (infringement notices) • No further review until 2011
DBCDE, Minister announcement (March 2009)	<ul style="list-style-type: none"> • Review of the process for the development of Consumer Industry Codes
DBCDE announcement	<ul style="list-style-type: none"> • Launch of ACCAN – July 2009
DBCDE, <i>Digital Economy Future Directions Draft Discussion Paper</i> and blog (2008)	<ul style="list-style-type: none"> • Flagging a shift of focus around ICTs to achieve a range of social and economic goals
Department of Finance and Deregulation and Information Management Office, <i>Consulting with Government – Online</i>	<ul style="list-style-type: none"> • Discusses government use of online consultation methods, specifically a government blog through Australia.gov (which was trialled by DBCDE in 2008)
Treasury, <i>An Australian Consumer Law Fair Markets – Confident Consumers Discussion Paper</i> and announcements (2008–09)	<ul style="list-style-type: none"> • Will replace <i>Trade Practices Act 1974</i> • Civil pecuniary penalties • Unfair contract terms • Substantiation notices • Public warning powers • Represent and redress for non-parties • Product safety • Door-to-door selling, pyramid schemes • Warranties and refunds review • Single law, multiple regulators

	(ACCC, state/territory Fair Trading Offices)
Treasury, <i>Consumer Voices: Sustaining Advocacy and Research in Australia's New Consumer Policy Framework</i> issues paper	<ul style="list-style-type: none"> • Feedback sought on current advocacy and consumer research functions in Australia • Flagging potential national peak consumer body, national consumer policy research centre
Productivity Commission, <i>Review of Australia's Consumer Policy Framework</i> (2008)	<ul style="list-style-type: none"> • Recommendations are widely cited as influences in current consumer policy reform
OECD, <i>Seoul Declaration for the Future of the Internet Economy</i> 2008 (Australia is a signatory)	<ul style="list-style-type: none"> • 'Ensure consumers benefit from effective consumer protection regimes and from meaningful access to fair, easy-to-use and effective dispute-resolution mechanisms, including appropriate redress for economic harm resulting from online transactions.'
Key consumer policy discussion points	
<ul style="list-style-type: none"> • National ICT strategy • The need for consumer protections • Charter of Communications Consumers' Rights and Responsibilities • Sustainable consumer protection framework • Change of approach to regulation • Reform of code-making process • Reform of regulators • More consumer advocacy powers • More effective consumer consultation mechanisms • Research and measurement of consumer experience and ICT policy • International cooperation 	

Highlighted options

The government policy reform and development work listed above appears to be positive for consumers. It will be important to evaluate each with optimal policy positions in mind. Optimal policy positions might include the following (note that some of these options are broad and will be added to as the report continues):

A national ICT strategy

A national strategy can be viewed as a high-level approach, encompassing policy and encapsulating other communications as well as media policies and programs.

A national ICT strategy may be a good step towards providing stakeholders with input into and certainty around where top-level government policy is headed. This may aid in addressing consumer issues by setting out clear goals and priorities around which appropriate consumer policy and advocacy can develop. The government's digital economy work may be headed in this direction, but seems to require much more depth.

In such a strategy, it would be vital to set clear high-level goals, the most important of which are the use of ICTs to improve the quality of life of all people in Australia,

opportunity for everyone in society to participate fully, and the use of ICTs to enable us live more sustainably as a nation. Another major principle might be to treat ICTs – especially broadband and mobile services – as important utilities, not unlike electricity and water.

Such work would also include indications of cross-sector thinking, engaging stakeholders and policy work across areas such as electricity, health, education, roads and other infrastructure, which some believe is required in order for us to develop as a nation and take advantage of the NBN proposal (Budde 2009b). Regardless, wide and best-practice consultation in development of a national strategy seems very important.

For work as important as this, the government could take a strong leadership role in its own use of ICTs, something expanded on in coming sections dealing with accessibility, environmental sustainability and content provision.

Reviewing international models, such as the United Kingdom's *Digital Britain*, would be useful. In the UK example, research identified top priorities (including modernising networks, promoting investment and local content, fairness and access for all, and skill building) and laid out an action plan to achieve them.

Regular reviews of a national strategy would be very important to ensure that strategy and implementation remain on track and are meeting high-level goals.

A clear and sustainable framework for consumer protection and policy

This framework could include a number of reforms and simplifications of the current system. However, to be as sustainable as possible, it could be developed as part of a new approach to the converging telecommunications, Internet and broadcasting policy spaces. It could attempt to future-proof itself as much as possible by focusing on flexible approaches that are responsive to a changing dynamics across technological, economic or social circumstances. Cross-sector regulation may eventually be considered appropriate, especially around areas such as security and privacy.

A key part of such a framework could be setting a high-level goal of consumer empowerment, essentially placing positive consumer outcomes at the centre of policy development in this area. It is widely recognised that confident and empowered consumers secure better outcomes for themselves and society (Productivity Commission 2008). Consumer empowerment can have many definitions, but important aspects can include 'where individuals have the confidence, capability and context to act purposefully, as interpreters of their own needs' (Mayo & Cullum 2006) or where consumers require no expertise, expense or intermediary to be informed and confident in the market.

A consumer protection framework could contain a number of key principles to support the goal of empowerment. A clear communication of these could include a charter or set of principles of communications consumer rights and responsibilities from which consumer protections and policy can be developed and against which they can be benchmarked. To be most effective, the charter could be enshrined in legislation. There has been a significant amount of useful work done on communications consumer rights, which can be referred to in terms of the development of rights in Australia.⁶ Some principles might include 'must have', non-negotiable protections across a range of areas (these are expanded on

⁶ See CTN (2007); Trans Atlantic Consumer Dialogue (2008); Consumer Focus (2009); Association for Progressive Communications (2006); United Nations (1948).

throughout the case study but include non-discriminatory access, performance, customer service, and accessibility).

The framework might also reaffirm the need for shared responsibility for consumer issues, with major roles for government, industry and consumer representatives. However, the framework might take a different top-level approach to regulation. Recognising the shortcomings of self-regulation, the framework could, in the first instance, have government (in consultation with stakeholders) decide what type of regulatory action might be necessary as individual issues arise. This type of approach would leave government with more options to customise its responses to issues, but also underscores the importance of effective consultation mechanisms.

A number of reforms to the code-making process could then be made, ensuring compliance and meaningful penalties (at least in line with consumer detriment, which might include more than just monetary penalties). Reforms might also align the code-development and code-content processes with best practice, open and independent code monitoring and review (Galexia 2008). Reform to regulation in the communications industry might also be effective, including developing a good practice enforcement model, a system for reporting against the model, and consistent reporting on enforcement actions and outcomes that facilitates comparative analysis (Choice 2008b).

New consumer advocacy powers and new participation mechanisms

A key part of a protection framework might be a 'super complaints' legislative function for ACCAN, which would allow the peak consumer body to bring urgent consumer issues to the attention of government, which in turn would have to formally respond.

Beyond this, commitments to ongoing, real-time formal and informal policy discussions might be very important (see Morsillo 2008b); relationships between consumers and industry, in particular, are covered later in the study. Some potential tools here might include a ministerial consumer roundtable, consumer impact statements, and ensuring many opportunities for face-to-face interaction and relationship-building.

Online consultation mechanisms provide new opportunities to engage with consumers and their representatives. The use of blogs, wikis and other interactive web tools has the potential to create new pathways and relationships with governments, build working communities, improve levels of responsiveness to the public, and increase the efficiency and effectiveness of governments. However, there is undeveloped practice in these areas, with unknown effectiveness, uncertain representativeness and unclear content and control. Rollout of these new mechanisms must be strictly complementary while they are developed in practice and research (CTN 2009b).

Finally, considering the complexity and dynamic nature of the communications and media area, specialised training for advocates could be vital. Strategies to develop expertise to navigate complex legislation, policy and relationships, in addition to general advocacy principles, could be important.

An international consumer policy and protection engagement plan

A unified and well-resourced cross-government plan to engage with consumer issues internationally might be very important. This could start with recognition of the importance of international policy work. Ensuring people in Australia can receive adequate protections and policy participation across borders might go a long way towards building trust and confidence. Developing strategies to target appropriate bodies to participate in

and maximise coordination – including engagement in regional networks (see Appendix 3.1 for a preliminary representation of players in the international scene) – seems wise.

A national communications consumer research and measurement program

Consumer-focused research can be a key tool for determining policy direction; this includes strong support for consumer-driven research. Such a program might aim to produce reliable research on how consumers are faring in the market, and on how effective ICT policy is. On a broad level, models can be developed to measure national ICT strategies (for instance, how ICTs are contributing to quality of life) and consumer protection (for instance, the levels of consumer empowerment there are in the market).⁷

Specific research priorities can be developed around key consumer issues. A number of research priorities are highlighted in the report.

3.3. Information provision and decision-making

A major part of consumer empowerment is being properly informed. The Productivity Commission calls educated consumers the ‘first line of defence against poor behaviour by suppliers’, saying this is important because ‘it would not be feasible or sensible to use regulation to deal with all of the problems that consumers may face’ (Productivity Commission 2008). It is a major issue for consumers, then, that in the ICT market there is often misleading advertising, and complex and confusing information, available. As a result, consumers are experiencing detriment, and potentially low levels of confidence and trust.

Misleading advertising and selling practices

There is a worrying pattern of misleading advertising and selling practices in the communications industry. In a speech in March 2009, ACCC Chairman Graeme Samuel detailed misleading conduct across the mobile premium services industry (unfairly targeting youth and unclear terms and conditions of contracts), in the area of phone cards (hidden costs and charges), amongst Internet service providers (accuracy of download speeds, bundles and packages) and in general advertising claims of ‘unlimited’ and ‘free’ calls, texts and equipment. He also pointed to worrying trends in scams (missed calls, SMS competitions, trivia, online auctions), warranties and refunds (Samuel 2009).

Along similar lines, the TIO has reported that in 2008, 43 per cent of complaints about contracts (the fourth highest category of complaints) were about point-of-sale advice and product terms and conditions (TIO 2008), while the Regional Telecommunications Independent Review Committee (RTIRC) has flagged concern over advertising for mobile services that claimed to reach 98 per cent of the population but in fact only covered 25 per cent of the land mass in Australia (RTIRC 2008). Internationally, the OECD has flagged issues around information disclosure as key in consumer protection in mobile commerce (OECD 2008b). There is an important tie-in here to the concept of informed consent – a topic currently being researched in another ACCAN project.

Confusing content, presentation and quantity of information available

Flows of information to consumers in the communications market come in many forms: information on products; prices; billing; advertising and marketing terms and conditions;

⁷ See OECD (2007) for a useful discussion of models and challenges in developing models.

advice and opinion; educational materials, and more. There are also differing motivations for these flows of information, with some required to be given to consumers by ICT service providers (often referred to as ‘mandatory information disclosure’), others purely commercial, and some part of formal education or voluntarily given. The problem is that this maze of information it is often challenging to understand and hard to navigate.

Consumers have problems with the presentation of information – for example, standard-form contracts that are often not accessible, legible or comprehensible for the average consumer, involving lengthy paragraphs, complex language and that run into multiple pages (TIO 2009). Another example is product information or advice provided with complex technical terminology. Consumers also have problems with the quantity of information in the market, a so-called ‘confusopoly’ in which ‘a combination of numerous competing messages and consumers’ cognitive limitations and other behavioural tendencies means there is a risk that some information initiatives will be ignored by consumers, or misunderstood’ (Productivity Commission 2008). These themes work against consumers’ understanding of what is on offer, as well as their ability to compare and use products.

The Better Regulation Executive and National Consumer Council in the United Kingdom released a seminal research report examining information disclosure. The report’s conclusions, reached through qualitative focus groups and case studies of information available across many sectors, echo many of these dynamics:

although information can be a powerful tool it is neither fail safe nor costless. When presented to consumers, many of the pieces of information from our case studies were not having the desired outcomes. Consumers rejected much of the information because there was too much of it and because it was presented in a complex and unappealing format ... Some of the more vulnerable groups we spoke to found overly complex information not only difficult but also humiliating. Across society, our research found a desire for simple, succinct information. (Better Regulation Executive & National Consumer Council 2007)

Though there are many information disclosure requirements in the communications market, there is no research available on the outcomes they are providing to consumers. It is possible that many of these requirements are not having their desired effect.

Lack of consumer awareness of rights and responsibilities

Another area on which there is little public research is consumers’ awareness of their rights and responsibilities in the communications market. The feeling across stakeholders consulted was that a low awareness exists of key safeguards in place, but that the majority of consumers think it is important to know about safeguards. This certainly compromises the effectiveness of protections, and also highlights the complexity of the current protection framework. There is almost certainly an interplay between how easy rights are to understand and how many people understand them.

Lack of trusted information sources and assistance

Information available to consumers in the communications market involves many groups, including service and product providers, government agencies, media outlets, other consumers, community organisations and more. However, consumers do not currently have many trusted sources of advice in the communications market. Research indicates that many consumers consider the Internet their most important source of information, but that many may not be distinguishing between types of information online, and may be confusing ease of access with quality (CCi Digital Futures 2008; ACMA 2009e).

Questionable level of consumer literacy skills

Though little research exists on the subject in Australia, we must ask whether all Australian consumers possess the necessary skills to participate effectively through ICTs, including being able to access and assess information. Currently, there does not appear to be a national strategy around ICT education across all age groups. The OECD has recently characterised Australia's consumer education system as 'highly decentralised', with 'some federal initiatives in specific areas, but with limited mandates' (OECD 2009c). This topic is addressed in the policy options highlighted below.

The policy environment

Table 2: Policy environment – information and decision-making

Key government policy works	
<i>Telecommunications Consumer Protection Code</i> <i>Trade Practices Act 1974</i> ACIF C625: 2005 – <i>Information on Accessibility Features for Telephone Equipment</i> State Fair Trading Laws (e.g. <i>Victorian Fair Trading Act</i>) <i>Digital Education Revolution</i> policy	
Government policy reform and development works	Key elements
Treasury, <i>An Australian Consumer Law Fair Markets – Confident Consumers Discussion Paper</i> and announcements (2008–09)	<ul style="list-style-type: none"> • Will replace <i>Trade Practices Act</i> (1974) • Civil pecuniary penalties • Unfair contract terms (in standard form mobile contracts) • Substantiation notices • Public warning powers • Represent and redress for non-parties • Door-to-door selling, pyramid schemes • Warranties and refunds review • Single law, multiple regulators (ACCC, state/territory Fair Trading Offices) • Considering mandatory disclosure requirements, based on the Victorian FTA, and 'information layering' requirements: the requirement for consumer documents to be clear; the requirement for a business to include its address in a consumer document; and the requirement to provide receipts for itemised bills.
Key consumer policy discussion points	
<ul style="list-style-type: none"> • Information disclosure arrangements • Consumer advice body • 'Digital media literacy' and consumer education 	

Highlighted options

A coordinated information disclosure strategy for the communications market

Well-resourced research on current information disclosure arrangements in the communications market and their effectiveness for consumers may be the best place to start. This is an area already flagged by the Productivity Commission:

Through the National Education and Information Advisory Taskforce, Australian Governments should commission a cross-jurisdictional evaluation of the effectiveness of a sample of consumer information and education measures, and the prospects for improving them. The evaluation should focus on campaigns in areas where the benefits from changing consumer (or supplier) behaviour are likely to be most significant. It should also include an evaluation of the proposed school-based financial literacy program, drawing on evidence from similar programs overseas. (Productivity Commission 2008)

Principles in presentation, quantity and other aspects to consumer information can then be developed to approach information disclosure arrangements. ACCAN's research on informed consent might also feed into this process. One area that might be useful to investigate is user-generated education materials and ratings systems.

Another area to consider is the formation of an independent consumer advice body. Such a body would be an honest broker of guidance for consumers in their experiences in the communications market. This may include a role for ACCAN – a topic expanded on in the Conclusions to the report (Section 7). In the United Kingdom, such a role is played by Consumer Direct.

A national digital media literacy education program

The first step in this program might be to conduct well-resourced research on determining what sorts of skills we want Australians to pick up to become empowered consumers in the communications and media market.

The term 'digital media literacy' combines terms including 'media literacy' and 'digital literacy', all used to roughly describe 'the ability to use, understand and create media and communications' (Ofcom 2009). There is no universal agreement on any of these definitions, though ACMA research identifies two broad approaches in this area. One is the inoculation method (protect people from media's influence); the other is the 'multi-literacies' approach (prepare people to participate effectively and make their own choices) (Penman & Turnbull 2007). Three useful questions to consider from the latter model are:

- How can we help to prepare people to participate in the new convergent culture?
- How can we help them see how the media are shaping their understandings?
- How can we help them make informed value judgments about their digital practices?

(Penman & Turnbull 2007)

Another useful model developed by Ofcom is a pyramid of skills, with the base being access to broadband, built upon by digital life skills (ability to acquire and develop digital skills needed for employment and beyond), and media literacy on the top level (ability to use, understand and create media and communications) (Ofcom 2009).

A second step in such a plan might include determining how to deliver these educational goals. Engagement with best-practice literature and expertise seems very important.

Certainly, there are roles for multiple stakeholders, including government, consumer and community groups, the communications and media industry, schools, teachers, parents and more. Cooperation and partnerships across these stakeholders may also be considered. There are also many formats of education that may be employed, including formal learning, informal learning and 'lifelong' learning models (OECD 2009c).

It might prove wise to segment particular at-risk consumer groups such as youth, Indigenous consumers, consumers with disabilities and older consumers, and develop specific engagement strategies in close consultation with members of these groups. For instance, young consumers may best be reached in technologically savvy and peer-driven ways.⁸ Culturally adept campaigns might be vital in promoting digital media literacy. Finally, it may be important to develop measurement techniques for determining levels of digital media literacy among consumers in Australia.

3.4. Availability of high-quality communications services

If high-speed broadband and high-speed mobile networks are the cornerstones of a modern digital society, ensuring access and reliability is of paramount importance to consumers. Despite appearances, NBN policy must be examined to determine whether it is in the best interests of consumers.

There isn't universal access to next-generation networks

It is important to state that there can be no other standard for consumers than universal access to high-speed broadband and mobile networks – anything else risks rapid obsolescence. With this said, it is clear that currently we do not have universal access to NGNs in Australia. Specifically, people who live in rural and remote communities, including remote Indigenous communities, do not have the same access to services as people in metropolitan areas.

Recent statistics indicate that only 57 per cent of households in non-metropolitan areas have access to the Internet at home, compared with 67 per cent of metropolitan households (ACTU 2009). Australians living in very remote areas are 24 per cent less likely than people living in major cities to have an Internet connection and they are 22 per cent less likely to have a broadband connection, significantly affecting the applications these consumers are able to use and indicating a wider inequity they are experiencing beyond just access to high-speed Internet (ACMA 2008c). Additionally, though 3G mobile services are advertised to reach up to 98 per cent of the Australian population, coverage in rural areas does not meet consumer needs (Braue 2009). These statistics are consistent with the RTIRC *Framework for the Future* report, which concludes that rural areas experience a lack of competition, inequitable mobile services and inadequate broadband services.

Remote Indigenous communities face even more pronounced and additional access challenges. There is a general lack of basic telephony in communities – 23 per cent of remote Indigenous communities do not have access to some form of telephone services, excluding satellite mobile, and pay phones are the sole form of telephone service available for 10 per cent of remote Indigenous communities (ACMA 2009d) – and a lack of appropriate broadband services – 11 per cent of remote communities have Internet access,

⁸ See Hollier (2009) for an example of education materials targeted towards older consumers.

and data plans are proving prohibitively expensive. Despite trends which indicate a strong desire to take up pre-paid mobile services (CLC & Tangentyere Council 2007), 3G coverage is only available to roughly 62 per cent of people living in remote communities (ACMA 2009d).

Variable quality of services and equipment

Fault repair and provisioning of new services are ongoing issues for consumers. Faults were the third highest complaint category to the TIO in 2008 and provisioning the eighth highest (TIO 2008). There are also claims that there have not been adequate investments made in national telecommunications infrastructure (ACTU 2009). Emerging technologies such as VoIP are still considered prone to unreliable service (ACMA 2008c), and there are concerns that network operators are surreptitiously altering the quality of service to consumers (OECD 2008c).

The quality and reliability of communications devices provide a second dimension to this issue, though there is no major Australia research in this area. Statistics from the United States show over one-third of consumers surveyed with desktop or laptop computers had experienced their machines not working properly at some time in the previous 12 months, with more than a quarter reporting that their cell phone or PDA had experienced problems (Horrigan & Jones 2008). These results highlight the importance of customer service, another major issues covered in the report.

Evolution of consumer access and reliability protections is needed. Minister Conroy has flagged review in this area, citing declining industry performance on the delivery of current protections, including the Customer Service Guarantee, Universal Service Obligation, fault repair, priority assistance and decline of pay phone availability (along with other legacy technologies which continue to be important for rural and remote Indigenous communities as well as other consumers) – trends also discussed in the RTIRC report. Additional issues to consider here are the reliability of electricity-based communications services (essentially, all service delivered over mobile and broadband networks) in times of power outage and the implication on emergency services provision, choice of service providers and the importance of latency for time-critical applications.

Another topic under the umbrella of consumer protections is the approach to policy in remote Indigenous communities. There is a feeling that communications services to these communities are perpetually in trial stages, with successful services such as the Country Calling Line not rolled out extensively despite consumer satisfaction with the product. Additionally, there appears to be a cultural mismatch between application procedures for government programs and in application of concepts of consumer protections (CLC 2007; Morsillo 2008a).

Ensuring open access and network neutrality

As the Internet and the range of consumer software applications continue to grow, there is concern that consumers need to turn their attention towards ensuring non-discriminatory access to networks, and non-discriminatory access to content delivered over networks (Kelso forthcoming). On the former, the NBN proposal calls for an ‘open access’ wholesale-only network, though specifics about how this will affect consumers’ relationships with retailers remain to be explained. On the latter, there are no concrete policies in place to ensure network neutrality (in the United States, there have been a number of abortive attempts at net neutrality bills to prohibit ISPs from offering ‘tiered services’ priced according to the user’s choice of level of quality of service).

Is the NBN the right answer for consumer needs?

The proposed NBN is a very significant piece of policy, but much remains to be seen with regard to outcomes for consumers. There are concerns over return on investment for taxpayers/consumers (Choice 2009), and complex unanswered questions around availability (is it fair for 10 per cent of the population not to be reached by the NBN?), usefulness (meaningful choice, network access boxes, broadcasting over the NBN), affordability (billing arrangements, disconnection policy, comparison to current tariffs), reliability (cabling arrangements, performance during blackout, interoperability with copper network) and non-discriminatory protections (open access specifics, network neutrality) (Kelso 2009). This looms as a large and important area of policy work in which consumers will be at the forefront.

The policy environment

Table 3: Policy environment – availability of high-quality communications services

Key government policy works	Key elements
<i>Telecommunications Act 1997</i>	<ul style="list-style-type: none"> Customer service guarantee
<i>Telecommunications (Consumer Protections Act) Act 1997</i>	<ul style="list-style-type: none"> Universal Service Obligation, Network Reliability Framework, price controls, priority assistance, emergency services
<i>Trade Practices Act 1974</i>	<ul style="list-style-type: none"> Competition regulation
Government policy reform and development works	Key elements
NBN announcements (various)	<ul style="list-style-type: none"> High-speed services to 98 per cent of Australians 12 Mbps broadband to all Australians, no matter where work or live Towns up to 1,000 population to receive speeds up to 100 Mbps Fibre-to-the-premises, NGN Wireless or 3G satellite broadband access technologies Tasmania first rollout July 2009
NBN implementation study	<ul style="list-style-type: none"> In progress
DBCDE, <i>Regulatory Reform for 21st Century Broadband Discussion Paper</i> (April 2009)	<ul style="list-style-type: none"> Facilitation of NBN rollout Discussion of strengthening some protections and discussion of new options, including a 'Communications Service Standard' and transfer of emergency services responsibility to government Spectrum allocation New powers for ACMA (infringement notices) No further review until 2011
DBCDE responses to RTIRC report	<ul style="list-style-type: none"> \$46 million Digital Regions Initiative (Education, health and emergency services focus) \$1.4 million satellite phone subsidies Indigenous Communications Program (300 new community phones)

	<ul style="list-style-type: none"> Fast-track \$250 million backbone fibre-to-stakeholder identified priority locations and ACCC list
RTIRC (Regional Telecommunications Independent Review Committee, <i>Framework for the Future</i> report (2008))	<ul style="list-style-type: none"> Ensured access to education, e-health, emergency services Community phones for Indigenous communities More equitable mobile services Strengthen the CSG Consider a Communications Service Standard (including mobile and broadband services) Pay phone subsidies Community impact statements before removal of services Mechanisms to address and resolve service inadequacies run by the TIO
DBCDE <i>15 Year Radio-Frequency Spectrum Licences Discussion Paper</i>	<ul style="list-style-type: none"> 800Mhz, 2.1 GHz and 3.4 GHz bands
ACMA seeking comment on <i>Five Year Spectrum Outlook</i>	<ul style="list-style-type: none"> Future use of wireless spectrum
OECD <i>Seoul Declaration for the Future of the Internet Economy</i> 2008 (Australia a signatory)	<ul style="list-style-type: none"> Level playing field for competition Stimulate investment and competition of high-capacity infrastructures National coverage and use Efficient use of radio spectrum Choice with respect to connectivity, access, applications, terminal devices, content and information on quality and costs
Key consumer policy discussion points	
<ul style="list-style-type: none"> Universal NGN access plan Appropriate access and reliability protections NBN Open networks 	

Highlighted options

Detailed plan for nationwide access to NGNs

The NBN proposal is a significant step in this direction, but requires more detail. An explicit plan – perhaps even on a community-by-community, or town-by-town basis – including planned implementation dates, might go a long way towards addressing concerns over access inequities in mobile and broadband services in non-metropolitan areas. Such a plan might also include guarantees for nationwide access to e-education, e-health and emergency services, as recommended in the RTIRC report.

Furthermore, in terms of ensuring access, a national strategy might refresh its approach to provide culturally matching engagement practices and service delivery to remote Indigenous communities, especially pre-paid mobile services, consultation and education on placements of pay phones/community phones and affordable home calling plans. Research attention might be given to collecting more coherent data on telecommunications use in remote Indigenous communities, to education in Indigenous communities about

residents' rights as communications consumers, and to the development of appropriate NGN technology solutions for these communities.

A national access strategy could also include measures to ensure affordability, including heavy subsidies to make access to NGNs universal, and a detailed strategy to ensure inclusion of all members of society. Finally, a national NGN access plan would need continual measurement and review to ensure it was meeting its targets.

Reform of access and reliability guarantees and standards

A national access plan could involve reform of protections and assurances consumers have with relation to access and reliability of communications services. Concepts such as the USO and CSG can be evolved to match broadband and mobile access technologies, and the increasing importance of reliability and quality of service over IP networks. The RTIRC-proposed 'Communications Service Standard' seems a good start along this policy path, as are discussions in the United Kingdom around minimum service standards involving assurance of the delivery of applications most consumers want and expect (Consumer Focus 2009).

Reforms to strengthen the CSG in the meantime, and protections to traditional lifeline technologies such as fixed lines and pay phones, seem to be needed. Reforms could also look at addressing the issue of access to emergency services through NGNs (especially when there are electricity blackouts), extending priority assistance to people with disabilities, and the development of customer technical support/troubleshooting standards.

A research priority might include consistent annual measurement of 'real speeds', quality of service and other performance indicators.

Access and reliability standards might also include policy adopting and developing the principles of open access networks and network neutrality. This may be called a 'user-centric' approach to developing access to NGNs, involving a focus on openness, transparency and user choice (ISOC 2008).

Close consumer attention and involvement in NBN policy

Consumers will need to stay engaged with the development of NBN policy, proactively developing principles and policy suggestions. A high-level principle might be to ensure that every consumer in Australia benefits from the NBN, and certainly no consumer should be worse off. A second principle might be that the NBN should be treated as a public utility, with every home connected regardless of use (DEIWG 2009).

Consumer groups might also develop their own principles for 'open networks':

For a network to be open: 1) whatever else it might do, the network offers a pure 'transmission' service, so that users can freely communicate with each other; 2) users can connect any devices they want, as long as they don't harm the network; 3) the network connects to other networks; and 4) the network doesn't discriminate among users or among the services, information, and applications users want to provide each other. (Budde 2009a)

Consumer groups might also look at examples of consumer experiences with open networks in France, Sweden and the Netherlands.

3.5. Accessibility of communications and media technologies

Many consumers have trouble using the communications and media technology available in the market. These problems can occur at any stage – in setting up technology, interacting with the functions of technology or troubleshooting technology. Likewise, they can occur with any type of communications and media technology, from mobile phones to websites. These issues create significant barriers to participation and inclusion in society.

Product useability, interoperability and consumer ability

One aspect of accessibility issues involves digital media literacy skills, specifically skills in operating technical devices and content applications. Though there is not a great deal of research on this in Australia, it is reasonable to assert that many Australian consumers are not confident in their skills to use ICTs, specifically the Internet (ACMA 2009e).

Beyond this, there are many consumers who will face challenges to using ICTs because of a disability. It is estimated that 20 per cent of the Australian population has a disability and, with the population ageing, this estimate could increase (TEDICORE 2007). Disabilities of any sort can limit the range of communications and media services consumers can use.

Though low levels of digital media literacy skills and disability can significantly challenge consumers' access to technologies, it is these factors, combined with useability and design issues in technologies, that exacerbate the challenge. A 2007 Ofcom report illustrated a range of usability issues, and there is no reason to think the findings do not apply to the Australian market. The report contends that 'consumers encounter ease of use issues at every stage of interaction with communications equipment' (George & Lennard 2007). Mobile phones (complexity, screen size, button size, limited storage, memory capacity, battery life, low processing power) (OECD 2008b) and websites (page design, browser design, search engine design, difficulty of use, difficulty in understanding) are two key emerging concerns.

Increasing complexity of services and equipment may inhibit take-up and use of new technologies, especially by older consumers (ACMA 2009b). The Ofcom report also asserts that 'an assumption often made is that people who do not buy function-rich products are simply not interested, when in fact they may be put off by usability problems' (George & Lennard 2007).

Another key issue area here is the compatibility and interoperability of services and equipment. These issues are fast developing with the pace of technological change, and the proliferation of devices and applications used by consumers. Simply, not everything works with everything else. Combined with poor consumer information, this leads not only to under-served consumers, but also to unsatisfied consumers. There are also concerns over some services and equipment being 'locked' to specific providers (for example, a mobile phone being locked to a provider's network despite the consumer owning the handset), and limiting consumers' abilities to access services with the use of proprietary formats and standards (Microsoft Word formats, for instance) over open-source formats.

The adoption of IPv6 (a set of protocols for behind-the-scenes running of the Internet) in Australia might prove to be another consumer issue. Specifically, there may be a lack of IP addresses if it is not adopted soon enough, which is important when considering a future in which many consumer devices might be connected to networks (Dell et al. 2008).

Limited availability of simple technology, assistive equipment and skills training

The Ofcom ease of use report also contends that the ICT industry is not providing enough options for consumers who want simple-to-use technology, including responding with specialist models rather than mainstream products and services that are easy to use. Research on useability and simple technologies is needed for the Australian context.

In the case of consumers with disabilities, there is a need for greater support for the provision of assistive technology. There is a lack of an independent program (leading to lack of choice), the cost of assistive technology is often prohibitive or burdensome, and there is a need to support alternate methods of emergency services access (by SMS, for example) (TEDICORE 2007). Assistive technology that has been highlighted includes a video relay service, gateway software to allow communication between users of analogue TTYs and digital text services, and real-time IP-based communication services (TEDICORE 2007).

Finally, consumers do not have a wide range of easy access to skills training programs, or aren't using them in great numbers if they do. ACMA research has show that most Internet users are self-taught and hone their skills through frequency of use rather than formal training (ACMA 2009e), which raises questions about equity and suitability of current approaches to digital media literacy. The RTIRC and TEDICORE have highlighted appropriate training packages as important to improving accessibility for consumers.

The policy environment

Table 4: Policy environment – accessibility of communications and media technologies

Key government policy works	
<i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i> <i>Telecommunications Consumer Protection Code (TCP)</i> ACIF C625: 2005 – <i>Information on Accessibility Features for Telephone Equipment</i> <i>Disability Discrimination Act 1992</i> <i>United Nations Convention of the Rights of Persons with Disability</i> (ratified in Australia 2008; not a signed protocol)	
Government policy reform and development works	Key elements
DBCDE announcements and discussion paper for a study of the feasibility of an independent disability equipment program (2009)	<ul style="list-style-type: none"> • A feasibility study into whether a disability equipment program – independent of telecommunications carriers – should be established. • Will involve a detailed market analysis of the current arrangements for providing equipment to eligible people with disabilities. • The study will assess the estimated demand for specialised equipment over the next 10 years, and what eligibility criteria might apply to accessing that equipment at subsidised rates
DBCDE participation in	<ul style="list-style-type: none"> • Discussion of current arrangements for the

<i>Signposts for Change: People with Disabilities and Telecommunications Forum</i> (February 2009)	provision of telecommunications products and services to people with disabilities, and examination of options
DBCDE <i>Digital Economy Future Directions Draft Discussion Paper</i> (2008)	<ul style="list-style-type: none"> The importance of digital literacy
OECD <i>Seoul Declaration for the Future of the Internet Economy</i> 2008 (Australia a signatory)	<ul style="list-style-type: none"> Uphold open, decentralised and dynamic nature of the Internet, technical standards that enable ongoing expansion and innovation, interoperability, participation, ease of access IPv6
Key consumer policy discussion points	
<ul style="list-style-type: none"> Accessibility principles and national plan Standards development and adoption: universal design, usability, interoperability, W3C Government leadership in procurement policy, standard adoption and UN Convention Digital media literacy skills training Research 	

Highlighted options

A national accessibility plan

A first step in developing a national accessibility plan would be to establish a national inclusion strategy under which this plan would sit – a topic covered in the next section on inclusion. An overall goal of the inclusion and accessibility plan might be to involve useability, interoperability, disability access and skills training from the very start of policy discussions in the communications and media area.

One part of a national accessibility plan might be a focus on developing and adopting inclusive design, useability and interoperability standards which would benefit all consumers. Engaging and partnering with the ICT industry here might be vital, especially in proving that, by addressing ease of use, manufacturers can benefit from better reputations, reduced spending support and training, and increased customer satisfaction – not to mention return on investment (George & Lennard 2007). Two other particular areas to mention are website accessibility (adoption of W3C accessibility standards, perhaps) and working internationally in standards-setting bodies. This area could be a research priority, including examining labelling schemes and mandatory useability testing.

Another major part of a national accessibility plan might be a specific program for better supporting people with disabilities. This could start with formally recognising the rights of people with disabilities, potentially including aspects of the *UN Convention on the Rights of People with Disability* into the Consumer Rights and Responsibilities Charter discussed earlier in the report. The program could also include an independent equipment program (which is currently being considered by the government), an appropriate communications allowance for improved affordability for people with disabilities, and examination of the establishment of a national video relay service, real-time IP based communications and interoperability solutions for current technology to connect with NGN technology.

As part of the national digital media literacy plan, with inclusion in mind, the government could outline a strategy for providing training at all educational institutions, workplaces and

other public institutions supplemented by community outreach programs. Appropriate training can be developed through, or in close consultation with, disability organisations with specific expertise in servicing the needs of particular communities to ensure appropriate formats and approaches.

Finally, government leadership might be a major part of an accessibility plan. Incorporating useability standards into government procurement policy and adopting other standards such as W3C for government websites can have a trickle-down effect. Additionally, the government might consider signing the protocol of the *UN Convention on the Rights of People with Disability*, which would allow Australians to make cases to the United Nations regarding government compliance with the Convention.

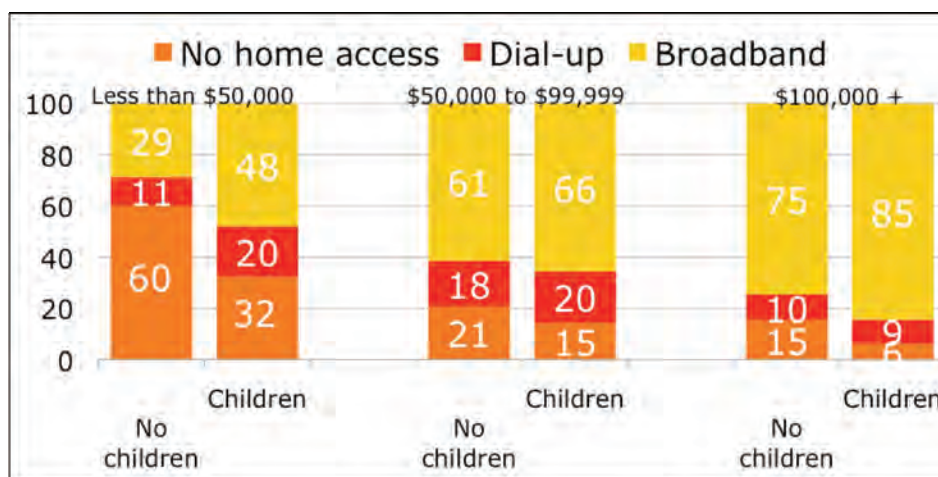
3.6. Inclusion and integration to lifestyle

Inequity in terms of access and accessibility has partially been highlighted up to this point in the report. This section focuses on issues around inclusion.

Disparities to access and use along demographic and socio-economic lines

There are a number of demographic and socio-economic circumstances that affect consumers' access to communications and media technology, which in turn can affect how consumers use technology and how they may participate in society. With this in mind, however, it is also important to note that there are broader questions around how digital inclusion relates to social inclusion, and how this might be related to government social inclusion policies. Further research is needed in these areas.

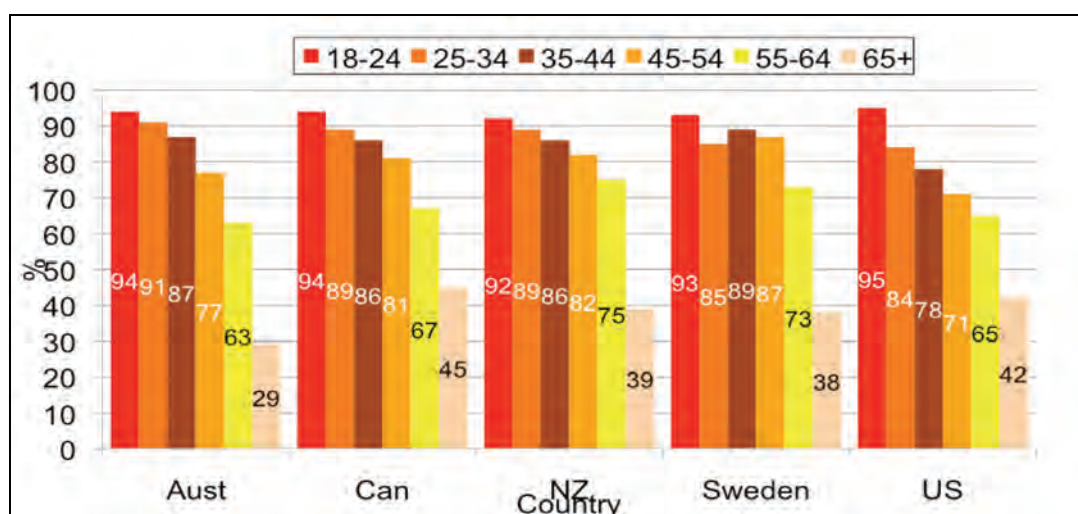
Some of the demographic and socio-economic lines which appear to have a more obvious correlation are location (less access for consumers in rural and remote communities than in metropolitan areas), age (proportion of Internet users in Australia gradually decreases with age, especially after the age of 50), income (higher income consumers are more like to use the Internet than lower income consumers), life stage (households with children or students are more like to have the Internet at home than other households) and membership of particular cultural groups (Indigenous and non-English speaking consumers are less likely to have Internet access than other groups) (CCi Digital Futures 2008; OECD 2008a; ACMA 2009b, 2009d; ACMA 2008a, 2008c, 2008d). A second dimension to this issue is that of 'multiple divides', in which consumers are adversely affected by more than one of these circumstances. Figures 4, 5 and 6 help illustrate some of these disparities.



Source: CCI Digital Futures Data (2007).

Figure 4: Use of the Internet in Australia by income level and life stage

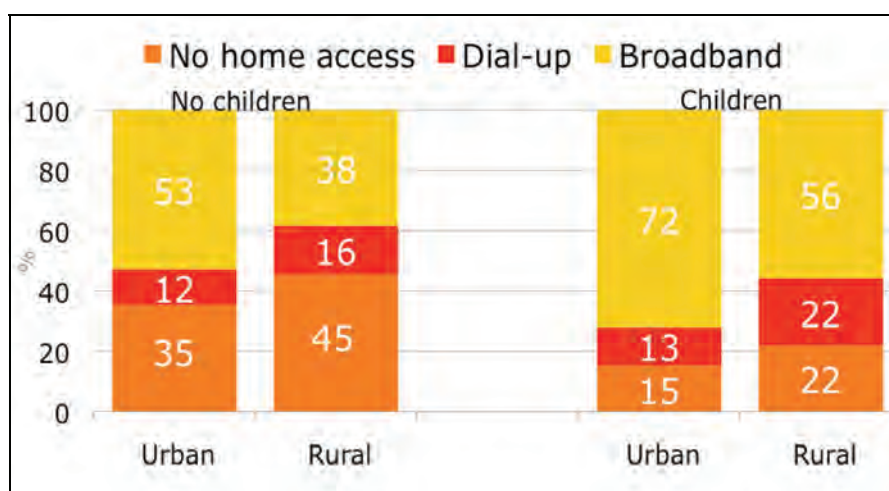
Figure 4 shows that consumers earning over \$50,000 – especially those earning more than \$100,000 – are much more likely to have broadband Internet connections at home than consumers who earn less than \$50,000 (who are much more likely not to have an Internet connection at home). As well, in both categories, having children significantly increases the chance that a consumer will have an Internet connection at home, especially broadband.



Source: World Internet Project Data (2007).

Figure 5: Use of the Internet by age

Figure 5 shows that, in Australia, Internet use drops from over 87 per cent for those 44 years and younger to 63 per cent for the 55–64 years age group, to 29 per cent for those 65 years and older. The graph also shows that, compared with Canada (45 per cent), New Zealand (39 per cent), Sweden (38 per cent) and the United States (42 per cent), Australians aged 65 years and older might be accessing the Internet at lower rates than their international counterparts.



Source: CCI Digital Futures Data (2007)

Figure 6: Use of Internet in Australia by location and life stage

Figure 6 shows that, in Australia, consumers in urban locations are much more likely to have Internet connections at home than consumers in rural locations – especially broadband connections – and that this trend holds across households with and without children. Some 53 per cent of urban consumers with no children have a broadband connection at home, while 72 per cent of those with children do; this compares with 38 per cent of rural consumers without children and 56 per cent of rural consumers with children having a broadband connection.

More research is needed across all of these areas, including factors such as gender (men appear to be more likely to access the Internet and to be employed in ICT industries than women), employment status (employed consumers are more likely to access the Internet than retired and unemployed people; more skilled employment are more likely to have Internet access than low-skilled occupations) and education (higher educated consumers are more likely to use the Internet than lower educated consumers) (CCI Digital Futures 2008; OECD 2007b).

A final factor to mention here – one that affects most consumers across all lines – is the pace of technological change and how that might affect access and use of ICTs. It appears that many consumers have difficulty keeping up with the complexity and pace of developments in technology (ACMA 2009e).

Pressure to adopt a digital lifestyle

There is some research emerging that points to consumers expressing a need to appropriately situate technology within their lives. It may be the case that consumers place widely different levels of interest in ICTs, and different levels of value on ICTs in their lives. In Australia, indications are that not all consumers feel that the computers and technology give them more control over their lives, with positive attitudes towards the Internet decreasing with age (ACMA 2009e). Research from the US market indicates that some adult Americans might reach a plateau in their technology use, content with a distant relationship to technology, while for others even a little modern gadgetry is too much (Horrigan 2009). In the United Kingdom, the Communications Consumer Panel (an Ofcom advisory body) has said of its research:

What will matter to people fundamentally is unlikely to change. ‘Life needs’ include personal fulfillment, social interaction, quality of life, and work satisfaction. People meet life needs in part by buying and using products and services. In doing so, they have certain ‘consumer needs’, which include quality, choice, ease of use, access and affordability. Consumer needs can therefore be seen as enabling people to meet some of their life needs ... However, technology is a means to an end and participants said that should this hierarchy be reversed they would have a number of concerns. (Communications Consumer Panel 2009)

This leads to a second point around the value of digital lifestyles in consumers’ lives. There are massive social changes occurring around technology use and, though there are undeniably enormous benefits for consumers, there is also legitimate concern around whether the *net quality of life* for consumers will improve. There is speculation that, long term, ‘the divisions of personal time and work time and between physical and virtual reality will be further erased for everyone who’s connected, and the results will be mixed in terms of social relations’, and that ‘mobility and ubiquity of networked computing devices will be harmful for most people by adding to stress and challenging family life and social life’ (Quitney & Rainie 2008). There is also research which raises questions around the effects of media consumption on children in terms of relationships and other areas of personal development (ACMA 2007).

The larger issue here is whether, in the movement towards a digital lifestyle, an almost ‘forced inclusion’ occurs in which consumers who actually have access to technology but do not want to use it in all the ways society dictates they should will experience inequity because of their choice not to participate as fully as others.

Health concerns

The next point to make is that it is justified to at least question how the health and well-being of consumers are affected by their use of information and communications technology. Research is needed in these areas, but there are concerns around addiction, physical health around ergonomics and sedentary lifestyle, and stress around information overload (CNN.com 2009).

Another issue not often discussed, but certainly worth mentioning, relates to health concerns around exposure to ICT equipment and communications transmissions, especially wireless networks and devices. According to ACMA, radiofrequency electromagnetic energy (EME) is emitted from artificial sources such as mobile phone base stations, broadcast towers, some types of remote control devices, and electrical and electronic equipment – non-ionising energy is not able to directly impact enough energy to a molecule or atom to break chemical bonds or remove electrons, while ionising radiation (x-rays, for example) can (ACMA 2009). ACMA says that, for low levels of exposure to radiofrequency EME, the evidence for production of harmful biological effects is ambiguous and unproven (ACMA 2009c, 2008b).

A key term in this discussion around human harm is SAR (which stands for specific absorption rate). In fact, the Australian Mobile Telecommunications Association has a voluntary reporting scheme for SAR – certainly consumers would benefit from a more prominent role for this scheme, or from information disclosure requirements for SAR to help them make appropriate technology choices.

The policy environment

Table 5: Policy environment – inclusion and integration with lifestyle

Key government policy works	
<i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i> <i>Telecommunications Consumer Protection Code (TCP)</i> <i>ACIF C625: 2005 – Information on Accessibility Features for Telephone Equipment</i> <i>ACMA Electromagnetic Radiation (EMR) Regulation</i> <i>Disability Discrimination Act 1992</i> <i>Race Discrimination Act 1975</i> <i>Sex Discrimination Act 1984</i> <i>Age Discrimination Act 2004</i> <i>UN Convention on Human Rights</i> <i>United Nations Convention on the Rights of Persons with Disability</i> (ratified in Australia 2008; not a signed protocol)	
Government policy reform and development works	Key elements
<i>DBCDE Digital Economy Future Directions Draft Discussion Paper (2008)</i>	<ul style="list-style-type: none"> The importance of inclusion in development of digital economy policy
<i>OECD Seoul Declaration for the Future of the Internet Economy (2008)</i> (Australia a signatory)	<ul style="list-style-type: none"> Enhanced services to people with disabilities and special needs Recognition of ability for development for those with most limited economic needs Promotion of use by all communities
Key consumer policy discussion points	
<ul style="list-style-type: none"> Inclusion and equity plan Research 	

Highlighted options

A national digital inclusion and equity plan

Such a plan would provide leadership and profile the goals of ‘inclusion for all’ and of improving the quality of life for all. A national inclusion and equity plan might encompass a national accessibility plan and have a role in other initiatives involving inclusion, especially a national digital media literacy plan. Such a plan might connect up with broader social inclusion policies, underscoring the need for cross-government strategies. It is worth noting that a Minister of Digital Inclusion was named in the United Kingdom to coordinate cross-government digital inclusion strategies.

With regard to the national digital media literacy plan, influence might focus on appropriate training that can be developed through, or in close consultation with, organisations or groups with specific expertise in servicing the needs of particular communities to ensure appropriate formats and approaches. Proper learning environments and savvy information materials may prove important.

There would be many research priorities in this area, including ongoing, targeted research into the needs and trends of use of consumers at risk of exclusion, and research examining

patterns of addiction, stress and ergonomics. A government-led research project around EME and SAR disclosure might also be very beneficial to consumers.

3.7. Relationships with service providers

Consumers are having difficulties with their relationships with communications and media service providers from pre-purchase through post-purchase. They are experiencing increasingly poor customer service and there are concerns over the evolution of customer services, the complaint handling process, and relationships between consumer representatives and industry.

Customer service experiences

Statistics from the TIO's *Annual Report 2008* reveal a telling story about worsening customer service in the telecommunications industry. Some 30 per cent of all complaints received were related to customer service or complaints handling. Customer service was the top category of complaints, up 94 per cent from 2007, and early informal indications are that this number is not decreasing for the 2008–09 year. Key aspects of complaints about customer service included advice given to consumers, failures to action requests, consumers unable to reach service providers and wait times. Half of complaints about complaint handling reported a failure of service providers to refer consumers to the TIO. A quarter of total confirmed code breaches were in the area of complaint handling.

Still quoting from the TIO *Annual Report 2008*, issues around contracts were the fourth highest complaint category, up 65 per cent from 2007. Key complaints here included point of sale advice, variation of terms, enforcement of terms and termination delay. A trend highlighted by the OECD in this area is automatic renewals of contracts (OECD 2008c), and others have pointed to a lack of tools for consumers to manage their spend with service providers.

On a larger scale, some stakeholders in the consumer space have flagged a trend towards customer self-service. The growth of e-billing (including a fee for paper bills) and online contacting and support processes are provided as examples of this shift. While there may be gains for consumers here, the trend away from more personal and customised service is a concern. Will there be a time when consumers are charged a fee for interacting with a live customer service agent?

Two further themes emerge from the future of the consumer–service provider relationship. One is the increasing complexity of just who consumers should contact about a service, especially in a perhaps more application-focused future. The mobile phone experience provides a good example of this, with consumers needing to navigate a long chain of companies that may be involved in their transaction (these can include handset companies, networks, switching equipment, computers and software, carriers or service providers, portal owners and other service providers).

As highlighted in the section on consumer protection, there is a growing international dimension to relationships with providers, an issue also involving the increasing complexity of value chains in the industry. Consumers can run into issues around lack of protections, customer service, contracts and redress. The OECD provides an example:

A consumer received an SMS containing a link to a website, which advertised a luxurious watch at a low price. The consumer felt confident that the offer was genuine because it came from a mobile site from which he had already bought

similar products and which contained information in his native language. He therefore placed an order to buy the watch. When the watch was not delivered, the consumer complained to the customer service department of the company, and found out that the business that he purchased the item from was in fact operated by another company which was not based in his country. When he complained to government authorities, he was told that they could do nothing since the business was located outside the country. (OECD 2008b)

Another issue in this area is territorial discrimination. Consumers might increasingly find that they cannot access services or engage in transactions because of their location.

The second emerging theme is the ability to switch services and number portability. These are already issues for consumers – transfers were the ninth highest TIO complaint category for the financial year ending 2008 (TIO 2008). In an environment in which there may not be much differences between services, healthy competition and perhaps a prevalence of bundled services, it will be important for consumers to have agency to switch their services swiftly and stress-free. The OECD concurs, saying that the ‘ability of consumers to switch service providers is often discouraged because of the time and costs involved. Lower switching costs may benefit consumers and provide a greater stimulus to operators to charge competitive prices and improve the quality of service.’ (OECD 2008c) The OECD similarly stresses the importance of number portability for consumers (OECD 2008c).

Evolution of converged complaint handling and redress

As converged, innovative services continue to enter the market, there might be increasing confusion for consumers around who to contact with a complaint. A good example of this is mobile commerce. The OECD provides a useful example of how such a situation may play out, in a scenario it calls ‘mobile handset transport ticket’:

A consumer ordered a transport ticket from the national railway company via his mobile handset, allowing him to use his Near Field Communication enabled handset as his ticket on local buses, trains and trams. While he was on a tram he was stopped by a controller, who tried unsuccessfully to validate the m-ticket. As a result, the controller required him to pay for the ticket immediately and levied an additional fine because the consumer was unable to prove that he had purchased the ticket. Back home, the consumer asked his mobile operator for assistance with reimbursement for the second ticket and the fine. The mobile operator informed him that it was not responsible in this matter and that the consumer should send his request to the railway company. (OECD 2008b)

The TIO scheme has received favourable reviews from consumer groups, but it is as yet unclear how it might evolve to deal with these types of issues.

Additionally, there is already a sentiment that disadvantaged or vulnerable consumers have difficulty accessing the complaints-handling mechanisms.

Relationships between consumer representation and industry

There is a feeling that consumer representatives and the industry are not engaging as productively as they might, including the presence of adversarial dynamics. It is important to note that there can be many explanations for these trends. It would seem that there is not a great deal of proactive, informal discussion of issues or *widespread* willingness by the parties to consult with each other.

The policy environment

Table 6: Policy environment – relationships with service providers

Key government policy works	
<p><i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i> <i>Telecommunications Consumer Protection Code (TCP)</i> <i>Trade Practices Act 1974</i> State and territory Fair Trading laws Support of Telecommunications Industry Ombudsman scheme Support of Telephone Information Services Standards Council (TISSC) scheme</p>	
Highlighted Industry Arrangements	
<p>Telstra:</p> <ul style="list-style-type: none"> • Telstra Consumer Consultative Council and Telstra's Customer Service Charter • Low Income Measures Assistance Committee and Telstra's Access for Everyone programs • Disability Forum, Disability Equipment Program, Disability Services programs • Credit Management Working Group and Telstra's Financial Hardship Assistance Policy <p>Optus:</p> <ul style="list-style-type: none"> • Optus Consumer Liaison Forum <p>Australian Mobile Telecommunications Association:</p> <ul style="list-style-type: none"> • Accessibility Committee and other general consumer education on EME, recycling, etc. 	
	Key elements
DBCDE support of TIO/Industry Connect.Resolve customer service improvement campaign	<ul style="list-style-type: none"> • Addressing many fixable complaint issues such as making contact with service providers and following through on issue resolution
DBCDE support of Communications Alliance Customer Service Summit 2009	<ul style="list-style-type: none"> • Develop Customer Service Charter principles
Treasury, <i>An Australian Consumer Law Fair Markets – Confident Consumers Discussion Paper</i> and announcements (2008–09)	<ul style="list-style-type: none"> • Will replace <i>Trade Practices Act 1974</i> • Civil pecuniary penalties • Unfair contract terms (including in standard-form mobile contracts) • Substantiation notices • Public warning powers • Represent and redress for non-parties • Door-to-door selling, pyramid schemes • Warranties and refunds review • Single law, multiple regulators (ACCCC, state/territory Fair Trading Offices) • Considering mandatory disclosure requirements, based on the Victorian FTA, and 'information layering' requirements: the requirement for consumer documents to be clear; the requirement for a business to include its address in a consumer document; and the

	requirement to provide receipts for itemised bills
Key consumer policy discussion points	
<ul style="list-style-type: none"> • Customer service principles and standard • Customer contracts • Switching and number portability arrangements • Evolution of complaint handling and complaint-handling standard • Addressing international relationships with service providers • New engagement methods between industry and consumer representatives 	

Highlighted options

Customer service and complaint-handling policy development

Such work could be prefaced by a recognition of just how crucial good customer service is for consumers and the industry. Consumers and the industry might then develop a set of principles around customer service mechanisms that may include provisions concerning access to customer service, training for customer service representatives and clear dissatisfaction processes (this may begin at the Communications Alliance Summit on customer service).

This work might support more consumer-friendly contracts (something that may be assisted by the Australian Consumer Law), switching processes (especially in relation to bundled services) and number (or other identifier) portability.

It would also be important for this type of work to connect with work on an international consumer protection and policy engagement strategy, especially in the areas of customer service, contracts and redress.

Beyond this, the development of the standard might involve open discussion and clarification of concepts such as customer dissatisfaction, customer expectations and consumer–supplier cooperation (Lally, Ang & Rowe 2008).

Research priorities for this area can include a mapping of the complaint-handling environment to aid in determining how complaints in the communications and media area might proceed in the future. Two possibilities in this area include a Communications and Media Ombudsman handling all issues, or an organisation like the TIO acting as a clearing house for complaints in a more segmented complaints-handling landscape.

Another research priority can be an examination of emerging trends in e-billing and customer self-service, and how they might affect consumers.

Evolution of relationships between consumer representatives and industry

Good progress might be made by transforming relationships with industry to be more cooperative. New engagement methods – both informal and formal – aimed at being proactive and conversational might be useful. Structures like working groups, even through Web 2.0 technologies (though face-to-face relationship-building will remain key), may be employed. Likewise, innovation may occur around areas like joint research about consumer needs. Further discussion of possibilities in this area might be fruitful (see Morsillo 2008b).

3.8. Security and privacy

Security and privacy concerns each involve aspects quite independent of each other, but with more integration of the technology driving each (malware, viruses, identity theft techniques and location information); they can also be considered interdependent issues. As is the case with most consumer issues in the traditional telecommunications space, security and privacy concerns around fixed lines and mobiles have mostly merged with Internet-based security and privacy issues. These convergences are causing notions of privacy and security to evolve. While covering the major issues across a converged environment, this section will focus mostly on aspects related to those around mobile technology.

Consumer detriment and confidence

Widely available software such as malware and viruses can not only significantly damage a wide range of consumer devices and networks, but can also act as a delivery mechanisms for identity theft techniques (OECD 2009a). Use of location-based technology, including radio frequency identification technology, other types of surveillance, and direct marketing and advertising, can constitute an invasion of consumer privacy. Aside from the growth of all of these phenomena, a worrying aspect of these threats is that they can mostly be perpetrated without the knowledge and consent of consumers.

It is clear that Australian consumers are both suffering attacks from these threats and also worried about them, affecting their confidence and willingness to participate in e-commerce and other aspects of communications and media (CTN 2007b; ACMA 2009e). The detrimental effects that can be experienced by consumers as a result of these threats can be many and varied, including financial detriment, loss of productivity and time, emotional stress, embarrassment, and potentially threats to national security. In the case of the misuse of personal information, thieves can typically misuse existing accounts, open new accounts, fraudulently obtain government benefits, services or documents, commit health care fraud and broker further use of personal data (OECD 2009b).

From a traditional telecommunications angle, the growth of mobile technology, and specifically mobile commerce functions, poses particular concern. These functions include the ability to access banking and financial services, to purchase or download content, to play online games, to access information, to act as payment devices and to interact with other media services via SMS (OECD 2008b). The security of these services has been questioned in areas such as unauthorised use and liability, hacking of banking sessions and location-based privacy issues (Clarke 2008). The OECD provides two scenarios to describe some of these concerns:

Buying spree: A consumer loses his mobile phone without informing either his mobile operator or the police about it, hoping that he will find it quickly. Three days later, the police call the consumer to let him know that his phone has been found. However, from the moment the phone was lost to the time that the police found it, someone used expensive mobile services from the phone, running up charges of around US\$2,000. The consumer is shocked to learn that he is liable for the full amount.

Unauthorised tracking: A mobile operator uses a Global Positioning System or triangulation (from signals generated from the device) to locate mobile users. The company sells the location and subscriber information to marketing companies for use in sending tailored advertisements or notices to the mobile

subscriber. The mobile subscriber has not understood, nor has she authorised, transfer of such personal information. She might be charged for the notices (e.g. text messages about nearby sales or Internet time for pop-up messages). She is disturbed by the tracking and concerned that the information could be picked up (stolen or bought) by criminals. (OECD 2008b)

A final concern in this area relates to speculation that telecommunications service providers may be regulated to hold user data for a much longer period than they are currently required to hold it. No formal announcements have been made about this, but an appropriate rationale would be necessary, as would assurances about protections of personal information and usage data.

Consumer understanding and preventative action

Research indicates that, although consumers are concerned about these issues, they are not taking sufficient preventative measures (ACMA 2009e). This can indicate over-confidence, but also a lack of understanding about threats and the skills required to deal with the threats (CTN 2007b).

Unclear and insufficient consumer protections

Research is needed to ascertain how aware consumers are of the current protections in place to help them deal with these issues, including the Do Not Call Register (2.7 million numbers registered at April 2009 – ACMA 2009f) and the *Spam Act*. Beyond this, there are few other protections in place. Australia's *Privacy Act*, currently under review, has been criticised for not being in tune to the rate of change in privacy concerns around new technologies. The OECD has said that, across its member countries, there has not been enough done to combat malware, viruses and identity theft, with two key issues standing out: a lack of common definitions of threats and a lack of comparable data (OECD 2009a).

Evolution of notions of security and privacy

A final consumer issue here is a sense that notions of security and privacy may gradually be eroding, with some contending that privacy will become scarce, greatly affected by new technologies (Quitney & Rainie 2008). At the very least, these notions are evolving from their traditional places in social practice and in policy (Kenyon & Richardson 2006). Identity management (IDM) software, via which consumers may have some control over their personal profile across a wide range of services, seems to provide some opportunities for consumers to gain control over their privacy, but it is not yet clear just how effective it might be (OECD 2007a).

The policy environment

Table 7: Policy environment – security and privacy

Key government policy works
<i>Telecommunications Act</i> 1997
<i>Telecommunications (Interception and Access) Act</i> 1979
<i>Do Not Call Register Act</i> 2006
<i>Telecommunications (Do Not Call Register) (Telemarketing and Research Calls) Industry Standard</i> 2007
<i>Spam Act</i> 2003
<i>Privacy Act</i> 1988
DBCDE Cyber Safety Plan (Education, Law enforcement, Content filtering)
Stay Smart Online campaign

Government policy reform and development works	Key elements
DBCDE, Expansion of the Do Not Call Register (May 2009)	<ul style="list-style-type: none"> • \$4.7 million over four years to widen the scope of the Register to include all telephone and fax numbers, including the numbers used by businesses and emergency service operators
Attorney-General, <i>E-Security Review</i> (2008)	<ul style="list-style-type: none"> • Develop e-security framework • A new approach to changing circumstances
Australian Law Reform Commission, <i>For Your Information: Australian Privacy Law and Practice</i> (2008)	<ul style="list-style-type: none"> • New set of unified privacy principles • A number of proposed changes to telecommunications privacy law (including unification with the <i>Privacy Act</i>) • First tranche of implementations expected in 2009
OECD, <i>Seoul Declaration for the Future of the Internet Economy</i> 2008 (Australia a signatory)	<ul style="list-style-type: none"> • Protect critical information • Strengthen resilience and security • Reduce malicious activity • Ensure protection of digital identities • Promote research to address emerging security threats
OECD, <i>Guidelines for Consumer Protection in the Context of Electronic Commerce</i> (1999)	
Key consumer policy discussion points	
<ul style="list-style-type: none"> • Consumer security and privacy principles • Consumer protection and privacy development 	

Highlighted options

A multi-faceted e-security and e-privacy framework

Noting that an e-security framework is on its way from the government, a starting point for consumers might be the development of a set of consumer-centred security and privacy principles (working with the revised Unified Privacy Principles) which can be used as guidance and benchmarks in the development of policy.

Some discussion of high-level concepts might be useful here, including privacy of the person, privacy of personal behaviour, privacy of personal communications and privacy of personal data (Clarke 2006). Another useful notion is that any consumer detriment as a result of breaches of security and privacy is significant, and that consumers cannot bear the brunt of liability for issues when they are clearly not in control of them.

There are many policy development suggestions that can be made which fall into the categories of: a cross-government approach; a cross-sector approach, as some industries may have specific expertise in these areas; legal status of e-crimes; regulation to set limits on behaviour of industry participants; accepted definitions of threats; use of privacy impact statements; standards for notification of breaches of security; credit ceilings; victim assistance programs; and global malware partnerships. One option to highlight is built-in

security and privacy features of consumer devices – an area some think carries much scope for improvement.

Research might be integral to this framework. Consistent research around consumer understanding and preparedness might be useful, as would a framework for gathering internationally comparable statistics.

Education initiatives, including a focus on the types of skills consumers need to build in these areas, would integrate into a national digital media literacy education plan.

3.9. Consuming, creating and using content

Like issues of security and privacy, traditional telecommunications consumer issues around content are now merged with discussions about regulating Internet and broadcasting content. Fixed-line content services remain, but content delivered over mobile devices is increasingly facilitating the consumption, use and re-use of content in new ways, especially via the Internet and user-developed applications. The two main consumer issues in the telecommunications area essentially mirror those of Internet discussions: regulating content to protect children from harm, and mass confusion around copyright and intellectual property arrangements, especially future directions.

Child protection across converged technologies

The main issue to cover here – rather than a discussion of what level of child protection is appropriate (therefore assuming that some level of protection is desired) – is consistency of protection across platforms.

Child protection has been a feature of content regulation in broadcasting for some time, while content delivered over converged devices has been addressed through the Content Services amendments to the *Broadcasting Services Act*, which extends content regulation to live streamed Internet content services, content delivered to convergent devices and services that provide links to content (Lindsay, Rodrick & de Zwart 2008). There is inconsistency in child protection measures here, since essentially some of the content delivered over mobile phones is regulated while, since the Internet is mostly unregulated, other content is not. There are blurred lines in this situation, illustrated by the following example:

A 15-year-old boy received a text message inviting him to preview a new Internet site for free. He responded to the message and acquired the site address in return. He accessed the site, discovering that it contained sexually explicit material. He reported the offer to his mother, who contacted the mobile operator immediately to express her outrage that her child had received the solicitation. The mobile operator explained that it did its best to filter such traffic, but some inappropriate content slipped through. When the child responded to the SMS, his contact information (i.e. phone number) was put on a list of potential customers. He subsequently received a stream of provocative messages, forcing the distraught mother to demand a new mobile phone account for her son. (OECD 2008b)

For mobile devices in particular, there are other concerns such as unfair marketing and subscription services, and over-consumption through mobile commerce functions:

A 12-year-old girl was delighted when she was elected president of her Grade 6 class. During the lunch break, she decided to express her appreciation by

buying a round of soft drinks for her classmates. The word spread rapidly, and soon there were 300 young friends waiting to be treated. She used her mobile phone to pay for the drinks. The total charge appeared on her mobile screen. When the monthly statement arrived at her home, her father was stunned to see the 400 Euro charge. (OECD 2008b)

There are also concerns with location-based services:

A 12-year-old mobile phone user goes on to the Internet and enters her mobile phone number to sign up for a location-based service that allows her to receive information about the location of persons she has identified (social mapping). She believes this will be a fun chance to find out when her school friends are in the area so she can text message them and meet up with them. They can also receive location data and a profile about her. There is no disclosure about how such information will be safeguarded, or who can view it. There is no verification process. The location data is not blocked even when she turns off that program on the mobile device. Her parents do not know she has subscribed to such a service. (OECD 2008b)

It is not immediately clear how these types of scenarios are addressed through current policy instruments.

Copyright and intellectual property: Confusion and the way forward

Though discussions over copyright and intellectual property are addressed in the Internet study (see Section 4), these discussions do apply to advanced mobile phones and devices. There is great confusion among consumers about what exactly is legal and what isn't when it comes to using and re-using content. This doesn't bode well for consumers or creators (as the Internet study discusses, users can take both of these roles). Clarity is needed, though there are differing views on the appropriate approaches to take as the media landscape evolves (Kenyon 2007).

Some of these views are of concern to consumers, specifically the involvement of Internet service providers (ISPs) in a policing role, and the threat of broadband disconnection. In Australia, there is currently legal action by a consortium of movie studios and Channel 7, represented by the Australian Federation Against Copyright Theft, against iiNet for failing to disconnect users who were allegedly swapping pirated movies via peer-to-peer (P2P) technology – a case some are flagging as very important to Internet copyright laws in Australia (Neiger 2008; Kidman 2008).

Internationally, the French government has recently passed a controversial law to cut the Internet connections of people who repeatedly download music and movies illegally for up to one year (Seward 2009). Though the French law has yet to be fully approved, these developments cast concern around prohibiting access to an increasingly essential service, and to the politicising of the role of ISPs. Additionally, there are concerns that international treaties that have copyright implications for consumers are being developed secretly without consumer involvement (Choice 2008a).

The policy environment

Table 8: Policy environment – consuming, creating, using content

Key government policy works	
<i>Broadcasting Services Act</i> 1997 Communications Legislation Amendment (Content Services) Bill 2007 National Classification Scheme Registered 1900 Code of Practice DBCDE Cyber Safety Plan (Education, Law Enforcement, Content filtering, Consultation) NetAlert campaign <i>Copyright Amendment Act</i> 2006	
Government policy reform and development works	Key elements
Pending registration of the Mobile Premium Services Code	<ul style="list-style-type: none"> Child protection measures (chat rooms, content classification, subscription services, age verification)
Involvement in International Anti-Counterfeiting Treaty?	<ul style="list-style-type: none"> Clauses around copyright? No consumer involvement?
OECD, <i>Seoul Declaration for the Future of the Internet Economy</i> (2008) (Australia a signatory)	<ul style="list-style-type: none"> Free flow of information Public sector information and content Basic and applied research, shared facilities Combat digital piracy with innovative approaches that provide creators and rights-holders with incentives to create and disseminate works in a manner that is beneficial to creators, users and our economy as a whole
Key consumer policy discussion points	
<ul style="list-style-type: none"> Cross-platform content regulation Consumer rights in copyright and intellectual property 	

Highlighted options

Appropriate cross-platform content regulation

Focusing on mobile phones and mobile devices, there are a number of areas of regulation to be considered across access issues, marketing issues, over-consumption issues and location-based services. Protections would need to be developed within the larger context of cross-platform use of technologies.

Possible elements of regulation might include (note that some of these are included in mobile premium services code proposals in varying forms): awareness-raising campaigns, warnings on audio and visual material, classification of content, more effective age-verification procedures, filtering options (of course, this is an area of great debate with the government's trial Internet filtering program), parental notification systems, remote blocking, limited or disabled features on devices sold to children, message blocking (picked up in recent protections to MPS adopted by ACMA), multiple-step authorisation for purchases (likewise by ACMA), credit ceilings with spending warnings, clear disclosure about tracking, clear disclosures about sharing of tracking data, adult approval to enable tracking and ability to turn off tracking in real time (OECD 2008b).

Development of fair copyright and intellectual property rights

A key aspect of this discussion might be the development of consumer rights and principles around content use, which might include the need for clarity and the need to balance the rights of consumers and creators to promote innovation – a scheme to consider is the Creative Commons movement (Fitzgerald & Atkinson 2008). An important part of the development of these principles might be research around the value of content use and re-use by consumers, especially concerning education. Consumers might also seek assurances that network access would not be affected in any copyright matters, especially considering the increasing importance of network access.

3.10. ICTs and the environment

The global community is facing a number of hard truths about human impact on the environment, which include climate change, speculation about an energy crisis and environmental degradation. Consumers are concerned about these issues and how their use of ICTs interacts with them.

E-waste and energy efficiency

E-waste can broadly be defined as discarded electronic equipment, including a wide range of consumer devices such as televisions, DVD players, mobile phones and computers, as well as accessories to these devices (DEWHA 2009). E-waste consists of metals and plastics, with some components having an economic value if recycled and some containing hazardous substances (DEWHA 2009). Indications are that e-waste is growing (DEWHA 2009; Cubby 2009).

There are a number of consumer concerns around e-waste. One is the danger of putting e-waste in landfill, and the associated resource use and potential environmental impact. Another is a lack of recycling, as it has been reported that only 4 per cent of Australia's e-waste is recycled, that there are limited options for the public to recycle e-waste, and that there is a growing practice of illegally shipping e-waste overseas (Cubby 2009; DEWHA 2009). A final concern here is around policy to reduce e-waste. In fact, it might be argued that policies like the NBN and development of a digital economy, without appropriate regulations in place, will contribute to e-waste, possibly feeding into a sense that consumers are continually needing to replace and upgrade equipment with short lifespans. The government is currently reviewing a national waste strategy.

Household energy use, and the role ICTs play in it, also represent a growing consumer concern. Recent research indicates that energy consumed by rising use of consumer electronic devices might be a major issue in the fight against climate change, with strong policy directions required to halt what looks like a doubling or tripling of use of ICTs by 2030 (IEA 2009). The government has begun to introduce energy efficiency initiatives, especially the investigation of smart use of electronic grids and telecommuting, as well as greenhouse gas reporting and carbon trading schemes; however, all are in their early stages.

A final issue here is that consumers are having difficulty comparing ICT products based on their environmental impact. In an Ofcom survey, nearly three-quarters of consumers said that they cared about the environment and took it into account in their personal lives, but only 39 per cent said that they compared environmentally friendly aspects when purchasing communications devices (Ofcom 2008). This may be because of available information and difficulty understanding energy efficiency applications to ICTs.

The policy environment

Table 9: Policy environment – ICTs and the environment

Key government policy works	
<i>The National Greenhouse and Energy Reporting Act</i> 2007 <i>Kyoto Protocol</i> (Ratified March 2008) Australian Capital Territory levy on the disposal of televisions and computers at landfill sites	
Other policy works (Australia)	
Mobile Muster (www.mobilemuster.com.au) Cartridges for Planet Ark (www.cartridges.planetark.org) Byteback (Victorian government–industry partnership) Australian Computer Society Green IT Group and online course	
Government policy reform and development works	Key elements
DBCDE in National Energy Efficiency Initiative (May 2009)	<ul style="list-style-type: none"> \$100 million in partnership with the energy sector for the development of a new National Energy Efficiency Initiative using twenty-first century technology to assist our transition to a low carbon economy by encouraging a smarter and more efficient energy network Subject to an implementation study, the demonstration project will lead to an integrated system of renewable energy, smart grid and smart meter technology and infrastructure in one Australian city, town or region. It will bring together electricity power generation, transmission, and distribution providers as well as private partners and IT experts, and will inform the wider national deployment of smart grid technologies.
Department of the Environment, Water, Heritage and the Arts, <i>A National Waste Policy: Managing Waste to 2020 Consultation Paper</i> (April 2009)	<ul style="list-style-type: none"> Provides e-waste statistics and asks: ‘What, if any, changes are needed to provide a national approach to the way e-waste is managed?’
Environment Protection and Heritage Council examining options to deal with end-of-life televisions and computers	<ul style="list-style-type: none"> Proposals from both the television and computer industries for product stewardship schemes. The industry-proposed product stewardship schemes would place a charge on eligible new products that would then be used to pay for recycling at the end of their life (an advance recycling fee) (DEWHA 2009)
DBCDE <i>Digital Economy Future Directions Draft</i>	<ul style="list-style-type: none"> Importance of using ICTs for environmental sustainability

<i>Discussion Paper</i> (2008)	
Australian Emissions Trading Scheme	<ul style="list-style-type: none"> • In development
OECD <i>Seoul Declaration for the Future of the Internet Economy</i> 2008 (Australia a signatory)	<ul style="list-style-type: none"> • ‘Harness the potential of the Internet to tackle global challenges such as improving energy efficiency and addressing climate change.’
Key consumer policy discussion points	
<ul style="list-style-type: none"> • E-waste reduction • Increased energy efficiency • Ability for product comparison 	

Highlighted options

E-waste and energy efficiency policy development

Strong public policy direction might be needed, including consideration of levies on e-waste and stricter standards on product development (specifically the idea of cradle-to-cradle design, where product components can be continually re-used once the device is no longer in use). Concerning energy efficiency, standards or schemes like the Energy Star program in the United States might have significant impact, as would information-disclosure arrangements that better allow consumers to compare products based on their environmental impact. Partnerships with industry across all of these areas appear to be very important. Government procurement policies that support reduction of e-waste and increased energy efficiency can also be an important step.

Across both areas, consumer-centred research around understanding of the issues and desired options to deal with them can inform education and program development work.

3.11. References

- Association for Progressive Communications, 2006. *APC Internet Rights Charter*. Available at <<http://www.apc.org/en/node/5677>>. Accessed 27 May 2009.
- Australian Communications and Media Association (ACMA), 2009a. ‘ACMA Announces New Approach to Regulating Mobile Premium Services’, Press Release. Available at http://www.acma.gov.au/WEB/STANDARD/pc=PC_311730. Accessed 18 May 2009.
- ACMA, 2009b. *Australian Household Consumers’ Take-up and Use of Voice Communications Services*, ACMA, Canberra.
- ACMA 2009c, Electromagnetic energy fact sheet. Available at <http://www.acma.gov.au/WEB/STANDARD/1001/pc=PC_1719>. Accessed 27 May 2009.
- ACMA, 2009d. *Telecommunications in Remote Indigenous Communities*, ACMA, Canberra.
- ACMA, 2009e. *Trust and Confidence*, ACMA, Canberra.
- ACMA, 2009f. ‘Westpac Warned for Calling Numbers Listed on the Do Not Call Register’, Press Release. Available at <http://www.acma.gov.au/scripts/nc.dll?WEB/STANDARD/1001/pc=PC_311664>. Accessed 27 May 2009.
- ACMA, 2008a. *Access to the Internet, Broadband and Mobile Phones in Family Households*, ACMA, Canberra.
- ACMA, 2008b. *Electromagnetic Energy Fact Sheet*, ACMA, Canberra.
- ACMA, 2008c. *Internet Activity and Content*, ACMA, Canberra.

- ACMA, 2008d. *Media Use by Girls and Boys*, ACMA, Canberra.
- ACMA, 2008e. *Top Six Trends in Communications and Media Technologies, Applications and Services – Possible Implications*, ACMA, Canberra.
- ACMA, 2007. *Media and Communications in Australian Families 2007*, ACMA, Canberra.
- Australian Council of Trade Unions (ACTU), 2009. *Fibre to the Future*, ACTU, Canberra
- Better Regulation Executive & National Consumer Council, 2007. *Warning: Too Much Information Can Harm: An Interim Report by the Better Regulation Executive and National Consumer Council on Maximising the Positive Impact of Regulated Information for Consumers and Markets*, NCC, Canberra.
- Braue, D., 2009. 'Why the VHA Merger will Boost Competition', *ZDNet Australia – Full Duplex Blog*. Available at <<http://www.zdnet.com.au/blogs/fullduplex/soa/Why-the-VHA-merger-will-boost-competition/0,139033349,339295806,00.htm>>. Accessed 27 May 2009.
- Budde, P., 2009a. *Big-think Strategies – Open Access*, Paul Budde Communication Pty Ltd, Sydney.
- Budde, P., 2009b. Submission to the Government's Paper on the Future Directions of the Digital Economy: Strategies for the Digital Economy.
- Ewing, S., Thomas, J. & Schiessl, J., 2008. *CCi Digital Future Report: The Internet in Australia*, Swinburne University of Technology, Melbourne.
- Central Land Council (CLC) & Tangentyere Council, 2007. *Ingerreenhe Antirrkeweme: Mobile Phone Use Among Low Income Aboriginal People, A Central Australian Snapshot 2007*, Central Land Council and Tangentyere Council, Darwin.
- CLC, 2007. The Central Land Council's submission to the Backing Indigenous Ability Program (BIA).
- Choice, 2008a. Anti-Counterfeiting Trade Agreement. Available at: <<http://www.choice.com.au/viewArticle.aspx?id=106450&catId=100387&tid=100011&p=1&title=Anti-Counterfeiting+Trade+Agreement>>. Accessed 19 April 2009.
- Choice, 2008b. *Good Practice in Consumer Protection Enforcement: A Review of 12 Australian Regulators*, Choice, Sydney.
- Choice, 2009. *The Future of Broadband*. Available at <<http://www.choice.com.au/viewArticle.aspx?id=105832&catId=100387&tid=100008&p=1&title=The+future+of+broadband>>. Accessed 27 May 2009.
- Clarke, R., 2006. 'What's Privacy?' *Roger Clarke's Web Site*. Available at: <<http://www.rogerclarke.com/DV/Privacy.html>>. Accessed 27 May 2009.
- Clarke, R., 2008. 'Can Mobile Payments be Secure Enough?' *Roger Clarke's Web Site*. Available at <<http://www.rogerclarke.com/EC/MPS-080501.html>>. Accessed 27 May 2009.
- CNN.com, 2009. 'Scientists Warn of Twitter Dangers', *CNN.com*. Available at <<http://www.cnn.com/2009/TECH/ptech/04/14/twitter.study/index.html>>. Accessed 27 May 2009.
- Communications Consumer Panel, 2009. *No One Should Miss Out: Consumers Say What They Want from the Digital Future*, Communications Consumer Panel, Sydney.
- Conroy, S., 2009. Speech to CommsDay Summit. March 2009. DBCDE, Canberra.
- Consumer Focus, 2009. Response to Digital Britain Interim Report.
- Consumers' Telecommunications Network (CTN), 2009a. 'Mobile Premium Service Code Provides no Safety Net', Press Release.
- CTN, 2009b. Online Consultation Mechanisms Discussion Paper.
- CTN, 2007a. Australian Charter of Communications Rights (Draft).
- CTN, 2007b. *Surfing on Thin Ice: Consumers and Malware, Adware, Spam and Phishing*, CTN, Sydney.

- Cubby, B., 2009. 'Toxic Australian E-waste Dumped on China', *Sydney Morning Herald*. Available at <<http://www.smh.com.au/environment/toxic-australian-ewaste-dumped-on-china-20090521-bh6f.html>>. Accessed 27 May 2009.
- Dell, P., Kwong, C. & Liu, Y., 2008. 'Some Reflections on IPv6 Adoption in Australia', *info* 10(3), pp. 3–9.
- Department of the Environment, Water, Heritage and the Arts (DEWHA), 2009. *A National Waste Policy: Managing Waste to 2020*, DEWHA, Canberra.
- Digital Economy Industry Working Group (DEIWG), 2009. *The National Broadband Network – Critical Considerations*, DEIWG Discussion Paper.
- Fitzgerald, B. & Atkinson, B., 2008. 'Copyright: The Middle Way, *Creative Economy*'. Available at <http://www.creative.org.au/webboard/results.chtml?filename_num=235546>. Accessed 27 May 2009.
- Foster, R. & Kiedrowski, T., 2006. 'Overview', In E. Richards, R. Foster & T. Kiedrowski (eds), *Communications in the Next Decade: A Collection of Essays Prepared for the UK Office of Communications*, Ofcom, London.
- Galexia, 2008. *Consumer Protection in the Communications Industry: Moving to Best Practice*, Choice, Sydney.
- George, M. & Lennard, L., 2007. *Ease of Use Issues with Domestic Electronic Communications Equipment*, Ofcom, London.
- Goggin, G. & Spurgeon, C., 2005. 'Mobile Message Services and Communications Policy', *Prometheus: Journal of Issues in Technological Change, Innovation, Information Economics, Communication and Science Policy* 23(2), pp. 181–93.
- Hollier, S., 2009. *Accessibility Features in Windows and Web Browsers*, Australian Seniors Computer Clubs Association (ASCCA), Sydney.
- Horrigan, J. & Jones, S., 2008. *When Technology Fails*, Pew Internet and American Life Project, Washington, DC.
- International Energy Agency (IEA), 2009. 'IEA Expects Energy Use by New Electronic Devices to Triple by 2030 but Sees Considerable Room for More Efficiency'. Available at <http://www.iea.org/Textbase/press/pressdetail.asp?PRESS_REL_ID=284>. Accessed 27 May 2009.
- Internet Society, 2008. *Internet Society Discussion Paper: Preserving the User Centric Internet*, Internet Society, Reston, VA.
- Kelso, R., 2009. *A User's Guide to the National Broadband Network*, forthcoming.
- Kelso, R. (forthcoming) 'Moving the Debate from Open Access to Network Neutrality: US lessons for Australia', *Telecommunications Journal of Australia*.
- Kenyon, A., 2007. 'Changing Channels: Media Studies, Copyright Law and Communications Policy'. In *TV Futures: Digital Television Policy in Australia*, Melbourne University Press, Melbourne.
- Kenyon, A. & Richardson, M., 2006. 'New Dimensions in Privacy: Communications Technologies, Media Practices, and Law', in *New Dimensions in Privacy Law*, Cambridge University Press, Melbourne.
- Kidman, A., 2009. 'SCAPEGOAT: iiNet sued over BitTorrent piracy', *APC*. Available at <http://apcmag.com/scapegoat_iinet_sued_over_bittorrent_piracy.htm>. Accessed 27 May 2009.
- Lally, E., Ang, I. & Rowe, D., 2008, *The Telecommunications Consumer-Service Provider Interface*, Centre for Cultural Research, University of Western Sydney, Sydney.
- Lindsay, D., Rodrick, S. & de Zwart, M., 2008. 'Regulating Internet and Convergent Mobile Content', *Telecommunications Journal of Australia*, 58(2/3), pp. 1–29.

- Mayo, E. & Cullum, P., 2006. 'The Consumer Agenda on Regulation', in E. Richards, R. Foster & T. Kiedrowski (eds), *Communications in the Next Decade: A Collection of Essays Prepared for the UK Office of Communications*, Ofcom, London.
- Morsillo, R., 2008a. 'Indigenous Culture and Communications', *Telecommunications Journal of Australia*, 58(1), pp. 76–85.
- Morsillo, R., 2008b. 'Transforming Consumer Representation in Australian Communications', paper presented to Communication Policy and Research Forum.
- Neiger, D., 2009. 'AFACT v iiNet: The Case that Could Shut Down the Internet', *APC*. Available at <http://apcmag.com/afact_v_iinet_the_case_that_could_shut_down_the_Internet.htm>. Accessed 27 May 2009.
- OECD, 2007a. *At a Crossroads: 'Personhood' and Digital Identity in the Information Society*, OECD, Paris.
- OECD, 2007b. *ICTs and Gender*, OECD, Paris.
- OECD, 2007c. *Measuring Impact of ICTs Using Official Statistics*, OECD, Paris.
- OECD, 2008a. *Information Technology Outlook 2008*, OECD, Paris.
- OECD, 2008b. *OECD Policy Guidance for Addressing Consumer Protection and Empowerment Issues in Mobile Commerce*, OECD, Paris.
- OECD, 2008c. *OECD Policy Guidelines for Protecting and Empowering Consumers in Communications Services*, OECD, Paris.
- OECD, 2009a. *Computer Viruses and Other Malicious Software*, OECD, Paris.
- OECD, 2009b. *Online Identity Theft*, OECD, Paris.
- OECD, 2009c. *Promoting Consumer Education: Trends, Policies and Good Practices*, OECD, Paris.
- Ofcom, 2008. *The Communications Market 2008*, Ofcom, London.
- Ofcom, 2009. *Report of the Digital Britain Media Literacy Working Group*, Ofcom, London.
- Penman, R. & Turnbull, S., 2007. *Media Literacy: Concepts, Research and Regulatory Issues*, ACMA, Canberra.
- Productivity Commission, 2008. *Review of Australia's Consumer Policy Framework: Volume 2*, Commonwealth Government, Canberra.
- Quitney, J. & Rainie, L., 2008. *The Future of the Internet III*, Pew Internet and American Life Project, Washington, DC.
- Regional Telecommunications Independent Review Committee (RTIRC), 2008. *Framework for the Future: Regional Telecommunications Independent Review Committee Report 2008*, Commonwealth of Australia, Canberra.
- Samuel, G., 2009. 'Making Phones Fair: Australian Telecommunications and Poor Consumer Practice', speech to ATUG Annual Conference.
- TEDICORE, 2007. TEDICORE Submission to RTIRC Framework for the Future 2007.
- TIO (Telecommunications Industry Ombudsman), 2009. Submission to An Australian Consumer Law: Fair Markets – Confident Consumers (A Discussion Paper).
- TIO 2008. *2008 Annual Report*.
- Trans Atlantic Consumer Dialogue, 2008. *Charter of Consumer Rights in the Digital World*.
- United Nations, 1948. *The Universal Declaration of Human Rights* (1948). Available at <<http://www.un.org/en/documents/udhr>>. Accessed 27 May 2009.

3.12. Appendixes

Appendix 3.1: A preliminary list of groups working around consumer issues in telecommunications and mobiles

AUSTRALIA

Consumer groups (all issues)

Choice

Australian Telecommunication Users Group (ATUG)

Internet Society of Australia (ISOC AU)

Telecommunications and Disability Consumer Representation (TEDICORE)

Australian government

Minister for Broadband, Communications & the Digital Economy (DBCDE)

Australian Communications and Media Authority (ACMA)

Australian Competition and Consumer Commission (ACCC)

State Fair Trading

Office of the Minister for Consumer Affairs

Attorney-General's Department (AG)

Australian Government Information Management Office (AGIMO)

Ministerial Council on Consumer Affairs (MCCA)

SCOCA Standing Committee of Officials of Consumer Affairs

Productivity Commission (PC)

Council of Australian Governments (COAG)

Commonwealth Consumer Affairs Advisory Council (CCAAC)

National organisations (all issues)

Telecommunications Industry Ombudsman (TIO)

Telephone Information Services Standards Council (TISSC)

Communications Alliance

Standards Australia

Australian Council of Trade Unions (ACTU)

Communications Law Centre

ACMA Consumer Consultative Forum

Industry groups (all issues)

Internet Industry Association

Digital Economy Industry Working Groups

Australian Mobile Telecommunications Association

Research groups (all issues)

Communications Policy and Research Forum

University centres

Inclusion and integration

Australian Human Rights Commission

Central Land Council

Centre for Appropriate Technology

Consumers Health Forum

Australian Radiation Protection and Nuclear

Safety Agency (ARPANSA)

Australian Institute of Aboriginal and Islander Studies (AIATSIS)
Strelow Centre
State and Territory libraries
Australian Council of Social Services (ACOSS)
PY Media

Affordability

Australian Securities and Investments Commission (ASIC)
Low Income Measures Advisory Committee (LIMAC)

Accessibility, useability

Department of Families, Housing, Community Services and Indigenous Affairs (FaHCSIA)
Media Access Australia
Australian Service for Knowledge on Open Source Software (ASK-OSS)
OLPC Friends

Privacy and security

Cyberspace Law Centre
Australian Privacy Foundation
Office of the Privacy Commissioner
Australasian Consumer Fraud Taskforce
Department of Health and Ageing

Information provision and education

National Education and Information Advisory Taskforce (NEIAT)
Private services: Phone Choice, Broadband Choice/Whirlpool

Content

Electronic Frontiers Australia
Australian Digital Alliance
Australian Library and Information Association
Department of Foreign Affairs and Trade
Australian Federation Against Copyright Theft

Environment

Department of the Environment, Water, Heritage and the Arts
Department of Climate Change
ACS Green IT Special Interest Group (SIG)
Smart Grid Australia
Australian Conservation Foundation
Greenpeace Australia
Consumer Electrical Supply Association
Environment Protection and Heritage Council
Electronics companies

INTERNATIONAL

Consumer groups (all issues)

Consumer Focus
Communications Consumer Panel (Ofcom)
Communications Consumer Forum
European Consumers' Organisation (BEUC)
Public Interest Advocacy Centre (Canada)
Transatlantic Consumer Dialogue
Consumers International

International governance and policy

The Internet Society (ISOC)
The Internet Governance Forum (IGF)
Internet Corporation for Assigned
Names and Numbers (ICANN)
Generic Names Supporting Organization (GNSO)
International Telecommunication Union (ITU)
International Organization for Standardization (ISO)
Organisation for Economic Co-operation and Development (OECD)
IEEE
Internet Engineering Task Force (IETF)
APEC Telecommunications and
Information Working Group (TEL)
Asia-Pacific Telecommunity (APT)

Industry groups

Mobile Marketing Association

Access

Open Society Institute
Open the Future

Accessibility, useability

W3C

Privacy and security

International Consumer Protection and Enforcement Network (ICPEN)
[econsumer.gov]
Electronic Privacy Information Centre
Privacy International
Data Portability Project
International Association for Impact Assessment (IAIA)
Asia Pacific Privacy Authorities (APPA)

Information provision and education

American Centre for Children and Media
Association for Media Literacy
UN Alliance of Civilizations
UNESCO

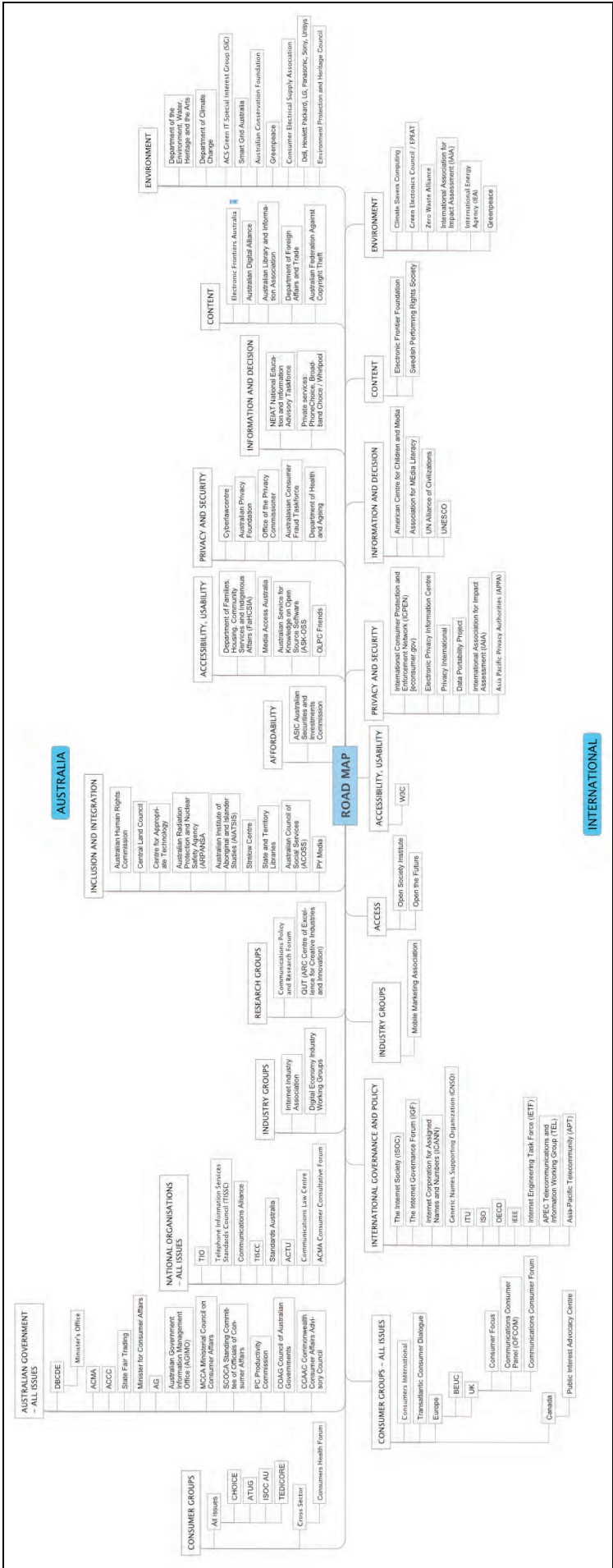
Content

Electronic Frontier Foundation
Swedish Performing Rights Society

Environment

Climate Savers Computing
Green Electronics Council/EPEAT
Zero Waste Alliance
International Association for
Impact Assessment (IAIA)
International Energy
Agency (IEA)
Greenpeace

Appendix 3.2: A mock representation of a road map tool ACCAN may develop to assist in identifying stakeholders and partnerships



4. INTERNET CASE STUDY

Sal Humphreys

The issues facing consumers on the Internet range across a number of areas and are associated with both an ongoing set of issues in common with other communications environments and a set of new, emergent issues arising from the specific characteristics of the Internet. This case study first considers the characteristics of the Internet and its use that give rise to the emergent issues, generally in the area of the newly forming social environments such as social networking sites (e.g. Facebook and MySpace) and online multiplayer games, and then briefly examines seven areas where attention could be focused. Finally, it canvasses existing consumer organisations feeding into these areas. Where appropriate, the case study suggests possibilities for new models of regulation and consumer protection that might arise from the structures of the emergent Internet culture.

In the process of exploring these issues, the underlying assumption of this study is that we are moving into a space where communications and content delivery areas are converging, and where consumers are inhabiting a more and more participatory role in media use. This implies that the policy silos which have dealt with broadcast and content regulation, and with communications services regulation will necessarily need to be reshaped into something different – something that addresses a transactional space where content and communication are exchanged by professionals, industries, amateurs and businesses across many different platforms. The institutional norms that have governed communications spaces and content delivery spaces are no longer adequate to the task before them. In the Internet environment, participation and transaction are the key driving concepts.

4.1. Convergence and the productive consumer

Users are creators

The Internet represents the convergence not only of technological devices, but of a number of social roles, as consumers increasingly take on the role of producers. Characterising the users of the Internet as consumers is in some ways a misnomer. One of the most important things about the Internet is the way in which it enables people to actively participate in, and contribute to, cultural production (Jenkins 2006). While users of the Internet do consume content and services provided by others, they also create their own content and publish it, and engage in transactions of both a social and financial nature. The enabling of these activities has been positive and enriching, but it has also generated new risks, new forms of exploitation and new challenges for old institutions that have until now organised and regulated our media and communications.

A person who creates a profile on a social networking site like Facebook or MySpace is a consumer in the sense that they are users of a service provided by the platform owner, under particular conditions. But they are also a producer, as they go about uploading their own content – photos, written text, videos and so on. They also engage with the content of their friends and make comments, add their content to their friends' sites, and so on. In this way, they engage not just with the service provided by the platform, but with the content created by other users. Furthermore, as they engage in the to and fro of conversation with those friends, they are creating not just persistent content in the form of pictures and written text, but ephemeral content in the form of social relations and

networks. It is the social networks that are core to the success of a platform (Jarrett 2003) – the reason a person will return to the site over and over is not just because of the functionality or content provided by the platform, but because of the content provided by other users and the social relationships they are conducting through the platform. In this way, our social relationships become very economically valuable to the platform owners (Humphreys 2005). The users of social networking sites also produce data about themselves, and this is the other source of economic value for the platform owners as this information is often sold to advertisers (Andrejevic 2007). The ways in which personal data is mined and used on these sites will require increasing attention.

Users are publishers

The importance of the Internet as a publication medium cannot be under-estimated. Millions of people now have access to the means of producing content, distributing content and reproducing content, and this has enormous implications for the institutions of copyright and intellectual property more generally, as well as for the classification and regulation of content. That people can publish their creative work and can be co-creative – can collaborate in the production of cultural works – is surely a net gain for society. That we will need new institutions to articulate the relationship between cultural production on this scale, governance and commerce is inevitable.

Users create data

Our conversations with each other in these new media leave persistent traces, or data, that can be captured, mined and shared, and this also requires new responses from us.

While it is not an entirely new concept, the fact that our social interactions are often occurring within proprietary spaces online, where we are subject to private contract laws, is an area that will be of increasing importance as significant parts of our cultural and social lives shift to online environments. The substance of those contracts that we all accede to in order to access our friends and families through proprietary platforms may be of increasing concern (Taylor 2002). Our social and cultural worlds are becoming subject to the governance structures of private corporations. This represents a further convergence, whereby our role as consumers has converged with our role as citizens. Our participation in this new form of public life, in its myriad manifestations, is at times subject to the constraints of private business, although the online space may resemble or be considered a quasi-public space.

Even those users of the Internet who never upload content or contribute to ‘intercreative’ activities are producers of data. People leave electronic data traces of themselves (Simon 2006) as they interact with the Internet in its various forms, even if they are just going from site to site in search of information, and those traces are a source of economic value, as well as risk. Data mining, together with the information it produces, presents us with challenges in the areas of privacy and security in ways that are new and require new models of response.

Users need information

Perhaps one of the biggest challenges is to ensure we have an informed community of Internet users who understand both the risks and the benefits of online participation. To some extent, this means generating a heightened awareness in individuals through education, and to some extent it means putting in place structures that allow consumers to assess those risks. Thus it is not enough to try to convince consumers to read electronic click-through contracts before they click ‘I Agree’. Most of us don’t read them because they are unreadable to all but a few highly trained legal people. There are areas where advocacy

on behalf of consumers is required in order to ensure that they can access the kind of information they need. Beyond this, there are areas such as data mining where the information about what happens to data is not available at all. The loss of control of personal data online has reached the level where people advocate that we give up any notion of privacy.⁹ But the informed debate about this has not been had, and the loss is neither inevitable nor irreversible.

At an even more submerged level is a debate about the control of domain names, and the fight to maintain net neutrality (Mueller 2007) – issues that seem far removed from the ordinary consumer's concerns and yet affect the structures through which consumers can participate in networked culture.

In the following sections, the implications of these convergences for 'consumers' will be explored in terms of the specific areas of:

- copyright and intellectual property;
- privacy;
- trust and risk management;
- contracts;
- social and cultural capital access and rights;
- content regulation;
- cross-jurisdictional issues.

4.2. Copyright and intellectual property

Digital networks change the production cycle

Intellectual property, and more specifically copyright, has been used as an institutional means of organising rights around the publication of work for several centuries now, but the cycle of production for which this particular set of laws was created has been very much changed by the Internet and its users. The institution is straining to keep up with the practices of users. Thus we see the widespread behaviour of 12-year-olds criminalised as the modes of reproduction and distribution change. The ability to produce perfect copies of works in digital formats at almost no cost, and the availability of easy distribution channels, has completely undermined the older modes of production, reproduction and distribution. Analogue media such as books and television generally took a form that was hard to produce, often difficult to reproduce and required physical distribution networks that were even harder to access. With the lowered barriers to publication, the relative ease of use of reproduction technologies and the Internet as a conduit for distribution, there are no longer the bottlenecks in the publication process relied upon by copyright law to actually function. In the following sections we will focus not on the issues of reproduction and distribution, which have been argued about for 10 years already (see, for instance, Benkler 2003a, 2003b; Berkman Centre for Internet and Society 2004; Bowrey & Rimmer 2002; Boyle 1997, 2002; Drahos & Braithwaite 2002; Frow 2000; Gartner & Berkman Centre for Internet and Society 2003; Hugenholtz 1999a, 1999b; Lessig 1999, 2001; Vaidhyathan 2004), but on the more emergent and unsettled issues that co-production or user-generated content generate for the copyright regime. A small final section will look

⁹ For instance, in 1999 the CEO of Sun Microsystems, a major corporate producer of database software and online software technologies, suggested that consumers 'have zero privacy anyway' and they should 'get over it': <<http://www.wired.com/politics/law/news/1999/01/17538>>.

briefly at digital rights management and technical protection measures which are of concern due to their implications for fair use provisions in copyright.

Ownership of co-created content

In many online environments, we increasingly see that there are many contributors to the production of content. In the example of social networking sites (SNSs) above, we saw that users produce much of the content on the platform. In online environments such as computer games, we can see a similar phenomenon, where players often contribute time, labour and intellect to the creation of artwork, code and gameplay for a game (Banks 2007). While the content created by the game publisher may be extensive, and it is not our intention to belittle the extent of their investment in the creation of a game, the participation and co-creation of content by players is often much more than a peripheral part of the game (Herz 2002; Pearce 2002). In some notable cases, the game may actually rely on the players for almost all the artwork. Electronic Arts' latest game *Spore* (from development studio Maxis) is a platform that provides players with a toolkit to create their own in-game creatures, which not only populate that player's game world, but are shared over the Internet and used to populate other players' game worlds as well. Thus we see a level of co-creative activity being employed with great success into the production of a game. This kind of creative activity on the part of games players is not new, but the struggle for *control* of the content made and used by players is ongoing and by no means settled (Banks 2009). Many games have extensive online communities that create modifications for games either with or without the blessing of the publisher (Postigo 2008).

The crisis of expertise and the struggle for control

In a broader sense, this represents a 'crisis of expertise', where we have amateurs and professionals creating in the same environment, and to some extent in competition with each other. Players may be creating from any number of non-monetary motivations, including a passion for the game, the desire to make it better, social standing in their game community, as part of a gifting economy,¹⁰ and so on. Particularly when this is the case, they often cannot see the rationale behind publishers who try to shut them down for breach of copyright and for illegal use of intellectual property (Postigo 2008). The players often hold that they should be able to modify material if it is not for commercial gain. There are two main responses to user-generated content from publishers: to embrace user productivity and harness it into the production cycle, as is the case with *Spore*; or to reject it in an attempt to maintain control over copyrighted or trademarked material. Even when they take the former approach, most will not grant ownership rights to players for their creations.

The virtual world *Second Life* is an interesting example of a platform provider that allows its users to own the intellectual property in their creations. What has become problematic in *Second Life* is the terms of use for the platform, in which the publishers still claim an overarching right to exclude users for arbitrary reasons and without a transparent or accountable structure to ensure fairness for the users. Thus, while the user may hold intellectual property in their own creations within the virtual world, and be able to sell such creations for real money, they may have their access to those creations arbitrarily taken from them because of the nature of the contractual agreements for the platform (*Bragg v Linden*).

¹⁰ See, for instance, Benkler's (2006) analysis of motivations for participation in non-monetary economies.

Beyond the world of digital games, the copyright struggle is also played out on many fan sites (Hills 2002; Jenkins 1992), where people have creatively engaged with copyrighted cultural products and generated their own derivative works from them, often not for commercial gain. People have always done this; this is how culture proceeds – by building on work that has gone before us – but the Internet has created a massive publishing and distribution network that alters the impact and significance of such activities.

Amateurs as publishers negotiating complex law

Before the advent of the Internet, people who wanted to publish work were for the most part unable to do so unless they went through the gatekeeping organisations of publishing firms (across a variety of media forms). One aspect of this process was that issues pertaining to copyright and intellectual property were often dealt with by in-house legal teams. Authors (in whatever medium) could also call upon their various professional organisations to advise them about contracts and rights. There were conventions and institutions that existed to deal with these matters.

The Internet has made it possible for literally millions of amateurs to become publishers of content. Almost none of them is trained in copyright law. Most of them do not think of themselves as professionals and have little sense of access to professional advocacy bodies. And yet all of them are operating deep within the territory of a set of complex, convoluted and ultimately incomprehensible laws, across jurisdictions, and across media and platforms. There are no specialists to advise them and there are often no clear ways for them to determine whether what they are publishing is legal or not, or what their rights in their work might be.¹¹ The need for simplified systems to manage rights in these environments is urgent. Creative Commons licensing¹² is one attempt to address some of these issues, but it is ultimately not enough to deal with them all.

Reproduction and distribution issues – fair dealing erosions, DRM and TPMs

One response to the ease of distribution and reproduction of copyrighted work from the consolidated media corporations that control much of the copyrighted work of our culture has been to introduce Technological Protection Measures (TPMs) or Digital Rights Management (DRM) systems that code into the digital work a set of constraints and restrictions. Generally these will prevent a work from being copied or distributed through hard coding into the product that is bought by the consumer. It becomes very difficult indeed to sue the work for legitimate purposes under the fair dealing provisions of the law. Users are also routinely contracting out of the statutory fair dealing exceptions to copyright. Copyright has always represented a balancing between the rights of authors to recompense for their work and the larger public good that results from having a public sphere with material that is available for citizens to access¹³ and draw upon in their own creative endeavours. Copyright was never intended as solely a system of individual rights for authors. It was always a system that sought to retain the public domain as a collective, social good. As such, there have always been time limits on the term of copyright on a particular work, and there have always been exceptions that allow the use of a work for such things as educational purposes, critique, parody and the like.

¹¹ See Humphreys (2008) for an analysis of users' experiences trying to negotiate intellectual property and copyright law on an online social networking site for knitters.

¹² See <<http://www.creativecommons.org>> for information on this set of licences.

¹³ See Bettig (1992) for a discussion on the historical development of copyright law.

When TPMS and DRMs are placed in a blanket fashion on copyrighted works, there is often no way for that work to be used for fair use purposes, and we thus have an erosion of what has been an integral part of the principles of copyright. TPMS can also prevent users who have legitimately bought a work to copy it from one of their devices to another – from computer to MP3 player for instance, or for a back-up copy in the case of device failure.

The issue of commercial-scale piracy is one that certainly needs to be addressed. However, the approaches taken by such bodies in the United States as the Record Industry Association of America (RIAA) and the Motion Picture Association of America (MPAA) in pursuing individual users who have copied work on a small scale for personal use – and which has the effect of criminalising a large part of the population who, like it or not, habitually do this – is perhaps an over-reaction. Large-scale commercially driven piracy operations are arguably not on a par with individual non-commercial copying, and distinctions may need to be made around this. It is possible that scale is not only what creates the ‘problem’, but also the measure through which responses should be calibrated.

4.3. Privacy

The constant productive activity of users of the Internet – be they mere web surfers or shoppers or active uploaders of content – generates a massive amount of data. The control of that data is what is at stake when we consider issues of privacy online. The Internet was not built to be secure but rather to be open. That openness comes with a certain vulnerability that must be addressed in balance with the openness that is necessary for the functioning of the Internet (see Internet Governance Forum 2008, p. 6).

In environments such as social networking sites, the privacy settings are not always easy to understand, and it is not always clear who exactly will have access to information about a user when they choose particular settings. People often post information about themselves thinking access to that information will be restricted to a particular context, when in reality it may be spread across many different domains through a networked process of which the user is unaware (Dwyer & Hitz 2008). Privacy is about control of personal data, but also involves awareness and contextual factors, and these three areas all require attention and development if we are to achieve acceptable levels of privacy. However, it must also be understood that people’s conception of privacy changes over time, and we need to be aware that there is a certain drive to publicity that is now in play alongside notions of privacy and a person’s right ‘to be left alone’ (Fitzgerald & Fitzgerald 2007). There is no quick technological fix for privacy issues, as they are both technological and social. Technological affordances don’t determine the use that is made of the technology (Livingstone 2008, p. 403). Similarly, the legal measures instituted will only be effective up to a point if those legal measures are not in step with the social practices of users (Grimmelmann 2009).

Collection of data

Data collection from individuals can be carried out either through voluntary or involuntary processes. There are many places where people will offer information about themselves, including personal data such as name, address, phone number, email and other information relating to tastes and habits in order to register on a site or in order to make a financial transaction (ALRC 2008). In some cases, this may be carried out under secure conditions, but in many cases people will divulge such information under circumstances where they lose control over what happens to that data. For some this is an informed decision, but for

many the understanding of what happens to that data, and who will have access to it, is not fully understood (Ofcom 2008).

For instance, although a user may be aware of the privacy settings available to them through a social networking site, through which they may block other users from randomly viewing their content, these settings do not necessarily prevent the owner of the site from sharing data stored in the back-end database of the site with their commercial partners, or with government organisations.

There is also data collected about a user where the user is *unaware* of that collection. These collections range from the reasonably benign installation of cookies that track a user's movement around a website, collecting metrics about time spent on different pages and saving preferences indicated by users. The site will then recognise the user if they return using the same computer or IP address. The result is convenient for the user. The data generated by the user on the site can be used to create a more efficient and commercially lucrative site, but can also be sold to commercial partners and advertisers.

However, the installation of tracking devices can escalate to more sinister purposes in the form of spyware, where the tracking of data expands beyond the site of installation and may be used to gather data about other websites visited, collect web browser histories containing information about all the other sites a user has visited, other programs in use on the computer including email, and IP addresses. The very popular online game *World of Warcraft*, played by over 10 million people worldwide, has a piece of software called *Warden*, which gathers data from the players' computers including web browser histories, IP address, information on all other programs running on the computer at the same time as the game,¹⁴ and so on. It is a piece of software that, according to the publishers of *World of Warcraft*, is necessary to find cheats and people who may be buying game items in illegal online auctions. Anyone who clicks through the electronic Terms of Use and End User Licence Agreement has agreed to the installation of this software. However, as discussed below in the section on contracts, most players will probably not have read the agreement and will have no idea that this is what they have agreed to.

Malware – programs that are installed with malicious intent to do harm to the user or their computer – is a source of concern, particularly regarding identity theft. People's awareness of the risk of such applications and how to protect themselves from unwanted surveillance could be improved. Malware will often do more than gather personal information. Such programs may damage or destroy a computer's hard drive, and result in great inconvenience and sometimes financial loss for the user.

Sharing of data

One of the more popular revenue models on the Internet involves selling advertising space on websites. Increasingly, this is done through targeted marketing where the ads are sent to users on the basis of profiles generated through the collection and aggregation of data about a user from many different sites. Data about people is accumulated over time into increasingly finely grained profiles that are then used for more and more specifically targeted marketing (Andrejevic 2007). This is a tradeoff that some people are prepared to make – they give their data away and receive more relevant ads. However, there are vulnerable people in our communities for whom targeted marketing may present difficulties, including gamblers targeted by online casinos, sick people targeted by pharmaceutical companies, and so on. Data aggregated through people's search engine

¹⁴ See the Terms of Use document section 17 at <<http://www.worldofwarcraft.com/legal/termsofuse.html>>.

histories, site memberships and email list postings may be used in profiling that results in targeted marketing that is detrimental to them. Other people face very real dangers if information about them is made public, and their loss of anonymity can have grave effects.

Some platform services like Facebook have their own privacy policies but will share user data with plug-in application developers if a user consents. Thus, when users install the small applications developed to plug into the platform by third party developers – of which there are many – they accede to sharing their data with that developer. The third-party developer may have its own privacy policies which do not align with Facebook's, however, and thus the user's data is subjected to different constraints. There have been discussions about the amount of data that the platform shares with these developers – whether they are given access to more than is necessary for the smooth running of their plug-in – and whether users are really aware that, in the process of installing the new software, they have compromised the privacy of their data.

Visibility and aggregation of data

The networked structure of the Internet can have unforeseen consequences for users. Privacy is as much a social construct as a technical or legal one (Lessig 2004). People will make assessments about what information they reveal based on the context into which they deliver that information. Thus we assume that we can make revelations in one place and that those revelations will remain within the context in which they are made and under the same conditions in which they are made. In reality, on the Internet data is gathered from many sites and aggregated in unexpected ways. Data mining and search engines will pull data from different areas of people's activities and throw them together, sometimes in unexpectedly public ways.

Facebook has provided a number of salient examples of this (Boyd 2008). The introduction of the 'newsfeed' on Facebook took many users by surprise as it published information they had thought was relatively private to a much larger audience. Facebook said they were only making information that was already public more efficiently available by taking people's 'status updates' and publishing those updates on a newsfeed that went out to all of their 'friends'. But many people felt their privacy had been invaded because they had made those revelations based on particular *perceptions* of privacy (that only a few of their closest friends would actually bother to visit their profile page and see the status update). This is true of many interactions and revelations on the Internet. People make them thinking they are hidden away in a relatively anonymous corner of the massive Internet. And yet a search engine can find them in seconds.

In a second example from Facebook, the site introduced the 'Beacon' shopping feed which published people's recent purchases at online stores into the newsfeed read by their friends. Facebook withdrew this particular feed after the uproar it caused. However, the interesting thing to note was that they were able to do this at all. Using information from their commercial partners they were able to aggregate and publish personal information gathered from different contexts to a wide network of people. Thus the network of the Internet allows information to be aggregated and made visible in ways that can be regarded as an intrusion on users' privacy. People are often not given the ability to opt in or out of such schemes that share their data and have little control over it once it has been generated.

Persistence of data and mutable privacy policies

One of the more troubling aspects of how data can be used unexpectedly arises from the fact that much of the data that is captured from users persists over time. Content that users may have contributed, for instance, to an email discussion list, a bulletin board or a social

networking site may persist for many years – well beyond its relevance to the current context into which it was made. This in itself should become an area of awareness for all users who contribute to online environments. However, of more concern is the fact that content contributed under particular privacy conditions may become more public over time, or be shared beyond the original audience, as the privacy policies of the site where it was contributed change over time. This is sometimes called function creep (O'Brien 2008, p. 31), and it refers to the ways in which data gathered for a particular purpose can be re-used beyond that initial purpose if it is not destroyed after use. If a site is sold, the new owners may have different policies. Or the commercial arrangements of owners may change as they enter into new partnerships. Thus it can be the case that information published under a particular set of understandings about privacy may, in the future, become subject to different privacy rules. In 2006 AOL published 19 million search queries for research purposes. Although the queries were supposedly stripped of identifying information, in fact researchers were able to data-match and cross reference to the extent of being able to identify people (Gasser & Hauserman 2007).

Data mining, pattern matching, and surveillance

The data that users create by interacting over the Internet – be it through a social interaction on a community site or through a financial transaction with an online commercial organisation – will leave trails of information in ways that were not formerly possible. In a cash-based society, we didn't leave a record of our purchases as we paid for goods and services in face-to-face transactions with providers. Gradually, we have shifted to transactions that leave a trail of information that can be stored and mined for other purposes, or bought and sold to other commercial organisations. Similarly, our social interactions have most often been ephemeral – our face-to-face conversations don't leave a trace that persists through time. But our online conversations through social networking sites, bulletin boards, email lists and instant messaging services may persist well beyond their initial time and purpose, and again be mined for information and bought and sold commercially.

One of the things that is problematic about this kind of surveillance is that decisions we make are decontextualised and aggregated with data from a variety of sources and may give rise to some very odd conclusions. If, for instance, a science student at a university conducted a search for information relating to his chemistry subject, and later bought a book from an online store such as Amazon.com on mobile phone mass protests in the Philippines for his girlfriend who was also a student, studying media and democracy movements, and then searched for cheap flights in order to visit his dying grandmother (who lives in Lebanon), this information could result in him being deemed a security risk by a government security agency. He has been searching for chemicals, buying books on mass protests and is visiting the Middle East. The contexts of his choices are stripped away (Baruh 2007).

People make different choices about privacy based on the different contexts in which they operate. Thus most Internet users will have a variety of strategies about privacy based on the particular uses they have for different sites (Lange 2007). Those strategies are often nullified by the data mining that goes on in the databases that collect information. The data mining of the massive amounts of data available is generally done through pattern recognition. The conclusions drawn from data available for aggregation across sites can be misleading. Having some kind of say in the ways in which data are first made available and second analysed, and then having some transparency in how conclusions are drawn from those analyses is an important part of the protection of our rights to privacy.

The OECD guidelines on the protection of privacy point out that:

Among the reasons for such widespread concern are the ubiquitous use of computers for the processing of personal data, vastly expanded possibilities of storing, comparing, linking, selecting and accessing personal data, and the combination of computers and telecommunications technology which may place personal data simultaneously at the disposal of thousands of users at geographically dispersed locations and enables the pooling of data and the creation of complex national and international data networks. (OECD n.d.)

Guidelines for government agencies that deal with our personal data are developing and evolving, but the constraints on dealing with the data generated online through commercial and non-commercial transactions of both a financial and social nature are less evolved.

The Australian Privacy Commission has recently conducted an extensive inquiry into privacy standards, and released its final report in August 2008 (ALRC 2008). The government response is forthcoming and it is expected to act firstly on a recommendation to implement Unified Privacy Principles. These principles are presented in the report as a model, but this model may not be implemented in this form. As it stands, the principles relate to:

- UPP 1. Anonymity and Pseudonymity
- UPP 2. Collection
- UPP 3. Notification
- UPP 4. Openness
- UPP 5. Use and Disclosure
- UPP 6. Direct Marketing (only applicable to organisations)
- UPP 7. Data Quality
- UPP 8. Data Security
- UPP 9. Access and Correction
- UPP 10. Identifiers (only applicable to organisations)
- UPP 11. Cross-border Data Flows

Further information on and elaboration of these principles can be found at the Australian Law Reform Commission's website at <http://www.austlii.edu.au/au/other/alrc/publications/reports/108/_4.html>.

4.4. Trust, risk management and transactions

Creating secure online transactional spaces has been the focus of many government and commercial organisations for some time now. The issue of trust is big, and there are many consumers who still perceive online spaces to be insecure and will not transact business online – perhaps with good cause. As a new medium of exchange, the online environment is still developing the conventions needed to establish the trustworthiness of sites, and there are still many new scams and risks that are evolving in time with the technologies.

In part, the role of consumer advocacy organisations in this field must be one of education and contributing to schemes designed to inform consumers of the risks involved in online environments. The development of standards and secure trust mechanisms over time will ease this problem, but there is a need to ensure that such mechanisms don't at the same time impose onerous invasions of privacy or restrictions on users' access to freedom of

expression. As with any regulatory mechanism, a balance must be sought between the public good and individual freedoms.

There are some areas where the problem of spam and phishing could be addressed. The registrars of domain names (appointed through ICANN)¹⁵ are supposed to identify those who seek to register a domain name, but often don't. The lack of transparency in the domain registering process as it is currently organised could be addressed through a restructuring of ICANN and its accountability measures. If more transparent processes were in place, the registering of most domain names from which spam emanates could be addressed. This is one area where there is room for consumer advocacy at the international level.

The issue of trustworthiness is also an area where it is possible to identify some emergent models that are based on user-generated ratings. The most popular online auction site, eBay, has instituted a system whereby users rate their experience of particular sellers. If a seller has low ratings due to poor performance (non-delivery of goods, slow delivery of goods, wrong goods delivered, and so on), then other users become reluctant to buy from them. This encourages sellers into better service and users can establish the degree of trustworthiness of the seller. There are problems with this system being 'gamed', and there are some scammers who perpetrate frauds and then disappear without much care for the ratings system, so it is not foolproof. Yet it is a mechanism that makes sense in the context of a multitude of sellers and a lack of any overriding industry codes or standards. User-generated ratings are also discussed below in the section on content regulation.

Identity theft

The Internet, email and other digital forms of information-sharing have all led to increased opportunities for scammers to develop ways of gaining access to personal information that can be used in identity fraud and theft. These can involve 'malware' mentioned above, hacking and various scams perpetrated through emails known as phishing, pharming, spear phishing, and so on. Each involves illegally obtaining information about someone through some kind of deceptive practice. In the case of malware and hacking, the user may not be aware of the fraud. In the case of email scams such as phishing, the scams rely on users being tricked into divulging information. There are a variety of schemes, education programs and information sites already in place that help to warn consumers about these traps – advising on how to protect computers from malware through using virus scans and firewalls, and how to recognise fraudulent emails.

4.5. Contracts

The issue of unfair contracts arises in many different contexts for consumers, and the Internet provides yet another environment where contractual agreements are in need of monitoring (Clapperton & Corones 2007). In keeping with the focus of this case study on issues that are emergent and related to the newly constituted environments such as multiplayer online games and social networking sites – community sites that often are constituted within proprietary platforms – this section focuses on some of the impacts of contracts that go beyond those commonly found in other contractual arrangements. Issues of informed consent are the subject of a further report by ACCAN and won't be delved into too deeply here.

¹⁵ See <<http://www.icann.org/en/about>> for information about how these registrars are appointed.

Click-through agreements

Many online environments use click-through agreements in order to create a contractual agreement with their users about the terms under which they engage with the site. In principle, this is a good idea – it makes the terms under which the service is offered explicit. In practice, as the terms are non-negotiable and as most agreements are written in dense legal language, most users don't actually read them, and the idea that clicking through such an agreement indicates informed consent is mostly a convenient myth (Clapperton 2009). Studies into the terms that most of these contracts offer show that they are almost uniformly one-sided, with the owners of the sites making claims well beyond what is necessary for the smooth functioning of their platform (Fairfield 2007).

The End User Licence Agreement (EULA) for one of the popular online multi-user game runs to four A4 pages, with a further 14 pages of a Terms of Use contract. A large part of these documents is written in legal language that is difficult to understand. Furthermore, some of the terms require the user to understand what the local laws that might pertain to a particular section are and whether local law would invalidate some of the terms. Such knowledge is well beyond the average game player. The idea that a 15-year-old in Australia who clicks through such agreements is giving informed consent is seriously misguided.

There are many aspects of unfair contracts that have been dealt with by consumer organisations over a long period of time, and not just with reference to electronic environments. Victoria has quite strong legislation pertaining to unfair contracts in its *Fair Trading Act* 1999 and the Commonwealth Productivity Commission is recommending legislation that is similar but not quite as strong. Issues to do with electronic click-through agreements are gradually and very slowly being addressed. The more emergent issues are dealt with in the next section.

4.6. Social and cultural capital: Access and rights

The increased social participation of people in online environments governed by contractual agreements gives rise to some issues that are much harder to address and yet will become increasingly important. When people participate in social networking sites, or play an online game as one of their major social pastimes, they are conducting some quite crucial parts of their social and cultural lives within proprietary spaces. Increasingly, participation in our culture requires us to participate in online media environments. If your entire peer network is communicating at least in part through an electronic environment of some description (as is the case with many younger people, and an increasing number of older people as well) the choice not to use that environment because you don't agree with the terms under which that environment may be run can result in exclusion from social networks. For some people, participation is necessary just to ensure that their reputation is not being unfairly attacked in their absence (Livingstone 2008).

We seem to be in a situation where we are forced to accept terms that we find onerous or unfair in order to maintain our inclusion in social and cultural networks. Online social sites have taken on some of the characteristics of quasi-publics. We could draw analogies with shopping malls or gated communities. The shift doesn't represent an entirely new set of conditions, but the scale on which this is occurring requires us to consider how much of our cultural and social lives should be subjected to the private law set up through contracts, and what the constraints on those contracts might need to be in order to ensure that we maintain a semblance of the rights we have in the public sphere where appropriate (Jankowich 2006).

The proprietors of online social environments maintain that their ownership of the platform gives them property rights that guarantee them the ability to control the space in any way they see fit (Herman, Coombe & Kaye 2006). But this reliance on notions of property as the sole source of control is one of the issues we will need to confront in the coming years (Suzor 2009). And this is one of the biggest shifts that we need to make from the old silos that currently organise our thinking about media. An online social environment is much more than a piece of intellectual property. It is much more than copyrightable code. It is an arena of social interaction where those interactions are not only important for social and cultural reasons but are also the source of much economic value (Banks & Humphreys 2008). As outlined in the first section of this case study, it is the social networks that keep people subscribing to online games over a long period of time. They maintain their subscriptions in order to access their online community inside a game. Social networks are what make websites ‘sticky’ – they are why people continue to participate in sites like Facebook. That attention of users over time is what Facebook is able to sell to advertisers. The electronic traces of the interactions between users are the source of data to be mined and sold to advertisers as well.

The right to exclude

Our social interactions have become more and more economically valuable to the publishers of online sites. And yet the terms under which we may participate in those sites are based on principles derived from property law. We may need to begin considering some alternative frameworks which outline the social obligations and rights of both publishers and consumers in these environments, and they may need to be based on more than the ownership of the platform. As the contributions of users are a source of economic and social value, they should not be erased from consideration, as they are through property law such as copyright; rather, they should be given some part in the negotiation of rights and obligations.

A key reason for concern is that most End User Licence Agreements and Terms of Use currently available to participants contain exclusionary terms that seem manifestly unjust (Fairfield 2007). Thus most of these contracts include terms such as the right of the publisher to exclude a user for ‘any or no reason’, and without notice. While the right to exclude may be a necessary part of managing an online community, and there are some very disruptive users who do indeed need to be excluded in order for a site to remain functional, the lack of any form of accountability for decisions to exclude, and the lack of any mechanism of appeal, are less acceptable. Should the proprietor be able to exploit the value of the social investments of users with no social obligation in return? Or should there be some duty of care, some obligation to treat the user fairly in return for that social investment which is being exploited by the publisher for economic gain? As mentioned above in the example of *Second Life*, users who have intellectual property they have created and which is a source of income for them may be denied access to that intellectual property if the proprietors decide to deny them access to the site. This has happened on at least one occasion, and the case is still making its way through the courts (see *Bragg v Linden Research*).

Arguments exist that locate the power of consumers in their ability to exit – their ability to choose a different product if they don’t like the current one – and that claim this ‘exit power’ is enough to constrain the ways in which producers or publishers will behave. However, the ‘exit power’ of the ‘consumer’ of a social networking site or an online game is a very constrained thing. Changing social networking sites or online games is not the same as changing the brand of jeans you wear. The investment of time, money and social effort into particular sites, and the building of social status and reputation within those sites, is not something that can easily be transferred between sites. The switching costs are

very high and act as a significant constraint on users' ability to exit. To be sure, some users exit en masse, and if a user can take their network of friends with them, there is less of a problem. However, an individual who is unhappy with the site governance strategies, or who is excluded from the site unfairly, may find they are excluded from their social network and that their ability to participate is unfairly constrained.

There is also what must be seen as a market failure to provide choice in contract terms. The click-through contracts that form the basis of participation are in fact almost uniform in the terms they offer and they represent the most extreme terms that a publisher thinks it may be able to impose. Thus a user may find the terms of one site onerous, but they will be hard pushed to find terms they *do* like, and that do represent a balanced set of rights and obligations.

To some extent, these must be considered risks that we all face in participating in any social environment. But the lack of access to administrative justice, along with the rewriting of our rights and obligations through the mechanisms of contract law, and the lack of choice, will grow increasingly important as this kind of cultural and social participation becomes ubiquitous.

Cultural policy in an era of fragmented 'audiences'

The Australian government has legislated on many occasions in the sphere of media to ensure that the population is catered to in ways that wouldn't be provided for in a purely market-based environment. Thus we have local content quotas, anti-siphoning laws, advertising laws, and so on. Broadly speaking, these are laws aimed at maintaining some kind of shared cultural understandings, sense of nationhood and shared values within the Australian population. Although mass media are not about to disappear and those goals may still be achieved through such policies, there is a need to think about cultural participation in the era of fragmented audiences. Issues of inclusion may require the government to turn its attention to those areas outlined above, but also to address the obvious shift to creative and generative activities of users as well. The goal of policy may have to be more directed at facilitating online participation where the Australian population is able to publish its own content, rather than being policy directed at *producing* content *for* the population to consume. The issues outlined above, in relation to matters of copyright, ownership, privacy and contracts, will need to be addressed as part of the shift to focus on facilitating user production.

Consumers and consumer rights organisations need to be alive to all these arenas, and to be participating in the establishment of conventions and legislation that enable users of the Internet to participate fully. On the Internet, consumers are no longer just consumers. They are users who both consume *and* produce, and who invest their time and social and cultural creativity into the online media environments. As such, participation, access and exclusion become the discourse through which the Internet can be understood.

Casting access as being more than about access to technology – as being a political and social mechanism as well – means we need more than an 'access to broadband infrastructure' policy, although that is obviously a good starting point. It is important to notice, though, how the social, cultural and political aspects of access play out. What are the policy mechanisms for ensuring disability access? How are the most socially marginalised enabled to participate actively in online cultural production? Where do the barriers lie?

4.7. Content regulation

Content regulation has always been a balancing act between informing people about what content they might expect from a particular media product, and restrictions or outright censorship for content that we, as a society, deem unacceptable. There will always be debate about where to draw the line, and this report doesn't seek to engage that debate. It should be noted that different consumer groups may have a wide range of positions in relation to the regulation of content on the Internet. It is not possible to entertain one position on this matter as being the single viewpoint from which consumer interests will be catered for.

There are, however, many generic issues that arise from content being shared across the networked environment of the Internet – challenges that come from the loss of control of distribution and the massive increase in the amount of content there is, as well as the ephemeral (socially interactive) nature of much of the content generated through social sites. With more conventional media, bottlenecks in production processes made it easier to apply classification regimes before the publication of material. Well-worn pathways of distribution made it easy to control dissemination of restricted content, and the limited amount of content published made it possible to implement reviewing processes.

Because these processes and conventions have been disrupted by the new structures and practices of the Internet and its users, new conventions need to be established in order to achieve a balanced set of protocols that take account of freedom of expression as well as community standards. The sheer scale of the enterprise is daunting, and requires a range of measures that can cater to the many ways in which people use the Internet, the diversity of cultural groups and community standards, the diversity of content delivery modes, and the contexts in which content is consumed or created – from the very public to the very private.

Regulating user-generated content

Perhaps one key shift that needs to take place in our understanding of the Internet is to conceptualise at least some of it as a social space which is generative and interactive. In online social environments, content is often made on the fly and people may encounter behaviour they didn't want to face. This is a risk we confront and manage in our everyday offline lives as well. In the offline world, we seek to protect ourselves through various behaviours and we have strategies to protect us when we are confronted by something we would rather not see. Sometimes people behave badly in our presence and sometimes they behave badly towards us. We have strategies for dealing with this. The point is that we cannot live in a risk-free society, and as such we learn to manage our risks. When the risks are extreme and damaging, then we call upon regulating bodies to intervene. When we are seeking to protect vulnerable people who cannot manage risk on their own (for instance, children), then we need to have regulatory strategies as well.

To some extent, the approach we have to offline risk is the approach we need to take with the Internet. There is no hope of regulating all content before it is published. Instead we need to try to develop specific Internet literacy and awareness of online risks, and help people develop skills in managing their risks. As the Byron review of children and technology suggests:

we need to move from a discussion about the media 'causing' harm to one which focuses on children and young people, what they bring to technology

and how we can use our understanding of how they develop to empower them to manage risks and make the digital world safer. (Byron 2008, p. 2)

We need to have government bodies providing tools to help lower our risks, and the Australian government has taken steps in this direction with a number of sites that give information and suggest strategies for managing risk.¹⁶ But the idea that government could ever implement a regime of content management and classification or censorship in the complex environment of the Internet without unwarranted impacts on the creative enterprises of many users, and without restricting what should be available to most of the population, is far-fetched. Blanket prohibitions tend not to work, and solutions that restrict access to certain users are likely to be more successful and to cater to the many times, places and contexts of consumption by the huge range of users of the Internet.

Australia currently has a co-regulation scheme which includes opt-in filter systems, industry self-regulation (embodied in an industry code of practice which the government monitors for compliance) and a reactive complaints-handling mechanism managed by ACMA. The current federal government is seeking to introduce a blanket filter system across Australian networks, but it remains to be seen whether this is either feasible or desirable. Implementing opt-in filters for people who wish to limit the kind of access their children have to the Internet is the current option which doesn't restrict the access of fully competent adults. Instead, the government is seeking to implement an opt-out system, which would require people to actively have filters removed from their service – a process many would regard as an invasion of privacy as they would need to be identified in order to access what has been deemed more adult material.

In the area of informed choice, which is the underlying basis of a ratings system, there are some emergent models for regulation from the Internet that are centred on user-generated ratings and information systems. Thus, on sites like eBay, sellers are rated over time by the people to whom they sell products. This gradually builds the reputation they need to establish their trustworthiness. While there are flaws in such systems that still need ironing out, it seems clear that the users of the Internet are themselves able to generate the kind of information that other users need in order to make informed decisions. What need to be developed further are conventions and standards that establish the trustworthiness of such systems. Ultimately, though, the feedback from thousands or hundreds of thousands of users on particular content such as games or website content could prove to be a more reliable test of community standards than of the views of the small body of people who currently work to rate content in more conventional media (Brand & Finn 2009). Just as various environments on the Internet harness the creative energy of users, as discussed in Section 4.1, so that participatory drive can be – and already has been – harnessed to other kinds of activities such as rating content. It will take time for this kind of system to evolve into being truly effective, but it could ultimately prove to be more efficient to tap into the 'collective intelligence' found on the net (Benkler 2006) than centralised government strategies. At the very least, a system that creates some model of co-regulation between users and government ratings agencies and industry could provide a workable solution.

There are also labelling schemes in place, such as the system produced by the Family Online Safety Institute (formerly the Internet Content Rating Association) – an international industry self-regulation body – which allows the publishers of content to self-label their content before publication, giving it descriptors that have been standardised and that are attached to the content through an RDF (Resource Description Framework)

¹⁶ See, for instance, the government site NetAlert at <<http://www.netalert.gov.au>>.

designed by the WC3 consortium that can be read by filtering software. This form of information dissemination helps to fulfil the need of users for information about content in order to make their own decisions about their engagement with it. Labelling and information that can be picked up by filters are only as effective as the labels and the compliance of the industry in applying them. There have to be other strategies as well. The use of user ratings and descriptors to either describe or supplement publisher descriptors of content could prove a useful tool in this particular area.

Whereas much classification of content with more conventional media has happened before publication, any kind of regulation that seeks to restrict content produced for the Internet has to be reactive – occurring after publication. Implementing a complaints-based mechanism of control has been the work of ACMA in Australia, and that organisation has been able to deal in some measure with sites that are published within the Australian jurisdiction. Dealing with sites hosted offshore is more complex, and there are some cross-jurisdictional arrangements in place with some countries to share information about illegal material (INHOPE) (Family Online Safety Institute 2008, p. 51).

With regard to the ephemeral content made by other users in real-time interactions with each other, in many of the more socially oriented online environments strong communities develop, and those communities create their own norms and ways of influencing behaviour – much as communities do offline. Obviously not all behaviour can be regulated through government intervention, and to some extent users will do their own regulating of one another through the setting of community standards within particular environments. Depending on the environment, there may also be some policing of behaviour by the customer service team of the platform publisher. Thus many online multiplayer games have a certain amount of behavioural control placed on them by publisher employees who work within the game. There is some talk that Internet Content Hosts will be required to take more responsibility for the monitoring of live content, but this would seem to be an onerous requirement with a level of surveillance that would breach the privacy of many users.

Regulating converged content

A source of confusion for users of the Internet is the different classifications and restrictions that are placed on similar content, depending on what platform it is being delivered on. The lack of platform-neutral policies creates uncertainty, and yet the issues are complex and require a complex response. Restrictions on content have often been based on determining where the content will be encountered and by whom. But content has become increasingly ‘mobile’ – able to be delivered across a range of platforms and into a range of environments. Converged content doesn’t fit within the silos that have previously dealt with classification. Thus online games are regulated by the OFLC (Office of Film and Literature Classification, now subsumed into the Attorney-General’s Department) as games, but also by ACMA as they are online media. Much Internet content is now also available on mobile platforms, with the mobile phone being the most obvious. As mobile phones can be used in very public arenas, the provision of X18+ and R18+ content has been restricted while the government works on resolving some of the issues involved. Content developed for television is often now available on the Internet. These convergences mean that content which was formerly dealt with through different medium-specific silos of regulation is now mobile across platforms, and any regulation of it needs to be able to reflect that mobility.

Currently in Australia, we have a system where various kinds of content are available in some states and not others, and available on one platform but not another. Thus it is

possible to access X 18+ rated videos in the ACT but not online from Australian-hosted sites. Content that is rated R 18+ in the movies is accessible to adults, but is refused classification if it is in a game. Video games are restricted in Australia to the MA 15+ rating and below, and everything else is refused classification. Why this should be so is not obvious in any coherent way, and many users circumvent the restriction by accessing and buying such games over the Internet.

The uncertainty around different platforms having different rules for content, and different jurisdictions having different rules, creates difficulties for content creators as well as consumers. In the era of user-generated content as mentioned in Section 5.2 on intellectual property and copyright, there are many people publishing and offering services online without much understanding of the legal environment in which they are operating.

Safe harbour rules for Internet Service Providers (ISPs) have also become slightly ambiguous with the introduction of the term 'Internet Content Hosts' into the parlance of legislation. As some ISPs occupy both roles at times, the liabilities for content and the responsibility for its take-down become confusing. Traditionally, telecommunications providers have been regulated on the basis of competition, while broadcast media have been regulated more heavily on the basis of content. Because the Internet represents a convergence of these two (and other) areas, the responsibilities and liabilities around content are undecided and there is still uncertainty in this area.

It is clear that the environment for this area of regulation is in a state of flux, and it is important that consumers argue for a flexible system of regulation which acknowledges the complexity of environments available and the different roles that 'consumers' occupy within them. The current government proposals to implement a broad-scale compulsory filter system (that is not transparent in its workings) for the entire nation is heavy handed and, according to some sources, both unworkable technically and likely to be expensive. The development of more nuanced systems in the future is necessary for the growth of a vibrant and innovative online culture. The Internet should not be mistaken for a monolithic media form. Different styles of regulations – ranging from self-regulation to industry and co-regulation to government regulation – will be appropriate in different Internet contexts. There is an increasingly big role that consumers can play in this process, and it is important that the contributions of consumers be recognised as valid and useful in this domain.

4.8. Global environments

There are many issues that arise from the cross-jurisdictional scope of the Internet. Users participate in environments that may be hosted in other jurisdictions, and they transact both socially and financially across jurisdictions. In practice, this means that there can be problems when a user buys goods or services from someone in another country and they are not delivered, or the quality of service is unacceptable.

There may be difficulties if that user wants to take action, in terms of identifying and locating the business they bought from – for instance, many online auction houses such as eBay provide a space for pretty much anyone to sell goods. A further problem may then develop as the consumer is in a different jurisdiction from the business, and it may be unclear whose law prevails. Will the transaction be subject to local law of the buyer or seller? Who bears the cost of travelling to the correct jurisdiction to take action? In many cases, transactions that fail are not large, and most users will find that it is an unreasonable cost to pursue an action to retrieve their goods or money.

Of course, many online businesses are seeking to build reputation and trustworthiness, and will have proper policies in place to deal with disputes that are not too onerous for the customer. However, there are many other small businesses that fail to do this. When offline transactions fail, consumers turn to regulators to enforce law. However, in online environments regulators often find themselves confronted with similar cross-jurisdictional issues to consumers – primarily that courts are very reluctant to enforce laws from another jurisdiction (Scott 2004).

Addressing these problems requires supranational norms and standard-setting, and the development of trans-national agreements through organisations like the EU, OECD, UN, and so on. This usually implies a shift to principles-based regulation that can be agreed upon across borders. Industry self-regulation may help in some areas. However, as this report has discussed, many participants in the Internet economy are small or micro-businesses, rather than businesses likely to belong to industry associations, and this ever-increasing dimension of the Internet economy is going to require some further regulatory innovation if it is to be addressed adequately.

A final point about global environments online lies in the cultural standards that differ between countries and the ways in which this may affect the social organisation of the Internet. One of the most positive and generative aspects of the Internet is the possibility for people to interact with others from around the globe. If there were to be a drive to regulate content on the basis of cultural standards that resulted in walls which blocked access to different countries, this would be a dampener on the creative and innovative possibilities that the Internet affords through these rich and diverse interactions.

4.9. Internet consumer organisations

There are a number of consumer organisations that advocate on behalf of consumer interests on the Internet. Most focus on a specific aspect, rather than on the whole raft of issues that have been outlined above. There are also numerous consumer organisations that represent a particular viewpoint or position in relation to an issue but which couldn't be said to speak for all consumers. A diversity of voices is exactly what the Internet enables, and this is a highly desirable state of affairs as long as one position isn't taken to represent the whole. Following is a list of some of these organisations, with text taken from their own sites to describe who they represent and what field of activity they are involved in.

Electronic Frontiers Australia (EFA)

<<http://www.efa.org.au>>

Electronic Frontiers Australia Inc. (EFA) is a non-profit national organisation representing Internet users concerned with online freedoms and rights. EFA was established in January 1994 and incorporated under the *Associations Incorporation Act (SA)* in May 1994.

EFA is independent of government and commerce and is funded by membership subscriptions and donations from individuals and organisations with an altruistic interest in promoting online civil liberties.

Our major objectives are to protect and promote the civil liberties of users and operators of computer based communications systems such as the Internet, to advocate the amendment of laws and regulations in Australia and elsewhere (both current and proposed) which restrict free speech and to educate the

community at large about the social, political, and civil liberties issues involved in the use of computer based communications systems.

EFA members and supporters come from all parts of Australia and from diverse backgrounds. They are people who recognise that preserving freedoms and rights always depends on the willingness of people to defend them and that combating the threats posed by the anti-civil libertarian forces, the radical right agenda and ill-informed reports in the media requires constant vigilance and support.

Australian Digital Alliance

<<http://www.digital.org.au>>

The ADA is a non-profit coalition of public and private sector interests formed to promote balanced copyright law and provide an effective voice for a public interest perspective in the copyright debate. ADA members include universities, schools, consumer groups, galleries, museums, IT companies, scientific and other research organisations, libraries and individuals.

Australian Privacy Foundation

<<http://www.privacy.org.au>>

The Australian Privacy Foundation is the primary association dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues which pose a threat to the freedom and privacy of Australians. The Foundation has led the fight to defend the right of individuals to control their personal information and to be free of excessive intrusions.

The Privacy Foundation plays a unique role as a non-government organisation active on a wide range of privacy issues. It works with consumer organisations, civil liberties councils, professional associations and other community groups on specific privacy issues. The Privacy Foundation is also a participant in Privacy International, the world-wide privacy protection network. Where possible, it cooperates with and supports official agencies, but it is entirely independent – and often critical – of the performance of agencies set up to protect our privacy.

The Privacy Foundation is an entirely voluntary organisation. It is involved in a wide range of privacy issues. The following are regarded as the matters of highest priority:

- ensuring that the Commonwealth Government's changes to privacy legislation to cover the private sector give Australians real privacy safeguards;
- contributing to the development of industry codes;
- highlighting privacy risks in emerging technologies including biometrics;
- participating in global efforts to make the Internet safe for personal privacy.

The Internet Society of Australia (ISOC-AU)

<<http://www.isoc-au.org.au>>

The Internet Society of Australia, ISOC-AU, was founded in 1996. It is a non-profit, user-focused organisation which promotes development of the Internet in Australia to benefit the whole community, including business, academic, professional and private Internet users.

ISOC-AU is committed to the positive evolution of the Internet. It is the Australian chapter of the worldwide Internet Society, ISOC – the parent body of the Internet Engineering Task Force: a large, open community of network designers, operators, vendors, and researchers which actually creates the protocols and standards that are fundamental to Internet operation.

ISOC-AU provides technically knowledgeable advice on Internet development and public policy. It offers an environment in which members may seek information, discuss issues and provide input into official policy submissions that the Society takes to industry and government on the members' behalf. Through parent body ISOC, members also take part in international Internet policy development.

ISOC-AU represents the interests of the users of the Internet. The Internet industry in Australia is required to be self-regulatory: to consult with and take into account the needs and concerns of all users, including individuals, vendors and business interests. ISOC-AU is widely respected as the provider of the informed end-user voice that is essential to this process. Our Organisational Members represent more than 40,000 Internet users at all levels of Internet industry, research and infrastructure.

Choice

<<http://www.choice.com.au>>

While Choice is not a specifically Internet-focused consumer organisation, it has covered many areas of Internet goods and services from infrastructure and services related to ISPs to online goods and services.

With over 200,000 subscribers to our information products, we are the largest consumer organisation in Australia. Our aim is to tackle the issues that really matter to consumers, arming them with the information to make confident choices and lobbying for change when consumers are getting a raw deal. Choice is fiercely independent: we do not receive ongoing funding from any commercial organisation. We earn the money to buy all the products we test and support our campaigns through the sale of our own products and services.

Choice is a representative on many national and state-based government committees, councils and independent bodies related to consumer rights and issues: from food regulation and labelling, health and financial services to telecommunications and digital technology, standards codes, ecologically sustainable development and the environment ... to name but a few. We monitor what's going on in the consumer's world and respond to (actually, we rely on) consumers letting us know what's up, or down, as the case may be. We make submissions to government inquiries into issues we see as important to the consumer, however marginal it might appear at first.

Internet Governance Forum

<<http://www.intgovforum.org/cms>>

This is an international body which advises the World Summit on the Information Society (WSIS), which is a United Nations-backed organisation. The IGF states the following about its purpose:

The mandate of the Forum is to:

- Discuss public policy issues related to key elements of Internet governance in order to foster the sustainability, robustness, security, stability and development of the Internet;
- Facilitate discourse between bodies dealing with different cross-cutting international public policies regarding the Internet and discuss issues that do not fall within the scope of any existing body;
- Interface with appropriate inter-governmental organizations and other institutions on matters under their purview;
- Facilitate the exchange of information and best practices, and in this regard make full use of the expertise of the academic, scientific and technical communities;
- Advise all stakeholders in proposing ways and means to accelerate the availability and affordability of the Internet in the developing world;
- Strengthen and enhance the engagement of stakeholders in existing and/or future Internet governance mechanisms, particularly those from developing countries;
- Identify emerging issues, bring them to the attention of the relevant bodies and the general public, and, where appropriate, make recommendations;
- Contribute to capacity building for Internet governance in developing countries, drawing fully on local sources of knowledge and expertise;
- Promote and assess, on an ongoing basis, the embodiment of WSIS principles in Internet governance processes;
- Discuss, inter alia, issues relating to critical Internet resources;
- Help to find solutions to the issues arising from the use and misuse of the Internet, of particular concern to everyday users;
- Publish its proceedings.

ICANN (*Internet Corporation for Assigned names and Numbers*)

<<http://www.icann.org>>

There are a number of sub-committee areas within ICANN where consumer input is sought or desirable. These include the At Large Advisory Committee (ALAC), the Regional At Large Organisations (RALOs) and the Generic Names Supporting Organization (GNSO).

The At Large Advisory Committee describes its role as follows:

At-Large provides a way for the worldwide individual Internet user community to engage in all the issues that are a part of ICANN's work such as:

- Guidance on how internationalised domain names ('local language' domain names) are to be implemented;
- How additional new top-level domains (the part of a domain name after the dot, for example: .info, .name, .museum) are introduced;
- How to transition from the current Internet addressing system ('IPv4') to the next-generation of Internet addresses ('IPv6') in a stable and equitable manner.

Groups throughout the world that deal with individual Internet users' interests are encouraged to register and participate in ICANN by submitting a simple application form. Groups that meet the minimum requirements will be certified as 'At-Large Structures', or ALSes. The ALSes located in each of the

five geographic regions of the world have federated into Regional At-Large Organisations (RALOs), which provides a forum for them to work together on issues that affect their region.

Media Access Australia

<<http://www.mediaaccess.org.au>>

Media Access Australia (MAA) is an independent not-for-profit, public benevolent institution and Australia's primary media access organisation. The organisation's primary role is to provide information about media access and to support the development and application of technological solutions to media access issues. This includes, but is not limited to, supporting the development of captioning and audio description for the Deaf and hearing impaired, and blind and vision impaired.

Consumers International

<<http://www.consumersinternational.org>>

Consumers International (CI) is the world federation of consumer groups that, working together with its members, serves as the only independent and authoritative global voice for consumers. With over 220 member organisations in 115 countries, CI is building a powerful international movement to help protect and empower consumers everywhere. Founded in 1960, the organisation is now needed more than ever. This modern movement is essential to secure a fair safe and sustainable future for consumers in a global marketplace increasingly dominated by international corporations.

CI is working to put the rights of consumers at the heart of decision-making. CI's vision is a world where everyone has access to safe and sustainable goods and services. Where the strength of the collective power is used for the good of consumers throughout the world.

Law centres

There are a number of law centres based in universities around Australia that deal with Internet law-related issues and often provide information and research of benefit to consumers. These include:

The Communications Law Centre at the University of Technology, Sydney

<<http://www.comslaw.org.au>>

The Communications Law Centre is an independent, non-profit, public interest centre specialising in media, communications and online law and policy. The CLC aims to be an innovative and influential centre of communications and media law ideas, research and community-based activity. We achieve our aims via legal information, policy and law reform, education and research.

The Centre believes the public interest in Australian media and communications is best served via a combination of accessibility, diversity, relevance, accountability, breadth, quality and competition.

The Centre for Media and Communications Law (CMCL) at the University of Melbourne

<<http://www.law.unimelb.edu.au/cmcl>>

The CMCL is a centre for the research, discussion and teaching of all aspects of media and communications law and policy. The CMCL:

- undertakes large-scale research projects;
- holds public seminars about legal and regulatory developments;
- supports research visits from Australian and international academics, lawyers and policy-makers; and
- supervises undergraduate and graduate teaching and research in media and communications law.

The CMCL has a team of Directors from the Melbourne Law School, as well as Associates from across the University of Melbourne, and Research Staff. It is assisted by an Advisory Board representing a wide variety of expertise in media and communications industries and legal practices, and receives support from the Melbourne Law School as well as external sponsors and research partners. It is the editorial base for the *Media & Arts Law Review*, a leading refereed journal in the field.

The Cyberspace Law and Policy Centre at the University of New South Wales

<<http://www.cyberlawcentre.org>>

The Cyberspace Law and Policy Centre at UNSW provides a focus for research, public interest advocacy and education on issues of law and policy concerning digital transactions in cyberspace. It is a Centre of the Faculty of Law at the University of New South Wales in Sydney, Australia. The Centre's work covers e-commerce, provision of government services by Internet, Public Key Infrastructure (PKI) and the use of encryption, Internet governance, intellectual property in digital artefacts, decision-making technologies in public administration, privacy and freedom of information in digital records, to name only the most obvious issues.

Consumer Action Law Centre

<<http://www.consumeraction.org.au>>

Although the consumer action law centre is not an Internet-focused body, it represents a strong consumer advocacy body in Australia.

The Consumer Action Law Centre is a campaign-focused consumer advocacy, litigation and policy organisation. Based in Melbourne, Australia, it was formed in 2006 by the merger of the Consumer Law Centre Victoria and the Consumer Credit Legal Service and is funded jointly by Victoria Legal Aid and Consumer Affairs Victoria.

As a community legal centre, Consumer Action provides free legal advice and representation to vulnerable and disadvantaged consumers across Victoria, and is the largest specialist consumer legal practice in Australia. As well as working with consumers directly, Consumer Action provides legal assistance and

professional training to community workers who advocate on behalf of consumers.

Whirlpool

<<http://whirlpool.net.au>>

Whirlpool is a consumer-driven site which acts as an information portal and comparator for ISP services in Australia. As such, it relates more to broadband provision than Internet issues *per se*. However, it is also an interesting example of a user-driven and user-generated content site that informs other users about broadband providers and equipment. It is owned by an individual (Simon Wright) but the content is provided by users.

4.10. Conclusion

The issues of concern for consumers of the Internet are increasingly complex, as this case study has shown. With consumers now more active participants who create, reproduce and distribute content themselves, as well as using these media platforms for interaction and communication with other people in many forms, the need for literacy in these media is paramount. People are conducting transactions of both a financial and social character via the Internet, and a key concern is the current loss of control of personal data that often ensues from these transactions. While there is a role for governments to regulate some areas of these transactions, in other ways the spontaneity and the sheer volume of transactions mean that consumers must be able to strategically manage their own risks to some extent. We need to ensure that consumers are literate in areas such as copyright and intellectual property, privacy (where there is definitely room for greater regulation of the spread of data as well) and contracts. There is scope for correctives to the current contractual agreements imposed on users, and for ensuring that consent is informed. The regulation of content online is a very different proposition from broadcast media, and must be understood as comprising quite different transactions. Users of the Internet need to be skilled in negotiating online social environments so that they can engage in protective behaviours where necessary.

The Internet represents a major shift in how people communicate with each other, and how content is produced, reproduced and distributed. It represents a convergence of content and communication, and a convergence of financial and social relations. Institutional forms that have sufficed for regulating some of these functions in other media no longer work. As such, it requires a breaking down and revisioning of policy areas and strategies. It requires a new form of literacy in users and the development of new skills and strategies. There is a potential role for ACCAN in many of these areas to advocate on behalf of users, and to ensure that the very valuable contributions that users make to these environments in the course of their interactions are not exploited in ways that are detrimental to them.

4.11. References

- Andrejevic, M., 2007. *iSpy: Surveillance and Power in the Interactive Era*, University Press of Kansas, Kansas City.
- Australian Law Reform Commission, 2008. *For Your Information: Australian Privacy Law and Practice*, ALRC, Canberra.
- Banks, J., 2007. 'Opening the Production Pipeline: Unruly Creators', in S. De Castell & J. Jenson (eds), *Worlds in Play: International Perspectives on Digital Games Research*, Peter Lang, New York.
- Banks, J., 2009. 'Co-creative Expertise: Auran Games and *Fury* – A Case Study', *Media International Australia* 130, pp. 77–89.
- Banks, J. & Humphreys, S., 2008. 'The Labour of User Co-Creation: Emerging Social Network Markets?' *Convergence* 14(4), pp. 401–18.
- Baruh, L., 2007. 'Read at Your Own Risk: Shrinkage of Privacy and Interactive Media', *New Media and Society* 9(2), pp. 187–211.
- Benkler, Y., 2003a. 'Freedom of the Commons: Towards a Political Economy of Information', *Duke Law Journal* 52, pp. 1245–76.
- Benkler, Y., 2003b. 'The Political Economy of Commons', *Upgrade* IV(3), pp. 6–9.
- Benkler, Y., 2006. *Wealth of Networks: How Social Production Transforms Markets and Freedom*, Yale University Press, New Haven.
- Berkman Center for Internet and Society, 2004. *iTunes. How Copyright, Contract, and Technology Shape the Business of Digital Media – A Case Study*, Harvard Law School, Cambridge, MA.
- Bettig, R.V., 1992. 'Critical Perspectives on the History and Philosophy of Copyright', *Critical Studies in Mass Communication* 9(2), pp. 130–55.
- Bowrey, K. & Rimmer, M., 2002. 'Rip, Mix, Burn: The Politics of Peer to Peer and Copyright Law', *First Monday*, 7(8).
- Boyd, D., 2008. 'Facebook's Privacy 'Trainwreck'', *Convergence: The International Journal of Research into New Media Technologies* 14(1), pp. 13–20.
- Boyle, J., 1997. 'A Politics of Intellectual Property: Environmentalism For the Net?', *Duke Law Journal*, 47, pp. 87–116.
- Boyle, J., 2002. 'Fencing Off Ideas: Enclosure & The Disappearance of the Public Domain', *Daedalus* (Spring), pp. 13–26.
- Brand, J. & Finn, M., 2009. 'Informing Our Own Choices: A Proposal for User-generated Classification', *Media International Australia* 130, pp. 112–26.
- Byron, T., 2008. *Safer Children in a Digital World*. The report of the Byron Review.
- Clapperton, D., 2009. 'Electronic Contracts: A Law unto Themselves?' *Media International Australia* 130, pp. 102–11.
- Clapperton, D. & Corones, S., 2007. 'Unfair Terms in "Clickwrap" and Other Electronic Contracts', *Australian Business Law Review*, 35, p. 152.
- Drahos, P. & Braithwaite, J. (eds), 2002. *Information Feudalism: Who Owns the Knowledge Economy?*, Earthscan, London.
- Dwyer, C. & Hiltz, S.R., 2008. 'Designing Privacy into Online Communities', in *Internet Research 9.0: Rethinking Community, Rethinking Place*, Denmark Association of Internet Researchers, Copenhagen.
- Fairfield, J., 2007. *Anti-social Contracts: The Contractual Governance of Online Communities*, Indiana Legal Studies Research Paper Series.
- Family Online Safety Institute, 2008. *State of Online Safety Report*, Family Online Safety Institute, Washington, DC.
- Fitzgerald, A. & Fitzgerald, B., 2007. *Internet and E-Commerce Law: Policy, Law and Technology* Law Book Company/Thomson, Sydney.

- Frow, J., 2000. 'Public Domain and the New World Order in Knowledge', *Social Semiotics* 10(2), pp. 173–85.
- Gartner G2 & Berkman Centre for Internet and Society, 2003. *Copyright and Digital Media in a Post-Napster World*, Harvard Law School, Cambridge, MA.
- Gasser, U. & Haeusermann, D.M., 2007. *E-Compliance: Towards A Roadmap for Effective Risk Management*, Berkman Center for Internet & Society Research Publication Series, Cambridge, MA.
- Grimmelmann, J., 2009 (forthcoming). 'Facebook and the Social Dynamics of Privacy', *Iowa Law Review* 94.
- Herman, A., Coombe, R.J. & Kaye, L., 2006. 'Your Second Life? Goodwill and the Performativity of Intellectual Property in Online Digital Gaming', *Cultural Studies* 20(2–3), pp. 184–210.
- Herz, J.C., 2002. 'Harnessing the Hive: How Online Games Drive Networked Innovation', *Release 1.0* 20(9), pp. 1–22.
- Hills, M., 2002. *Fan Cultures*, Routledge, London.
- Hugenholtz, B., 1999a. 'Code as Code, or the End of Intellectual Property as We Know It', *Maastricht Journal of European and Comparative Law* 6(3), pp. 308–18.
- Hugenholtz, B., 1999b. 'Copyright, Contract and Technology: What Will Remain of the Public Domain?' *Copyrites* 31.
- Humphreys, S., 2005. 'Productive Players: Online Computer Games' Challenge to Conventional Media Forms', *Journal of Communication and Critical/Cultural Studies* 2(1), pp. 36–50.
- Humphreys, S., 2008. 'The Role of Intellectual Property in the Negotiations Among Users of a Specialist Social Networking Site', Media, Communications and Public Speech conference, Communications Media Law Centre, Melbourne.
- Internet Governance Forum, 2008. Chairman's report on the Annual Forum of the IGF, 2008. Hyderabad, Internet Governance Forum
- Jankowich, A., 2006. 'EULaw: The Complex Web of Virtual Law-making in Virtual Worlds', *Tulane Journal of Technology and Intellectual Property*, 81, p. 58.
- Jarrett, K., 2003. 'Labour of Love', *Journal of Sociology* 39(4), pp. 335–51.
- Jenkins, H., 1992. *Textual Poachers: Television Fans and Participatory Culture*, Routledge, New York.
- Jenkins, H., 2006. *Convergence Culture: Where Old and New Media Collide*, New York University Press, New York.
- Lange, P.G., 2007. 'Publicly Private and Privately Public: Social Networking on YouTube', *Computer-Mediated Communication* 13(1), article 18.
- Lessig, L. 1999, *Code and Other Laws of Cyberspace*, Basic Books, New York.
- Lessig, L. 2001, *The Future of Ideas: The Fate of the Commons in a Connected World*, Random House, New York.
- Lessig, L., 2004. *Free Culture: How Big Media Uses Technology and the Law to Lock Down Culture and Control Creativity*, Penguin, New York.
- Livingstone, S., 2008. 'Taking Risky Opportunities in Youthful Content Creation: Teenagers' Use of Social Networking Sites for Intimacy, Privacy and Self-expression', *New Media and Society* 10(3), pp. 393–411.
- Mueller, M., 2007. 'Net Neutrality as Global Principle for Internet Governance', *Internet Governance Project*.
- O'Brien, M., 2008. 'Law, Privacy and Information Technology: A Sleepwalk Through the Surveillance Society?' *Information & Communications Technology Law* 17(1), pp. 25–35.
- OECD (n.d.) Working Party on Information Security and Privacy. *OECD Guidelines on the Protection of Privacy and Transborder Flows of Personal Data*, OECD, Paris.

- Ofcom, 2008. *Social Networking: A Quantitative and Qualitative Research Report into Attitudes, Behaviours and Use*, British Office of Communications, London.
- Pearce, C., 2002. 'Emergent Authorship: The Next Interactive Revolution', *Computers and Graphics* 26(1), pp. 21–9.
- Postigo, H., 2008. 'Video Game Appropriation Through Modifications: Attitudes Concerning Intellectual Property Among Fans and Modders', *Convergence: The International Journal of Research into New Media Technologies* 14(1), pp. 59–74.
- Scott, C., 2004. 'Regulatory Innovation and the Online Consumer', *Law and Policy* 26(3 & 4), pp. 477–506.
- Simon, B., 2006. *The Databased Self: Perfect Surveillance in the Age of Virtual Worlds*, Society for Social Studies of Science, Vancouver.
- Suzor, N., 2009. 'On the Partially Inalienable Rights of Participants in Virtual Communities', *Media International Australia* 130, pp. 90–101.
- Taylor, T.L. 2002. 'Whose Game is This Anyway?': Negotiating Corporate Ownership in a Virtual World', in F. Mayra (ed.), *Computer Games and Digital Cultures*, Tampere University Press, Tampere, Finland.
- Vaidhyathan, S., 2004. *The Anarchist in the Library*, Basic Books, New York.

5. BROADCASTING CASE STUDY

Jock Given and Marion McCutcheon

This case study was commissioned by the Australian Communications Consumer Action Network (ACCAN), a newly created consumer peak body. ACCAN is required to complete research projects on matters related to Australian communications consumers under its contract with the Department of Broadband, Communications and the Digital Economy.

The case study forms part of a larger scoping study on consumers and future of communications entitled *Future Consumer: Emerging Consumer Issues in Telecommunications and Convergent Communications and Media*.

A Project Brief was settled between ACCAN and the Consultant in mid-April 2009, with the final report due at the end of May. A detailed outline was discussed at a teleconference on 1 May. A Draft Report was discussed at the Consumer Research Workshop held by ACCAN in Sydney on 21 May following the final annual CTN Conference.

The Project Brief required the Consultant to investigate and report on:

- broadcasting, especially the new issues posed at the intersection of digital broadcasting and telecommunications;
- the emerging consumer issues in digital broadcasting (such as new services and contracts in pay television, or digital television rollout);
- the organisations addressing consumer issues in broadcasting, including what issues are not addressed and what ACCAN's role in this arena might be;
- the future trends in broadcasting – for instance, what are the implications of broadcasting moving to a 'watch it when you want to, how you want to' model? What regulation and policy for consumer protection and disadvantaged consumers might be needed?

The consultant is Swinburne University's Institute for Social Research. The authors undertaking the work for the Institute were Professor Jock Given and Dr Marion McCutcheon.

Following the executive summary, the report is divided into three sections:

- Section 6.2 describes the state of broadcasting in Australia from the perspective of consumers. It summarises the matters covered by current regulation and the recent history of complaints and breaches.
- Section 6.3 considers in detail the main issues likely to arise for consumers.
- Section 6.4 briefly explores the role ACCAN might take.

5.1. Executive Summary

Radio and television broadcasting services are popular, influential and almost universally available. For most of their history, they have been provided on a free-to-air basis. Listeners and viewers were conceived as audiences rather than consumers.

This is no longer the case. Pay TV, audio and video-on-demand services, and the many ways audiences now interact with broadcasters – from talkback radio and online discussion forums to SMS voting and user-generated content – mean the audiences for TV and radio are already consumers. This creates contractual relationships and expectations about broadcasters and the quality of their services that are familiar to consumers of voice and mobile telephony and Internet access services.

The non-contractual relationship between free-to-air broadcasters and audiences has always been heavily regulated, reflecting the perceived social and cultural significance of the services. Requirements are set out in licence conditions, standards and codes of practice developed by sections of the broadcast industry and registered with the specialist regulator, ACMA. These cover several main areas:

- advertising;
- programming;
- accessibility;
- relationship with audiences;
- technical, legal and financial matters.

In the future, these issues will continue to matter to consumers, but they will acquire new dimensions and be supplemented by others.

Summarising these issues, two central themes emerge. First, the perceived social and cultural significance of broadcasting means a lot of special laws and regulations apply to it. Key questions for future consumers are:

- Are radio and TV becoming less special, so the rationale for special rules melts away?
- Or are their special qualities shared or even exaggerated by emerging media forms, so the rationale for special rules extends to them?

Second, despite the perceived significance of broadcasting, the lack of a direct customer relationship between free-to-air broadcasters and their audiences means that some of the normal elements of relationships between service providers and consumers have not existed. Equipment manufacturers, retailers, installers, regulators and especially government, rather than broadcasters, have carried considerable responsibility for service coverage and quality issues. This emphasis may shift as broadcasters are forced closer to their consumers. New possibilities and practices might bring new expectations.

This report identifies several major areas of consumer interest: services, service delivery, content, competition, environmental impact and intellectual property.

Services

The goal of universal access to radio and TV broadcasting services is pursued through state-funded and/or state-owned enterprises, spectrum planning and licensing, direct funding and legislation. The introduction of digital TV and radio and the looming shutdown of analogue TV are creating big challenges for achieving this old goal.

In TV, these challenges include continued access to the main analogue free-to-air TV services, national access to community and Indigenous TV services not yet available on digital in all areas, access to new digital services and features, and wholly new services that might be provided using vacated analogue spectrum.

In radio, they include the availability and price of receivers, the adequacy of the information and education program being conducted by the industry and the arrival of new commercial, national and community services, including Radio for the Print Handicapped services, the extension of digital radio to regional areas, and the future of AM radio.

Service delivery

New technologies and applications need to be used to improve access to services for people with disabilities, and should not be allowed to undermine levels of access achieved for existing services. This will be a major challenge as digital transmission technologies are deployed, enabling more services to be delivered and eventually wholly replacing analogue services.

A number of policy and regulatory reviews are currently underway, including the development of a National Disability Strategy and a departmental review of access to electronic media. Critical issues include captioning and audio description for digital television, and ensuring the special value of radio for blind and vision-impaired listeners is not compromised by the introduction of visual features in digital radio.

For all consumers, audio and video-on-demand services offered by broadcasters are raising issues that are unfamiliar to broadcasting regulation. Because the services themselves are not broadcasting services, they lie beyond the regulatory ambit of the BSA, even though consumers are likely to see them as integral parts of the overall service provided by broadcasters.

Download services bring to broadcasting a wide range of the kinds of consumer issues familiar from telecommunications. In some ways, this experience of proliferating services and service types and increased complexity is similar to the one the telecommunications industry underwent when competition replaced monopoly in the 1990s. The relationship between consumers and broadcasters is shifting from a relatively simple one where simple, standardised equipment purchased from retailers gave access to services from several providers, to one where consumers need discrete mixes of hardware and applications for each provider.

Content

Radio and TV content have always been extensively regulated. The delivery of broadcast-like content using online and mobile platforms, and changes in the nature of broadcast content and the relationships between broadcasters and their audiences, are raising many new issues for consumers.

For ACCAN, content issues are a big challenge. While its charter and statutory revenue source indicate that its focus is ‘telecommunications’, the young online and mobile content regulatory regime and converged regulator ACMA demonstrates clearly that content services, and consumer concerns about them, are inseparable from the carriage services used to deliver them. Although it may be inappropriate for ACCAN to participate in the whole range of content issues currently covered in broadcasting licence conditions and codes, online and mobile media have already intensified rather than eliminated some of the policy concerns underpinning broadcasting regulation. Striking the balance is likely to be an iterative process, best handled case by case.

To the extent that it chooses to participate in content issues, ACCAN will need to consider the range of perspectives that different consumers bring to them. These range from censorious protection of vulnerable and perhaps not-so-vulnerable users to the libertarian permissiveness of some innovators.

Competition

Competition law has had an increasing impact on broadcasting as media-specific ownership limits have been relaxed, new powers have been given to the competition regulator and new issues have attracted its attention. There are at least three areas where competition concerns may affect consumers in broadcasting: cooperation between broadcasters sharing facilities and understandings as part of the introduction of digital transmission; relationships between broadcasters and third parties that force consumers to use particular applications; and vertical integration.

Environmental impact

This has not been a significant factor in broadcasting regulation to date. Its growing importance in public policy, however, means that this is likely to change. Household energy and many aspects of the introduction of digital TV and radio and the shutdown of analogue TV raise big issues. Policy and regulatory development in the future will need to involve a wider range of stakeholders and pay more attention to the environmental impact of different policy options.

Intellectual property

There has been little direct consumer involvement in these issues for broadcasting to date despite their significant implications. Digital broadcasting, especially high-definition TV, has crystallised industry concerns about piracy, but digital media generally have changed user expectations about electronic media content, especially its 'shareability'. The development of content management technologies is one important area where consumer participation might be valuable.

What can ACCAN do?

ACCAN's charter and the statutory basis of its funding may limit and shape its activities in broadcasting. While the convergence of broadcasting and telecommunications is reflected in the merger of the ABA and ACA to form ACMA, the economy-wide activities of the ACCC and the creation of ACCAN itself, the sector-specific Commonwealth legislation about broadcasting and telecommunications, the responsibilities of the TIO and the history of Mobile Premium Services regulation show that convergence across the communications sector is still a work in progress.

5.2. Broadcasting now

Services, consumption, regulation

Most Australians can receive five commercial and national television services and a mix of commercial, national, community and narrowcast radio services. The precise numbers of services can vary, depending mainly on the size of each local market and its capacity to provide advertising and sponsorship revenue to sustain commercial and community stations.

Radio broadcasting services commenced in Australia in the 1920s and television services in the 1950s. For most of their history, the people using them have been conceived as audiences rather than consumers. The 'sealed set' scheme used for the first radio broadcasting services required listeners to pay subscription fees to service providers. This arrangement was quickly changed. From then until the introduction of pay TV services in the mid-1990s, radio and TV audiences had no direct relationship with the providers of the services. Pay TV forced some broadcasters to think about their audiences as consumers, or purchasers of content, for the first time. Around one-third of households now subscribe to a pay TV service, making them broadcasting consumers rather than merely an audience.

The non-contractual relationship between free-to-air broadcasters and their audiences has always been regulated. Broadcasters have needed licences to use radio frequency spectrum and transmit particular kinds of services. The *Broadcasting Services Act* 1992 saw the creation of different categories of licence with different conditions (see Table 10), requiring services to meet certain social and cultural standards. Much has been expected of broadcasters, reflecting the perceived significance of their services to audiences. A series of specialist regulators, now the Australian Communications and Media Authority (ACMA), have had primary responsibility for enforcing these conditions.

A central element of the changes to broadcasting law introduced in 1992 was the idea that different services should be regulated according to their ‘degree of influence’. Narrowcast services were regarded as less influential than commercial services, justifying lower – though in some areas still significant – levels of regulation. Class licences, introduced for some categories of broadcasting service at this time, allowed services to be provided without individual licences being granted, provided they complied with the terms of the relevant licence. Self-regulation, or co-regulation, gave broadcasters more responsibility for setting and enforcing their own social and cultural standards (Table 10).

In the 1990s, online media enabled broadcast-like content to be electronically distributed without the use of spectrum by unlicensed entities. This meant licence conditions and the possibility of losing the right to broadcast could not readily be used to regulate the activities of content providers. These have been crucial tools of broadcasting policy. Also, because online services are not necessarily consumed in real time, regulation aimed at the scheduling of programs could not be effective.

Mobile devices are increasingly being used to distribute broadcast-like content too, providing an even more personal, individualised environment than the home for the reception of electronically distributed content. This has confounded the expectation that proliferating electronic media services would diminish the perceived significance of individual services. Especially by limiting the scope for parental influence over children’s media use, mobile media have intensified some of the policy concerns of broadcasting regulation.

New forms of interactivity, especially the use of premium rate phone services for voting and other kinds of participation, have created contractual relationships between broadcast audiences and broadcasters or their third-party suppliers. Around 2004, Australian radio broadcasters began offering podcasts and in 2008, television broadcasters launched various forms of catch-up TV services using streaming and downloads. These encourage or require consumers to opt in to a contractual relationship with the content and application provider, even where no direct payment is made for the content.

Both online and mobile media are increasingly encouraging audiences to participate in the activities of broadcasters, reviewing, discussing, voting, copying, manipulating and redistributing content. Not all of this activity is sanctioned by broadcasters themselves. Where it is, it demonstrates that some broadcasters want users to engage with them in new ways. These new forms of engagement give rise to changed expectations. To the extent that broadcast audiences are taking on some of the characteristics of broadcasters, they are attracting consumers of their own.

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Table 10: Levels of regulation applying to broadcasting services in Australia

Licence type	Act	Standard	Code of Practice
Commercial television	BSA	Australian Content Standard, Children's Television Standards	Commercial Television Industry Code of Practice
Community television	BSA		Community Broadcasting Association of Australia Code of Practice
ABC television	BSA, ABC Act		ABC Code of Practice
SBS Television	BSA, SBS Act		SBS Codes of Practice
Subscription television	BSA		Subscription Broadcast Television Codes of Practice
Subscription narrowcast television	BSA		Subscription Narrowcast Television Codes of Practice
Open narrowcast television	BSA		Open Narrowcast Television Codes of Practice
Commercial radio	BSA	Commercial Radio Compliance Program Standard, Commercial Radio Advertising Standard, Commercial Radio Current Affairs Disclosure Standard	Commercial Radio Australia Codes of Practice and Guidelines
Community radio	BSA		Community Radio Broadcasting
ABC Radio	BSA, ABC Act		ABC Code of Practice
SBS Radio	BSA, SBS Act		SBS Codes of Practice
Subscription narrowcast radio	BSA		Subscription Narrowcast Radio Codes of Practice
Open narrowcast radio	BSA		Open Narrowcast Radio Codes of Practice

Both online and mobile media are increasingly encouraging audiences to participate in the activities of broadcasters, reviewing, discussing, voting, copying, manipulating and redistributing content. Not all of this activity is sanctioned by broadcasters themselves. Where it is, it demonstrates that some broadcasters want users to engage with them in new ways. These new forms of engagement give rise to changed expectations. To the extent that broadcast audiences are taking on some of the characteristics of broadcasters, they are attracting consumers of their own.

Consumer issues

Various Acts of Parliament, standards and codes of practice that apply to different types of radio and television broadcasters in Australia. They cover several main areas:

- advertising;
- programming;
- accessibility;
- relationship with audiences;
- technical, legal and financial matters.

Each of these areas can be seen as a form of consumer protection. Some of the regulatory measures are positive, requiring broadcasters to act in certain ways, while others are negative, prohibiting or restricting some actions. To some extent, the regulatory requirements can be seen as protection for consumers against broadcasters' commercial incentives. Because commercial, subscription and community broadcasters all have to make money to maximise profits or to reinvest in the service (Owen and Wildman 1992, p. 5), there can be a mismatch between the need to attract audiences to sell to advertisers and sponsors, and the desire to provide those audiences with what they most want to watch or listen to, and what they would rather not.

These Acts of Parliament, standards and codes of practice are detailed in Appendixes 5.1 and 5.2 to this report.

Advertising

Advertising is limited in many ways. The ABC is not able to advertise at all, SBS can advertise for up to five minutes an hour, community broadcasters can transmit sponsorship announcements but not advertisements for five minutes in an hour (radio) and seven minutes an hour (television). The Commercial Television Industry Codes of Practice allows licensees to broadcast up to 16 minutes of advertising in an hour, while the Commercial Radio Codes only limit the time devoted to advertising where a licensee operates as a near-monopoly.

Advertising for particular products is also restricted: tobacco advertising is banned; individual advertisements for therapeutic goods require government approval; political advertising, advertising for alcoholic beverages and advertising in children's programs are restricted. Broadcast industry codes refer to advertising codes developed by third parties, including the Federal Chamber of Automotive Industries Code of Practice, which forbids advertisements showing dangerous, illegal, aggressive or reckless driving.

Programming

Programming is also subject to many regulatory requirements. A threshold requirement is that it be distinguished from advertisements. This issue was highlighted in the ABA's Cash for Comment Inquiry in 1999–2000. Commercial radio services are now required by licence

condition to disclose commercial relationships and ensure that advertisements and promotions are readily distinguished from program material. Similar requirements are included in the commercial television codes of practice.

Other rules ensure the availability of minimum amounts of program types vulnerable to substitution, either with cheaper content or content likely to attract audiences more highly valued by advertisers. Commercial television services are required to broadcast minimum amounts of Australian content, and subscription television services are required to spend a minimum amount on Australian drama. Commercial radio services must broadcast minimum amounts of Australian music under their code. Commercial television broadcasters must also provide minimum levels of age-appropriate programs for children, again as a licence condition. All broadcasters acknowledge in their codes that they should ensure that news and information are accurate and impartial.

Accessibility

For analogue broadcasting, captioning of programs for the hearing impaired is dealt with under codes of practice and the *Disability Discrimination Act 1992* (DDA). The Commercial Television Industry Code of Practice, for example, states that licensees will ensure closed-captioning programs are clearly indicated in program guides and promotions, and that emergency announcements include visual information. Expanded requirements for digital television services, including simulcasts of analogue services, are set out in legislation. Commercial and national television broadcasters must provide a captioning service for all television programs broadcast on their digital services between 6.00 p.m. and 10.30 p.m. each day, and for all news and current affairs programs broadcast outside these hours. These rules are due for review before 1 January 2010. The ABC Code of Practice also provides guidance for television programs for people who are blind or have a visual impairment or limited reading comprehension. Where material appears in text format, the ABC will provide it in audio as well, where practical.

In addition to the Code requirements, an arrangement under the DDA requires certain levels of programming between 6.00 a.m. and midnight to be captioned. The Act prohibits disability discrimination in the provision of goods and services. This includes free-to-air television. Temporary exemptions have been granted by the Australian Human Rights Commission until 2011, preventing complaints by deaf and hearing impaired people in return for broadcasters captioning a proportion of their programs. The proportion increases from 75 per cent of programs between 6.00 a.m. and midnight in 2009 to 85 per cent in 2011. Initially imposed for metropolitan networks, this exemption has just been extended to regional broadcasters (HREOC 2009). An exemption is also in place for subscription television, requiring 20 channels to caption 25 per cent of their programming and another 20 channels to caption 15 per cent of their programming by 2009. The exemption expires in October 2009 and negotiations are underway about future arrangements. Some of the networks and subscription TV channels already exceed their 2011 targets.

Relationships with audiences

These are regulated in different ways for different types of broadcaster. Community broadcasting licences are based on the premise that users can also be creators of radio and television, and these services must encourage community participation in operations and program selection. Unlike free-to-air broadcasters, subscription services have a contractual relationship with their audience, and must have policies in place about contracts, fault procedures and customer privacy. All broadcasters are required to have processes for

handling complaints. Generally, aggrieved consumers must complain first to the broadcaster, but can complain to ACMA if the matter is not handled to their satisfaction by the broadcaster.

Technical, legal, financial matters

These include many guidelines that ensure other regulatory requirements can be enforced. Some of the kinds of consumer issues raised by direct contracts that are familiar in telecommunications are addressed in the Australian Subscription Television and Radio Association (ASTRA) Subscriber Code, including subscriber options, fault repair, privacy, credit management and billing.

These requirements provide a picture of stakeholders' views of what matters in broadcasting. Further guidance about what matters to at least some consumers can be obtained from complaints made about broadcasting services. Tables 11 and 12 summarise the complaints processed and investigations initiated by ACMA and its predecessor, the ABA, from 2003–04 to 2007–08. Over this period, ACMA processed an average of about 800 complaints triggering around 140 investigations each year. Most investigations were about breaches of codes of practice.

Table 11: Summary of complaints and investigations

	2003–04	2004–05	2005–06	2006–07	2007–08
Agency	ABA	ABA	ACMA	ACMA	ACMA
Complaints received			737	886	793
Investigations completed	106	153	142	136	136
Investigations resulting in breach findings	27	59	34	45	47
Investigations regarding compliance with the BSA	1	1	1	0	1
Investigations regarding compliance with licence conditions	7	7	15	13	23
Investigations regarding compliance codes of practice	19	48	18	32	23
Code of practice and licence condition		3			
Investigations resulting in non-breach findings			100	86	84
Investigations regarding compliance with the BSA			0	3	0
Investigations regarding compliance with licence conditions			16	15	21
Investigations regarding compliance codes of practice			84	68	63
Investigations concluded (e.g. complaint withdrawn)			8	5	5

Sources: ABA and ACMA, Annual Reports 2004–05 to 2007–08.

Of the roughly 40 breaches each year, most related to complaints handling the accurate representation of material and advertising on community broadcasting services.

Table 12: Breach findings by year and licence type

	2005–06	2006–07	2007–08
Commercial television			
Advertisement during ‘C’ and/or ‘P’ time (BSA)			2
Captioning	1		1
Classification and consumer advice	7	4	6
Complaints handling	4	3	14
Depiction of suicide			1
Election advertisement during blackout period (BSA)			1
Fair and/or accurate representation of material	2	5	8
Invasion of privacy			1
Use of material relating to children			1
Commercial radio			
Classification and consumer advice	1		
Complaints handling	2	2	2
Disclosure of relationship between announcer and third party			1
Fair and/or accurate representation of material		3	
Inappropriate language		1	
Tobacco advertising (BSA)		1	
Vilification, inciting violence		3	
Community radio and temporary community radio			
Broadcasting advertisements (BSA)	11	4	9
Community participation, volunteer guidelines (BSA)	1	4	6
Complaints handling	1	1	1
Compliance with licence conditions regarding content			1
Conflict resolution policy (BSA)	2	3	
Exceeding sponsorship announcement limits (BSA)	3	3	5
Failure to retain record	1		
Fair and/or accurate representation of material		1	
Vilification		1	
Community television			
Broadcasting advertisements (BSA)		3	
Complaints handling			1
Exceeding sponsorship announcement limits (BSA)		1	
ABC television			
Classification and consumer advice		1	
Fair and/or accurate representation of material		2	
ABC radio			
Fair and/or accurate representation of material		1	
SBS television			
Classification and consumer advice		1	1

Subscription television	
Classification and consumer advice	1
Open narrowcast radio	
Providing a commercial broadcasting service (BSA)	1

Sources ACMA Annual Reports, 2005–06 to 2007–08.

Consumer organisations

Organised consumer activity in broadcasting has been limited. This probably reflects the conceptualisation of listeners and viewers as audiences rather than consumers, and the very wide range of special interests affected by the services.

Generally, non-industry participants in policy and regulatory reviews have been special-interest organisations addressing particular matters directly relevant to that interest, rather than general consumer organisations like the Australian Consumers Association or the Consumers Federation of Australia.

Consumer perspectives have been offered to recent inquiries and reviews by a number of organisations:

ACMA Review of the Children’s Television Standards, 2008–09

- The Parents Jury
- Media Access Australia
- Choice
- Australian Children’s Television Foundation
- Young Media Australia

A large number of submissions to this review came from community organisations concerned with children’s health and eating habits.

Productivity Commission Inquiry into Parallel Importation of Books, 2008

- Australian Copyright Council
- National and State Libraries Australasia
- Public Libraries of NSW – Country
- Royal Society for the Blind of South Australia

ACMA Draft Restricted Access System Declaration 2007 (restricting access to age restricted content hosted in Australia or provided from Australia)

- NSW Council for Civil Liberties
- Australian Privacy Foundation
- Internet Society Australia
- Consumers Telecommunications Network

ACMA Reality Television Review 2007

- Australian Christian Lobby
- Australian Family Association
- Catholic Women’s League

- Dads in Families Foundation
- Festival of Light
- Thomas More Centre for Young Adults

DCITA Review of the Duration of the Analogue/Digital Television Simulcast Period, 2005

- Australian Children's Television Foundation

Some of the organisations have existed in different forms for many years. Organisations contributing to the Australian Broadcasting Tribunal's *Self-Regulation for Broadcasting Report* in the 1970s included the Council for Children's Films and Television (now Young Media Australia), the Australian Children's Television Action Committee, the Festival of Light and Community Standards, TV Make It Australian and the Friends of the ABC.

Related perspectives also come from the media and public-interest organisations. All of the breaches that led to the Commercial Radio Inquiry and the subsequent breaches of the Commercial Radio Standards were identified by the ABC's *Media Watch* program. Without its scrutiny, the inquiry may never have taken place. Public-interest issues were raised in the ABA/ACMA investigations by the Communications Law Centre. It also made submissions in the recent Federal Court action about the imposition of penalties for breaches of the Commercial Radio Standards by 2UE.

The self-regulatory approach that underpins the Australian broadcasting regime relies on breaches of rules being observed and reported by the public. There is presently no consumer group acting as a general watchdog across broadcasting issues. ACCAN may wish to consider whether it wishes to position itself in this type of role.

5.3. Emerging consumer issues

For much of the last decade, the centrepieces of government broadcasting policy have been the introduction of digital transmission for terrestrial TV and radio services and the possible shutdown of analogue services. The immediate future of broadcasting is heavily influenced by these government-sanctioned plans.

While these plans have been developed and implemented, however, other changes have been occurring. These include the deployment and adoption of new and existing technologies, services and applications; the economics of particular devices and services; audience and user tastes; and the kinds of 'X-factors' that have played important parts in the evolution of media services, from wars, natural disasters and depressions to the personalities of entrepreneurs. These are changing the services offered by broadcasters and their competitors, and the practices of their audiences and advertisers.

Digital terrestrial television services

These commenced in metropolitan areas on 1 January 2001. Almost all households now receive digital services, although complex issues are still being considered about how to get them to the many small communities that do not. Analogue services will be switched off progressively, starting with Mildura/Sunraysia in the first half of 2010 and ending with the metropolitan centres and remote services in 2013 (DBCDE 2008). Extensive work is being carried out within government by a Digital Switchover Taskforce established to advise government on policy and implementation, develop and implement a program framework,

run an information and education program and convene meetings of an Industry Advisory Group comprising stakeholders, including broadcasters, retailers, manufacturers, antenna technicians, public and commercial housing agencies, and government departments. Work is beginning on the job of determining what will be done with the spectrum to be vacated when analogue broadcasts cease.

The Digital Switchover Taskforce's first Digital Tracker Survey report for the first quarter of 2009 found 47 per cent of Australian households had converted to digital TV (at least their main TV set has either an integrated digital tuner or a digital STB or they view their main TV set through a PVR or similar device with a digital tuner), although the rate varies greatly from 70 per cent in Mildura/Sunraysia to 25 per cent in remote Central and Eastern Australia. Groups with relatively low conversion rates are aged pensioner households (32 per cent converted) and households with annual income of less than \$30,000 (34 per cent converted). The level of awareness of digital switchover is high. Those who have converted have generally found the process easy, either with a set-top box or an integrated digital TV, and 77 per cent are satisfied with the result. Almost all the dissatisfaction recorded in the survey is about reception, including picture quality, pixilation, loss of signal and the impact of bad weather. Most households intend to convert to digital. Those with relatively low levels of intent to convert include aged pensioner households (67 per cent intend to convert) and households where the main source of income is government pensions and benefits (68 per cent) (Digital Switchover Taskforce 2009).

Digital terrestrial radio services

These commenced in five state capital cities progressively from early May 2009: Perth (4 May), Melbourne (11 May), Adelaide (18 May), Brisbane (25 May) and Sydney (30 May). Only commercial services started broadcasting at these times. ABC and SBS services are expected by 1 July, and community services some time later. The commercial and national broadcasters are running an information and education campaign to inform listeners about the new services and what is required to receive them. Legislation requires a review to be conducted by 2011 to reconsider the establishment of services in country areas.

For consumers, the mix of centrally planned and market-driven changes provides a complicated mix of new opportunities and challenges. They are getting, and can expect:

- more broadcasting, broadcasting-like and other services, and continuing blurring of distinctions between them;
- increased delivery of broadcasting services over multiple platforms, involving multiple relationships between broadcasters and consumers;
- different business models, requiring consumers to pay for familiar and new services in different ways;
- delivery of broadcasting services and applications from places outside Australia;
- greater audience/consumer participation in broadcasting services;
- more sophisticated technical demands for interoperability between TV and radio receivers and other devices and applications.

Many issues have been identified that seem likely to be important to audiences and consumers of broadcasting services in the immediate and longer-term future. This section summarises the most important and organises them into four major categories:

- services;
- service delivery;
- content; and
- environmental impact.

In addition, there are other areas where broadcasting is confronting issues that are familiar in telecommunications, including information and marketing, pricing, billing and contracts. These are noted only briefly because they are addressed more extensively in other parts of the *Future Consumer* report.

Two central themes emerge from the discussion that follows. First, the perceived social and cultural significance of broadcasting means a lot of special laws and regulation apply to it. Key questions for consumers, as for government, regulators and the industry, are:

- Are radio and television becoming less special, so the rationale for special rules melts away?
- Or are their special qualities shared or even exaggerated by emerging media forms, so the rationale for special rules extends to them?

In considering emerging consumer issues, the idea of ‘equivalence’ is critical. There is likely to be considerable pressure from some quarters to treat new services like the existing ones, but also much argument from others who see new services as an opportunity for modifying or overturning old policy settlements.

Second, despite the perceived significance of broadcasting, the lack of a direct customer relationship between free-to-air broadcasters and their audiences means that some of the normal elements of relationships between service providers and consumers have not existed. Equipment manufacturers, retailers, installers, regulators and especially government, rather than broadcasters, have carried considerable responsibility for service coverage and quality issues. This emphasis may shift as broadcasters are forced closer to their consumers. New possibilities and practices might bring new expectations.

Services

Broadcasters are not subject to enforceable obligations to provide services to all consumers within their licence areas. Commercial and community licensees must only commence providing a service within 12 months of receiving their licence. This contrasts with the universal service obligation scheme in the *Telecommunications (Consumer Protection and Service Standards) Act* 1999. Under this scheme, the designated universal service provider or providers for an area are required to provide basic services (voice telephony including customer equipment, pay phones and 64 kbits/sec digital data services) to all consumers on request within prescribed timeframes. Providers are reimbursed for the net cost of providing services where it is uneconomic to do so, from a fund to which all contribute according to their share of industry revenue.

Successive governments have held similar goals about universal access for radio and TV broadcasting services, but have used different policy tools. These have included the creation of state-funded and/or state-owned enterprises, spectrum planning and licensing, direct funding and legislation.

The ABC and SBS are corporations established by legislation, and National Indigenous Television Limited (NITV) is a public company limited by guarantee. All receive most of their revenue from the federal government. The statutory basis for the ABC and SBS, and the funding provided to all three, give the Commonwealth a major stake in decisions about when, where and which services are provided across the country, although the detailed decisions are made by the broadcasters at arm’s length from government. In the 1980s, a state-owned domestic satellite system, AUSSAT, was established by the Commonwealth. A major reason was its capacity to improve the range and quality of services offered to Australians living and working beyond the reach of terrestrially transmitted broadcasting

services. AUSSAT was sold to Optus Communications as part of its creation as Australia's second telecommunications carrier in the early 1990s.

Spectrum is planned and licensed by ACMA and the minister under the *Radiocommunications Act* and the *Broadcasting Services Act*. ACMA prepares the national Spectrum Plan, dividing the useable spectrum into frequency bands and specifying the general purpose(s) for which each may be used (RA, section 30). The minister can reserve part of the spectrum primarily for broadcasting and refer it to ACMA for detailed planning. He or she can also reserve capacity for national and community broadcasting services and give more detailed directions about frequency allotments.

ACMA sets planning priorities across different areas of the country and parts of the designated broadcasting services bands, allots frequencies to different purposes, prepares individual licence plans and technical planning guidelines, and allocates licences. In all of these steps, decisions are made that affect the services available to consumers in particular places at particular times. Sometimes, as with the introduction of services using the domestic satellite and subsequent expansion of commercial TV services in country areas, extensive changes were made to the planning and licensing schemes set out in broadcasting legislation.

Direct funding has been provided to establish and support particular forms of broadcasting or extend coverage. Community broadcasters receive Commonwealth funds through the Community Broadcasting Foundation. Remote Indigenous broadcasting has been supported since the 1980s, when communities were provided with satellite reception, production and retransmission facilities. This equipment was upgraded and, in the 2000s, additional transmitters were provided to enable the retransmission of a second channel (Rennie & Featherstone 2008). A \$35 million program supported improved reception in television 'black spots' through analogue retransmission, and an Alternative Technical Solutions Program helped extend services where frequencies were unavailable or analogue retransmission was unable to cover at least 80 per cent of the households in the black spot area.

A legislative scheme relieves 'self-help providers' from most legal and regulatory obligations (e.g. defamation, copyright infringements) where they merely retransmit unaltered broadcasts. This encourages entities like local councils and mining companies as well as remote Indigenous communities to establish facilities to improve reception of services in small communities.

Digital television broadcasting requires action in all these four areas. Extra funding has been provided for the new transmission facilities required by national broadcasters and non-metropolitan commercial TV broadcasters. Further money is being provided to support a Digital TV Switchover Task Force in the Department of Broadband, Communications and the Digital Economy. Two large packages of amendments in 1998, 2000 (television) and 2007 (radio), along with several other changes, have been made to broadcasting legislation to implement government policies, and substantial technical planning work has been undertaken by ACMA and its predecessors.

In completing the transition to all-digital terrestrial TV, Australia has the advantage of being able to learn from the experience of other territories, such as the United Kingdom (Digital UK 2008, 2009). It also has to consider the impact of the fibre-to-the-premises National Broadband Network announced by the federal government in April 2009 (Conroy 2009a). This may affect digital terrestrial television in many ways, providing a competing or

complementary digital transmission system in some places and making a much wider range of digital video and audio services available to consumers by IPTV.

For ACCAN, several related issues may be especially relevant:

- continued access to the main existing analogue free-to-air TV services;
- national access to analogue services not yet available on digital in all areas – community TV and NITV;
- access to new digital services and features as they become available;
- new services provided using vacated analogue spectrum;
- relationship with other non-broadcast services, including the National Broadband Network.

In addition, there are issues about digital radio that may warrant ACCAN's immediate and longer-term attention.

Continued access to the main analogue free-to-air TV services

ACMA's chair and CEO, Chris Chapman, recently highlighted the importance of television services to Australians and the scale of the challenge this presents for digital switchover:

Unique geography and population spread and the high rate of reliance on terrestrial TV caused by the late arrival of pay TV in the mid-1990s have placed high community expectations on broadcasters and government about what – and when – digital services will be available, and how far they will extend. Local audiences' degree of ownership over their local television services means it is vital to ensure that locally based TV services can be meaningfully preserved. The promise of better TV might actually be difficult to deliver because, in areas where analogue reception has been poor, digital reception may also be unreliable. This is especially important where consumers have already gone to considerable expense to get access to analogue services, such as erecting 20–30 metre masts and antenna amplification systems, as is common in some towns. (Chapman 2009)

In January 2009, a set of measures was announced to apply to the Mildura/Sunraysia area, where analogue services will cease in the first half of 2009 (Conroy 2009c). These will serve as a model for other areas, to be adapted according to experience. The measures cover:

- access;
- awareness, information and help; and
- targeted assistance for vulnerable households.

Access

The general policy goal has been to ensure digital services achieve the 'same coverage' as the analogue services. This has raised significant technical planning challenges and is not achievable in all places because of the different characteristics of the analogue and digitally coded signals, the choice of available frequencies and the location and power of transmitters. The minister announced a new satellite service to extend access to digital TV as part of the set of measures for Mildura/Sunraysia. While satellite transmission may be capable of delivering technically adequate signals, the economics are much more difficult, because all the separate regionally based services would need to be carried across the national footprint. The issue is beginning to attract public attention as the switchover deadlines approaches (Day 2009).

Awareness, information and help

The January 2009 package included measures concerning:

- awareness: working with the local community to improve awareness and understanding of switchover;
- product labelling: a labelling scheme to help consumers to easily identify digital-ready products;
- help: a national call centre and a website providing switchover information.

In late March 2009, the minister announced an information, awareness and education campaign to include television, radio and online advertisements, equipment labelling, point-of-sale information, and training and accreditation for retail staff (Conroy 2009b).

Targeted assistance for vulnerable households

The January 2009 package indicated that the government would assist households in the Mildura licence area where at least one resident is a recipient of the full Aged Pension, Disability Support Pension, Carer's Payment or equivalent payment from the Department of Veterans' Affairs. Some guidance can also be taken from the UK scheme and experience (Ofcom Consumer Panel 2004; Freeman et al. 2007).

These measures supplement work already done on digital TV equipment and installation. ACMA works with broadcasters and Standards Australia to ensure the quality of transmission and reception equipment. It also has legislative powers to make technical standards for digital broadcasting if necessary, although the industry standard for receivers is a voluntary one at this stage. The Australian Building Codes Board, in cooperation with the Digital Switchover Taskforce and television-associated industries, has released handbooks for developers, owners, managers and tenants of buildings with shared antenna systems and for individual households with single antenna systems.

ACMA chairman and CEO Chris Chapman says there has been a 'very low level of complaints about digital receiver performance' but promises to monitor developments closely, anticipating that this may increase with take-up (Chapman 2009). ACMA has conducted research about the audiovisual equipment already in households, finding that set-ups generally don't comply with those recommended by manufacturers and antenna installers. The unique, dwelling-by-dwelling combinations and connections between devices of different ages presents a major challenge for consumers, service providers, manufacturers, retailers and installers (ACMA 2008).

National access to community TV and NITV

Community television services currently operating in Brisbane, Sydney and Melbourne (ACMA 2009c) are only available in analogue. The issue of digital transmission is still unresolved. This means that, as consumers acquire digital receiving equipment that ensures continued access to free-to-air broadcasts, they lose access to community TV in the centres where it is operating.

NITV is freely available to analogue viewers in the remote communities with terrestrial retransmission facilities; to Optus/Aurora satellite viewers anywhere; to Foxtel, Austar, Optus, TransACT and Neighbourhood Cable pay subscribers; and to digital free-to-air viewers in Sydney only.

Consumers who are being encouraged to acquire digital receivers may be interested in broader digital free-to-air access to the already existing community TV services in some centres and to NITV nationally.

Access to new digital TV services and features

In the past, access to new broadcasting services has only required new equipment after fairly long intervals. Old equipment continued to work satisfactorily for its original purpose. Listeners needed FM radio receivers and colour TVs with UHF as well as VHF reception to get access to the new services introduced in later decades, but AM radio receivers and black and white analogue TV sets still work.

Getting access to new digital services is requiring more continuous adjustment to domestic reception equipment, constant awareness of new developments and a degree of technical skill. Rescanning is needed to get access to extra digital TV channels, including Ten's recent One HD, the anticipated ABC 3 Children's Channel and perhaps further Freeview channels from the Seven and Nine Networks. Software downloads can be used to upgrade receivers but can raise considerable compatibility challenges between new and older generations of equipment.

Consumers may also be interested in ensuring that services promised as part of the selling of digital receivers are actually delivered. A consolidated electronic program guide for all free-to-air digital services is one example of a much-delayed service. The advertised Freeview services might be another. Where services like this are not delivered, the fragmented ownership of the DTTV platform makes it difficult for consumers to pin responsibility on any accountable entity.

New services provided using vacated analogue spectrum

The government and ACMA are beginning to turn their attention to the enormous issue of what to do with the spectrum that will become available as analogue TV transmissions cease between 2010 and 2013. This will require careful balancing of the interests of consumers, network builders and operators, service providers and governments. It may also require balancing of the interests of different groups of consumers in rural and metropolitan areas, between those with different tastes and capacities to pay, and between those seeking continued access to established services and those more interested in new services and possibilities for innovation.

In undertaking this balancing, Australia's unique local circumstances will need to be matched with the international demands for standardisation of frequency allocations and equipment specifications. Australian consumers will have an interest both in the global standardisation that helps interoperability and lowers prices, and in the preservation and development of tailored solutions for special needs.

Already, at least four potential users have indicated a keen interest in some of the vacated spectrum:

- incumbent TV broadcasters, who are reluctant to discuss any 'digital dividend' publicly until the spectrum requirements for 'same coverage' of existing services are settled;
- incumbent radio broadcasters, who are likely to seek additional VHF allocations to extend DAB+ services to non-metropolitan areas (Warner 2009);
- mobile operators and service providers, highlighting the rapid recent growth of mobile broadband and likely increased demands for this purpose (Althaus 2009); and

- ‘open spectrum’ advocates like Google, who want optimal use of unlicensed spectrum, spectrum-sharing and dynamic spectrum allocation and management (Google 2008).

ACCAN will need to consider participating in the processes leading to decisions about which services are to be made available, where and when.

Digital radio

Consumers are already likely to be interested in the quality of coverage of the services that launched across the mainland state capitals in May 2009, the availability and price of receivers, the adequacy of the information and education program being conducted by the industry, and the arrival of new commercial, national and community services.

ACCAN may be interested in participating in the review of digital radio in regional areas, which the minister is required to conduct by 1 January 2011 (BSA, section 215A). Tough questions will need to be asked about the technology to be used, who gets access to it to offer digital services, and any government funding for commercial, national and community services. There will inevitably be considerable pressure to use the same DAB+ technology already being deployed in metropolitan areas, although this may not be ideal for country coverage, and alternate technologies like Digital Radio Mondiale (DRM) are available – though not yet widely deployed.

Radio, including AM radio, is a particularly important medium for older consumers. In Ratings Survey 3 2009, two of the top three stations on both Sydney and Melbourne and both the top stations in Adelaide were AM (‘Talk’ 2009).

Radio for the Print Handicapped (RPH) services are provided in 15 capital cities and major regional centres. About half are on AM and half on FM. The services hold community broadcasting licences. City-wide community broadcasters, including the RPH stations, are guaranteed two-ninths of the capacity of each of the multiplex transmitters allocated to commercial and community broadcasters in the capital cities where broadcasts have commenced. This will be shared among those community stations interested in launching digital services. No community digital services have yet commenced.

A further review of digital radio in Australia generally is required by 1 January 2014 (BSA, section 215B).

See also sections on Accessibility and Emergency Services below.

Service delivery

Accessibility

New technologies and applications need to be used to improve access to services for people with disabilities, and should not be allowed to undermine even the levels of access achieved for existing services. This is a major challenge as digital transmission technologies are deployed, enabling more services to be delivered and eventually wholly replacing analogue services.

Legal obligations are imposed on television broadcasters under the *Disability Discrimination Act* 1992 (DDA) and the BSA. In addition, Australia’s 2008 ratification of the UN Convention on the Rights of Persons with Disabilities will require Australia to report to the United Nations regularly on compliance with the Convention obligations, including rights of access to electronic media and the Internet. This may provide the basis for changes to current arrangements.

A number of reviews are underway that may affect this area. A National Disability Strategy is being developed across all areas of government. The strategy 'will serve as an overarching policy statement setting the national view, direction and priorities to tackle the complex needs of people with disability and their carers'.

The DBCDE is understood to be close to finalising the report from its Inquiry into Access to Electronic Media for the Hearing and Vision Impaired. This inquiry was begun under the previous government. Submissions made in mid-2008 are summarised on Media Access Australia's website under five headings: blind and vision-impaired consumers; deaf and hearing-impaired consumers; new media; education; and others. These propose a wider range of equipment and services than are currently required.

In February, the Minister for Broadband, Communications and the Digital Economy and the Parliamentary Secretary for Disabilities and Children's Services announced a feasibility study into a new disability equipment program to operate independent of telecommunications carriers (Shorten & Conroy 2009). Specialised equipment to enable fixed phone access for people with disabilities is currently available through the disability equipment programs run by major carriers.

Digital TV

In a submission to the Digital Switchover task Force in mid-2008, Media Access Australia recommended several changes to the rules and practices already in place for captioning on digital services. It wanted captioning requirements extended beyond the main channel to multichannels, increased levels of captioning over time and a better definition of captioning to ensure the entire soundtrack is captured. It is also seeking a single model under the BSA to replace the two separate models under the BSA and the *Disability Discrimination Act*. It wants 'mechanisms to allow social inclusion through access whilst balancing fair commercial considerations' (MAA 2008a).

Media Access Australia and other organisations are already very closely involved in research and advocacy about accessibility issues across media and telecommunications. The National Disability Strategy, the departmental review of access to electronic media, the expiry of the HREOC pay TV exemption in June 2009, the joint departmental review of telecommunications equipment and continuing work by the Digital Switchover Task Force provide many opportunities to influence policy in this area.

Digital radio

Media Access Australia has criticised the level of thought given to issues of accessibility by either broadcasters or receiver manufacturers, especially about the proposed visual features of digital radio. The blind and vision-impaired are among the highest users of radio, but few if any radio receivers are available that convert the promised visual features to audio. Problems include tuning for stations through an alphabetical list displayed visually rather than a frequency dial, and changes to the way DJs operate once the name of the station, the song and the artist are shown on a screen. Some DJs no longer bother to give this information verbally, resulting in a less satisfactory listening experience for blind and vision-impaired listeners. Facilities incorporated into at least one European receiver include voice feedback which, on hitting a button, can tell the time, the current station and alarm settings currently entered, but not the names of songs and artists displayed on the screen (MAA 2008b).

Digital radio receivers were not yet available in the Melbourne CBD store of a major participating retailer at the time this report was finalised.

From audiences to consumers: Audio and video on demand

Audio and video-on-demand services – streaming, podcast, vodcast, catch-up TV and radio services – offered by broadcasters encourage or require users to opt in to a contractual relationship with the content and application provider even where no direct payment is made for the content. These services are now widely deployed by broadcasters and used by consumers. They raise a wide range of issues that are unfamiliar to broadcasting regulation. Because the services themselves are not broadcasting services, they lie beyond the regulatory ambit of the BSA, even though consumers are increasingly likely to see them as integral parts of the overall service provided by broadcasters.

A brief review of the information available online about the on-demand services offered by the Nine Network and the ABC, including user requirements and Frequently Asked Questions (FAQs), gives a good indication of the issues that are already significant for consumers (HIRO 2009; ABC 2009c). Nine uses the HIRO platform, developed by an Israel-based company to enable video downloads and streams with advertising inserts. The ABC uses its own iView to deliver streamed video for free, full-screen viewing and ABC Shop Downloads to deliver content from its DVD catalogue for sale online. Some content is also available for downloading to mobiles.

Registration

This is not compulsory with HIRO, but registered users ‘enjoy a greater level of personalisation of content and promotional elements’.

Privacy of personal information

‘HIRO does not give out any detail or information relating to anyone of its users to anyone else.’ This does not prevent personal information being used to serve customised advertising to the consumer.

Technical requirements for use

Users have to download the free HIRO and iView players. HIRO specifies PC/Windows Media Player or Mac/Quicktime; the iView is available for Linux as well. Both require Flash. HIRO requires the Internet Explorer Flash player, iView Adobe’s Flash 9+. Nine does not specify a minimum recommended access speed. The ABC iView streams at 650 kbits/sec and recommends a broadband connection of at least 1.1 Mbps.

What the applications don’t do

HIRO doesn’t install pop-ups or spyware and doesn’t permit ad-skipping.

Programs available

Both HIRO and iView only offer a selection of programs broadcast. ABC programs are generally available the day after broadcast and remain available for 30 days. This reflects storage costs and rights arrangements. Its services are geo-blocked so they are only accessible to users in Australia. Some of Nine’s videos are not available in some territories.

Age verification

HIRO says it will not play restricted videos to young viewers who are not permitted to view them. Age restrictions are set according to broadcast classification codes.

Metering of content streamed or downloaded

Nine and the ABC both have arrangements with particular ISPs that allow their customers to stream and download content unmetered (i.e. without incurring excess usage charges on capped plans).

Help and complaints

While both Nine and the ABC provide detailed online FAQs, it is not clear whether consumers can make use of established broadcasting complaints processes if they are dissatisfied with aspects of these services.

Download services bring to broadcasting a wide range of the kinds of consumer issues familiar from telecommunications. In some ways, this experience of proliferating services and service types and increased complexity is similar to the one the telecommunications industry underwent when competition replaced monopoly in the 1990s. The relationship between consumers and broadcasters is shifting from a relatively simple one, where simple, standardised equipment purchased from retailers gave access to services from several providers, to one where consumers need discrete mixes of hardware and applications for each provider.

Content

Multi-platform content, multiple regulatory requirements

Audiovisual content is regulated under several schemes.

Films (DVDs and videos) and computer games are classified by the Classification Board under the Commonwealth *Classification (Publications, Films and Computer Games) Act 1995 (Classification Act)*.

Broadcast content is regulated according to the rules applying to the relevant licence category set out in Appendixes 5.1 and 5.2 to this report. Television and radio program services delivered over mobile devices ('mobile TV') are also subject to these rules (Bloch 2008), but streamed services are not.

Internet content has been regulated under the BSA since 1999. The regulatory scheme was overhauled in 2007 as discussed in the next section. Broadcasters' websites, including streamed content, are now regulated under Schedule 7 of the BSA rather than broadcasting content rules. If a broadcaster's website includes prohibited content or links to prohibited content, ACMA can issue the broadcaster with a take-down notice. Prohibited content means:

- any online content that is classified RC or X 18+ by the Classification Board;
- content which is classified R 18+ and not subject to a restricted access system that prevents access by children;
- content which is classified MA 15+, provided by a mobile premium service or a service that provides audio or video content upon payment of a fee and that is not subject to a restricted access system (ACMA 2009a, 2009b).

Content delivered over convergent devices challenged these regulatory distinctions. In 2006, a highly publicised incident exposed a gap in the rules governing ephemeral content such as live streamed audiovisual services. Sexually explicit material unable to be shown on commercial television was streamed live on the subscription-only website of Channel Ten's *Big Brother* program. Copies of the material were then redistributed online by users. Because the 1999 online amendments to the BSA only covered stored content, the live material was unregulated. Much public criticism ensued.

Also in 2006, ACMA approved the Mobile Premium Services (MPSI) Scheme, supported by a service provider determination made under the *Telecommunications Act*. The scheme is an industry-based self-regulatory scheme requiring clear information to be provided about the costs and terms and conditions on which mobile premium services are offered, and about the handling of complaints. Initially, it also prohibited and restricted access to certain mobile premium services in line with the principles of content classification applying to films and games.

Following the *Big Brother* incident, the then Department of Communications, Information Technology and the Arts reviewed the laws affecting 'convergent content services' (DCITA 2006). The review found that these services cut across broadcasting and telecommunications regulation. Subsequent amendments introduced a new Schedule 7 of the BSA, establishing a new regulatory framework for convergent content delivered over various platforms. Most of the scheme commenced in 2008. The amendments narrowed the coverage of the Internet content regime in Schedule 5 of the BSA, which now only applies to the activities of ISPs, and repealed Part 9A of the TCPSSA which covered telephone sex services.

The Scheme covers most live and static content-related services provided over the Internet and mobile phones. It expressly excludes broadcasting and datacasting services, voice telephone calls, Internet directories and search engines (Lawrence & Grant 2007). Four main categories of service provider are covered: live content service providers; hosting service providers who provide access to stored content; links service providers who provide access to content via links; and commercial content service providers who provide access to content for a fee as part of a profit-making enterprise (House of Representatives 2007; Bloch 2008).

ACMA administers the scheme. It can investigate complaints and issue take-down, service-cessation and link-deletion notices if satisfied that age-restricted content (MA15+ and R18+ content) is being provided directly or via links without the access and other controls required. Failure to comply with notices by 6.00 p.m. on the day after they are issued constitutes a contravention that can attract civil and criminal (fines up to \$11,000) penalties. The scheme and ACMA's responsibilities under it replace the earlier arrangements for content regulation under the Mobile Premium Services Scheme.

The 'convergent content' regime addresses only issues relevant to classification: themes, violence, sex, language, drug use, nudity (the 'classifiable elements' under the guidelines for classifying films and games). Most of the issues summarised in Appendixes 5.1 and 5.2 are regulated for broadcasters' broadcasting services; therefore, they are not regulated for their online and mobile on-demand services. For example, commercial radio and television codes of practice require licensees to ensure accuracy and fairness in news and current affairs programs. This is not required for their online and mobile on-demand services. Consumers may expect the same standards to apply. On the other hand, applying more onerous rules may discourage broadcasters from introducing innovative services on websites, or services best targeted to users that do not replicate broadcast audiences.

For ACCAN, content issues are a big challenge. While its charter and statutory revenue source indicate its focus is ‘telecommunications’, the young online and mobile content regulatory regime and converged regulator ACMA demonstrate clearly that content services, and consumer concerns about them, are inseparable from the carriage services used to deliver them. CTN participated in the ACMA consultation on the draft declaration of restricted access systems in 2007, recognising that ‘convergent content services’ are a matter of significant interest for telecommunications consumers.

It seems likely that consumers will want ACCAN to continue to pursue this and related issues. Although it may be inappropriate for ACCAN to participate in the whole range of content issues currently covered in broadcasting licence conditions and codes, online and mobile media have already intensified rather than eliminated some of the policy concerns underpinning broadcasting regulation. Striking the balance is likely to be an iterative process, best handled case by case.

To the extent that it chooses to participate in content issues, ACCAN will need to consider the range of perspectives that different consumers bring to them. These range from censorious protection of vulnerable and perhaps not-so-vulnerable users to the libertarian permissiveness of some innovators.

User-generated content

Examples of user-generated content already gathered and distributed by broadcasters include the ABC’s *The Gruen Transfer* and Austereo’s RadarRadio.

The Gruen Transfer is a weekly program that invites viewers to produce their own advertisements, either using tools provided on its website or independently. Some advertisements are selected to be shown on the TV program. All are available for viewing on the ABC’s website. Would-be producers are warned that the ABC cannot broadcast material that includes footage or music that is protected by copyright: ‘so don’t borrow anyone else’s stuff’.

Radar Radio is a digital radio service launched online early in 2009 and on terrestrial digital radio as services commenced in capital cities in May 2009. It seeks unsigned musicians, inviting them to upload their music to its website before its service launch. By posting their content, producers warrant that they are not violating any intellectual property rules. However, there is no requirement that the content meets any broadcasting code requirements (Austereo 2009).

Expectations about what can be done with material that users have created, or feel they have contributed towards creating, are increasingly conditioned by those imposed by other sites, especially YouTube, and the elements addressed in Creative Commons licences: attribution, re-use and redistribution. The agreements users are currently required to accept before they upload material generally give the broadcaster a worldwide, non-exclusive, royalty-free right to reuse, reproduce and redistribute it as well, and waive the creator’s moral rights. *The Gruen Transfer*’s ‘Consumer’s Revenge’ terms and conditions expressly permit commercialisation of the content. By comparison, YouTube’s US law-based terms do not refer to moral rights but include the right to create derivative works.

The ABC has developed guidelines for managing user-generated content. These are included in its Editorial Policies. In developing the guidelines, it considered many issues, including the style of moderation for managing discussion boards, the extent to which the ABC may be responsible for content submitted by users, how it should minimise the risk of copyright infringements and how it should manage the classification of Internet material

(ABC 2008). The Editorial Policies ensure that there is a continuum between the ABC's online activities and traditional broadcasting services:

- 9.2.1 The ABC upholds the same values when engaging with users of our online and other interactive services as we do when engaging with our viewers, listeners and readers on established platforms: honesty, fairness, independence and respect.
- 9.3.1 The fundamental purposes of the ABC engaging with users on online and interactive services are the same as the public service purposes for ABC activities on other media platforms: to inform, entertain, educate, and encourage and promote the arts. (ABC 2009)

A recent episode of *The Gruen Transfer* provides an example of this policy in action. Each week, the program presents faux advertisements produced by two advertising agencies 'challenged with selling the unsellable'. In the episode broadcast on 13 May 2009, one of the advertisements was not broadcast because it was considered a breach of ABC Editorial Policies. The ABC did, however, allow it to be published on an external website, www.antiprejudicead.net (ABC 2009b).

Obligations under the Guidelines extend to all users of ABC interactive services, who must agree to conditions of service before contributing material. ABC services that publish user-generated content are moderated. Different levels of moderation apply, depending on the type of service and sensitivity of content. Particular care is taken to minimise the risks of exposure to unsuitable content by children. In relation to links:

ABC must check user-submitted links to ensure they are editorially justified and suitable for the likely audience, which may include children. Particular care must be exercised when linking to sites that have content that is contentious. The publication and placement of links should not give undue prominence to commercial products or services. (ABC 2009a)

Other forms of audience/user participation

Broadcasting codes of practice already contain some safeguards to protect the privacy of participants in interactive broadcast programs. Under all broadcasting industry codes except the community television codes, any person participating in a program must be assured of their right to privacy, if they so wish. The Commercial Radio Code of Practice, for example, aims to prevent the unauthorised broadcast of statements by identifiable persons in interviews or talkback, by requiring persons to consent to the broadcast of recordings made without their knowledge and to be informed or be reasonably aware in advance that their words may be broadcast.

The widespread practice of audience voting in programs is not mentioned in any of the codes, or other regulation in Australia. This has been a significant issue overseas. In the United Kingdom, a series of scandals about competitions and voting on all four main terrestrial broadcasters resulted in record fines by the communications and premium rate phone-line regulators, becoming one of the most damaging events in television history. It 'struck at the heart of the UK public's trust in broadcasters and served as a blow to a relatively nascent, but significant revenue stream for TV broadcasters already struggling with a precipitous drop in advertising revenue' (Smith 2009). For example, in 2008 a problem with the voting system on *Strictly Dancing* that resulted in all competitors progressing to the next round triggered hundreds of complaints. In 2006, viewers of *Sport Relief* were encouraged to enter competitions they had no chance of winning and winners

were faked by using production team members. In 2007, *Blue Peter* altered the results of a poll to name the show's cat (Thomas 2008). With an increasing trend for the production of television programs that allow viewers to vote on the distribution of money for community projects, there is a heightened awareness that these voting schemes should operate in an equitable and ethical manner (Holmwood 2009).

A subsequent review of 'participation TV' found broadcasters had to do more to recognise the contractual relationships they had with viewers/consumers when providing premium rate services and the obligations these imparted. It generated a host of recommendations, most of which were adopted by Ofcom.

For ACCAN, the British experience shows how the expectations of consumers can run ahead of the internal processes of commercial enterprises struggling to develop new revenue streams in rapidly changing fields.

Emergency services

Access to the emergency number is an essential feature of voice telephone services, mandated under telecommunications legislation.

Emergency use of broadcasting services is also important, but it is handled differently. Existing codes of practice require broadcasters to have adequate procedures in place to enable the broadcast of emergency information. This includes consultation with appropriate emergency and essential service organisations and the designation of a 24/7 contact officer at the station. Broadcasting legislation imposes, as a licence condition, a long-standing obligation to give control over matters broadcast to a person authorised by the minister in emergencies (see Appendixes 5.1 and 5.2).

The significance of broadcasting as a provider of emergency service information was highlighted early in 2009 during the Victorian bushfires. In particular, AM radio provided a crucial service:

- transmitted from sites safely outside the affected areas;
- to universally available receivers;
- powered by batteries or another portable power source (e.g. in cars).

AM continued to provide service when mobile phones and laptops connected wirelessly to nearby cellular transmitters, and fixed computers connected to wireline Internet and electricity, did not.

This is a significant issue to be considered when addressing the extension of digital radio to country areas, especially any eventual shutdown of AM.

Archives

Broadcasters own and control access to large archives of material that are of interest to the public. Access has typically been granted on a commercial basis. The content that broadcasters are increasingly making available on demand is blurring the line between 'broadcast' and 'archives'. It is likely consumers will increasingly see the service provided by broadcasters as more than transmission in real time of live and pre-recorded programs. Some kind of access to archival material may come to be seen as an intrinsic part of broadcasting itself. Conditions of access to archival material may become important issues for consumers.

Issues for consideration could include:

- *Availability.* What material should be made available, given that broadcasters may not control all the relevant rights? For how long after broadcast?
- *Accessibility.* Should material be available as streamed footage or for download? What level of broadband service should be targeted as a minimum for satisfactory results for users?
- *Price.* Should broadcasters charge for all access to archived material or for use beyond a certain capped level?
- *Re-use.* What, if any, conditions should apply to re-use of the material?

For each of these issues, expectations may vary for broadcasters that receive significant government funding and those that are largely or purely commercial.

A further issue about access to archives is dealt with under Competition.

Advertising: Accuracy

A central feature of the regulation of broadcasting content is the separation of advertisements and programs. Deep integration of selling messages into programs challenges this separation, making it difficult to judge the appropriate standards to which the content should be held accountable.

The commercial TV and radio codes of practice both require advertising material to be distinguishable from other program material. Some of the rules applying to these different forms of content cover similar issues, like the portrayal of sex and violence. One issue – accuracy – is handled quite differently.

Advertising and information programming are both expected to aspire to accuracy. Trade practices and fair trading laws make it an offence for advertisers on TV, radio and other media to engage in misleading and deceptive conduct. Broadcasting law sets ‘fair and accurate coverage of matters of public interest’ as an object for commercial and community services. Detailed requirements for relevant program material, like news, current affairs and documentaries that, like advertisements, provide information to potential consumers, are set out in self-regulatory codes. Breaches might not lead to any significant sanction unless they are especially flagrant or systemic. Failing to achieve accuracy does not amount to an offence.

The usual public policy rationale for this different treatment is that occasional inaccuracy is the price a society pays for fearless journalism. Tougher sanctions would chill the speech a free society needs. Inaccurate advertising, however, undermines the proper functioning of markets, which work best when the quality of information about goods and services for sale is highest. Tough sanctions encourage the speech free markets need.

The ABA’s ‘Cash for Comment’ Commercial Radio Inquiry and a more recent High Court decision have tested the boundaries of advertisements and programs.

‘Cash for Comment’: The Commercial Radio Inquiry

In 2000, the ABA investigated talkback hosts on some commercial radio services accused of accepting payment in return for favourable on-air comment. It found hosts had breached code rules requiring:

- 2.2 In the preparation and presentation of current affairs programs, a licensee must ensure that: ...

(d) viewpoints are not misrepresented, and material is not presented in a misleading manner by giving wrong or improper emphasis, by editing out of context, or by withholding relevant available facts,

and

3.1 Advertisements broadcast by a licensee must:

- (a) not be presented as news programs or other programs.

The conduct of talkback hosts and the licensees for whom they worked amounted to a systematic failure of self-regulation (Hitchens 2004; ABA 2000). In response, the ABA introduced three new program standards, the first to be made for commercial radio licensees since the 1992 *Broadcasting Services Act* substituted self-regulation for most government regulation of broadcast content. These three standards require:

- advertisements to be distinguishable from other programs;
- on-air disclosure and a publicly accessible register of commercial agreements between sponsors and talkback presenters;
- compliance plans to be formulated by commercial radio licensees.

In 2002, following repeated breaches of the new disclosure requirement, the ABA referred one matter about the *Alan Jones Show* on 2GB to the Department of Public Prosecutions (DPP). The DPP decided it would be too difficult to prove a breach according to the criminal standard of proof and did not proceed. At the same time, 2GB had not disclosed that Telstra had sponsored the *Alan Jones Show*. The ABA found that there had been no breach because the agreement was with the licence-holder, rather than with Jones. The government has since expanded the range of broadcasting enforcement powers available to ACMA. These powers are being tested by ACMA in a Federal Court action against 2UE. The case is about repeated failures by the 2UE licensee of 2UE to ensure that on-air announcements disclosing a commercial relationship were made during broadcasts of the *John Laws Morning Show* in August 2006. The decision is pending.

The publisher's defence

Under section 52 of the *Trade Practices Act* 1974 (TPA), it is an offence to engage in conduct that is 'misleading or deceptive or is likely to mislead or deceive'. Those who 'carry on a business of providing information' are not subject to this provision, except in their advertising (section 65A). Broadcasters, magazines, newspapers and other information providers all benefit from this 'publisher's defence', designed to protect editorial comment (ACCC 2009; Jackson & Pelly 2009).

A recent case makes it clear that the publisher's defence does not necessarily apply to all content that might be thought of as 'programs'. In 2004 and 2005, Channel Seven's *Today Tonight* broadcast two segments on an investment scheme called Wildly Wealthy Women (WWW). It was falsely claimed that the principals of the scheme were very wealthy when this was not the case. The ACCC took action against Channel Seven, alleging misleading and deceptive conduct under section 52.

In 2007, Justice Bennett found Channel Seven had made misleading representations about the principals of the WWW scheme and could not rely on the section 65A publisher's defence. The broadcaster had an arrangement with the women about the general content of the broadcasts and thereby adopted the statements made by the WWW principals when making the broadcast. On appeal, the Full Federal Court agreed that Channel Seven had

engaged in misleading and deceptive conduct, but thought it could use the defence. In April 2009, the High Court upheld an appeal by the ACCC. In their joint decision, Chief Justice French and Justice Keifel held that:

The purpose of the exemption in s. 65A ... was to maintain a vigorous free press as well as to maintain an effective and enforceable TPA. That purpose is served by releasing ... [information providers] ... from undesirable inhibitions on the provision, by them, of news, information, opinion and comment. Consistently with that purpose information providers are free as part of the function of an independent free press to praise or criticise the providers of goods or services and the quality of what they provide. Where, however, the information provider publishes matter in connection with goods or services which itself provides, or publishes an advertisement for its own or someone else's goods or services, the rationale of maintaining a free and vigorous press does not require the exemption from the prohibition of misleading or deceptive conduct. The same is true where the information provider promotes the goods or services of a third party pursuant to a contract, arrangement of understanding with that party (quoted in ACCC 2009).

Armed with a wider interpretation of s. 52 (or narrower interpretation of the s. 65A defence), the ACCC has 'vowed to step up its scrutiny of infomercials, advertorials and current affairs programs'. Media outlets have to 'check their facts'. (Jackson & Pelly 2009)

The standards determined after the Commercial Radio Inquiry elevated the separation of commercial radio advertisements and programs to a regulatory rather than a self-regulatory requirement in broadcasting law. They also imposed a new requirement for content previously regarded as programming rather than advertising: disclosure of commercial agreements with presenters. The High Court's interpretation of the TPA means that even some material regarded as programming rather than advertising will be held to the tougher standard of accuracy and sanctions demanded of promotional content. Together, they reveal the high expectations about accuracy in programming as well as advertising, and the scope for serious sanctions to be imposed where broadcasters fail to achieve it.

For ACCAN, the cases show that traditional consumer protection concerns about misleading and deceptive conduct can be pursued in some forms of broadcast programming as well as advertising.

Advertising to children

Limitations on advertising during children's programs are set in the Children's Television Standard and the codes of practice. The Standard prohibits advertising during programs directed to preschoolers, and only allows G-rated advertisements during programs for children aged five to 12. A particular concern is advertisements for food and drinks. The Standard states:

- 6.23 Advertisements directed to children for food and/or beverages;
 - 6.23.1 should not encourage or promote an inactive lifestyle;
 - 6.23.2 should not encourage or promote unhealthy eating or drinking habits;
 - 6.23.3 must not contain any misleading or incorrect information about the nutritional value of the product.

Despite these rules, community submissions to the 2008 review of the Children's Television Standard expressed significant concerns about advertising food and beverages directed to children. Of the 53 submissions on the draft standard, 28 were from health

professionals and eight were from media representative groups. Submissions were extremely polarised, ranging from suggestions that advertising food to children should be banned, in a manner similar to that adopted for tobacco advertising, to allowing the advertising and broadcasting industries to continue to self-regulate. Although some submissions were made by groups representing parents, and Choice also made a submission, no submissions were made on behalf of consumers of broadcasting services. ACMA expects to release a new draft standard in mid-2009.

So-called ‘junk food advertising’, especially to children, has been increasingly contentious in recent years. Some suggest it is ‘the new tobacco’, hinting at the long campaign to ban advertising for tobacco products. One of the reasons given for not adopting tougher limits on broadcast advertising for unhealthy food and drinks is that this would not affect promotional activities in online and mobile media. It is likely that some groups wishing to participate in a broadly focused communications consumer body may encourage ACCAN to become involved in this area.

Australian content

One of the most important goals of broadcasting regulation has been ‘to promote the role of broadcasting services in developing and reflecting a sense of Australian identity, character and cultural diversity’ (BSA, section 3(1)(e)). The only two areas where the broadcasting regulator is required to make program standards are Australian content and children’s programs (section 122).

The policy goal has also underpinned the structure of the broadcasting industry. A limited number of licences have been allocated even where more were technically possible, to underwrite the financial capacity of broadcasters to produce and commission substantial amounts of Australian programs, rather than acquire cheaper programs from overseas. Even though the BSA also sets as an object ‘a regulatory environment that will facilitate the development of a broadcasting industry in Australia that is efficient, competitive and responsive to audience needs’ (BSA, section 3(1)(b)), the policy of limiting the number of commercial TV and radio broadcasters has been preserved in statutory moratoria on the granting of new licences during the introduction of digital TV and radio.

The Australia–US Free Trade Agreement has detailed provisions about quotas and other measures that can be adopted for broadcasting and new media services (Given 2004). While this issue might seem a long way from CTN’s telecommunications brief, its central place in broadcasting policy means ACCAN may be drawn into it, even if only indirectly – especially when considering consumers’ interests in the reallocation of vacated analogue spectrum.

Competition

Competition law has had an increasing impact on broadcasting as media-specific ownership limits have been relaxed, new powers have been given to the competition regulator and new issues have emerged that have attracted its attention. Examples include long-term exclusive program supply deals entered into by the Seven and Nine Networks which the ACCC felt could reduce the likelihood of competition from new entrants in Darwin and regional Western Australia, and a content-sharing agreement between pay TV operators Foxtel and Optus. These cases demonstrated both the effectiveness and limits of the ACCC’s powers.

There are at least three areas where competition concerns may affect consumers in broadcasting:

- *Cooperation between broadcasters sharing facilities and understandings as part of the introduction of digital transmission.* This includes the activities of Freeview, the consolidated free-to-air

digital platform being launched by incumbent broadcasters, in content, customer equipment and applications; any consolidated download services offered, along the lines of the United States-based Hulu, co-founded in 2007 by NBC Universal, News Corp and Providence Equity Partners, now offering videos from nearly 150 content companies (Hulu 2009); and digital radio – especially the relationship between commercial and community radio services that share multiplexes and hold shares in joint venture transmission companies.

- *Relationships between broadcasters and third parties that force consumers to use particular applications* – for example, to get access to downloads.
- *Vertical integration, providing common ownership of physical networks, distribution platforms and major content assets.* This is especially important as different types of corporations work to secure control of the gateways into households. A new (or revived from the early days of radio and television broadcasting) example is the relationship between some broadcasters and hardware suppliers, such as the ownership of Hybrid Television Services, the company controlling rights to TiVo in Australia and New Zealand, by the Seven Network and TVNZ.

A novel example of a broadcaster using its control of content assets occurred in 2008 when, according to the *Canberra Times*, the ABC placed conditions on a sale to SBS of news and current affairs footage for a documentary on the Howard Liberal government. Conditions were understood to include SBS agreeing to the ABC broadcasting its own documentary on the Howard government first, and SBS only having access to footage that the ABC did not want for its own program (Bodey 2008; Waterford 2008). Nick Torrens, the co-producer of the SBS program said at the time:

The ABC Archive is a public resource, publicly funded. What justification could there be for the ABC to place an embargo on the use of the ABC Archive by an independent documentary producer and to reject as well the commercial opportunity of archive recoupment to the ABC? For us this is a clear and salutary reminder of Australia's new and commercially competitive public broadcasting environment. The implications for filmmakers, audiences and taxpayers of these decisions and events are dire and of great importance. (Waterford 2008)

The growing number of producer/consumers with an interest in using archival material may make the terms and conditions of access to it an issue for competition authorities.

Environmental impact

This has not been a significant factor in broadcasting regulation to date. Its growing importance in public policy, however, means this is likely to change. Household energy consumption is a major issue and audiovisual and computer equipment are significant contributors to it.

The introduction of digital transmission by TV and radio broadcasters raises big issues, including the power consumption of new, larger displays, the replacement and/or disposal of analogue TV sets and the possible transformation of television to the kind of regular 'upgrade' culture familiar in computers and mobile phones. Much attention is already being paid to the labelling of TV receivers according to their 'digital-readiness'. Consumers may be increasingly interested in the power they consume and what they can do to reduce it.

Policy development in the future will need to involve a wider range of stakeholders, such as the Department of Climate Change, and pay more attention to the environmental impact of different policy options and ways of providing particular services. The National

Broadband Network and consideration of possible uses of vacated analogue spectrum are obvious candidates.

Intellectual property

The services offered to broadcast consumers are often affected by intellectual property rights created in legislation and any exceptions allowed. Special provisions in broadcasting law limit the liability of self-help rebroadcasters but ensure that underlying rights-holders (though not broadcasters) are compensated for the retransmission of their works – for example, by pay television operators that include free-to-air services in their channel lineups.

Contemporary debate about the balance intellectual property law strikes between the interests of rights-holders and users is intense and broad ranging. A particular issue affecting broadcasters is the changed expectations about electronic media content formed by digital technology, especially about its ‘shareability’. For some consumers, content that can’t be copied, edited or redistributed is perceived to be ‘broken’. For broadcasters, however, content is ‘broken’ when any one of these activities occurs.

Digital broadcasting – especially high-definition television – has crystallised industry concerns. Various content-management technologies have been developed that seek to preserve the easy-access nature of terrestrial broadcasting, while providing technical protection to avoid redistribution of broadcast content without the authority of the rights-holders. A ‘broadcast flag’, the term used in the United States, is a description code embedded within a broadcast. It does not lock, encrypt or scramble broadcasts. Instead, it is a request that hardware receivers limit what can be done with the broadcast content after reception. Broadcast flags can only be effective where hardware manufacturers incorporate the technology that recognises them and acts upon the instructions embedded within the description. This requires regulation (Brennan 2007).

Content-management technology standards have been developed in the United States, Europe and Japan. While the US and European systems are based on a similar idea, their implementation is very different. The US system consists of two bytes of information, which can be set to ‘on’ or ‘off’ for the associated broadcast. It relies upon public law to mandate hardware recognition and to specify hardware behaviour. The proposed European content protection and copy management (CPCM) system is more complex. It also needs law to mandate hardware recognition. Once recognised, hardware behaviour is specified by the CPCM standard itself. The Japanese approach is quite different. It is not flag based, but relies on encryption at the source (Brennan 2007).

In Australia, the legislative framework appears to be in place for ACMA to make content management technology standards under either Part 9A or Part 9B of the BSA. So far, it has been satisfied with the approach taken by industry without such intervention. The United States may attempt to export its regime to Australia through a round of Free Trade Agreement revisions, but at this stage the chances of Congress supporting something like the broadcast flag in its original form seem remote. Broadcasters choosing to compete with unauthorised Internet distribution through the timely broadcast of programs in a high-quality high-definition broadcast environment may also cut demand for pirated content (Brennan 2007). The proliferation of download services suggests the latter is occurring, though not without continuing technical initiatives and regulatory and policy pressure.

An important technical initiative is the introduction of HDMI (High-Definition Multimedia Interface) technology to connect the increasing array of digital video and audio devices in households, including computers, digital TVs and set-top boxes (HDMI). Built in to

HDMI is a copy protection technology developed by Intel, HDCP (High-bandwidth Digital Content Protection).

There has been little direct consumer involvement in these activities to date despite their significant implications (see also de Zwart 2007; Weatherall 2007; Wright 2007).

5.4. What can ACCAN do?

ACCAN's charter and the statutory basis of its funding may limit and shape its activities in broadcasting. The organisation is being established to represent consumer interests in telecommunications, disseminate information to consumers, engage and train volunteer consumer advocates, coordinate responses to government-initiated processes, and conduct conferences and workshops.

The 2009–10 federal Budget provides an additional \$7.5 million over four years to support its activities, supplementing the \$0.8 million already included in the forward estimates under the Telecommunications Consumer Representation and Research Grants Program. The funds are being made available under section 593 of the *Telecommunications Act* 1997, which empowers the minister, 'on behalf of the Commonwealth, to make a grant of financial assistance to a consumer body *for purposes in connection with the representation of the interests of consumers in relation to telecommunications issues*' (emphasis added). The Budget Papers indicate that the costs of this measure will be fully recovered from annual carrier licence charges collected by ACMA under the *Telecommunications (Carrier Licence Charges) Act* 1997 (Australian Government 2009).

The *Telecommunications Act* does not define the term 'telecommunications' but does define 'telecommunications network' to mean:

a system, or series of systems, that carries, or is capable of carrying, communications by means of guided and/or unguided electromagnetic energy,

and 'telecommunications industry' to include:

an industry that involves:

- (a) carrying on business as a carrier; or
- (b) carrying on business as a carriage service provider; or
- (c) supplying goods or services for use in connection with the supply of a listed carriage service; or
- (d) supplying a content service using a listed carriage service; or
- (e) manufacturing or importing customer equipment or customer cabling; or
- (f) installing, maintaining, operating or providing access to:
 - (i) a telecommunications network; or
 - (ii) a facility;

used to supply a listed carriage service.

The functions of the Telecommunications Industry Ombudsman do not include complaints about the content of a 'content service'. The *Telecommunications Act* defines these as:

- (a) a broadcasting service; or
- (b) an on-line information service (for example, a dial-up information service); or
- (c) an on-line entertainment service (for example, a video-on-demand service or an interactive computer game service); or
- (d) any other on-line service (for example, an education service provided by a State or Territory government); or
- (e) a service of a kind specified in a determination made by the Minister for the purposes of this paragraph.

While the convergence of broadcasting and telecommunications is reflected in the merger of the ABA and ACA to form ACMA, the economy-wide activities of the ACCC and the creation of ACCAN itself, the sector-specific Commonwealth legislation about broadcasting and telecommunications, the responsibilities of the TIO and the history of Mobile Premium Services regulation show that convergence across the communications sector is still a work in progress.

5.5. References

- ABA, 2000. *Commercial Radio Inquiry Final Report*, ABA, Sydney.
- ABC, 2009a. *Editorial Policies*, ABC, Sydney.
- ABC, 2009b. *The Gruen Transfer – The Pitch*, <<http://www.abc.net.au/tv/gruentransfer/thepitch.htm>>. Accessed 16 May 2009.
- ABC, 2009c. *iView Requirements*, <<http://www.abc.net.au/tv/iview/requirements.htm>>. Accessed 25 May 2009.
- ABC, 2008. *Editorial Policies – Discussion Starter – User-Generated Content*, ABC, Sydney.
- ACCC, 2009. ‘High Court Explains Limit of the “Publisher’s Defence”’, News Release 098/09, 30 April.
- ACCC, 2008. ‘ACCC Accepts Undertaking from Fairfax Digital Australia and New Zealand Pty Ltd about “Free” Services Claims’, Media Release 212/08, 25 July.
- ACMA, 2009a. *Broadcasting Content Regulation*, <http://www.acma.gov.au/WEB/STANDARD/pc=PC_90078>. Accessed 5 May 2009.
- ACMA, 2009b. *Prohibited Online Content*, <http://www.acma.gov.au/WEB/STANDARD/pc=PC_90102>. Accessed 13 May 2009.
- ACMA, 2009c. *Community TV Broadcasting Licences*, ACMA, Sydney, 24 April.
- ACMA, 2008. *Household Television Environment Research 2007/08*, ACMA, Sydney.
- AFTRS, 2008. *Business Models for Digital Distribution 2008 – Research Summary*, AFTRS, Melbourne.
- Althaus, C. (CEO, Australian Mobile Telecommunication Association) 2009, ‘Productivity, Connectivity, Mobility: Mobile Broadband – Driving Australia’s Economic Growth’, ACMA RadComms09 Conference, 30 April, <http://www.acma.gov.au/webwr/_assets/main/lib310814/digital_dividend-c_althaus.pdf>. Accessed 25 May 2009.
- Australian Government, 2009. *Budget Paper No 2 2009/10, Part 2: Expense Measures – Broadband, Communications and the Digital Economy*, <http://www.budget.gov.au/2009-10/content/bp2/html/bp2_expense-07.htm>. Accessed 26 May 2009.
- Austereo, 2009. ‘Radar Radio Terms of Service’, <<http://www.radarradio.com.au/tsandcs.html>>. Accessed 13 May 2009.
- Australian Senate, 1999. *Broadcasting Services Amendment Bill (Online Services) 1999*, Canberra.
- Bloch, V., 2008. ‘A Difficult Cache to Solve – Regulating Content in a Digital World’, *Communications Law Bulletin* 27(2), pp. 14–17.
- Bodey, M., 2008. ‘Access to Archive “Denied”’, *The Australian*, 28 August, p. 32.
- Bowrey, K., 2007. ‘What are You Missing Out On? Big Media, Broadcasting, Copyright and Access to Innovation’, in A.T. Kenyon (ed.), *TV Futures – Digital Television Policy in Australia*, Melbourne University Press, Melbourne.
- Brennan, D., 2007. ‘Flag Waving in the Digital Jungle’, in A.T. Kenyon (ed.), *TV Futures – Digital Television Policy in Australia*, Melbourne University Press, Melbourne.
- Chapman, C., 2009. ‘ACMA’s Role in the Switchover to Digital Television, Its Multi-layered Approach and On-going Regulatory Role’, Speech to the Get Ready for Digital TV Conference, Sydney, 30 March.
- Conroy, Senator S. (Minister for BCDE), 2009a. Joint Media Release with Prime Minister, Treasurer and Minister for Finance, New National Broadband Network, 7 April.

- Conroy, Senator S. (Minister for BCDE), 2009b. 'Get Ready for Digital TV', Media Release, 30 March.
- Conroy, Senator S. (Minister for BCDE), 2009c. 'Package to Drive Digital Television Transition', Media Release, 29 January.
- Creative Commons Australia 2009, *Creative Commons Licences*, <<http://www.creativecommons.org.au/licences>>. Accessed 25 May 2009.
- Day, M., 2009. 'Regional Viewers Living in a Black Hole for Digital TV', *The Australian*, Media, 25 May, p. 36.
- Department of Broadband, Communications and the Digital Economy (DBCDE), 2008. 'Digital TV Timetable by Region', 19 October, <http://www.dbcde.gov.au/__data/assets/word_doc/0008/89738/Digital_TV_Timetable_by_Region.doc>. Accessed 25 May 2009.
- Department of Communications, Information Technology and the Arts (DCITA), 2006. *Review of the Regulation of Content Delivered over Convergent Devices*, DCITA, Canberra (April).
- de Zwart, M., 2007. 'Australia's Fair Dealing Exceptions – Do They Facilitate or Inhibit Creativity in the Production of Television Comedy?', in A.T. Kenyon (ed.), *TV Futures – Digital Television Policy in Australia*, Melbourne University Press, Melbourne.
- Digital Switchover Taskforce, 2009. *Digital Tracker – Report on Quarter 1, 2009*, DBCDE, Canberra, May.
- Digital UK, 2008. *Report on the First Digital TV Switchover: Whitehaven/Copeland, Cumbria*, Digital UK, London, <http://www.digitaluk.co.uk/__data/assets/pdf_file/0011/19388/DUK_Copeland_ReportWEB010508.pdf>. Accessed 26 May 2009.
- Digital UK, 2009. *Review of the Scottish Borders Digital TV Switchover*, Digital UK, London, <http://www.digitaluk.co.uk/__data/assets/pdf_file/0017/26513/Review_of_the_Scottish_Borders_Digital_TV_Switchover_FINAL1.pdf>. Accessed 26 May 2009.
- Freeman, J. et al. (i2 media research ltd, Goldsmiths College, University of London), 2007. *Digital Television Switchover and Disabled, Older, Isolated and Low Income Consumers*, report prepared for Ofcom, Advisory Committee for Older and Disabled People and digitalUK, <http://www.ofcom.org.uk/research/tv/reports/dsoind/dso_research/dso_research.pdf>. Accessed 26 May 2009.
- Given, J., 2004. "Not Unreasonably Denied": Australian Content After AUSFTA', *Media International Australia* 111, pp. 8–22.
- Google, 2008. Submission to ACMA Consultation on Spectrum Management Principles, 17 July, <http://www.acma.gov.au/webwr/_assets/main/lib310710/google.pdf>. Accessed 25 May 2009.
- HDMI, 2009. 'What is HDMI?', <<http://www.hdmi.com.au/whatis.htm>>. Accessed 27 May 2009.
- HIRO, 2009. HIRO System Support, <http://www.hiro-media.com/NINEMSN/ninemsn_faq.html#31>. Accessed 25 May 2009.
- Hitchens, L., 2004. 'Commercial Broadcasting – Preserving the Public Interest', *Federal Law Review* 32(1), pp. 79–106.
- Holmwood, L., 2009. 'Motivation of the Masses: Despite Recent Phone Voting Scandals, Interactive TV Shows Increasingly Allow the Public to Have a Say in Funding for Good Causes', *The Guardian*, 4 March, p. 3.
- House of Representatives, 1999. Copyright Amendment (Digital Agenda) Bill 1999: Explanatory Memorandum, Canberra.
- House of Representatives, 2007. Communications Legislation Amendment (Content Services) Bill: Explanatory Memorandum, Canberra.

- Hulu, 2009. Media Info, <<http://www.hulu.com/about>>. Accessed 16 May 2009.
- Human Rights and Equal Opportunity Commission (HREOC), 2009. 'Temporary Exemption: Regional Television Captioning', 12 May, <http://humanrights.gov.au/disability_rights/exemptions/tvcap/dec09.htm>. Accessed 26 May 2009.
- International Telecommunications Union, 2008. *ITU-T IPTV Focus IPTV Proceedings*, <<http://www.itu.int/publ/T-PROC-IPTVFG-2008/en>>. Accessed 26 May 2009.
- Jackson, S. & Pelly, M. 2009, 'Samuel Puts the Squeeze on Spin', *The Australian*, 4 May, p. 31.
- Lawrence, A. & Grant, R., 2007. 'Online Content Regulation – the New Regime', *Communications Law Bulletin* 26(2), pp. 1–5.
- Media Access Australia (MAA), 2008a. Submission to Digital Switchover Task Force discussion paper on legislative framework for implementing a digital switchover timetable, MAA, Sydney (July).
- Media Access Australia (MAA), 2008b. 'Access on Digital Radio', *The Media Access Report* 6 (Autumn), MAA, Sydney.
- Ofcom Consumer Panel, 2004. *Supporting the Most Vulnerable Consumers Through Digital Switchover*, Ofcom, London, <http://www.digitaltelevision.gov.uk/pdf_documents/publications/cp_dso_report_webv.pdf>. Accessed 26 May 2009.
- Owen, B.M. & Wildman, S.S., 1992. *Video Economics*, Harvard University Press, Cambridge, MA.
- Productivity Commission, 2000. *Broadcasting, Report no. 11*, AusInfo, Canberra.
- Rennie, E. & Featherstone, D., 2008. 'The Potential Diversity of Things We Call TV: Indigenous Community Television Self-determination and NITV', *Media International Australia* 129, pp. 52–66.
- Schulze, J., 2008. 'Consumers Seek Tough Digital TV Regulation'. *The Australian*, 17 March, p. 34.
- Shorten, B. (Parliamentary Secretary for Disabilities and Children's Services) and Conroy, S. (Minister for BCDE), 2009. 'Exploring Improved Communications Access for Australians with a Disability', Joint Media Release, 16 February.
- Smith, G., 2009a. 'Fakery and Deception in Participation TV – Lessons Learned from the UK's TV Phone-line Scandals', *Communications Law Bulletin* 27(4), pp. 11–14.
- Smith, G., 2009b. 'Talk Continues Its Winning Ways', *The Australian*, Media, 18 May, p. 34.
- Thomas, L., 2008. 'Strictly Fans Want Their Money Back', *Daily Mail*, 15 December, p. 6.
- Warner, J. (CEO Commercial Radio Australia), 2009. 'Digital Radio', ACMA RadComms09 Conference, 30 April, <http://www.acma.gov.au/webwr/_assets/main/lib310814/digital_radio-j_warner.pdf>. Accessed 25 May 2009.
- Waterford, J., 2008. 'Broadcasters' History Wars Over Howard', *Canberra Times*, 23 August, p. 1.
- Weatherall, K., 2007. 'The Impact of Broadcast Treaties on Broadcast Policy', in A.T. Kenyon (ed.), *TV Futures – Digital Television Policy in Australia*, Melbourne University Press, Melbourne.
- Wright, R., 2007. 'So You Want to Tape Off TV? Copyright Law, Digital Television and Personal Use', in A.T. Kenyon (ed.), *TV Futures – Digital Television Policy in Australia*, Melbourne University Press, Melbourne.

5.6. Appendixes

Appendix 5.1: Television – summary of regulation and codes

	Commercial TV	Community TV	ABC TV	SBS TV	Subscription TV	Subscription narrowcast TV	Open narrowcast TV
Advertising							
Prohibitions or limits on advertising and/or sponsorship announcement time, or non-program matter	Comm TV Code 5	BSA s. 87A, Sched 2, ss. 9.1.b, 9.3	ABC s. 31	SBS Act s. 5, SBS Code 5	BSA Sched 2, s. 10.2.b	BSA Sched 2, s. 11.2	
Disclosure of commercial arrangements	Comm TV Code 1.17–22						
A commercial, community service announcement, program promotion or station promotion must be readily distinguishable from program material	Comm TV Code 1.15			SBS Code 5			
Political advertising	BSA Sched 2, ss. 3.2, 3A, 4	BSA Sched 2, ss. 3.2, 3A, 4	ABC Act s.79A	SBS Act ss. 70A, 70C SBS Code 7	BSA Sched 2, ss. 3.2, 3A, 4	BSA Sched 2, ss. 3.2, 3A, 4	BSA Sched 2, ss. 3.2, 3A, 4
Approval under <i>Therapeutic Goods Act</i> 1989 for advertisements relating to therapeutic goods	BSA Sched 2, s. 6	BSA Sched 2, s. 9.1.a			BSA Sched 2, s. 6	BSA Sched 2, s. 6	BSA Sched 2, s. 6
Not, in contravention of the <i>Tobacco Advertising Prohibition Act</i> 1992, broadcast a tobacco advertisement	BSA Sched 2, s. 7.1.a	BSA Sched 2, s. 9.1.a			BSA Sched 2, s. 10.1.a, STV Code 6.1.f	BSA Sched 2, s. 11.1.a	BSA Sched 2, s. 11.1.a
Commercials comply with Advertiser Code of Ethics, the Code for Advertising to Children and the Federal Chamber of Automotive Industries Code of Practice (Codes do not mention all advertising codes. STV code also includes Weight Management Code of Practice, Therapeutic Goods Advertising Code and Alcohol Beverages Advertising Code)	Comm TV Code 1.10				STV 6.1	SNTV Code 3.9	ONTV Code 3.8, 10
Commercials or community service announcements directed to children	Comm TV Industry Advisory Note				STV Code 6.3	SNTV Code 3.6–9	ONTV Code 3.7–9

	Commercial TV	Community TV	ABC TV	SBS TV	Subscription TV	Subscription narrowcast TV	Open narrowcast TV
No program classified higher than PG to be promoted in programs directed at children	Comm TV Code 3		ABC Code 3.8–10		STV Code 2.3		
Commercials must not be excessively noisy	Comm TV Code 1.11–14						
Advertising/sponsorship announcements may only be broadcast before programs commence, after programs end or during natural program breaks		BSA Sched 2, s. 9.4		SBS Code 5			
Classification and placement of commercials and community service announcements.	Comm TV Code 6			SBS Code 5, 6	STV Code 2.3, 6.2, 6.5		
Program promotions scheduled to be consistent with surrounding content			ABC Code 2.11	SBS Code 5			
Programming Policies							
Broadcast programs that contribute to a sense of national identity and inform and entertain, and reflect the cultural diversity of, the Australian community		CTV Code 3.1	ABC s. 6	SBS Act s. 6, SBS Code 1.2, 1.4, 1.5			
Provide a service that contributes to the provision of an adequate and comprehensive range of broadcasting services in that licence area	BSA Sched 2, s. 7.2.a						
Develop codes of practice or programming policies	BSA s. 123	BSA s. 123	ABC s. 8.1.e *	SBS ss. 10.1.b, 10.1.j *	BSA s. 123	BSA s. 123	BSA s. 123
ACMA power to require licensee to comply with Code of Practice as licence condition	BSA s. 43, 44						
ACMA power to determine standard or licence conditions where Code is not operating	BSW s. 125	BSA s. 87					
Broadcast items of national interest as directed by the Minister without charge	BSA Sched 2, s. 7.1.d	BSA Sched 2, s. 9.1.d	ABC s. 78	SBS s. 12			

	Commercial TV	Community TV	ABC TV	SBS TV	Subscription TV	Subscription narrowcast TV	Open narrowcast TV
Content							
Australian content program standards or other Australian content rules	BSA s. 122, BSA Sched 2, s. 7.1.b, Australian Content Standard	CTV Code 3.10–12			BSA Division 2A		
Children's content	BSA s. 122, BSA Sched 2, s. 7.1.b, Children's Content Standard	CTV Code 4	ABC Code 2.12, 3.8 – 10				
News and information, opinion content, topical and factual content (accurate and impartial)	Comm TV Code 4	CTV Code 3.3, 6	ABC s. 8.1.c *, ABC Code 3.2–3.7, 4, 5	SBS s. 10.1.c *, SBS Code 2.2	STV Code 2.1.b, 2.2	SNTV Code 1.2.a	ONTV Code 1.2
Religious content	BSA Sched 2, s. 7.2.c		ABC Code 2.13	SBS Code 1.6			
Comply with anti-siphoning and anti-boarding restrictions	BSA Sched 2, ss. 7.1.ha, 7.1.ob				BSA Sched 2, s. 10.1.c		
Provide cost information if inviting viewers to use premium charge telephone numbers Be aware of community needs	Comm TV Code 1.25			SBS s. 10.1.g *, SBS Code 3			
Classification							
Classify programs, including use of violent images and sounds, language, treatment of sex and sexuality and	Comm TV Code 2	CTV Code 3.2, 5	ABC Code	SBS Code 1.7, 2.4, 4	STV Code 3	SNTV 3.1, 3.2	ONTV 3.1, 3.2, 3.3

	Commercial TV	Community TV	ABC TV	SBS TV	Subscription TV	Subscription narrowcast TV	Open narrowcast TV
suicide, and provide consumer advice about content			2.4-2.6, 2.9, 2.10, 3.8-3.10, 6				
Broadcast programs according to classification at an appropriate time of day	Comm TV Code 2	CTV Code 3.2, 5		SBS Code 4			ONTV Code 3.5
Not broadcast a program classified RC or X18+ by the Classification Board	BSA Sched 2, s. 7.1-g	BSA Sched 2, s. 9.1-g			BSA Sched 2, s. 10.1.f	BSA Sched 2, s. 11.4, SNTV Code 3.3	BSA Sched 2, s. 11.3.a, ONTV Code 3.4
Not broadcast a program classified R18+ unless modified	BSA Sched 2, s. 7.1-ga	BSA Sched 2, s. 9.1-ga			BSA Sched 2, s. 10.1-g, STV Code 3	SNTV Code 3.4	BSA Sched 2, s. 11.3.b
Access to programs R18+ to be restricted by disabling devices							
Ethics							
Licensee may not broadcast material that deceives or misleads	Comm TV Code 1.8	CTV Code 3.3, 4			STV Code 2.1.b	SNTV Code 1.2.b, 4	ONTV Code 1.2.b, 4
Portrayal of Aboriginal and Torres Strait Islander peoples, cultural diversity and people with disabilities	Comm TV Industry Advisory Note	CTV Code 3.4, 5, 7-9	ABC Code 2.7	SBS Code 1.3	STV Code 2.1.a	SNTV Code 1.3	ONTV Code 1.3
Observe significant cultural practices of indigenous Australians in content and reporting	Comm TV Industry Advisory Note		ABC Code 2.14	SBS Code 1.3.1			
Rights to privacy	Comm TV Industry Advisory Note	CTV Code 3.5	ABC Code 2.8	SBS Code 1.8, 1.9	STV Code 4.3	SNTV Code 4.2	
Emergencies							
In emergencies, give control over matters broadcast to persons authorised by the Minister	BSA Sched 2, s. 7.1.e	BSA Sched 2, s. 9.1.e			BSA Sched 2, s. 10.1.d		

	Commercial TV	Community TV	ABC TV	SBS TV	Subscription TV	Subscription narrowcast TV	Open narrowcast TV
Adequate procedures to enable broadcast of emergency information	Comm TV Code 1.26-30						
Accessibility							
Closed captioning of programs for the deaf and hearing impaired	BSA Sched 2, s. 7.1.o, Comm TV Code 1.23		ABC Code 2.15	SBS Code 1.10	STV Code 2.4	SN'TV Code 1.8	ON'TV Code 1.8
Accessible domestic TV services for people who are blind or have a visual impairment or limited reading comprehension			ABC Code 2.16				
Relationship with audiences							
Complaints handling	Comm TV Code 7	CTV Code 2	BSA s. 150-3, ABC Code 7	SBS s. 10.1.h *, BSA s. 150-3, SBS Code 8	STV Code 5	SN'TV Code 2	ON'TV Code 2
Complaints about signal quality			ABC s. 79AA	SBS s. 70AA			
Supply subscription contract in plain English					STV Code 4	SN'TV Code 4	
Allow termination of subscription contract on one month's written notice					STV Code 4.1	SN'TV Code 4.1	
Fault repair, subscription services					STV Code 4.2	SN'TV Code 4.3	
Privacy of subscribers					STV Code 4.3	SN'TV Code 4.2	
Subscription credit management and billing					STV Code 4.4	SN'TV Code 4.4	
The licensee will encourage community participation in operations and program selection		BSA Sched 2, s. 9.2.c					

	Commercial TV	Community TV	ABC TV	SBS TV	Subscription TV	Subscription narrowcast TV	Open narrowcast TV
The licensee will provide the service for community purposes and continue to represent the community interest that it represented at licence allocation or renewal		BSA Sched 2, s. 9.2.b, d, CTV Code 1.2 - 4					
Policies and procedures in place to encourage community participation and protect the rights of volunteers		CTV Code 1.5					
Legal, financial, technical							
Maintain independence and integrity			ABC s. 8.1.b *	SBS s. 10.1.a *			
Compliance with ownership and control rules	BSA Sched 2, s. 7.1.c, oa, q						
Not use broadcasting services in the commission of an offence against another Act or a law of a state or territory	BSA Sched 2, s. 7.1.h	BSA Sched 2, s. 9.1.f	ABC s. 8.1.d *	SBS s. 10.1.d *	BSA Sched 2, s. 10.1.h	BSA Sched 2, s. 11.1.c, SNTV	BSA Sched 2, s. 11.1.c
The licensee will remain a suitable licensee	BSA Sched 2, s. 7.2.b	BSA Sched 2, s. 9.2.1			BSA Sched 2, s. 10.2.a	Coden1.5	
If the licence is a broadcasting services bands licence, hold a spectrum licence under the <i>Radiocommunications Act 1992</i>	BSA Sched 2, s. 7.1.f						
Commence broadcasting service within one year of being allocated the licence	BSA Sched 2, s. 7.1.i	BSA Sched 2, s. 9.1.h					
Efficient operation		CTV Code 1.1, 1.6	ABC s. 8.1.a *	SBS s. 10.1.e, f *			
The licensee will not operate the service for profit		BSA Sched 2, s. 9.2.e					
Subscription fees will continue to be the predominate source of revenue for the service					BSA Sched 2, s. 10.2.b	BSA Sched 2, s. 11.2	
Keep accounts and make them available to ACMA	BSA Sched 2, s. 7.1.ia						

	Commercial TV	Community TV	ABC TV	SBS TV	Subscription TV	Subscription narrowcast TV	Open narrowcast TV
Keep records of broadcasts for a minimum of six weeks	BSA Sched 2, s. 5	BSA Sched 2, s. 5	ABC s. 79B	SBS s. 70B	BSA Sched 2, s. 5	BSA Sched 2, s. 5	BSA Sched 2, s. 5
Comply with restrictions on providing broadcasting services in regional areas					BSA Sched 2, s. 10.1.ca	BSA Sched 2, s. 11.1.ab	BSA Sched 2, s. 11.1.ab
Minister may give a direction to the Board			ABC s. 8.2 *	SBS s. 11, 13			
Comply with industry/technical standards	BSA Sched 2, s. 7.1.ba	BSA Sched 2, s. 9.1.ca, caa, cb			BSA Sched 2, s. 10.1.ba, bb	BSA Sched 2, s. 11.1.ba, baa, bb	BSA Sched 2, s. 11.1.ba, baa, bb
Datacasting arrangements	BSA Schedule 6		ABC s. 6A	SBS s. 6A			
Comply with the requirements of the commercial television digital conversion scheme	BSA Sched 2, s. 7.1.k, l, m, ma, mb, na, nb						
Not use transmitter to operate unlicensed broadcasting services	BSA Sched 2, s. 7.1.p						
Not use the part of the broadcasting services bands designated for digital radio to provide a broadcasting service	BSA Sched 2, s. 7.1.r	BSA Sched 2, s. 9.1.j			BSA Sched 2, s. 10.1.f	BSA Sched 2, s. 11.1.e	BSA Sched 2, s. 11.1.e
Not provide broadcasting services under the licence outside its licence area	BSA Sched 2, s. 7.2A	BSA Sched 2, s. 9.2A					
Licence allocation	BSA s. 36	BSA s. 84			BSA s. 94		
Ongoing licence fees	BSA s. 205C						
Reporting requirements			ABC s. 80	SBS s. 73			
Pay TV access, digital TV channel B access	ACCC				ACCC		

* Not enforceable by proceedings in a court

Appendix 5.2: Radio – summary of regulation and codes

	Commercial radio	Community radio	ABC radio	SBS radio	Subscription narrowcast radio	Open narrowcast radio
Advertising						
Prohibitions or limits on advertising and/or sponsorship announcement time	CRA Code 3.2	BSA Sched 2, ss. 9.1(b), 9.3, CRB Code 6	ABC s. 31	SBS Act s. 5, SBS Code 5		
Disclosure of commercial agreements by presenters of current affairs program	Commercial Radio Standard					
An advertisement, community service announcement, program promotion or station promotion must be readily distinguishable from program material	Commercial Radio Standard, CRA Code 3.1(a)			SBS Code 5		
Political advertising	BSA Sched 2, ss. 3.2, 3A, 4	BSA Sched 2, ss. 3.2, 3A, 4	ABC Act s79A	SBS Act ss. 70A, 70C SBS Code 7	BSA Sched 2, ss. 3.2, 3A, 4	BSA Sched 2, ss. 3.2, 3A, 4
Approval under <i>Therapeutic Goods Act</i> 1989 for advertisements relating to therapeutic goods	BSA Sched 2, s. 6				BSA Sched 2, s. 6	BSA Sched 2, s. 6
Not, in contravention of the <i>Tobacco Advertising Prohibition Act</i> 1992, broadcast a tobacco advertisement	BSA Sched 2, s. 8.1.a	BSA Sched 2, s. 9.1.a			BSA Sched 2, s. 11.1.a	BSA Sched 2, s. 11.1.a
Commercials comply with Advertiser Code of Ethics, the Code for Advertising to Children and the Federal Chamber of Automotive Industries Code of Practice (Codes do not mention all advertising codes. STV code also includes Weight Management Code of Practice, Therapeutic Goods Advertising Code and Alcohol Beverages Advertising Code)	CRA Code 3.1(b)					
Classification and placement of commercials and community service announcements.				SBS Code 5, 6		
Program promotions scheduled to be consistent with surrounding content			ABC Code 2.11	SBS Code 5		

	Commercial radio	Community radio	ABC radio	SBS radio	Subscription narrowcast radio	Open narrowcast radio
Programming						
Policies						
Broadcast programs that contribute to a sense of national identity and inform and entertain, and reflect the cultural diversity of, the Australian community	CRA Code 4	CRB Code 5	ABC s. 6	SBS Act s. 6, SBS Code 1.2, 1.4, 1.5		
Provide a service that contributes to the provision of an adequate and comprehensive range of broadcasting services in that licence area	BSA Sched 2, s. 8.2.a					
Develop and comply with program standards	BSA s. 122, BSA Sched 2, s. 8.1.b	BSA s. 122, BSA Sched 2, s. 9.1.c			BSA s. 122, BSA Sched 2, s. 11.1.b	BSA s. 122, BSA Sched 2, s. 11.1.b
Develop and comply with codes of practice	BSA s. 123	BSA s. 123, CRB Code 8	ABC s. 8.1.e *	SBS s. 10.1.j *	BSA s. 123	BSA s. 123
Publicise the existence of the code of practice	CRA Code 7					
Comply with local news and information requirements	BSA Sched 2, s. 8.2.c					
Develop and publicise programming policies				SBS s. 10.1.b *		
News and information, opinion content, topical and factual content (accurate and impartial)	CRA Code 2		ABC s. 8.1.c *, ABC Code 3.2–3.7, 4, 5	SBS s. 10.1.c *, SBS Code 2.2	SNR Code 1.2	ONR Code 1.2
Broadcast items of national interest as directed by the Minister without charge	BSA Sched 2, s. 8.1.d	BSA Sched 2, s. 9.1.d	ABC s. 78	SBS s. 12		
Content						
Australian content						
Religious content	CRA Code 4	CRB Code 5	ABC Code 2.13	SBS Code 1.6		
Classification						
Not present as desirable the misuse of alcohol or tobacco or the use of illegal drugs, narcotics or tobacco or suicide	CRA Code 1.3		ABC Code 2.9			

	Commercial radio	Community radio	ABC radio	SBS radio	Subscription narrowcast radio	Open narrowcast radio
Meet contemporary standards of decency/appropriate program material for time of day and audience	CRA Code 1.5 - 1.8		ABC Code 2.4–2.6, 2.9, 2.10, 3.8–3.10	SBS Code 1.3	SNR Code 1.1	ONR Code 1.1
<i>Ethics</i>						
Licensee may not broadcast material that deceives or misleads	CRA Code 1.3					
Not incite hatred or violence or vilify any person on the basis of age, ethnicity, nationality, race, gender, sexual preference, religion or physical or mental disability/promote diversity	CRA Code 1.3		ABC Code 2.7		SNR Code 1.3	ONR Code 1.3
Rights to privacy	CRA Code 6		ABC Code 2.8	SBS Code 1.8, 1.9	SNR Code 1.5	ONR Code 1.5
Observe significant cultural practices of Indigenous Australians in content and reporting		CRB Code 4	ABC Code 2.14	SBS Code 1.3.1		
<i>Emergencies</i>						
In emergencies, give control over matters broadcast to persons authorised by the Minister	BSA Sched 2, s. 8.1.e	BSA Sched 2, s. 9.1.e				
Adequate procedures to enable broadcast of emergency information	CRA Code 8					
Accessibility						
Relationship with audiences						
Complaints handling procedures	CRA Code 5	CRB Code 7	BSA s. 150-3, ABC Code 7	SBS s. 10.1.h*, BSA s. 150-3, SBS Code 8	SNR Code 2	ONR Code 2
Complaints about signal quality			ABC s. 79AA	SBS		

	Commercial radio	Community radio	ABC radio	SBS radio	Subscription narrowcast radio	Open narrowcast radio
The licensee will encourage community participation in operations and program selection		BSA Sched 2, s. 9.2.c, CRB 3		s. 70AA		
Policies and procedures in place to encourage community participation and protect the rights of volunteers		CRB Code 2				
Be aware of community needs		CRB 3		SBS s. 10.1.g *, SBS Code 3		
Supply subscription contract in plain English					SNR Code 3.1	
Fault repair, subscription services					SNR Code 3.3	
Privacy of subscribers					SNR Code 3.2	
Subscriber credit management and billing disputes					SNR Code 3.4	
Legal, financial, technical						
Maintain independence and integrity			ABC s. 8.1.b *	SBS s. 10.1.a *		
Minister may give a direction to the Board			ABC s. 8.2 *	SBS s. 11		
Compliance with ownership and control rules	BSA Sched 2, s. 8.1.c, j, q Commercial Radio Standard					
Formulate, implement and maintain a compliance program to ensure compliance with the requirements of the Act, standards and the codes						
Not use broadcasting services in the commission of an offence against another Act or a law of a state or territory	BSA Sched 2, s. 8.1.g	BSA Sched 2, s. 9.1.f	ABC s. 8.1.d *	SBS s. 10.1.d *	BSA Sched 2, s. 11.1.c	BSA Sched 2, s. 11.1.c
The licensee will remain a suitable licensee	BSA Sched 2, s. 8.2.b					
If the licence is a broadcasting services bands licence, hold a spectrum licence under the <i>Radiocommunications Act</i> 1992	BSA Sched 2, s. 8.1.f					
Commence broadcasting service within one year of being	BSA Sched 2,	BSA Sched 2,				

	Commercial radio	Community radio	ABC radio	SBS radio	Subscription narrowcast radio	Open narrowcast radio
allocated the licence	s. 8.1.h	s. 9.1.h				
The licensee will provide the service for community purposes and continue to represent the community interest it represented at licence allocation or renewal		BSA Sched 2, s. 9.2.b, d, CRB Code 1				
Efficient operation			ABC s. 8.1.a *	SBS s. 10.1.e, f *		
The licensee will not operate the service for profit		BSA Sched 2, s. 9.2.e				
Subscription fees will continue to be the predominate source of revenue for the service					BSA Sched 2, s. 11.2	
Keep accounts and make them available to ACMA	BSA Sched 2, s. 8.1.ha					
Keep records of broadcasts for a minimum of six weeks	BSA Sched 2, s. 5	BSA Sched 2, s. 5	ABC s. 79B		BSA Sched 2, s. 5	BSA Sched 2, s. 5
Comply with industry/technical standards	BSA Sched 2, s. 8.1.ba, bb	BSA Sched 2, s. 9.1.ca, caa, cb			BSA Sched 2, s. 11.1.ba, baa, bb	BSA Sched 2, s. 11.1.ba, baa, bb
Not use transmitter to operate un-licensed broadcasting services						
Not use the part of the broadcasting services bands designated for digital radio unless the service is a digital radio broadcasting service	BSA Sched 2, s. 8.1.k	BSA Sched 2, s. 9.1.j			BSA Sched 2, s. 11.1.e	BSA Sched 2, s. 11.1.e
Not provide broadcasting services under the licence outside its licence area	BSA Sched 2, s. 8.3	BSA Sched 2, s. 9.2A				
Licence allocation	BSA s. 36	BSA s. 84				
Ongoing licence fees	BSA s. 205C					
Reporting requirements			ABC s. 80	SBS s. 73		
Digital radio access regime	ACCC					

* Not enforceable by proceedings in a court

6. AFFORDABILITY CASE STUDY

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6.1. Introduction

This case study has been commissioned within a short timeframe by the new Australian peak consumer body ACCAN as a contribution to its *Future Consumer* study of developments worldwide that are relevant to its converged communications brief. The request was to identify major trends in thinking about affordability of communications, and measures to address it – primarily in developed countries. The brief time available does not permit an exhaustive or in-depth treatment. The paper therefore relies on the author's existing knowledge of the subject, backed up by a limited amount of desk research and personal inquiries. It aims to complement and selectively deepen the recent LIMAC report, with particular reference to Western Europe.

For speedy production, the body of the paper (from section 6.4 on) is organised around information sources rather than around the themes emerging from the sources. Sections 6.2 and 6.3 aim to draw together some of the main trends and themes.

Affordability is, of course, only one factor contributing to 'digital inclusion', or social inclusion in the ICT dimension,¹⁷ though it is one whose importance is often under-rated. Affordability is often seen as a social goal because of its implications for equity; however, it is also in the interests of providers, for whom affordable bills mean savings in collection costs and bad debt.

6.2. Overview of trends

- There is now a general in-principle acceptance of the importance of affordability as a factor in the take-up and use of electronic communications services; less often, there are specific policies to enhance it beyond what the market provides (or recognition of any need in this area).
- The current economic downturn makes communications affordability both a more pressing concern and one that is less likely to receive attention, as many others compete for scarce resources.
- Voice telephony is widely recognised as an essential service, with affordability or related payment-linked concerns being the main barriers to take-up, wherever service is available.
- In practice, special tariffs and other 'official' affordability provisions (where they exist) have been focused on fixed lines (with increasing emphasis on their targeting to the truly needy, particularly including people with disabilities).
- Non-elderly people on low incomes are giving up fixed lines in favour of mobiles, which provide more flexibility in both use and payment options, as well as potentially

¹⁷ There is a huge literature on digital inclusion – see, for example, Sinclair et al. (2007), whose bibliography alone runs to over 30 pages. Literatures on universal service and on diffusion of mobile and Internet services are also vast and only slightly tapped for this overview.

being cheaper. Mobile market innovations to improve affordability are effective where they exist, but are specific to particular countries.

- Recognition of mobiles as the de facto choice of people on low incomes, and the consequent need to assure their affordability, is gradually growing. For example, mobile offerings under the US Lifeline program are spreading to a growing number of states, and a French special post-paid mobile tariff has recently been announced (offered voluntarily by the industry).
- There is a new stress on affordability in relation to broadband, whose availability and rapid take-up many countries now want to promote. But here affordability is just one of a group of intertwined barriers to take-up, also including:
 - lack of interest in or motivations for use;
 - lack of necessary skills and competences to use Internet; and
 - difficulties related to equipment usability, especially for people with disabilities.
- It is hard to separate the strands of perception of lack of need or interest from those of affordability. There is a high correlation between educational level and income, and interest in the Internet is plainly related to the former (and also strongly to age, even in the countries with highest take-up, like Denmark and Korea).¹⁸
- Take-up of special tariffs can be low. Barriers can be lack of awareness and unwillingness to prove eligibility, but also special tariffs need to be presented on a par with commercially available ones – budget-constrained people prefer to feel they are part of the same market as everyone else, not a separate underclass.
- There is a small recent academic literature relevant to defining the concept of affordability and measuring it.

6.3. Foundations

The term ‘affordability’ is one that everyone thinks they understand, but it gets used in many different ways and attempts to define it rigorously are rare.¹⁹ This case study deals with a user-centred idea of affordability – loosely, whether users both can, and feel they can, pay the amounts needed for communications access and use without detriment to other essential spending.

Our focus here is on low-income users. Some areas of concern linked to affordability that could not be covered in this paper are:

- *Geographic tariff averaging.* This is designed to keep rural and urban tariffs at similar levels for all users.
- *Avoiding bill shock.* Initiatives here aim to ensure that people know what calls will cost them (through transparent tariffs) and do not inadvertently run up high bills. Regulation of premium rate services is relevant here. Problems can affect any user, though of course they could hit low-income users hardest, and be worst for people with multiple difficulties, which might include addictive use.
- *Pay phone use.* As pay phones cater for people who have no home phone, their use must be affordable to those on the lowest incomes. There is a widespread assumption that pay phone use is affordable, since only calls are paid for. A larger

¹⁸ OECD (2007a), Annex Figure 12, p 47.

¹⁹ The present author made some first steps in this direction in Milne (2006 and 2004).

question may be the continuing existence of pay phones, as their revenues are undermined by the use of mobile phones.

A further area not covered, but which could affect low-income take-up adversely, is moves to require prepaid users to register their personal details, for security reasons.

Of course, amounts billed are linked to underlying costs of networks and equipment, and reducing those costs (through technology advance and competition) has made, and continues to make, vital improvements in affordability.²⁰ Our concern here is not with the underlying costs, but with the prices and packages offered to users given prevailing costs, and their influence on take-up and usage levels. Payment terms and mechanisms are included, as are aids to bill control, as they strongly influence users' perceptions of affordability. Prices and packages are functions of both market and regulatory activity.

Affordability in this sense is plainly linked to the fulfilment of basic needs for communications. It may best be understood as one of the underlying conditions necessary for developing (or, we may say, a 'component of') 'communications capabilities'. (Other components besides affordability are availability and accessibility, plus certain personal competencies and motivations.) Following Sen's capability approach, a minimum level of communications capability could be defined which is necessary to avoid communications poverty. As Garnham (1997) remarks:

We can argue, I think, from the Smithian perspective of what produces social shame, that in developed societies at least, the ability to say ring me or I'll ring you without thinking about it has become the social norm and that those without that potential functioning are disadvantaged.

Communications is not only an important area of functioning in itself but also, together with ICT more generally, is in turn an important component of other capabilities. This theme is increasingly being picked up in international development literature;²¹ it should be equally applicable in developed economies.

One reason for affordability falling down policy priority scales in developed countries has been the very low price elasticities of demand, which for a long time were associated with fixed-line subscriptions.²² Particularly before the arrival of mass-market mobile services, and once high fixed-line penetration had been achieved,²³ subsidised fixed-line rates made little difference to market take-up. Studies in developing countries²⁴ have, however, shown sizeable price elasticity of demand for mobile service. In developed countries, the debate

²⁰ The links can be very indirect. For example, text messages are widely sold at prices which greatly exceed generous estimates of their production cost (Milne (2006), Annex C) yet they are still perceived as affordable. Conversely, services may be sold below cost yet remain unaffordable.

²¹ For example, Chapter 4 of Spence and Smith (2009) surveys recent literature on ICTs, Capabilities, Freedoms & Human Development.

²² Garbacz and Thompson (2007) provide references.

²³ Behavioural economics (the endowment effect) would point to a resistance to give up a phone line even if prices rise, which could far exceed initial willingness to subscribe at the same price, especially in the absence of close substitutes.

²⁴ Well presented, for example, by Garbacz and Thompson (2007), who also point to implications for developed countries. Milne (2006) also assembles earlier relevant evidence on price elasticities of demand in developing countries.

around mobile termination rates has stimulated the study of marginal users' price elasticity of demand, which is plainly significant²⁵ – clearly, mobile rates do affect mobile take-up.

Users' income is a basic element in assessing affordability. Kessides et al. (2009) have developed and presented a rigorous approach to measuring utilities affordability, using the residual income approach – that is, looking at whether the income that people are left with after paying for essential utilities is enough to pay for other essentials. This assumes an understanding of the spending levels that are necessary both on utilities and on other essentials, and in the case of communications such understanding is very hard to get – empirical research modelled on that of Colston for energy (discussed under The United States below) might be helpful. Pau (2008) applies the residual income approach to communications, remarking among other things on the malign influence of addiction to mobiles. While the approach of Kessides and colleagues is presented in the context of developing countries, Miniaci et al. (2008) have applied it to electricity and water affordability in Italy.

Figure 7 illustrates an important aspect of affordability which does not yet appear to have been properly taken into account in any theory, though it has been amply reflected in market developments in some developing countries.²⁶ The point is that a typical low-income pattern is not just low but is also highly volatile and unpredictable, with cash in hand often hitting zero. (This diagram does not show the negative balances, or debts, that are also common features of low-income patterns.) Zero standing charges for remaining connected, and low denomination prepayments (down to micropayments covering just a single call or message) are key to affordability for many people in such situations.²⁷

Rather, such quantitative affordability modelling as has been attempted all appears to focus on regular outgoings (or total cost of ownership) in relation to an assumed regular income. Milne (2000) provides just such a model in relation to fixed line telephony. That paper's hypotheses about how different levels of inequality in income distribution are likely to be reflected in communications take-up have recently been supported by Brazilian data.²⁸

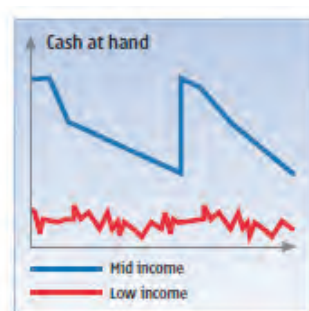


Figure 7: Cash available for people at mid- and low-income levels

Source: Nokia (2005).

²⁵ Ofcom's May 2009 mobile calling patterns research at http://www.ofcom.org.uk/consult/condocs/mobilecallterm/annex10_2.pdf is the latest in a line of such studies.

²⁶ The Philippines, and especially the operator Smart, led the move to micropayments. Its achievements are well documented and often cited.

²⁷ Barrantes and Galperin (2008) demonstrate these effects, along with those of per-second billing, and underline their importance in Latin America.

²⁸ See Bohman (2008).

6.4. International bodies

The ITU

As the lead international body for e-communications development, the ITU's attitudes are of particular interest. For over a decade now, it has explicitly been promoting universal access and universal service, and recognising in principle that affordability is one of three components of these concepts (the others being availability and accessibility). In practice, affordability has tended to receive less attention than the other components. Possible reasons for this include:

- the obvious need for physical access to exist first before services can be made available to the public on any terms. Actual network provision has been the priority in many countries, and coverage is still lacking in remoter parts of many poor countries;
- pressure from industry to regard prevailing price levels as indicative of unavoidable costs, rather than of inefficiency or excess profits. Such pressure exists, to varying extents, in all countries.

The ITU is the authoritative source of statistics on e-communications. These are drawn on by people all over the world who may want to compare country performances, or who wish to study the effects of different policies or regimes. If the ITU does not produce statistics relevant to assessing affordability, this makes it much less likely that affordability will be assessed.

In recent years, several composite indices of 'e-readiness' or the like have been developed. Starting around 2004, affordability has been included as a component of these indices, measured typically as the prices of 20 hours of Internet use per month and of 100 minutes of mobile use per month, measured in US dollars, and as a percentage of per capita income.

In this year's statistical report (ITU 2009b), affordability has been given a much higher profile. The new ICT Development Index, which measures outcomes such as telephony and Internet take-up and use, is accompanied by an ICT Price Basket. The Basket is a straight average of three prices, for modest monthly usage of 1) a fixed line; 2) a mobile; and 3) broadband Internet, divided by the country's per capita GNI. As the report explains:

The main objectives of the ITU ICT Price Basket are to raise awareness of the importance of ICT prices for ICT usage and to allow policy makers to evaluate the cost of ICTs in their country and benchmark them against those of other countries. Policy discussions and analysis often tend to be focused on the availability of infrastructure, whereas the 'power of price' is often not sufficiently addressed. For this reason, it is hoped that the ICT Price Basket will provide countries with a useful additional tool for benchmarking and analysis. Since prices are shown not only in absolute values (US\$ and Purchasing Power Parities (PPP) adjusted) but also as a percentage of GNI per capita, they point to the relative cost (or affordability) of ICT services within a country. At the same time, policy makers can identify where they stand globally, and in comparison to other countries. This information will put national prices into perspective and, if necessary, provide a starting point for looking into ways of lowering prices – for example, by introducing or strengthening competition, by reviewing operators' revenues and efficiency, or by reviewing specific tariff policies.

A simple regression, pictured in Figure 8, shows that affordability, as measured by the ICT Price Basket, has a powerful influence on the outcomes index. The part of this chart relating to developed economies is crammed into the top left-hand corner. Actual values of the Basket and the Index for these top-scoring countries²⁹ are shown in Table 13.

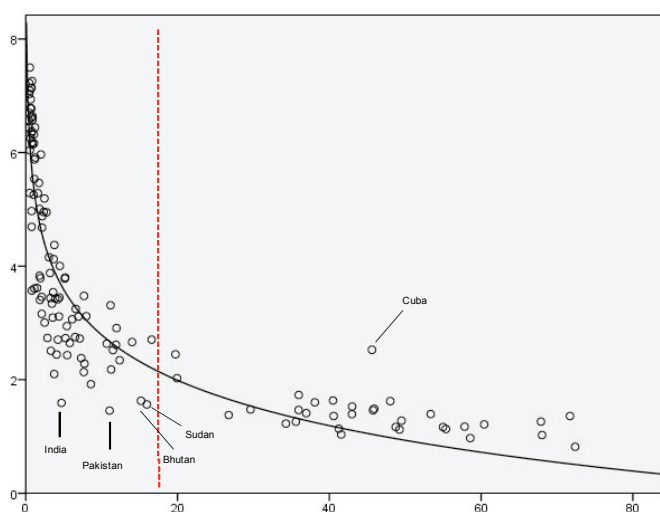


Figure 8: ICT Development Index (y axis) against ICT Price Basket (x axis) for 150 countries

Source: ITU (2009) Chart 6.2.

The correlation between achievement, as represented by the ICT Development Index, and affordability, as represented by the ICT Price Basket, is much less clear when looking only at the top-scoring countries. Many other factors besides affordability also contribute to achievement. Australia ranks 26th on affordability (with a price basket more than double the lowest available) and 14th on achievement. Table 14 provides more detail on the ICT Price Basket components for the top-scoring countries.

These country-level findings suggest that it is likely to be fruitful to include affordability as a factor when investigating and analysing ICT take-up and use by different socio-economic groups within any country. For some years now, it has been recognised that household surveys can contribute greatly to understanding these issues. The ITU's manual for measuring ICT access and use by households and individuals (ITU, 2009a), however, does not yet suggest asking about expenditure on ICT, and leaves questions on household income and barriers to use to countries' discretion. It provides examples of 'barrier' questions, including cost or inability to pay, from surveys used in Singapore and Nicaragua. It is notable that Singapore has found it worthwhile to ask about ICT affordability, even if it has the world's best score.³⁰

²⁹ Cut off at a point chosen to just include both New Zealand and all of the EU15 countries. Four countries are within this range for affordability but outside it on achievement and therefore do not appear in the table: Kuwait, Trinidad and Tobago, Saudi Arabia and Serbia.

³⁰ The OECD's model ICT use questionnaire Annex 1d: OECD Model Survey of ICT Access and Use by Households and Individuals (annex to Guide to Measuring the Information Society, OECD 2005) at <http://www.oecd.org/dataoecd/49/42/35930682.pdf> includes 'barriers' questions, but the EU's recent relevant Eurobarometer surveys have included these only selectively.

Table 13: ICT affordability and achievement indices for top-scoring countries

Country	ICT Price Basket rank	ICT Price Basket value	IDI rank	IDI value
Singapore	1	0.4	15	6.57
United States	2	0.4	16	6.44
Luxembourg	3	0.5	7	7.03
Denmark	4	0.5	3	7.22
Hong Kong, China	5	0.5	11	6.70
United Arab Emirates	6	0.5	30	5.29
Taiwan, China	7	0.5	25	6.04
Sweden	8	0.5	1	7.50
Norway	9	0.5	6	7.09
Finland	10	0.6	9	6.79
Macao, China	11	0.6	21	6.25
Switzerland	12	0.6	8	6.94
Iceland	13	0.7	4	7.14
United Kingdom	14	0.7	10	6.78
Canada	15	0.7	19	6.34
Netherlands	16	0.8	5	7.14
Cyprus	17	0.8	33	4.97
Bahrain	18	0.8	34	4.69
Germany	19	0.8	13	6.61
Ireland	21	0.8	18	6.37
Italy	22	0.8	22	6.18
Korea (Rep.)	23	0.8	2	7.26
Japan	24	0.9	12	6.64
Belgium	25	0.9	24	6.14
Australia	26	0.9	14	6.58
Greece	27	1.0	32	5.25
Austria	28	1.1	20	6.32
France	29	1.1	23	6.16
Malta	30	1.1	28	5.54
Slovenia	32	1.2	27	5.88
New Zealand	33	1.2	17	6.44
Spain	34	1.3	26	5.91
Lithuania	37	1.6	31	5.29
Portugal	38	1.7	29	5.47

Source: Data from ITU (2009b), rearranged by present author.

Table 14: ICT Price Basket components for top-scoring countries

Country	Fixed sub-basket (% of GNI per capita)	Mobile sub-basket (% of GNI per capita)	Broadband sub-basket (% of GNI per capita)	GNI per capita, USD
Singapore	0.26	0.15	0.81	32,470
United States	0.45	0.40	0.39	46,040
Luxembourg	0.49	0.22	0.70	75,880
Denmark	0.62	0.13	0.66	54,910
Hong Kong, China	0.43	0.10	0.96	31,610
United Arab Emirates	0.25	0.21	1.08	23,950
Taiwan, China	0.22	0.69	0.72	17,250
Sweden	0.59	0.20	0.84	46,060
Norway	0.59	0.15	0.90	76,450
Finland	0.51	0.37	1.00	45,820
Macao, China	0.78	0.24	0.86	14,020
Switzerland	0.58	0.71	0.65	59,880
Iceland	0.54	0.31	1.26	54,100
United Kingdom	0.77	0.57	0.83	42,740
Canada	1.00	0.59	0.60	39,420
Netherlands	0.82	0.46	1.00	45,820
Cyprus	1.27	0.25	0.79	24,940
Bahrain	0.29	0.40	1.66	19,350
Germany	0.89	0.31	1.18	38,860
Ireland	1.05	0.47	0.95	48,140
Italy	0.98	0.61	0.92	33,540
Korea (Rep.)	0.39	0.89	1.24	19,690
Japan	0.58	1.03	1.01	37,670
Belgium	1.07	0.65	0.90	40,710
Australia	0.92	0.88	0.92	35,960
Greece	1.08	1.02	1.02	29,630
Austria	0.81	0.68	1.71	42,700
France	0.96	1.11	1.18	38,500
Malta	0.85	0.89	1.66	15,310
Slovenia	1.18	0.71	1.57	20,960
New Zealand	1.43	0.96	1.28	28,780
Spain	1.25	1.36	1.18	29,450
Lithuania	1.82	1.05	1.93	9,920
Portugal	1.63	1.67	1.92	18,950

Source: Data from ITU (2009b), rearranged by present author.

The OECD

The OECD has been active in monitoring e-communications and particularly broadband developments. This section identifies some findings from its recent publications that are especially relevant for affordability.

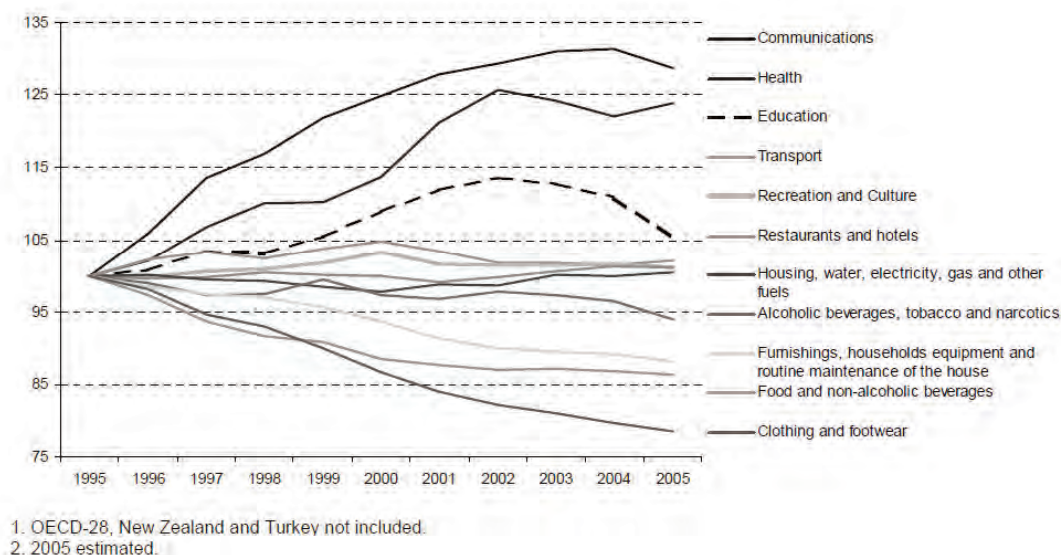


Figure 9: Increasing importance of communications in OECD household budgets

Source: OECD (2007a).

Figure 9 shows the latest developments³¹ in a trend previously noted across all member countries for communications to account for an increasing share of household spending. Over a decade, the average communications share has increased by some 30 per cent. This reflects both increased volume resulting from lower prices and better service, and substitution – especially by Internet – for other categories of spending such as entertainment. Following the dip shown by the 2005 figures, it remains to be seen whether this growth will continue.

The communications share of household spending is important here because it is widely used to assess affordability. A higher communications share of spending by a lower income group than a higher one (as is now generally found in expenditure statistics from developed countries) points to communications having attained the status of a necessity rather than a luxury.³² A high share can point to an excessive burden, or simply to the household attaching considerable value to the services. Elsewhere in this paper we consider the question of how high a share should be seen as ‘too high’. Figure 9 makes it plain that any answer will have to be reviewed frequently.

Table 15 presents statistics for selected OECD countries showing the difference in PC and Internet penetration between upper and lower income bands – a way of measuring a ‘digital divide’. High figures here generally indicate especially low propensity to take up by the

³¹ This trend has previously been noted in the biannual OECD *Communications Outlooks* since 2001. The next update is expected in June 2009.

³² Charts in Barrantes and Galperin (2008) of household spending by income group show that communications is still a luxury in Mexico, Brazil, Peru and Colombia.

lower income bands, which may point to affordability problems or to other socio-economically linked barriers, such as poor education. Here Sweden stands out as having unusually even penetration across the income bands, and the United Kingdom as having unusually high disparities. Australia and the other countries covered occupy a middle ground.

Table 15: Penetration gaps between upper and lower income bands

	1994	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006
<i>Quartiles</i>												
Canada												
Internet	..	..	27	38	43	49	53	53	55	..	..	..
Finland												
Internet	..	..	20	33	41	52	54	49	60	59	47	53
France												
PC	..	18	20	22	28	28	33	32	35	..	34	..
Internet	..	..	..	..	11	20	27	29	35	..	37	..
Sweden												
PC	22	23	25	30	23	18	15	13	15	12	..	..
Internet	..	..	..	29	28	25	21	18	19	17	..	..
<i>Quintiles</i>												
Australia²												
PC											45	
Internet											50	
United Kingdom												
Internet	..	..	..	24	40	61	62	66	68	69	..	..
<i>Deciles</i>												
Canada³												
PC	32	48	..	..	..	65	..	..	..	..	..	..
Internet	..	18	41	47	55	63	..	..	..	..	..	..
Netherlands												
PC	..	..	..	29	38	38	50	..	..	..	..	..
Internet	..	..	..	24	37	41	59	..	..	..	..	..
Sweden												
PC	30	33	42	35	26	23	18	15	17	12	..	..
Internet	..	..	..	37	34	32	25	23	25	18	..	..
United Kingdom⁴												
Internet	..	..	..	29	42	66	70	73	75	71	76	..

1. Difference in the penetration rates between high- and low-income quartiles, quintiles or deciles.

2. 2004-2005 instead of 2005.

3. 1990 instead of 1994.

4. 1998/99 instead of 1998, and similarly for other years.

Source: OECD (2007a).

An OECD study³³ of the factors influencing broadband take-up attributed greater significance to price than previous similar studies had done, but found that national per capita income had little influence.

Last but not least, the OECD's report³⁴ on universal service in the Next-Generation Network environment (where multiple service providers are expected to provide service over shared high-speed infrastructure) highlights the need for a stronger focus on how consumers experience affordability problems. Measures to safeguard affordability will continue to include pre-payment and bill-control mechanisms; actual financial help may

³³ OECD (2007b), by the Australian telecommunications economist John de Ridder.

³⁴ OECD (2006), by another Australian, Patrick Xavier.

better be channelled direct to consumers (through vouchers or an equivalent) than through special tariffs.

6.5. The European Union

The Universal Service Directive

The central apparatus of the European Union has had a major influence on attitudes towards, and provisions for, affordability throughout Europe and the European Neighbourhood. The notion is strongly linked to the idea of universal service.

In particular, the Universal Service Directive 2002 (USD)³⁵ requires that the minimum set of services it identifies (mainly telephony at a fixed location) shall be made available to all 'at an affordable price in the light of specific national conditions, without distorting competition'.³⁶ Affordability of tariffs includes³⁷ the possibility of requiring:

tariff options or packages to consumers which depart from those provided under normal commercial conditions, in particular to ensure that those on low incomes or with special social needs are not prevented from accessing or using the publicly available telephone service.

The Directive also requires the provision of facilities such as itemised bills and selective call barring for helping consumers to monitor and control their bills.

The wording is close to that in the earlier legislation that the 2002 Framework replaced,³⁸ and reflects compromise between the demands of the 'social partners' (in this case, mainly consumer organisations and trades unions) for affordable services,³⁹ the principle of subsidiarity, and the primary purpose of the Framework in promoting competition. The 2002 Framework, in turn, is close to being replaced by a revised version, whose texts are not yet final; however, the draft replacement texts on affordability have shown little change from the 2002 USD, and have not prompted controversy. The main relevant changes allow for separation of network and service provision, and strengthen the requirements for equivalent levels of access and affordability for people with disabilities.

Despite widespread assent to the principle of equal opportunities for people with disabilities, current European legislation does not permit national regulators to intervene to make specialised communications equipment affordable to them. It is hoped that the forthcoming revision of the Radio and Telecommunications Terminal Equipment (RTTE) Directive will improve this situation.

Implementation monitoring

The European consumer federation BEUC in 1998 published a survey of the EU15 member states' implementation of universal service, including affordability. It found that eight of the 15 countries had no clear definition of universal service. Six of the remaining seven had a definition in terms of existing prevailing price levels, which were presumed affordable (though the existence of supporting evidence was unclear). The honourable

³⁵ Part of the 2002 Electronic Communications Regulatory Framework, which is currently under review.

³⁶ USD Article 1(2). Because of the pivotal importance of this Directive, extracts from it are provided as Annex A.

³⁷ USD Article 9(2)

³⁸ The second Voice Telephony Directive came into force in 1998. It included similar wording, and referred especially to the need to maintain affordability in the face of the progressive adjustment of tariffs towards costs.

³⁹ Consumer organisations in general would have preferred a clear statement on the meaning of affordability against which national situations could be assessed (see BEUC 1998).

exception was Denmark, which set very detailed rules for price evolution taking account of consumers' actual usage patterns, but even it took no account of consumers' incomes.

Annual reviews by the Commission of member states' implementation of the universal service part of the Framework⁴⁰ have made little mention of affordability, or indeed other consumer aspects, focusing instead on the supply arrangements. There has been a general assumption that fixed telephony has become sufficiently affordable. A flavour of the latest annual implementation report can be obtained from the extracts provided in Appendix 6.2, which touch on seven countries.⁴¹

Complementary horizontal reviews of the markets for network industries⁴² provide a little more information. Their 2007 report, when feeding back consumer views, remarks:

The affordability of these services is an issue of great importance in consumers' daily lives since, in general, they comprise a considerable part of consumers' household budget. A positive aspect is that, according to users' views, most services have become more affordable. Most improvement is observed in urban and extra-urban transport and mobile telephony. Consumers indicate that energy has become less affordable for both electricity and gas. Electricity users are especially dissatisfied with prices in Malta, Finland, Sweden and Poland. Gas users are most dissatisfied in Poland, France, Germany and Hungary.

When examining the views of citizens who are non-users of these services on the question of affordability, we can get a picture of the scale of exclusion from using these services due to affordability. The results are not very encouraging since, in this group of citizens, we observe percentages ranging from 21 per cent for urban transport to 39 per cent for electricity.

Some interesting data for the EU15 (the original Western European Member States before enlargement in 2004) are reproduced for convenience in Appendix 6.3. These appear to show the following over the period 1994–2004:

- All consumer groups benefited from price reductions in telecommunications, to extents varying between 0 per cent and 0.66 per cent of their total spending.
- All consumer groups also increased their telecommunications usage volume, by extents varying between 1.12 per cent and 3.49 per cent for the best-off quintile and between 1.83 per cent and 7.12 per cent for the worst-off quintile.
- Thus, the worst-off consumer quintiles have shown a significant price elasticity of demand, and telecommunications now accounts for a considerably higher share of their total spending than of the spending of the best-off consumer quintiles.

The finding that communications accounts for an increased share of overall consumer spending echoes that of the OECD discussed above.

⁴⁰ These reports are available online for every year since liberalisation in 1998, at http://ec.europa.eu/information_society/policy/ecom/library/communications_reports/index_en.htm.

⁴¹ The annex contains all the material relevant to this paper found in a trawl of the entire report, hundreds of pages long.

⁴² Under the auspices of a different part of the Commission – Directorate for Internal Markets rather than Directorate for Information Society (which is responsible for policy and legislation related to electronic communications).

Reviews of scope of universal service

By now, two reviews of the scope of universal service have taken place,⁴³ each time addressing the question of whether a) mobile and b) broadband should be added to the scope. Both times the conclusions have been ‘no’:

- for broadband because take-up is not yet so high that the service can be regarded as essential to social inclusion;
- for mobile because, although it has become essential to social inclusion, the market has provided universal availability and affordability.

Along with all other developed countries, EU member states are anxious to foster the spread and take-up of broadband. Various broadband initiatives have emerged outside the ‘universal service’ wrapper. However, Finland, France, Spain and the United Kingdom (at least) have announced broadband plans which either are called ‘universal service’ or look very much like it. It seems probable that the next European review of the scope of universal service will have to include ‘basic’ broadband (at a speed sufficient to enable, for example, interactive access to government websites); this will entail attention to the affordability of broadband.

Fixed-line social tariffs

Several member states have special fixed-line tariffs or concessions aimed at affordability for low-frequency users or low-income users, sometimes with limited eligibility. In most countries these are offered only by designated universal service providers, in general the fixed line incumbent; in Belgium, exceptionally, all fixed line operators offer them. Design features may include:

- a much reduced rental (typically, 50 per cent of the standard level), possibly inclusive of some usage, but often with relatively high call charges once the included usage is exceeded (for example BT Basic and its predecessors, FT Abonnement Social, KPN BelBudget, Eircom Vulnerable User Scheme);
- a straight allowance towards telephony charges, provided either by the telephone company (as in Belgacom’s tarif social) or direct to the customer by social services (as in Finland, and the Irish Telephone Allowance);
- zero rental, with a minimum monthly call spend (Maltacom’s Easyline and Telefónica’s Línea Libre);
- additional concessions for deaf users, with the aim of making the longer time they are obliged to spend on the phone for a given conversation (say, through a text relay service) cost no more than the equivalent conversation time for a hearing user.

Affordability of mobile service

Despite its acknowledged social importance, and despite indications that its affordability is by no means universal, particularly in newer member states,⁴⁴ it is less likely that mobile service will be included within the scope of universal service. Concern that everyone should be able to afford mobile service is beginning to surface, however. Examples include the following:

⁴³ See European Commission (2005, 2008) for the conclusions of these reviews.

⁴⁴ Survey evidence is available from Portugal (see Puga 2008 for a summary). The series of Eurobarometer E-Communications Household Surveys, available at http://ec.europa.eu/information_society/policy/ecomm/library/ext_studies/index_en.htm#2009, has included at different times varying questions related to cost or affordability of fixed and mobile telephony and Internet.

- The UK Minimum Living Standards budgets, developed through deliberative research among groups of ordinary citizens about what is essential in contemporary society and published in 2008,⁴⁵ all include provision for modest use of a mobile phone (as well as a fixed line).
- There is a discussion of whether involuntary exclusion from the mobile phone market is an important issue in a recent consultation by Consumer Focus.⁴⁶
- The COST605 European collaborative project on economics of telecommunications includes a work strand on affordability of mobile service.⁴⁷

An announcement on 12 May 2009 from Orange (France) of a new mobile social tariff (€10 a month, to include 40 minutes of calls and 40 SMS, available to social benefit recipients) may be followed by similar moves in other European countries.⁴⁸ The press notice ends by saying that a €20 social triple play offer (telephone, TV and broadband Internet) is being prepared. Orange is providing the mobile social tariff voluntarily, and meeting all costs without outside financial support.⁴⁹ Telefónica in Spain is now also offering 50 per cent discounts on both fixed and mobile bills to people who are unemployed.⁵⁰

It is worth noting that the European Commission has been active in bringing down certain mobile roaming prices directly (first those for voice roaming, followed by those for SMS and data roaming). The intervention has have been widely supported by consumer and public interest groups, on grounds related more to perceived excessive profit margins than to affordability. The Commission justified its intervention in terms of a failure of effective competition, aggravated by national regulators' inability to address the charges levied by the roaming operator in another country. They are now pressing national regulators to reduce mobile termination charges to cost.

6.6. The United States

Affordability as part of universal service

The United States is the country which originated the idea that communications should be affordable to all,⁵¹ and which has put in place the most extensive provisions to achieve this end.⁵² In spite of low take-up⁵³ by eligible groups, 7 million households are provided with subsidised telephone service under the Low Income Program by 1,700 registered telephone companies. Along with Do Not Disconnect policies in most states, this has contributed to telephony penetration of near 90 per cent in the lowest income group (household income below US\$10,000 a year).⁵⁴

⁴⁵ See <<http://www.minimumincomestandard.org>>.

⁴⁶ Consumer Focus (2009).

⁴⁷ See Pau (2008).

⁴⁸ See Orange (2009); information on other countries obtained in private communication from L-F Pau, leader of COST605 affordability workstream.

⁴⁹ Personal communication to the author from Matthieu Belloir of Orange, 14 May 2009.

⁵⁰ <<http://www.telefonica.es/on/io/es/teayudamos/home.html>>.

⁵¹ See Cooper (1996) for a useful historical summary.

⁵² Much of the information in the following paragraphs is drawn from the Universal Service Administration Company's Low Income Program website at www.lifelinesupport.org and the FCC's pages at www.lifeline.gov.

⁵³ In 2007, under half of eligible households in all but six states, according to the map at <http://www.lifelinesupport.org/_res/documents/li/pdf/li-participation-rate-map-2007.pdf>.

⁵⁴ See NRRI (2006), which is also a useful source for more detail on the Lifeline and Link-up schemes.

Much recent concern and debate has been caused by the rapid growth of the multi-billion dollar Universal Service Fund (USF), the lion's share of which (62 per cent in 2007) has been used to subsidise operations in high-cost rural areas, so that tariffs are comparable to those prevailing elsewhere. Special affordable tariffs for low-income customers (called Link-Up for initial connection and Lifeline for ongoing service) have cost much less (in 2007, a 'mere' US\$823 million, only 12 per cent of the Universal Service Fund) and attracted less controversy.

Some commentators argue that low take-up and high cost per customer benefited point to a need for improvements in target group awareness and in packaging and presentation of the tariffs. In particular, it has been pointed out⁵⁵ that a growing majority of low-income households now prefer wireless to fixed service⁵⁶. At least since 2000, wireless as well as fixed carriers have been able to offer low-income packages through these programs, and such wireless packages are now available in a growing number of states. In 2007, 14.6 per cent of low-income USF disbursements were to competitive carriers rather than incumbents, with more than half of this competitive share going to wireless carriers. In Alaska, Arizona and South Dakota, wireless carriers had the most Lifeline customers.

Assessing affordability

Pioneering basic research into underlying principles for affordability has been carried out in the context of energy affordability. Some of its lessons may be transferable into communications markets. A recent study into best-in-class low-income utility rate affordability programs⁵⁷ came up with and applied the following five criteria:

- Is the program reasonably open to all households in need?
- Does the program recognise the multiple facets of energy affordability 'need'?
- Does the program efficiently use program funding?
- Does the program provide for continuous improvement?
- Does the program provide for reasonable cost recovery?

Earlier studies by the same consultancy have examined the important question of how to identify households who should receive assistance, and determine a threshold for an acceptable energy burden (that is, proportion of household spending devoted to energy).

The project devised the following Household Level Home Energy Insecurity Scale for Home Energy Assistance Programs:⁵⁸

- *Thriving*. A 'thriving' household has achieved generally accepted standards of well-being.
- *Capable*. A 'capable' household is secure, even though not having achieved the full range of generally accepted standards of well-being.
- *Stable*. A 'stable' household does not face significant threats and is unlikely to be in immediate crisis.
- *Vulnerable*. A 'vulnerable' household is one that is not in immediate danger, but that may avoid this danger only through temporary or inappropriate solutions.

⁵⁵ See, for example, Hauge, Chiang and Jamison (2009), who provide many earlier references.

⁵⁶ The best data on mobile-only and mobile-mostly households are provided by the National Health Interview Survey, available at <<http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless200905.htm>> (where they are interestingly related to health issues).

⁵⁷ See Colton (2009), which summarises Colton (2007).

⁵⁸ The following material is taken from LIHEAP (2003).

- *In crisis.* An ‘in crisis’ household faces immediate needs that threaten the household’s physical and/or emotional safety.

A questionnaire enables each household to be classified at the appropriate level. Replies throw light on the following areas of concern:

- *Receipt of outside assistance.* This includes more than simply energy assistance. The household is asked about the extent to which the household’s ‘home energy bill became due and [the household] did not have money to pay it without somebody’s help’.
- *Constraints on energy usage.* Different questions explore different intensities of constraint on energy usage. One question, for example, asks whether the household is constrained in the energy it ‘wants’ to use. A more intense constraint involves whether reductions in energy use are to ‘uncomfortable or inconvenient levels’. An even more intense constraint involves turning hot water heating or space heating/cooling off entirely because of the lack of money.
- *Constraints on household necessities.* Different questions explore different levels of impact that home energy bills have on the provision of household necessities. On the one hand, the involuntary discontinuance of energy service due to non-payment is considered to be an adverse impact on the provision of household necessities. On the other hand, households are asked the extent to which, if at all, they reduce their expenditures on household necessities such as food or medicine because there is not enough money to pay for these *and* the home energy bill.
- *Non-payment of energy bills.* Again, different questions explore different levels of intensity of the response. Households are asked whether they ever do ‘not pay our home energy supplier because there is not enough money for the home energy bill’. A more intense non-payment issue is raised by the question of whether the household has ever had its supplier of electricity or heating energy threaten to disconnect electricity or home heating fuel service, or discontinue making heating fuel deliveries, because the household could not afford to pay a past-due energy bill. An even more intense response involves the *actual* disconnection of service (or discontinuance of deliveries).
- *Financial strain.* The presence of ‘strain’ is measured through a variety of questions, including the extent to which, if at all, a respondent ‘worried whether [his or her] home energy bill would become overdue before [he or she] could get money to pay it’.

6.7. South Africa

This overview is designed to focus on developed countries, since their experience is most likely to provide useful learning for Australia. South Africa is included because its unusual mix of First and Third World economies has led to some particularly interesting developments.

In the spirit of its 1994 democratic constitution, South Africa has paid a good deal of attention to the idea of affordable communications for all. It has a dedicated Universal Service and Access Agency⁵⁹ which is currently consulting on the detail of various definitions required by legislation: universal access and universal service (which both use

⁵⁹ See <<http://www.usaasa.org.za>>.

the concept of affordability), under-serviced area and needy person. Regulatory activity in support of affordability has included:⁶⁰

- requiring the fixed incumbent Telkom to provide lines to raise telephone penetration in under-serviced areas. A low-priced prepaid offering (but with a line rental) was introduced for this purpose. Between 1997 and 2002, Telkom installed over 2.6 million new lines as required, 1.6 million of them in under-serviced areas, but within a few years the majority had been disconnected for non-payment of the monthly rental – real net line growth was only 0.6 million;
- requirement for provision by cellular operators of large numbers of free SIM cards to needy people, in part-recognition of the privilege of 3G licensing;
- provision of both fixed and mobile ‘lifeline’ services, whereby calls can still be received and emergency calls can be made even on lines whose credit or payment status does not permit charged outgoing calls;
- special licensing (with financial support, and relatively gentle licence conditions) since 2004 of new operators for the provision of affordable service to needy people in under-serviced areas. Twelve such licences have been issued, but only a few of the licensed operators are in business, and none is operating on anything like the scale originally planned;
- requirements on both fixed and cellular operators to provide Community Service Telephones – that is, public pay phones with controlled call charges (achieved through compulsorily reduced interconnection rates). Since 1997, nearly 200,000 such pay phones have been provided in many locations, though demand for more of them in deprived areas continues. Where these phones exist, people often use them to make outgoing calls, reserving their cell phones for receiving calls.

These measures have, however, had less impact than the market in achieving real progress towards universally affordable service. In particular, the mobile market in South Africa (despite the high call prices for which it attracts criticism) offers many innovative services which improve affordability. Although the technology obviously⁶¹ permits them, such services tend to be unavailable in developed countries. They include:

- low-cost prepaid starter packs including a SIM card (from under US\$2);
- the popular ‘please call me’ free SMS service;
- low-value credit top-ups (down to around US 50 cents);
- over-the-air airtime transfer between mobile users;
- reverse-charge calls to contract customers who accept such calls, or pre-authorise them from a specific number;
- real-time discounted call rates reflecting spare network capacity. Customers opting in are informed of the discounts (which can be up to 95 per cent) by SMS;
- itemised call statements for prepaid customers;
- ‘shared phone’ SIM cards which make it easy for an individual to set up a personal call resale service on any cellular handset (so they become a sort of walking pay phone).

⁶⁰ This section draws on Msimang (2006), which is a good source for further information.

⁶¹ Examples other than the last are taken from <<http://www.vodacom.co.za>> and <<http://www.mtn.co.za>>.

6.8. The United Kingdom

Affordability in context

Lennard and George (2008) provide a valuable overview of how low-income and other disadvantaged consumers in the United Kingdom fare in relation to telecommunications markets.⁶² They make some important points which are relevant to affordability, including the following:

- The variability of individual needs and circumstances in turn leads to variable levels of necessary consumption. In particular, disability and illness both often raise consumption requirements while at the same time lowering income.
- Many consumers find it difficult to take advantage of the competitive offers in the market. This difficulty is compounded by personal disadvantage, and may lead to the least well-off consumers being unable to find best buys, and even paying above-average prices.⁶³
- Disconnections caused by debt remain too frequent.

They quote 2006 household survey findings which show lowest decile communications spending at around 3.6 per cent, double the budget share for the highest decile, while half the amount in money terms (equivalised for household size).

In the last few years, Ofcom has carried out a considerable amount of consumer research, some of which has addressed affordability and other reasons for involuntary non-use of services. Its attitudinal study of people on low incomes (Ofcom 2007) is worth reading in its entirety by anyone wanting to follow up affordability issues. As qualitative research, it naturally provides no figures, but makes it clear that the proportion of people citing cost as a barrier to use of telephony is now very low. Having to pay bills through a bank account, and being tied in to contracts which may prove to be a mistake, are much more significant considerations for most of the group surveyed.

Additional charges

A lot of bad feeling has been caused in the last year or two by the increasing tendency of service providers to charge more when customers do not pay their bills by direct debit, or other automated method. Additional charges are now also typically made for paper rather than electronic billing. Both types of charge weigh most heavily on lower income and especially elderly consumers, who may resist direct debit even if they have a bank account, and who often cannot receive bills by email. Although the amounts in question are usually not very large, and can be justified in terms of costs, many people feel them keenly as discriminatory and unfair. Ofcom has looked into these and other additional charges, and concluded that while it neither could nor should ban them, it is important that such charges should be cost-justified and transparent.⁶⁴

⁶² The reference given is to a book chapter. The book is a major study of the problems faced by the poor in the market for seven essential services in the United Kingdom – energy, food, housing, water, telecoms, transport, and financial services. Together, these represent 60 per cent of spending by the poorest 30 per cent of households.

⁶³ Findings such as those of Waddams and Chang (2008) show that switching provider is by no means always advantageous.

⁶⁴ The statement on Ofcom's Review of Additional Charges is at <http://www.ofcom.org.uk/consult/condocs/addcharges/statement>, where links to the consultation and responses can also be found.

Special fixed line tariffs

The new BT Basic social tariff⁶⁵ is intended to replace the old Light User Scheme and In Contact tariffs.⁶⁶ While marginally more generous to light users than its predecessors (and without additional charges for non-direct debit payment and paper bills), it is the first UK telecoms tariff with restricted eligibility (dependent on receipt of specific benefits). Ofcom requires BT to recruit 600,000 users to BT Basic before the predecessor tariffs can be withdrawn. It is more generous than its predecessors in allowing beneficiaries also to use mobile phone and broadband service.

The service was launched in the autumn of 2008 and by mid-May 2009 over 300,000 people had registered with the scheme, and it was on target for 425,000 by the end of May,⁶⁷ when BT also expected to have written to all existing Light User Scheme customers, advising them of BT Basic. Light User Scheme customers whose lifestyle data indicates low income are being invited to move to BT Basic without completion of an application form or eligibility checks.

Needy groups who cannot benefit from these schemes include:

- the homeless – a privately funded and provided free voicemail service with free message pick-up is now available to homeless people.⁶⁸ In 2007, it had 1,000 customers;
- prisoners – a recent complaint by Consumer Focus on behalf of prisoners succeeded in getting a modest reduction in their pay phone rates, which remain high.

Affordability of mobile phone service

While pay-as-you-go mobile is undoubtedly the cheapest telephony option for people who make few calls, high call charges mean that it can rapidly become very expensive if usage increases. So, in a short period of crisis which requires extra calling (for example, sickness in the family), the mobile can become an extra liability. This is even worse if necessary calls include those to specially tarified numbers, typically used by call centres – not only are these often charged at a premium, but it may be necessary to hold for some time before getting any attention.

Subject to these concerns, commercially available prepaid mobile tariffs are now acceptable to the vast majority of the UK public, even if higher-frequency users with contracts are getting more benefit from price reductions than lower-frequency and prepay users.⁶⁹ The MVNO market in particular is targeting low-income users, largely through supermarket brands such as Tesco and Asda. It has produced a virtually free youth service, funded by advertising,⁷⁰ and a number of low-priced services targeted at people who make many international calls.⁷¹

The fate of marginal prepaid users has been brought into debates over reductions in mobile termination rates, with the industry arguing that the ‘waterbed effect’ will drive them to

⁶⁵ See <<http://www.bt.com/btbasic>>.

⁶⁶ Grilli (2004) discussed the deficiencies of these schemes and draws wider lessons for social tariff design.

⁶⁷ This information and what follows were kindly provided to the author in a personal communication from Fiona Miller of BT.

⁶⁸ See <www.voicemail4all.org.uk>.

⁶⁹ As Ofcom’s recent Mobile Sector Assessment pointed out. See Chapter 4 of *Mobile Citizens, Mobile Consumers*, available at <<http://www.ofcom.org.uk/consult/condocs/msa08/msa.pdf>>.

⁷⁰ See <<http://www.blyk.com>>.

⁷¹ See, for example, <<http://www.lycamobile.com>>.

recover lost termination revenues from other sources, to the greatest detriment of the lowest users. A recent Ofcom consultation, when touching on this issue, suggests that if this effect matters it should be addressed through targeted measures:⁷²

6.48 The net effect of the rebalancing of call and subscription charges would be likely to favour consumers that make more calls, against those that make fewer calls. This section sets out our preliminary views about the nature of these effects and their relevance to choosing an approach to setting termination rates.

6.49 For some customers, particularly low users, who do not make many calls, this effect could make them decide not to continue to have a mobile phone(s). We think the impact of this effect is real though the size of the effect is unclear. Industry claims of widespread negative impact need to be weighed against the evidence of widespread take-up and low barriers of affordability in the UK for mobile services.

6.50 To the extent that the impact is significant, this issue may be better addressed through alternative policy means rather than allowing termination rates to be higher than they would otherwise be – e.g. through broader consumer protection measures. For example, some form of mandatory social tariff to ensure that mobiles are affordable for low usage subscribers could be the best vehicle to achieve this objective more directly. We also note that according to an Analysys Mason report that we commissioned (annex 8.1), it appears that the relevant regulatory authorities in countries where mobile termination rates are very low or zero – US, Hong Kong, Canada and Singapore – have not expressed concerns about distribution issues and the need for a mandatory social tariff.

Barriers to Internet use

Having been reduced to a small issue for telephony, affordability arises again in the context of Internet use and broadband take-up. Recent research⁷³ found that cost was the second most quoted reason for those without home Internet access not planning to get it in the coming year, at 22 per cent of respondents (with 55 per cent quoting lack of need or interest). Sub-groups for which cost was more important than average included the lowest income group (31 per cent), those aged 15 to 34 (46 per cent), mobile-only households (46 per cent) and, most strikingly, households with children (50 per cent).

Because of the priority now given by government to getting as many people as possible online, broadband affordability has become a new area of concern and prepaid broadband tariffs have been mooted.⁷⁴ When speaking of people's reasons for not having broadband, it is hard to disentangle mentions of affordability from their perceptions of need and benefit. Perceptions of low need or little benefit may themselves be much influenced by limited competence and fear or dislike of the unknown.

⁷² See 20 May 2009 Ofcom preliminary consultation on future regulation on wholesale mobile voice call termination at <http://www.ofcom.org.uk/consult/condocs/mobilecallterm/mobile_call_term.pdf>.

⁷³ The figures quoted are taken from Ofcom (2009), a summary of several pieces of research which may be consulted individually for full details.

⁷⁴ One such has already been introduced, by the 3G mobile operator 3 (see <http://www.three.co.uk/Mobile_Broadband/Ready_to_go_Mobile_Broadband>). As might be expected, it is very expensive per GB of data compared with 3's contract options, which are competitive with the best fixed broadband offers.

6.9. References

- Barrantes, Roxana and Galperin, Hernan, 2008. 'Can the Poor Afford Mobile Telephony? Evidence from Latin America, *Telecommunications Policy* 32(8), pp. 521–30.
- BEUC (Bureau Européen des Unions de Consommateurs), 1998. *Universal Service in Telecommunications: European Consumers' Rights to Telecommunications Services*, by Kátrin Schweren and Alma Palazzi, BEUC/341/1998.
- Bohman, Helena, 2008. 'Income Distribution and the Diffusion of Networks: An Empirical Study of Brazilian Telecommunications', *Telecommunications Policy* 32(9–10), pp. 600–14.
- Colton, Roger D., 2007. *Best Practices: Low-Income Rate Affordability Programs Articulating and Applying Rating Criteria*, prepared For Hydro Quebec Distribution Company, Montreal, Quebec by Fisher, Sheehan and Colton.
- Colton, Roger D., 2009. *FSC's Law & Economics Insights*, Fisher, Sheehan & Colton, no. 2, <http://www.fsconline.com/downloads/FSC%20Newsletter/news2009/n2009_0304.pdf>. Accessed 20 May 2009.
- Consumer Focus (2009), *Mobile: What's the Problem? Consumer Priorities in the Mobile Phone Sector*, <<http://www.consumerfocus.org.uk/mobilephones>>. Accessed 20 May 2009.
- Cooper, Mark, 1996. *Universal Service: A Historical Perspective and Policies for the Twenty-First Century*, a joint publication of the Benton Foundation and the Consumer Federation of America, <<http://www.benton.org/publibrary/uniserv-prospective/prospects.html>>. Accessed 20 May 2009.
- European Commission, 2002. Directive 2002/22/EC of the European Parliament and of the Council of 7 March 2002 on Universal Service and Users' Rights Relating to Electronic Communications Networks and Services (Universal Service Directive), available at <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:32002L0022:EN:HTML>>. Accessed 20 May 2009.
- European Commission, 2005. Communication from the Commission to the Council, the European Parliament, the European Economic and Social committee and the Committee of the Regions On the Review of the Scope of Universal Service in accordance with Article 15 of Directive 2002/22/EC [SEC(2005)660]/*COM/2005/0203 final, <<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52005DC0203:EN:HTML>>. Accessed 20 May 2009.
- European Commission, 2007. Annexes to the Commission Staff Working Document: Evaluation of the Performance of Network Industries Providing Services of General Economic Interest, 2006 Report, (SEC(2007)1024), <http://ec.europa.eu/internal_market/economic-reports/docs/2006/sec20071024-annex_en.pdf>. Accessed 20 May 2009.
- European Commission, 2008. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on the second periodic review of the scope of universal service in electronic communications networks and services in accordance with Article 15 of Directive 2002/22/EC/*COM/2008/0572 final, <<http://eur-lex.europa.eu/>

- LexUriServ/LexUriServ.do?uri=CELEX:52008DC0572:EN:NOT>. Accessed 20 May 2009.
- Garbacz, Christopher and Thompson, Herbert G., 2007. 'Demand for Telecommunication Services in Developing Countries', *Telecommunications Policy* 31(5), pp. 276–89.
- Garnham, Nicholas, 1997. 'Amartya Sen's "Capabilities" Approach to the Evaluation of Welfare: Its Application to Communications', *Javnost (The Public)* 4(4), pp. 25–34, <<http://www.javnost-thepublic.org/media/datoteke/1997-4-garnham.pdf>>. Accessed 20 May 2009.
- Grilli, Luca, 2004. 'Special Tariffs to Promote Fixed Telephony Penetration: Reflections from the UK Experience During the 1990s', *Telecommunications Policy* 28(3–4), pp. 295–308.
- Hauge, Janice A., Chiang, Eric P. & Jamison, Mark A., 2009. 'Whose Call is It? Targeting Universal Service Programs to Low-income Households' Telecommunications Preferences', *Telecommunications Policy* 33(3–4), pp. 129–45.
- ITU, 2009a. *Manual for Measuring ICT Access and Use by Households and Individuals*, <<http://www.itu.int/ITU-D/ict/publications/hhmanual/2009/index.html>>. Accessed 20 May 2009.
- ITU, 2009b. *Measuring the Information Society: The ICT Development Index*, <http://www.itu.int/ITU-D/ict/publications/idi/2009/material/IDI2009_w5.pdf>. Accessed 20 May 2009.
- Kessides, Ioannis, Miniaci, Raffaele, Scarpa, Carlo & Valbonesi, Paola, 2009. *Toward Defining and Measuring the Affordability of Public Utility Services*, The World Bank Development Research Group, Environment and Energy Team, Policy Research Working Paper 4915, <http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2009/04/28/000158349_20090428083002/Rendered/PDF/WPS4915.pdf>. Accessed 20 May 2009.
- Lennard, Linda & George, Mike, 2008. 'Telecommunications', in *Poor Choices*, energywatch, <<http://www.psiru.org/reports/PoorChoices.pdf>>. Accessed 20 May 2009.
- LIHEAP Committee on Managing for Results, 2003. *Measuring the Outcomes of Low-income Energy Assistance Programs Through a Home Energy Insecurity Scale*, US Department of Health and Human Services, <<http://www.fsconline.com/downloads/Papers/2003%2005%20insecurity-scale.pdf>>.
- Milne, C., 2000. 'Affordability of Basic Telephone Service: An Income Distribution Approach', *Telecommunications Policy* 24, pp. 907–27.
- Milne, C., 2004. *Towards Defining and Measuring Affordability of Utilities – a Discussion Paper*, for PUAf (Public Utilities Access Forum), <<http://www.puaf.org.uk/docs/news/Affordability-%20a%20discussion%20paper.pdf>>. Accessed 20 May 2009.
- Milne, C., 2006. *Telecoms Demand: Measures for Improving Affordability in Developing Countries – a Toolkit for Action*, *World Dialogue on Regulation*, <<http://www.regulateonline.org/content/view/619/71>>. Accessed 20 May 2009.
- Miniaci, R., Scarpa, C. & Valbonesi, P., 2008. 'Measuring the Affordability of Basic Public Utility Services in Italy', *Giornale degli Economisti e Annali di Economia* 67(2), pp. 185–230.
- Msimang, Mandla, 2006. 'Universal Service and Universal Access', in Lisa Thornton, Yasmin Carrim, Patric Mtshaulana and Pippa Reburn (eds), *Telecommunications Law in*

- South Africa, IDRC, <<http://link.wits.ac.za/papers/tele-law.html>>.
<http://www.regulateonline.org/content/view/619/71>>. Accessed 20 May 2009.
- Nokia, 2005. 'Towards a More Affordable Mobile Experience', *New Horizons* (Nokia house journal), Q3.
- NRRI (National Regulatory Research Institute), 2006. *Commissioner Primer on Universal Service*, <<http://nrri.org/pubs/telecommunications/06-08.pdf>>. Accessed 20 May 2009.
- OECD, 2006), 'Rethinking Universal Service for a Next Generation Network Environment', by Patrick Xavier, DSTI/ICCP/TISP(2005)5/FINAL.
- OECD, 2007a. 'Broadband and ICT Access and Use by Households and Individuals', DSTI/ICCP/IE(2007)4/FINAL, <<http://www.oecd.org/dataoecd/44/11/39869349.pdf>>. Accessed 20 May 2009.
- OECD, 2007b. 'Catching up in Broadband: What Will It Take?' by John de Ridder, DSTI/ICCP/CISP(2007)8/FINAL, <<http://www.oecd.org/dataoecd/34/34/39360525.pdf>>. Accessed 20 May 2009.
- Ofcom, 2007. *Low Income Consumers and the Communications Market: An Attitudinal Study into People Living on a Low Income and Their Experience of Communications Services*, <<http://www.ofcom.org.uk/research/tce/ce07/annex4.pdf>>. Accessed 20 May 2009.
- Ofcom, 2009. *Summary of Ofcom Research on Internet Access, Use and Attitudes*, <<http://www.ofcom.org.uk/consult/condocs/access/accessandinclusionssummary.pdf>>. Accessed 20 May 2009.
- Orange, 2009. 'Orange is Launching the First Mobile Service in France Aimed at Beneficiaries of the Revenu de Solidarité Active (Earned Income Supplement)', Press Release, <http://www.francetelecom.com/en_EN/press/press_releases/cp090512en.jsp>. Accessed 20 May 2009.
- Pau, L-F., 2008. 'Approaches and Drivers to Requalify Universal Service Measures in View of Mobile Communications for the Needy', COST605 project, <<http://www.cost605.org/td.php?doc=TD-07-60.pdf>>. Accessed 20 May 2009.
- Puga, Pedro, 2008. 'Telecommunications for the Needy: An Exploratory Approach from Portugal', presentation from conference on Public-Private Interplay in Next Generation Communications, Seville, December, <<http://www.ict-publicprivate.net/galerias/comprimidos/42.zip>>. Accessed 20 May 2009.
- Sinclair, Stephen, Bramley, Dobbie, Glen, Louise & Gillespie, Morag, 2007, *Social Inclusion and Communications: A Review of the Literature, for Ofcom Consumer Panel*, <http://www.communicationsconsumerpanel.org.uk/downloads/Research/LowIncomeConsumers_Research/Social%20inclusion%20and%20communications/Social%20inclusion%20and%20communications.pdf>. Accessed 20 May 2009.
- Spence, Randy & Smith, Matthew, 2009. *Information and Communication Technologies, Human Development, Growth and Poverty Reduction: A Background Paper*, IDRC, <http://www.idrc.ca/uploads/user-S/12412058391HF2_Background_Paper_28-04-09.pdf>. Accessed 20 May 2009.
- Waddams Price, Catherine and Chang, Yoonhee Tina, 2008. *Gain or Pain: Does Consumer Activity Reflect Utility Maximisation?* ESRC Centre for Competition Policy, University of East Anglia, CCP Working Paper 08-15, http://www.uea.ac.uk/polopoly_fs/1.104668!ccp08-15.pdf. Accessed 20 May 2009.

6.10. Appendixes

Appendix 6.1: Extracts from 14th Implementation Report of the European Commission⁷⁵

Belgium

The Commission has opened infringement proceedings against Belgium on the costing and the financing of the Belgian universal service obligations, and in particular the social tariffs.

In Belgium, all operators offering public telephony services to consumers are required to offer social tariffs. In this system, the net cost of universal service is calculated as any loss of revenue resulting from the granting of social discounts. Any net cost so calculated, which is incurred by an operator, has to be considered as an unfair burden.

The Commission considers that the provisions in the Belgian Electronic Communications Act with regard to calculation of net cost and determination of the unfair burden infringe the Universal Service Directive. It decided to refer the Belgian State to the European Court of Justice in January 2008.

Czech Republic

A draft proposal for changing overall the compensation mechanism for universal service to public funding has been prepared. The current financing system allows for public funding only with respect to measures for disabled users.

The incumbent and the smallest mobile operator were again designated for the element of special social tariffs for disabled users on the basis of the new Government Decree of 2008. The decree specifies the reduction of the scope for the element of special tariffs, which was introduced by primary legislation at the beginning of 2008, by excluding the provision of special prices for low-income recipients. Nevertheless, in addition to the requirements set out in the designation, the smallest operator decided to maintain the original wider scope of special discounts. The third mobile player did not apply for a designation to provide social tariffs. However, it continues to offer on a voluntary basis more generous discounts than those provided for by the current universal service obligation.

France

The legislator has been active in France in 2008 regarding electronic communications regulation. A law on competition and consumer protection (Loi n° 2008-3 du 3 janvier 2008 pour le développement de la concurrence au service des consommateurs, so called 'loi Chatel'), with specific provisions on mobile, fixed and broadband services, was adopted in January 2008. The law on the modernisation of the economy (Loi n° 2008-776 du 4 août 2008 de modernisation de l'économie, LME) includes a chapter on electronic communications.

An issue raised by many mobile communications users, especially those not residing permanently in France, seems to be the short validity period of pre-paid cards in France

⁷⁵ Available at http://ec.europa.eu/information_society/policy/ecomms/library/communications_reports/index_en.htm.

and the early expiry of the recharge period, together with the loss of unused credit. Such conditions might have contributed to the small proportion of pre-paid users in France.

It should also be noted that under the LME (outside the universal service regime), mobile operators will provide a special tariff for people with low income, on a voluntary basis, further to an agreement between operators and the government, still to be concluded.

Greece

According to EETT's decision, the Greek incumbent remains the universal service provider until the completion of the procedures for universal service provider designation under Law 3431/2006. The relevant legislation on the conditions for the selection and compensation of related costs was finalised in 2008. At the time of drafting this report, EETT was working on specifying the selection process to be followed. A Joint Ministerial Decision was adopted in September 2008 introducing measures for users with disabilities in order to ensure access to and affordability of publicly available telephone services.

Lithuania

Billing and payments remained the main themes of consumer complaints in 2008. Several instances of exorbitant bills were identified. RRT has prepared changes to the rules clarifying the setting of limits for consumption of telecommunications services.

Luxembourg

While transparency is a key principle of the Universal Service Directive, several citizens of Luxembourg have informed the Commission's services of their concerns in the matter of the period of validity of prepaid cards.

While no universal service provider has been designated, the incumbent provides universal service on a voluntary basis. As a result, not much information is available on the effective provision of some components of universal service, such as public pay phones, universal directory services and social tariffs.

Poland

Alternative operators maintain that the compensation figure was inflated by the inclusion of a social tariff plan, which was priced below cost, and was available for all new subscribers and not only those with low incomes or the disabled. This plan was only available to new subscribers until December, and was replaced by one restricted to the most disadvantaged.

Appendix 6.2: Extracts from Universal service directive 2002

Selected paragraphs from the Preamble

(7) Member States should continue to ensure that the services set out in Chapter II are made available with the quality specified to all end-users in their territory, irrespective of their geographical location, and, in the light of specific national conditions, at an affordable price. Member States may, in the context of universal service obligations and in the light of national conditions, take specific measures for consumers in rural or geographically isolated areas to ensure their access to the services set out in the Chapter II and the affordability of those services, as well as ensure under the same conditions this access, in particular for the elderly, the disabled and for people with special social needs. Such measures may also include measures directly targeted at consumers with special social needs providing support to identified consumers, for example by means of specific measures, taken after the examination of individual requests, such as the paying off of debts.

(10) Affordable price means a price defined by Member States at national level in the light of specific national conditions, and may involve setting common tariffs irrespective of location or special tariff options to deal with the needs of low-income users. Affordability for individual consumers is related to their ability to monitor and control their expenditure.

(13) Member States should take suitable measures in order to guarantee access to and affordability of all publicly available telephone services at a fixed location for disabled users and users with special social needs. Specific measures for disabled users could include, as appropriate, making available accessible public telephones, public text telephones or equivalent measures for deaf or speech-impaired people, providing services such as directory enquiry services or equivalent measures free of charge for blind or partially sighted people, and providing itemised bills in alternative format on request for blind or partially sighted people.

(15) Member States should monitor the situation of consumers with respect to their use of publicly available telephone services and in particular with respect to affordability. The affordability of telephone service is related to the information which users receive regarding telephone usage expenses as well as the relative cost of telephone usage compared to other services, and is also related to their ability to control expenditure. Affordability therefore means giving power to consumers through obligations imposed on undertakings designated as having universal service obligations. These obligations include a specified level of itemised billing, the possibility for consumers selectively to block certain calls (such as high-priced calls to premium services), the possibility for consumers to control expenditure via pre-payment means and the possibility for consumers to offset upfront connection fees. Such measures may need to be reviewed and changed in the light of market developments. Current conditions do not warrant a requirement for operators with universal service obligations to alert subscribers where a predetermined limit of expenditure is exceeded or an abnormal calling pattern occurs. Review of the relevant legislative provisions in future should consider whether there is a possible need to alert subscribers for these reasons.

(16) Except in cases of persistent late payment or non-payment of bills, consumers should be protected from immediate disconnection from the network on the grounds of an unpaid bill and, particularly in the case of disputes over high bills for premium rate services, should continue to have access to essential telephone services pending resolution of the dispute.

Member States may decide that such access may continue to be provided only if the subscriber continues to pay line rental charges.

Selected articles

Article 3: Availability of universal service

1. Member States shall ensure that the services set out in this Chapter are made available at the quality specified to all end-users in their territory, independently of geographical location, and, in the light of specific national conditions, at an affordable price.
2. Member States shall determine the most efficient and appropriate approach for ensuring the implementation of universal service, whilst respecting the principles of objectivity, transparency, non-discrimination and proportionality. They shall seek to minimise market distortions, in particular the provision of services at prices or subject to other terms and conditions which depart from normal commercial conditions, whilst safeguarding the public interest.

Article 7: Special measures for disabled users

1. Member States shall, where appropriate, take specific measures for disabled end-users in order to ensure access to and affordability of publicly available telephone services, including access to emergency services, directory enquiry services and directories, equivalent to that enjoyed by other end-users.
2. Member States may take specific measures, in the light of national conditions, to ensure that disabled end-users can also take advantage of the choice of undertakings and service providers available to the majority of end-users.

Article 9: Affordability of tariffs

1. National regulatory authorities shall monitor the evolution and level of retail tariffs of the services identified in Articles 4, 5, 6 and 7 as falling under the universal service obligations and provided by designated undertakings, in particular in relation to national consumer prices and income.
2. Member States may, in the light of national conditions, require that designated undertakings provide tariff options or packages to consumers which depart from those provided under normal commercial conditions, in particular to ensure that those on low incomes or with special social needs are not prevented from accessing or using the publicly available telephone service.
3. Member States may, besides any provision for designated undertakings to provide special tariff options or to comply with price caps or geographical averaging or other similar schemes, ensure that support is provided to consumers identified as having low incomes or special social needs.
4. Member States may require undertakings with obligations under Articles 4, 5, 6 and 7 to apply common tariffs, including geographical averaging, throughout the territory, in the light of national conditions or to comply with price caps.
5. National regulatory authorities shall ensure that, where a designated undertaking has an obligation to provide special tariff options, common tariffs, including geographical averaging, or to comply with price caps, the conditions are fully transparent and are published and applied in accordance with the principle of non-discrimination. National regulatory authorities may require that specific schemes be modified or withdrawn.

Article 10: Control of expenditure

1. Member States shall ensure that designated undertakings, in providing facilities and services additional to those referred to in Articles 4, 5, 6, 7 and 9(2), establish terms and conditions in such a way that the subscriber is not obliged to pay for facilities or services which are not necessary or not required for the service requested.
2. Member States shall ensure that designated undertakings with obligations under Articles 4, 5, 6, 7 and 9(2) provide the specific facilities and services set out in Annex I, Part A, in order that subscribers can monitor and control expenditure and avoid unwarranted disconnection of service.
3. Member States shall ensure that the relevant authority is able to waive the requirements of paragraph 2 in all or part of its national territory if it is satisfied that the facility is widely available.

Appendix 6.3: Extract from European Commission (2007) Evaluation of the Performance of Network Industries Providing Services of General Economic Interest

(These services are electricity, gas, transport, telecommunications, and postal services.)

5 *Distributive effects of market opening*

5.1.2. Telecommunication services

Following the transposition of a number of EU Directives into Member States' legislation, the national markets for telecommunication services are largely open to competition. This market opening is accompanied by market analyses and the imposition of appropriate remedies by national regulatory authorities across the EU. Member States have however not reached the same level of completeness or consistency in this regard, which means that consumers have not yet reaped the full benefits of competition across the EU.

On average in the EU15, prices for telecommunications decreased by 22% between 1996 and 2004, as did the overall prices of telecommunications equipment and services. In a number of Member States, including Germany and Luxembourg, published telecoms prices declined by even more than 30%. Other Member States experienced much smaller price reductions, though still in the order of 10%, as in Belgium, Finland, the Netherlands and Spain. The price differential between overall CPI inflation and the index of telecommunications equipment and services prices is therefore very large in all countries, which has induced important behavioural changes on the part of consumers.

Over the same time period we observe substantial increases in the volume of telecommunication services consumed (volume change in Table 16). These results emphasise the strong elasticity of consumption to prices, as well as the effect of technological progress and changes in habits across user categories and across Member States over the past decade.

Comparing the direct price effect between lower-income and higher-income households, we can see that the expenditure of the former was affected more by the direct price effect.

The remarkable increase in usage of telecommunication services – and mobile telephony in particular – may also be explained by the presence of club externalities: Each new

subscriber benefits from accessing a group of pre-existent users, while also offering a new possibility for communication (actual or potential) to that group of connected customers. These club externalities furthermore amplify the reaction of consumers to price reduction. From Table 16 we can conclude that households with lower income increased their consumption of telecommunication services to a much greater extent than households with high income. Thus, low-income households now spend a considerably higher share of their outgoings on telecommunication services. The most prominent example is Ireland with an increase in the expenditure share for low-income households of 6.5 per cent, while high-income households increased their share by only 2%. In Italy, changes are similar with a plus of 4.5 per cent for low-income households and an increase of only 1.5 per cent for high-income households.

Table 16: Effect of telecommunications price changes 1994–2004 on total household spending

In %	Household quintile with low income			Household quintile with high income		
	Direct price effect	+ Volume change	= Overall change in expenditure share	Direct Price Effect	+ Volume change	= Overall change in expenditure share
AT	-0.19	2.12	1.93	-0.17	2.11	1.94
BE	-0.05	1.83	1.78	-0.03	2.58	2.55
DE	-0.66	2.16	1.50	-0.41	1.12	0.71
DK	-0.46	2.46	2.00	-0.27	1.42	1.15
EL	-0.38	2.55	2.17	-0.28	3.16	2.88
ES	-0.13	3.52	3.39	-0.13	3.49	3.36
FR	-0.35	3.39	3.04	-0.26	2.21	1.86
IE	-0.47	7.12	6.65	-0.50	2.69	2.19
IT	-0.23	4.68	4.45	-0.14	1.46	1.32
LU	-0.44	2.58	2.14	-0.29	1.68	1.39
NL	-0.05	4.90	4.85	-0.03	2.68	2.65
PT	-0.17	4.28	4.11	-0.13	3.09	2.96
SW	0.00	4.56	4.56	0.00	2.61	2.61
UK	-0.39	2.75	2.36	-0.30	1.89	1.59

Note: Data for Finland not available.

Source: Eurostrategies based on Eurostat.

7. CONCLUSIONS: CONVERGING CONSUMER ADVOCACY

A wide variety of emerging consumer issues have been discussed in the report across three traditionally segmented areas of communications and media: telecommunications and mobiles, the Internet and broadcasting. Indeed, it is easy to become lost in their complexities, but there are a number of useful conclusions that can be drawn to inform ACCAN's strategic direction and the wider policy arena.

The studies have identified key emerging consumer issues and situated them in the contexts in which they currently exist. This is significant in itself as a starting point from which to gain an understanding of the range of issues and policy environments in play.

In the telecommunications and mobile space, issues centre around navigating the market, gaining appropriate, open and neutral access to next-generation networks, and successfully using the services delivered over these networks. In the Internet space, participation and transaction are the key driving concepts around copyright, privacy, trust and rights issues. In the case of broadcasting, issues revolve around service coverage, service delivery methods and content, especially advertising and programming.

Finally, the study on affordability helps us view these areas as a whole by identifying cost as a key factor in take-up and use across most communications and media services, and pointing our attention towards affordability considerations around mobile and broadband services.

It will be up to ACCAN how to position itself among these issues moving forward, but already there are connections to be made between them. An important consideration, though, is that the speed and direction of the convergence of these issues are affected by developments in technologies and services, and the surrounding policy environments. Both of these areas are evolving quickly, so in essence the field is continually moving.

Already, we are seeing significant crossover in the areas of access (availability and network neutrality), privacy (especially the use of personal information), dealing with content (copyright, intellectual property and content regulation) and the environmental impact of ICTs (e-waste and energy efficiency). On a more future-oriented level, though, one can argue that most of the issues raised are intertwined, and that new models of organising issues and policy options are required.

It may be useful to delineate three key areas of converging issues across communications and media technologies: underlying network access (Is it available to all, open access, non-discriminatory, affordable, environmentally sustainable, and reliable?), delivery of services over the network (Are consumers informed? Is there safety and privacy? Are there fair and effective relationships between consumers and service providers?), and content and services delivered over the network (Are they accessible and easily usable? Do they meet user need and support users as creators? Do they deal with content regulation and content use in fair and consistent ways?).

In examining the myriad of policy options to address these grouping of issues, three high-level areas should be highlighted. The first is development of more appropriate consumer protections and policy frameworks. There is some work to be done around concepts of consumer empowerment, key consumer rights (especially across areas such as access,

affordability, accessibility, reliability, customer service and content use) and consumer responsibilities. Reform of self-regulatory practices, more effective working relationships with industry and engagement with international policy development might all be important parts of such work. A balance between rules and room for innovation would need to be struck.

The second area to highlight is developing consumer skills and literacies. The abilities to use, understand and create media and communications appear to be very important drivers of consumer empowerment in emerging communication and media spaces. There is work to be done around developing concepts and approaches to this digital media literacy education, and likewise work to be done informing consumers of their rights and responsibilities and setting information disclosure arrangements that support consumers' abilities to make choices and decisions on their own.

The third area on which consumers might focus attention is policy development around access to NGNs, specifically the NBN, digital television, digital radio and currently unused wireless spectrums. These issues are live, with key policy processes and roll-outs in train that have the potential to impact consumers for a significant period of time.

8. ACRONYMS

ABA	Australian Broadcasting Authority
ABC	Australian Broadcasting Corporation
ACCAN	Australian Communications Consumer Action Network
ACCC	Australian Competition and Consumer Commission
ACMA	Australian Communications and Media Authority
ALAC	At Large Advisory Committee
ALRC	Australian Law Reform Commission
AOL	America Online
BEUC	The European Consumers' Organisation
CI	Consumers International
CLC	Communications Law Centre
CMCL	Centre for Media and Communications Law
CPCM	Content protection and copy management
DBCDE	Department of Broadband, Communications and the Digital Economy
DCITA	Department of Communications Information Technology and the Arts
DPP	Department of Public Prosecutions
DRM	Digital Radio Mondiale
DRM	Digital rights management
DDA	<i>Disability Discrimination Act 1992</i>
DDTV	Digital Terrestrial Television
EET	National Committee of Telecommunications and Post (Greece)
EFA	Electronic Frontiers Australia Inc.
EU	European Union
EULA	End User Licence Agreement
GNI	Gross National Income
GNSO	Generic Names Supporting Organization
FTA	Free-to-air
HDCP	High-bandwidth Digital Content Protection
HDMI	High Definition Multimedia Interface
HIRO	Stands for High-Resistance Open (telecommunications)
ICANN	Internet Corporation for Assigned Names & Numbers
ICTs	Information and Communications Technologies
IP	Intellectual property
IP	Internet Protocol
ISOC-AU	The Internet Society of Australia
ISPs	Internet service providers
ITU	International Telecommunications Union
LIMAC	The Low Income Measures Assessment Committee
MAA	Media Access Australia
MPAA	Motion Picture Association of America
MPSI	Mobile premium services
MVNO	Mobile virtual network operator

NBN	National Broadband Network
NGNs	Next-Generation Networks
NITV	National Indigenous Television
OECD	Organisation for Economic Co-operation and Development
OFLC	Office of Film and Literature Classification
PKI	Public Key Infrastructure
RALOs	Regional At Large Organisations
RDF	Resource Description Framework
RIAA	Record Industry Association of America
RPH	Radio for the Print Handicapped
RRT	Communications Regulatory Authority of the Republic of Lithuania
RTIRC	Regional Telecommunications Independent Review Committee
RTTE	Radio and Telecommunications Terminal Equipment
SAR	Specific absorption rate
SBS	Special Broadcasting Service
SIM	Subscriber Identity Module
SMS	Short Message Service (mobile text service)
SNSs	Social networking sites
TCPSSA	<i>Telecommunications (Consumer Protection and Service Standards) Act 1999</i>
TIO	Telecommunications Industry Ombudsman
TPA	<i>Trade Practices Act 1974</i>
TPMs	Technological Protection Measures
UHF	Ultra-high frequency
UN	United Nations
UPP	Unified Privacy Principles
USD	Universal Service Directive
USF	Universal Service Fund
VHF	Very high frequency
WSIS	World Summit on the Information Society