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## Internet Dumping: Recent Developments

**Tom Reid reports on the Federal Government's recent Direction to the ACA on the issue of internet dumping.**

In an 8 April 2003 Discussion Paper,<sup>1</sup> the Australian Communications Authority (*the ACA*), invited public submissions on a new draft Determination for the 190 premium services industry. The draft Determination, entitled *Telecommunications Service Provider (Premium Services) Determination 2003*,<sup>2</sup> was issued pursuant to a 13 March 2003 formal Direction<sup>3</sup> from the Minister for Communications, Information Technology and the Arts, Senator Richard Alston, and is designed to address the growing problem of 'internet dumping'. The Telecommunications Industry Ombudsman (*the TIO*), John Pinnock, received 1,994 complaints about internet dumping in 2002.<sup>4</sup>

### INTERNET DUMPING EXPLAINED

Internet dumping occurs when a subscriber connected to the Internet through a dial-up connection is disconnected, and then reconnected through a 190 premium service or 001x international number, often without the subscriber being fully aware of what is happening. This most often occurs in relation to accessing adult content websites. Subscribers can subsequently run up bills of hundreds or even thousands of dollars, only learning of their mistake with the arrival of their next telephone bill.

Currently, most dumping complaints in Australia relate to 190 numbers. Providers of 190 services are regulated by a voluntary industry Code of Practice,<sup>5</sup> administered by the Telephone Information Services Standards Council

(*TISSC*). Telstra incorporates this Code of Practice into every 190 number lease contract it makes with a service provider, so the Code is enforceable under the contract.

Section C.8 of the Code of Practice regulates internet dialler services. Some of its most important requirements are that:

- (a) service providers use their best endeavours to ensure that web links or references to internet dialler software not contain false or misleading statements in relation to the cost of using premium services;
- (b) before reconnection, a dialogue box be displayed on the subscriber's computer screen warning that the service is not free and detailing the charges;

- (c) the bill payer's permission be obtained before the service commences and charging begins;

- (d) where services are charged at a per-minute rate;

- i. a digital clock be displayed on the subscriber's screen showing the elapsed time of the connection;

- ii. a dialogue box appear every 10 minutes, requiring the subscriber to click 'OK' to maintain the connection;

- (e) connections have a 5 minute idle timeout;

- (f) internet diallers not activate a premium service remotely without the intervention and informed consent of the subscriber.

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According to the TIO, service providers generally comply with these requirements, but warnings to subscribers about costs are often hidden amongst bright and flashy advertising. Many complainants to the TIO had not read or understood these warnings before clicking 'OK' and being reconnected to the 190 number.<sup>6</sup> While the Government is aware that the fault technically lies with the subscriber, nevertheless its March 2003 Direction is intended to further minimise the chance of subscriber mistake.

### **THE GOVERNMENT AND ACA RESPONSE**

In a May 2002 press release, Senator Alston indicated that the Government would respond by requiring subscribers to register for 190 premium services and obtain a Personal Identification Number for access. Part 9A of the *Telecommunications (Consumer Protection and Service Standards) Act 1999* (Cth) already imposes such a system where 190 services are provided as voice calls over the telephone, rather than as websites on the internet.

However, in its Direction to the ACA in March, the Government abandoned the PIN method in favour of a three-pronged approach, as detailed below.

### **A Cap on Monthly Fees**

The main thrust of the Government's proposals is a cap on monthly fees for 190 services to residential accounts. Under clause 4 of the Direction, access to premium services through 190 numbers, but *not* through 001x international numbers, will be barred for the rest of the month if the monthly cap is reached. This is regardless of whether the 190 services are accessed via the telephone or the internet. The cap will initially apply to every account in Australia, with subscribers able to waive their cap if they wish. The ACA, in its draft Determination, has set the cap at \$250, but has expressly invited public comment on the amount.

Industry representatives have tended to criticise the proposed cap. In an interview with the online IT magazine *ZDNet Australia*, the president of the Telephone Service Provider Association of Australia (*Telspa*), Adam Rowbottom, argued that capping 190 numbers was unnecessary and discriminatory, as it is possible for subscribers to accumulate large bills when making mobile, STD and international telephone calls.<sup>7</sup> However, this seems to be fairly empty criticism. It is likely that subscribers who make such telephone calls are aware of the associated charges, whereas the problem of internet dumping

stems from the fact that subscribers are (albeit through their own technical omission) unaware of the potential costs involved.

A monthly cap is a potentially effective technique, although it is perhaps doubtful whether a subscriber faced with an unexpected \$250 bill for premium services would be happy with the amount of the cap. Instead, a system of progressive caps, where subscribers could choose an appropriate level (say, \$20, \$250 and \$1,000) might be more subscriber friendly, as it would allow a distinction between occasional, regular and frequent users of premium services.<sup>8</sup> The ACA also acknowledges that a number of issues remain unresolved regarding the implementation of the cap, in particular where a subscriber has more than one line – according to the current proposals, the cap would apply separately to each line, meaning that a subscriber with one line for the telephone and one for the internet could potentially face a bill of \$500 (\$250 for each line).

### **Informing Subscribers**

Clause 4 of the Direction also directed the ACA to take steps to require service providers to inform subscribers about the dangers of internet dumping. Importantly, this information is to be

provided regardless of whether the premium services are provided through a 190 number or a 001x international number. The regime proposed by the ACA in Part 3 of its draft Determination is fairly arduous and requires service providers to supply, amongst other things:

- (a) information about the financial risks associated with premium services;
- (b) information about the action that a relevant customer may take to lessen the risk of unexpected high bills for premium services;
- (c) an explanation of how international numbers may be accessed by another service provider's override code;
- (d) an explanation of the procedure and consequences of monthly call caps; and
- (e) an explanation of the procedure and consequences of a subscriber's waiver of the monthly call caps.

The ACA has proposed that this information be disseminated by way of telephone bill inserts, as well as notices on service providers' websites.<sup>9</sup> It is to be supplied as soon as the Determination takes effect, as well as when a new service is connected, when a monthly call cap is reached, and at any time on the request of a subscriber. It must also be supplied in writing at least once every two years to every subscriber, regardless of whether a monthly call cap has been reached or not.<sup>10</sup> The ACA justifies this rigorous regime on the basis that the level of consumer awareness regarding 190 premium services was found to be relatively low in its *Consumer Awareness and Information Needs Survey 2001*.

#### Further Regulation?

The Government also directed the ACA to investigate and report on three further issues. The ACA has released a separate discussion paper on these issues,<sup>11</sup> which are as follows:

- (a) whether it would be 'practicable and appropriate' to require service providers to bar access to international numbers used to provide premium services;
- (b) whether requirements need to be imposed on service providers specifically in relation to internet diallers; and



- (c) whether the TISSC Code of Practice should be registered under Part 6 of the *Telecommunications Act 1997*.

#### Barring access to international numbers

At present there is no technical means of barring international calls to premium services, while at the same time still allowing international calls to other numbers. While the ACA has nevertheless asked for public comment on this issue, it states openly in the 5 May discussion paper that 'the fact that access to all... international destinations would be foregone may not be acceptable to a proportion of customers'. The ACA indicates that education of the public through the provision of information by service providers may be enough to reduce the problem to acceptable levels.

It is suggested that an alternative method, albeit one requiring significant technical change, would be to institute a system whereby the dialling of international numbers is barred unless the subscriber first enters a personal identification number of their own choosing. This would disallow internet dialling software from making an international connection (as each subscriber would keep their PIN

secret), but would still allow the subscriber to make international telephone calls if they wished. If the subscriber wished to be able to make an international internet connection, then internet dialling software could be modified to allow the subscriber to manually enter their PIN – a process that would alert the subscriber to the fact that an international connection was being made.

#### Specific requirements regarding internet diallers

As the ACA's 5 May discussion paper notes, internet diallers using 190 premium services numbers are subject to section C.8 of the TISSC Code, but diallers using international numbers are outside the ACA's reach. Other than educating the public about the danger of internet dumping, the ACA does not suggest any method of regulating internet diallers in general. However, regulation of diallers using 190 numbers could be further strengthened by registering the TISSC Code of Practice (see below).

#### Registration of the TISSC Code of Practice

Under section 117 of the *Telecommunications Act 1997*, the ACA

may register industry codes of practice. Registration of the TISSC Code would give the ACA power to administer it, including the ability to give remedial directions for breaches of it under section 121 of the *Telecommunications Act*. In its 5 May discussion paper, the ACA points out that the Code could not yet be registered in its current form as it has not yet met the administrative requirements for registering codes in section 117 of the *Telecommunications Act*. These requirements include consulting with the ACCC and TIO, industry, consumer representatives, and the public.

Even assuming that those requirements were met, however, it is arguable that registration would not have much effect on the problem of internet dumping. The provisions of the Code are already enforceable under Telstra's contract with the 190 service providers – although of course Telstra's impartiality in enforcing the contractual provision might be questioned in light of the fact that Telstra stands to gain from increased use of 190 numbers. But in any case, as mentioned above, the TIO reports that it is not a lack of compliance with the Code that is the problem. Rather, it is subscribers' lack of knowledge about the potential dangers of internet dumping, combined with their complacent approach to reading on-screen warnings, that is causing them to be caught.

The idea of registration has also been attacked by industry groups such as Telspa. Rowbottom argues that the voluntary industry Code of Practice, as administered by TISSC, is 'one of the best in the world', and that registration under the *Telecommunications Act* is unnecessary as the legislation itself is oriented towards self-regulation.<sup>12</sup> Section 4 of the *Telecommunications Act* expressly states Parliament's intention that 'telecommunications be regulated in a manner that... promotes the greatest practicable use of industry self-regulation'.

## COMMENT

In November 2002, *ZDNet Australia* reported that Telstra, which makes available the 190 number system to the service providers, had cautioned against restrictive controls on 190 numbers. Telstra argued that service providers will simply move offshore and use 001x international numbers, which are much

more difficult to regulate.<sup>13</sup> However, Telstra itself appears to be sending mixed messages on the issue: shortly after the Government's Direction was issued in March 2003, *The Australian* reported that Telstra had given six months' notice of a ban on the use of the 190 number system to access adult content on the internet. The TIO warned that this, too, would result in service providers moving offshore – exactly what Telstra fears will result from the Government's Direction.<sup>14</sup>

If service providers do begin to move offshore, the problem of internet dumping could potentially become worse rather than better. An international call involves a connection to an originating carrier in Australia, which passes the call through to the terminating carrier in the other country, which in turn connects the call to the service provider in the other country. The service provider earns its revenue from the terminating carrier in the form of a commission for generating telephone traffic. The subscriber in Australia is charged the applicable international call rate by their originating carrier. The service provider will be regulated by the laws of the country it operates in.<sup>15</sup> At present, no global regulator of service providers using 001x international numbers exists.

One way, suggested in the past,<sup>16</sup> in which the ACA might attempt to regulate overseas service providers is to require the Australian originating carriers to have provisions in their contracts with their overseas terminating carriers, under which the terminating carriers must ensure that the service providers follow rules similar to the TISSC Code of Practice outlined above. However, getting foreign terminating carriers to accept and enforce such rules would be a gruelling process, and even if successful would only result in a situation similar to the current level of regulation in Australia, which obviously has proved insufficient.

A better alternative might be the method suggested in this article, in which subscribers are required to enter a PIN before making an international call. This would render internet dialling software useless unless it was modified to allow the subscriber to enter their PIN, which would alert the subscriber to the fact that an international connection was being made. The downside of this would be the cost of implementing the technical changes required, as well as increased inconvenience for consumers.

With their forthcoming tightening of regulation, then, the Government and the ACA must perform a difficult balancing act. On the one hand, doing nothing will result in increasing numbers of dial-up subscribers faced with astronomical bills. On the other, too strict regulation risks forcing service providers out of the jurisdiction, meaning they will not be subject to the TISSC Code of Practice, and potentially requiring further regulation and technical changes to prevent subscribers being dumped onto international connections.

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1 Australian Communications Authority, *Premium Services: An ACA Discussion Paper Regarding the Development of a Service Provider Determination to Regulate Premium Services*, 8 April 2003, available at [http://www.aca.gov.au/aca\\_home/issues\\_for\\_comment/discussion.htm](http://www.aca.gov.au/aca_home/issues_for_comment/discussion.htm).

2 Available at [http://www.aca.gov.au/aca\\_home/issues\\_for\\_comment/discussion.htm](http://www.aca.gov.au/aca_home/issues_for_comment/discussion.htm).

3 The Australian Communications Authority (*Service Provider Determination*) Direction 2003 (No 1), available at [http://www.aca.gov.au/aca\\_home/issues\\_for\\_comment/discussion.htm](http://www.aca.gov.au/aca_home/issues_for_comment/discussion.htm).

4 TIO Talks Issue 28 (March 2003), 4; TIO Talks Issue 27 (December 2002), 4.

5 Available at <http://www.tissc.com.au/code.htm>.

6 TIO website, Frequently Asked Questions page, available at [http://www.tio.com.au/FAQ/int\\_dumping.htm](http://www.tio.com.au/FAQ/int_dumping.htm).

7 James Pearce, 'Industry Rebukes Australian Internet Dumping Prevention Plan', *ZDNet Australia*, 26 November 2002, <http://www.zdnet.com.au/newstech/security/story/0,2000024985,20270205,00.htm>.

8 Note that this is explicitly considered as an option in the ACA's Discussion Paper

9 The ACA Discussion Paper on the Service Provider Determination, above n1, 12.

10 *Ibid.*

11 Australian Communications Authority, *Premium Services: An ACA Discussion Paper Regarding the Need for Additional Regulatory Measures in Relation to the Supply of Premium Services*, 5 May 2003, available at [http://www.aca.gov.au/aca\\_home/issues\\_for\\_comment/discussion/investigationpremium.pdf](http://www.aca.gov.au/aca_home/issues_for_comment/discussion/investigationpremium.pdf).

12 James Pearce and Kate Stapleton, 'Internet Dumping Burning Unsuspecting Consumers', *ZDNet Australia*, 26 November 2002, <http://www.zdnet.com.au/newstech/communications/story/0,2000024993,20270212,00.htm>.

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14 Selina Mitchell, 'Telstra Tackles Net Porn Scam', *The Australian*, 15 March 2003, <http://australianit.news.com.au/articles/0,7204,6129114%5e15306%5e%5enbv%5e,00.html>.

15 For further information see John Corker, 'Internet Dumping and Regulation of the Audiotex Industry', (2001) 20(4) *Communications Law Bulletin* 15, 17-18.

16 *Ibid.* 19.