

Communications Law BULLETIN

CAMLA

Communications & Media Law Association Incorporated

Print Post Approved PP: 234093/00011

Minister's Address to the Communications and Media Law Association

On 25 March 2009, Senator Stephen Conroy, Minister for Broadband, Communications and the Digital Economy, addressed the Communications and Media Law Association at the offices of Henry Davis York in Sydney.

The media sector, and indeed the entire communications industry, is undergoing a period of seismic change.

New technologies and delivery platforms are raising a whole range of new challenges and opportunities for traditional media providers.

They are also providing opportunities for emerging players and services.

Production chains are changing and so too are media consumption habits.

More generally, from an economic standpoint, we are currently living in challenging and uncertain times.

In this context, the digital economy has been identified by global leaders as a stimulus for future economic and social prosperity.

In this environment we have the potential to achieve new efficiencies, jobs and innovation.

We have the potential to drive trade and productivity growth.

And, we have the potential to reduce the distance between those at the extreme ends of the economic spectrum.

To prepare for this future, governments around the world need to lay foundations.

We need to facilitate investments in digital infrastructure and undertake the necessary planning to ensure those investments are utilised.

The Rudd Government fully recognises the economic and social potential of digital technologies.

We have placed broadband at the forefront of a nation-building infrastructure agenda.

We have committed to invest up to \$4.7 billion in a National Broadband Network to be constructed in partnership with the private sector.*

The National Broadband Network will provide high-speed broadband access across the country.

It will support emerging applications in health and education.

It will support new developments in entertainment.

It will open new opportunities for business and trade.

This project will be a vital building block for Australia's future economic productivity and prosperity.

Certainly, recent economic turmoil has highlighted the need for swift and decisive action when it comes to economic stimulus.

However, the Rudd Government has always understood the importance of planning and building for the future.

Long-term infrastructure investments are essential to drive productivity and secure prosperity for the years to come.

This is certainly the case with communications infrastructure and is exactly why the government is engaging in the National Broadband Network project.

As you will appreciate, the Government is locked down, finalising our very close and careful consideration of the Panel of Experts report on the five NBN proposals.

This process is very much live and I am therefore highly restricted in what I can say.

Volume 27 N° 4
April 2009

Inside This Issue:

Minister's Address to the Communications and Media Law Association

Landmark Copyright Case: ISP Liability for Copyright Infringement?

Do You Need to be Licensed to Operate Your Internet Discussion Site?

Government Focuses on Consumer Law Changes

Fakery and Deception in Participation TV – Lessons Learned from the UK's TV Phone-line Scandals

Sports Broadcasting in the Digital Era

Trade Practices Amendment: Achieving Clarity in Pricing

Communications Law Bulletin

Editors: Matt Vitins & Lesley Hitchens

Printing & Distribution: BEE Printmail

Website: www.camla.org.au

* On 7 April 2009, the Prime Minister, Treasurer and Minister for Communications jointly announced that the Government would build a \$43bn Fibre-To-The-Premises Network.

Contents

Minister's Address to the Communications and Media Law Association

On 25 March 2009, Senator Stephen Conroy, Minister for Broadband, Communications and the Digital Economy, addressed the Communications and Media Law Association at the offices of Henry Davis York in Sydney.

Landmark Copyright Case: ISP Liability for Copyright Infringement?

Anita Cade and Maya Port consider some of the issues raised in a recent Federal Court Action against ISP iiNet. And also review approaches taken to ISP responsibility for users' copyright infringement in certain other countries.

Do You Need to be Licensed to Operate Your Internet Discussion Site?

Matthew McMillan and Howard Cheung discuss the ASIC's recent proposals on regulating internet discussion sites.

Fakery and Deception in Participation TV - Lessons Learned from the UK's TV Phone-line Scandals

Gavin Smith examines the background and regulatory response to one of the UK's worst television public relations disasters involving the faking of winners in on-air phone competitions and broadcasters receiving revenue from premium-rate phone votes which were never counted.

Government Focuses on Consumer Law Changes

Nick Abrahams and Kylie Howard provide an update on recent proposals to reform Australian Consumer Protection Laws.

Sports Broadcasting in the Digital Era

Trade Practices Amendment: Achieving Clarity in Pricing

Bridget Edghill reviews recent amendments to the Trade Practices Act 1974 (Cth) concerning component pricing.

Long-term infrastructure investments are essential to drive productivity and secure prosperity for the years to come.

What I can say, however, is that the Government stands 100 per cent behind to its election commitment to deliver the National Broadband Network.

We will ensure that Australia reaps the full competitive benefits that a national broadband network can provide.

We will ensure that we unlock the potential of the digital economy for all Australians.

You will be aware of much speculation in the media – and I'm enjoying the daily updates – on the possible timing and outcomes of the NBN process.

Our ambition for the timing of an announcement has always been contingent on the complexity of the considerations, and this remains the case.

The National Broadband Network will be one of the largest infrastructure investments undertaken by any Australian Government.

It is therefore imperative and only right that the Government give this decision the full attention, scrutiny and care that it deserves.

Our investments in broadband are driven by our recognition that digital technologies promise considerable benefits for our economies and communities.

To paraphrase Nicholas Negroponte, the movement of atoms is steadily giving way to the transmission of bits.

These bits do not comply with the rules of geography that we learnt in school.

For countries like Australia, this holds tremendous potential to overcome our physical distance from the rest of the world and the vast distances between our own cities and towns.

It offers the potential to participate in the creativity and collaboration required to stimulate the growth of this new environment.

And ultimately, it offers the potential to open up global markets at the click of a mouse.

The effective use of technology to manage digital information improves our productivity and social wellbeing.

Today, ICT is one of the largest drivers of economic growth.

Broadband in particular has been shown¹ to reduce costs, improve information flows, and streamline communications.

The end result is higher levels of productivity and greater efficiency.

This goal however, will not be achieved without overcoming some challenges.

Challenges arise because of two trends that we are witnessing in how we use technology, particularly the internet.

The first key trend is that – as more households take up broadband – people increasingly become 'heavy users' of the internet.

That is, the amount of time they spend online increases.

In 2007, for the first time, Australian internet users spent more time using the internet, than watching television.²

For online businesses, some argue that the next wave of growth will be driven mainly by increasing the revenues generated by each user rather than specifically attracting new users.

For Governments the challenge is how to ensure our citizens enjoy the same benefits and protections online as they have offline.

This requires targeted and appropriate regulation that addresses online risks but still allows the transformative nature of technology to add value to society.

This balancing act is even more pressing because of the second key trend that we are witnessing in internet usage.

Current and future generations are increasingly 'digital natives' who do not know life without a computer, the internet and MP3s.

'Digital natives' will have their first online experiences earlier in their lives than previous generations, and significantly, they rarely log-off.

When they are online, they participate in a different way than older generations – posting up-to-the-minute status updates, photos and videos to an array of web sites.

To quote from *Born Digital: Understanding the First Generation of Digital Natives*:

"Digital natives' almost never distinguish between the online and offline version of themselves".³

Our investments in broadband are driven by our recognition that digital technologies promise considerable benefits for our economies and communities.

This lack of a distinction between the online and offline impacts how digital natives interact with people.

Friendships are often formed first online, without the traditional safeguards.

Digital natives also engage with media differently – always looking for the 'edit' button.

Web 2.0 empowers our children with the tools, and the expectation, that they can collaborate and remix anything they read, hear or view.

Both of these trends present new challenges for businesses and new challenges for Government.

As our lives and those of our children are increasingly spent online, the challenge becomes: How do we build trust to maximise the commercial, community and personal benefits of the future growth of digital life?

In the offline world, we have a long tradition of laws, markets and norms that regulate our behaviour.

But online, Governments and industry around the world are grappling with how best to translate these offline modes.

To allow companies and citizens alike to play a strong role in the next wave of growth, it is important that governments and industry collaborate.

We need to work together to ensure that people are as confident to engage via the internet as they are offline.

This requires 'digital confidence'.

A business with digital confidence expands its online service offerings.

A citizen with digital confidence increasingly finds information, communicates and transacts online.

Developing citizen and consumer confidence requires a focus on cyber-safety and e-security.

Some of this requires cross-jurisdictional collaboration.

The internet is global.

It transcends national boundaries and is therefore hard to regulate.

However, the internet does require rules to support a civil society.

Just because it is a challenge does not mean there should be no regulation.

It requires a global response.

Australia continues to engage on an international level through forums such as the OECD, APEC and CeBIT.

In 2008, Australia joined with other OECD countries in adopting the Seoul Declaration, which guides international collaboration in promoting cyber-safety and e-security.

In addition to international co-operation, Governments around the world are developing national strategies to promote consumer confidence.

The Rudd Government is working to promote consumer confidence through our own \$125 million dollar Cyber-Safety Plan.

This plan contains a comprehensive set of measures to combat online threats and help parents and educators protect children from inappropriate material.

It includes funding for education and information measures, law enforcement and content filtering.

We also provide a range of information about online safety through our e-security websites.

These sites provide advice on how to protect against malicious spam, phishing and spyware that can lead to identity theft and financial loss.

The Rudd Government is also developing and implementing several other e-security initiatives which are aimed at awareness raising and education.

In collaboration with the private sector, we share technical information to develop a greater understanding of the online environment.

We work together to identify potential threats to core infrastructure and services in banking, telecommunications, water and power.

These e-security measures should contribute to the digital confidence of both citizens and businesses.

However, to build the digital confidence of industry, the question must be asked whether more can be done to facilitate their increased online engagement.

This is particularly important for those industries that are strong drawcards for the digital economy such as the content industry.

We are, no doubt, all familiar with the adage that 'content is king'.

Content companies are increasingly experimenting with new online distribution and commercialisation models.

These models encompass exclusive channels operated by content owners, as well as highly popular platforms like *iTunes*, *YouTube* and *MySpace*.

But the digital confidence of the content industry is undermined by reports that indicate that a large amount of internet traffic is peer-to-peer file sharing.

They have a concern that a large proportion of that activity may be infringing content ownership rights.

This level of infringement would be difficult to replicate in the offline world and, if it did occur, would likely be dealt with by laws and norms.

But in the online space, the activity persists in ways that potentially undermine the commer-

cial sustainability of the entertainment industry and promote an uncivil disregard for law.

The question becomes – how do we establish the norms to quell infringing activity online?

A number of different approaches are being considered.

Some stakeholders are advocating a more active role by Internet Service Providers to 'police online file sharing'.

Others advocate that business models need to change and that content owners adapt to new technologies.

As many of you may be aware, content industry players recently commenced legal action in Australia against an ISP arguing precisely this issue.

This legal battle and the broader debate it forms part of, looms large in the digital economy.

It symbolises the important challenge we face today.

It embodies the challenge of how to lay down the rules for tomorrow.

The Government is obviously watching developments with interest.

The paths that we carve out today will allow companies and citizens alike to confidently enjoy the full benefits of the digital economy.

Just as we enjoy a civil society in our everyday physical worlds, we should all work towards promoting civility in the online environment.

We should also all be doing all that we can to plan for the digital future.

The Rudd Government has determined to take a strong role to invest in infrastructure and to develop policy to ensure that we maximise the return on those investments.

Only by combining all of these factors can we fully harness the benefits that digital technology can deliver.

Senator Conroy is the Minister for Broadband, Communications and the Digital Economy and Deputy Leader of the Government in the Senate

(Endnotes)

1 Department of Communications, Information Technology and the Arts *The Economic Effects of Broadband: an Australia Perspective* (2007)

2 13.7 hours per week on the Internet v. 13.3 hours per week watching TV. Nielson Online *Aussie Internet Usage Overtakes TV Viewing for the First Time* News Release (March 2008).

3 John Palfrey and Urs Gasser *Born Digital: Understanding the First Generation of Digital Natives* (2008) at 20.