

Film & Publications Amendment Bill:

**Presentation to Home Affairs Portfolio
Committee**



**Internet Service
Providers' Association**

Agenda

- About ISPA
- General Comments
 - Definition of Internet Service Provider
 - Definition of interactive computer game
 - Games and pictures – film or publication?
 - New technologies – peer-to-peer and user generated content
- Specific Comments
 - Responsibility for submission of content
 - New 24C
- ISPA initiatives to protect children & promote compliance

- ISPA thanks the portfolio committee for the opportunity to present at these hearings

About ISPA

- History
 - Founded in June 1996, the Internet Service Providers' Association (ISPA) was founded by nine ISPs
 - Two key motivations for ISPA's formation:
 - 1. ISPs shared concerns about Telkom's entry into the ISP market.
 - 2. To establish the Johannesburg Internet exchange

About ISPA

- Membership
 - ISPA currently has **128** members
 - Currently an average of 2-3 new members join each month
 - Members are primarily Internet access providers (including resellers or “virtual” ISPs)
 - Since 2001, affiliate membership has been available for ISPs who do not sell access (e.g. content hosting services)
 - Most ISPA members are commercial enterprises, but members also include non-profit organisations, individuals and trusts

About ISPA

- Membership by category
 - Large access providers: 13
 - Medium access providers: 6
 - Small access providers: 100
 - The majority of ISPA's small members (and also a majority of all members) are classified as SMMEs
- Honorary members
 - e-Schools Network, NetDay, SchoolNet SA, TENET

General Comments

Definition of ISP

- Inconsistent definitions of “Internet” and “Internet Service Provider” in various pieces of legislation
- Has impact on use in the F&P Act and Bill
- Some examples
 - Interception legislation (RICA)
 - ECT Act
 - Electronic Communications Act
 - Telecommunications Act

Content Services

- EC Act "electronic communications" means the emission, transmission or reception of information, including without limitation, ... video, animation, visual images, moving images and pictures, signals or a combination thereof ... **but does not include content service; (our emphasis added)**
- "content service" reference an error as definition does not appear in the EC Act
- Originates in the "Convergence" Bill:
 - "content" means any —
 - (a) sound; (b) text; (c) still picture; (d) moving picture; (e) other audio visual representation or sensory representation; or (f) any combination of the preceding, — which is capable of being —
 - (i) created; (ii) manipulated; (iii) stored; (iv) retrieved; and (v) communicated, — but excludes content contained in private communications between consumers
 - "content service" means the —
 - (a) provision of content; or (b) the exercise of editorial control over the content conveyed via a communications network to the public or sections of the public, such as online publishing and information services.

Content Service

- EC Act – no license for providing a content service
- License for providing an electronic communications service and electronic communications network service
- Content services are EXACTLY the services the Films & Publications Act seeks to regulate and Bill seeks to extend this regulation
- Obligations should be placed on the correct parties NOT ON CONVENIENT parties such as electronic communications service providers

Definition of Interactive Computer Game

- "computer game" is a computer-controlled game
- "video game" is a computer game where a video display such as a monitor or television is the primary feedback device
- Unsure determining factor:
 - Interactivity; or
 - Played on some sort of hardware with computing functionality (personal computer, console, mobile phone or the like).
- Technology neutral terms should be used, as far as possible
- ISPA recommends that the definition of "interactive computer game" be amended to read:
 - 'game' means a computer game, video game or other interactive computer software for interactive game playing, where the results achieved at various stages of the game are determined in response to the decisions, inputs and direct involvement of the game player or players,

Games – Film or Publication

- Films treated differently from publications as:
 - larger audiences in cinemas & on TV
 - greater impact of films compared to publications, particularly on the youth
 - targeted at general public while publications targeted at a specific audience
- Games closer in nature to publications than films
- ISPA Recommends games be treated as publications and not films

Electronic Pictures: Film or Publication?

- Internal inconsistency
- Multi-media content distributed electronically (such as by way of the Internet) can be:
 - *a film* “a picture intended for exhibition through the medium of any mechanical, electronic or other device”; and
 - *a publication* “a message or communication, including a visual presentation, placed on any distributed network including, but not confined to, the Internet” where “visual presentation” includes “a drawing, picture, illustration ...”
- ISPA recommends that such content be treated as a publication and not a film

New Technologies

- Old media – editor selected and distributed through existing channels
- “New” media – editor selected and distributed through new channels eg the Internet
- Really NEW media – user selected and self-published through blogs, podcasts, peer-to-peer sharing networks eg YouTube, MySpace
- Regulate the content provider **NOT** the ISP

Specific Comments

(comments on Section 24C included in a proposed redraft of the Section provided to this Committee)

Responsibility for Submission

- ISPs may host content for their customers
- May host “mirrors” of international sites as a service to the local community
- Numbers may be huge & costs incredible
- ISPA recommends:
 - definition of “distribute” include games
 - proposed Section 18 specifically exclude hosting automated mirrors for moderated international download Internet sites
 - The sanction in the proposed Section 24A(2) should not apply where an ISP merely hosts an automated mirror of an international Internet download site.

Proposed Section 24C

- Refers to “Internet access and service providers”
 - internal confusion. Is the intention to refer to:
 - both Internet access providers and Internet service providers? Tautologous
 - Internet access providers and a generic undefined class of service providers?
 - only to Internet service providers?
- ISPs generally does not provide the chat room or child-orientated service
- ISPA Recommends obligations in the proposed Section 24C are not imposed on Internet access providers or service providers but rather **on the operator of the child-orientated service**

Proposed Section 24C

- “Child orientated services” not defined
- ISPA recommends:
 - “Services specifically targeted at children rather than at adults”
 - Services that are aimed at adults, but which a child might also use, should not be subject to the provisions of the proposed Section 24C
 - Limited to contact services, which allow users of the service to contact each other and exchange communications, through the mechanism of such service
 - It may be necessary to include content services as well and ISPA has proposed definitions of both of these concepts

Proposed Section 24C

- Not technology neutral. Internet should not be treated differently from:
 - Contact pages in magazines
 - Mobile phone contact services
- Obligation imposed on the wrong person:
 - Should be on the child orientated service provider NOT the Internet service provider
 - Very seldom the same person / entity
- Filtering software an additional service
 - Give access to end-user software
 - Not corporate scale solutions



ISPA Initiatives

ISPA Initiatives

- ISPA has a close working relationship with the F&P Board
- Working to register all its members
- Proposed protocol on unlawful content
 - Child pornography
 - Based on Belgian and UK examples
 - Practical issues (how to report, retain, hand over)
 - Limitation of liability

Thank you!

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