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Digital Broadcasting: Review of Regulation Discussion Paper
Broadcasting and New Digital Media: Future of Content Regulation Consultation Paper

Google is grateful for the opportunity to present its initial comments in response to the *Digital Broadcasting: Review of Regulation Discussion Paper* and the *Broadcasting and New Digital Media: Future of Content Regulation Consultation Paper*.

Google commends the New Zealand Government on its proactive, consultative approach. Google looks forward to assisting the New Zealand Government in this effort. In this submission, Google provides preliminary comments on a variety of selected issues highlighted by the report and indicates its relevant experience. Google would be pleased to provide further information.

In this submission, Google addresses the following key points:

- The Internet is clearly capable of supporting the principles identified by the Government as important in a 'Diversity scenario'. The Internet, free of unnecessary regulation, is capable of being one of the key enablers of the New Zealand public having access to a diverse range of content, including local content. Traditional broadcasting regulatory models cannot and should not be mechanically applied to the new media environment.
- Online advertising is a thriving, robustly competitive market that is already providing substantial consumer benefits. Regulation of online advertising, particularly by applying traditional models, is premature and risks obstructing this evolving, dynamic market.
- Child safety in the online environment is best achieved through empowering parents, education, media literacy, cooperation with law enforcement, coordination among industry and the use of safety tools. Google believes that industry is incentivised to promote and deploy these initiatives, as child safety is imperative to success. This submission includes an outline of how Google approaches this important issue.
- Google strongly supports maintaining the non-discriminatory, decentralised and open architectural principles that have made the Internet an unparalleled engine for economic growth, innovation and social discourse. It is imperative that network intermediaries, such as Internet service providers (ISPs), do not unduly favour particular sites or applications over others.
- Google advocates reforming the way spectrum is allocated to encourage the licensing of new market entrants. The analogue switch-off presents an important opportunity to



advance spectrum policy in key ways.

- Google supports the continued development of balanced, technology-neutral copyright laws in New Zealand that provide both incentives to ongoing creation and the ability to use and re-purpose copyright materials for socially useful purposes.

Introduction

About Google

Google initially became familiar to most Internet users as the provider of the Google search engine and subsequently as the provider of email, instant messaging and specialised search and information services, including Google News and Google Maps. Most recently, Google (by acquisition of YouTube) became the provider of the well known YouTube service. YouTube is a platform for people to watch and share original videos through a web experience.

Google's aim is to make the world's information universally accessible and useful to the public. Google's services endeavour to democratise the means of accessing, creating and communicating information across local, national and global boundaries. Millions of users rely on Google's services to both access and create information.

Google's business model has focused on what is known as the 'long tail' of the Internet – the millions of individuals and small businesses that cater to niche interests and markets. Google lowers the barrier to entry for these small publishers and advertisers and matches them up with users who are interested in what they have to say or sell.

Google in the New Zealand market

Tailoring services to local interests is of key importance in achieving Google's aim. New Zealand is strategically important for Google and Google is committed to increasing its local investment. Google has a local employee presence in Auckland. The web is an especially vital and exciting platform for New Zealand users and businesses and Google is committed to helping them take advantage of the opportunities that it brings.

New Zealanders are among the biggest users of Google's products worldwide and Google is committed to making the full suite of free Google products available in New Zealand and localised to New Zealanders' needs. For example, in 2007:

- Google launched a local version of maps.google.co.nz with data from apnfinda;
- Google launched youtube.co.nz, featuring video content from New Zealand users, political parties, NGOs and businesses such as TVNZ, SKY News NZ and Tourism NZ; and



- Google worked with Tourism NZ to launch the world's first official layer by a tourism authority on Google Earth, showcasing New Zealand's best destinations and activities worldwide to Google Earth's 300m+ users.

Google works with thousands of New Zealand businesses to help them connect with audiences, information and customers worldwide, through Google AdWords and Google AdSense, as well as Google Apps and Google Maps' enterprise edition.

Google's services are used by New Zealand agencies and businesses to promote New Zealand goods and services. For example, the Tourism New Zealand YouTube branded channel¹ has generated significant awareness for its *100% Pure New Zealand* campaign, with one video uploaded that has now been viewed over 829,000 times, as well as commented on and 'favourited' over 1200 times each. YouTube users have also posted their own videos about New Zealand in response.

The Internet remains dynamic and is still evolving

Google is, of course, only one piece of how the Internet as a whole is transforming the way people can create and engage with information. The Internet has dramatically lowered the barriers for any individual to develop transformative technologies and has created unparalleled avenues for social discourse across national and international boundaries. Innovation and free expression have thrived in an online environment because the Internet's architecture enables any and all users to generate new ideas, content and technologies.

Google is strongly committed to preserving the Internet's fundamental openness and protecting the benefits to technology innovation and content creation that are gained from this openness. As the New Zealand Government considers how to meet particular public policy, social and cultural objectives (the 'Diversity' scenario) in this new and evolving environment, Google believes that Government should also have regard to the importance of Internet openness and the benefits that will continue to flow from it in the future. It is no exaggeration to say that the New Zealand Government is now presented with an opportunity to mould a regulatory environment which can enable the next Google to rise from a New Zealand start-up to a global brand.

Google submits that the New Zealand Government needs to exercise caution when considering regulation that may impact the Internet, particularly where the consequences – both immediate and long-term – are unknown.

For example, Google is aware of the regulatory approach taken in Australia in the context of age-verification and classification rules on the Internet. Australian regulations seek to fulfil the aim of 'technology-neutrality'. However this goal has also led to many unintended

¹ <http://www.youtube.com/watch?v=9sEZ-wdFegU>



consequences in Australia, as a result of being too prescriptive and attempting to dissect the industry into artificial sections that do not properly correlate to the practical realities of the industry. It is often difficult for some Internet industry participants to identify the basis and extent of the regulatory requirements with which they must comply. It is also difficult, if not impossible, for certain types of local Internet content providers to technically comply with some or all of the regulatory requirements, a difficulty which is likely to result in poor compliance rates and/or a diminution of investment in the Australian digital economy. A further difficulty of the Australian regime is that it does not properly account for the practical realities of 'Web 2.0' and user generated content. Google would be happy to discuss the Australian model with you further if this would be of assistance.

The overarching principles of the review

The overarching principles

Google strongly supports the overarching principles that the Government has identified as important to this review. These include implementing the minimum regulatory intervention necessary, making regulatory choices that will adapt to technological change, ensuring innovation is not discouraged and ensuring benefits are delivered to all New Zealanders.

Traditional broadcasting regulatory models

Google would be extremely concerned if the Government were to apply traditional broadcasting regulatory models to the Internet and new media space. If this position is adopted as the result of the Digital Broadcasting Review, Google believes that the overarching principles and goals of the review as identified in the Discussion Papers would be undermined.

Google submits that the Internet and traditional broadcasting environments are inherently distinct. The Internet continues to provide unprecedented opportunities for the public to access as well as create content in ways radically different from traditional broadcasting media. The Internet has enabled vibrant social discourse to flourish and empowers individuals as consumers, citizens and speakers in ways that traditional media can not.

More specifically, the traditional broadcasting and media world is defined by scarcity and high barriers to entry – scarcity of spectrum licenses, limited rights of way and the need for high capital investments (eg. broadcasting towers), among other barriers – mean that only a limited number of entities can enter the traditional market.

In contrast, the Internet is characterised by abundance and low barriers to entry – anyone with a computer and an Internet connection can reach a worldwide audience.² The sheer amount and diversity of media content online far outstrips what is possible in the traditional broadcasting environment and this diversity is growing everyday. The low barriers to entry provide individuals with important local, national and global platforms to make their voices heard.

² Google recognises the importance of and is an advocate for child safety online. This is discussed further below.



Along with providing a broader array of information resources, the Internet empowers users by allowing them far more control over the content they can access. Content is 'pulled' to the user by the user, whereas in traditional broadcasting, content is 'pushed' at the user at the discretion of the broadcaster.

Furthermore, unlike one-to-many broadcasting, the Internet enables many-to-many communication, naturally cultivating a more participatory environment. This is the essence of what is being called 'Web 2.0': the emergence of interactive tools like YouTube and a more dynamic Internet in which content is generated by users themselves and enjoyed within online communities.

The Internet – unencumbered by unnecessary regulation – is a key enabler

Google submits that applying the principles of traditional broadcasting regulation to this dynamic and evolving environment would be premature, ill-fitting and unworkable. There would be many unintended and unwelcome consequences, including chilling expression and stifling new media and technology innovation.

In contrast, the potential benefits of allowing the Internet to truly flourish are high, particularly to an economy such as New Zealand's. For the reasons discussed above, Google encourages the Government to recognise the Internet as one of the key enablers of the New Zealand public having access to a diverse range of content, including local content. Google submits that the Government needs to recognise and preserve the characteristics that have fuelled the success of the Internet so far. In considering policy initiatives around the issue of convergence, Google respectfully cautions the Government to take extreme care to not encumber or regulate the Internet in such a way as to obstruct the diverse growth now being observed.

Google believes that New Zealand can achieve essential social values – diversity, localism, media literacy and safety – through less restrictive means than importing traditional broadcasting regulation into the Internet and new media space.

Content requirements

As set out above, the Internet is a key enabler of diverse content, including local content. Where certain types of content are not adequately produced by the market, the New Zealand Government may elect to subsidise that content. However Google submits that the Government should not impose measures that restrict or compel the delivery of certain content (eg. programme quotas), as these measures may curb free expression and competition.

Google believes that the solution should be to encourage a range of viewpoints. Encouraging the development and use of new content platforms (such as YouTube and similar services) is an effective way of ensuring that consumers and content providers adopt 'Web 2.0' as a means of developing new and divergent types of content, including content developed locally and by non-



traditional media sources.

Advertising

Google supports regulation of advertising being largely left to the market. To date, New Zealand has largely adopted this model and it appears to have encountered few problems. Google does not believe that now is the time for New Zealand to revert to intrusive regulation of advertising, particularly when the industry as whole (both traditional and new media) has demonstrated a very high standard of self-regulation in the area of advertising.

Online advertising is an evolving, dynamic market – the cost of regulation would be high

Online advertising remains an evolving, innovative business model which is fuelling substantial social and economic benefits. The online advertising business is complex and still nascent, but even at this early stage it is clear that online advertising benefits consumers while also helping small businesses succeed. It is also a robust industry characterised by strong competition, significant innovation and tremendous growth.

The growth in online advertising offers many consumer benefits. In Google's experience, individuals value advertisements that help connect them to the information, products and services they seek. Relevant advertising is information that is useful to consumers, particularly, as is the case in online advertising (and in contrast to traditional broadcasting advertising) where technology permits niche advertising to be more easily tailored to niche audiences.

Google's AdWords service allows any potential advertiser, from a neighbourhood dry cleaner to a multi-national car manufacturer, to easily create text, image and/or video based ads and display them online in a targeted manner. AdWords is principally a self-managed program, meaning that most advertisers create and control their advertisements through an online interface. AdWords is complemented by AdSense, which allows websites to display Google ads and receive a percentage of the revenue.

Google's online advertising network also helps small businesses connect with consumers that they otherwise may not reach and to reach the wider public in an affordable, efficient and effective manner. The advertiser decides the maximum amount of money it wishes to spend on advertising. Further, in the cost-per-click payment model, the advertiser only pays Google when a user actually clicks on an advertisement.

Online advertising business model: quality enforced through self-regulation

Google recognises that the success of any online business product ultimately depends on its quality. Industry is naturally incentivised to rigorously self-regulate the content of its advertisements as success is based on user-endorsement. As a result, industry self-regulation, together with Government support, provides effective and adequate measures to promote safe online environments and maintain advertising standards. This means that the case for Government intervention is reduced.



For these reasons, Google has implemented rigorous quality standards for its advertisements. In keeping with Google's company values and mission statement, Google has policies restricting the types and content of the advertising it accepts.

By way of example, the AdWords service employs numerous automated and manual checks, program policies and enforcement mechanisms to assist in providing Google users, publisher partners and advertisers with advertising services that are high-quality and relevant.

Under the terms and conditions, advertisers are required to comply with applicable policies, including the AdWords policy. The AdWords policy protects against certain types of advertising, including advertising promoting alcohol, drugs, tobacco and cigarettes, gambling, violence, weapons, fake documents and child pornography.³

Google submits that further regulation would encumber industry participants in a way that discourages innovation and stifles growth. Industry efforts would be diverted toward seeking to comply, rather than innovating new tools and positive projects that promote, for example, child safety.

Child safety issues

Google believes that the opportunities for freedom of expression and access to information are the greatest benefits that the Internet offers to consumers and, more broadly, to society. These opportunities are particularly important for children and young people as they learn about the world they live in.

The Internet offers children and young people the opportunity to access social and educational information about issues of interest and concern to them. It also offers them the opportunity to reach out and make connections with their peers from different backgrounds and cultures through applications such as social networking sites and instant messaging. Being able to connect with their peers can give children and young people a chance to individually express themselves and gain emotional and practical support and advice when they desire it. The Internet can provide today's children and future generations with a freedom of discovery and expression far surpassing the opportunities available to previous generations.

At the same time, Google acknowledges that the Internet presents risks that apply to everyone, but are perhaps of most concern in relation to children and young people. The challenge is to preserve maximum benefit to society through the availability and accessibility of the Internet whilst minimising the risk of exposure to illegal, inappropriate or offensive content. This goal can be successfully achieved through an industry commitment to child safety standards and a willingness to cooperate with users and law enforcement to combat safety risks encountered online.

³ <http://adwords.google.com/support/bin/static.py?page=guidelines.cs&topic=9271&view=all>



Google's approach to child safety

Google is committed to protecting children on the Internet and providing all of its users with a safe experience. Google's approach has three primary elements:

- *Empower* parents with safety tools to make their own choices about their families' online activities;
- *Protect* children online through:
 - safety tools;
 - partnerships with law enforcement; and
 - partnerships with industry; and
- *Educate* children on how to stay safe online.

User safety is a core principle in Google product design, throughout the entire design cycle. Google has a network of child safety experts who advise on the best ways to promote safety in and combat abuse of Google's products. In addition, Google provides users with a range of safety tools across all of its applications, including search, content and networking. Google also provides industry leading tools for users to tell Google about inappropriate content or harassment encountered on the Web or in Google's products.

In addition, Google is committed to supporting law enforcement efforts to keep children safe online. Google has an established legal team devoted to working with law enforcement officials, on call 24 hours a day. Google quickly removes and reports child pornography to law enforcement. Google is constantly identifying ways for law enforcement and Google to work most effectively together, including by equipping law enforcement with the tools necessary to investigate and prosecute online crimes against children, and is leveraging its tools to combat online child exploitation. Google would be pleased to discuss these measures further.

Google provides users with tips and articles for staying safe and protecting their privacy while using our products. Through the Google Grants program for non-profits, Google is providing more than ten child safety organisations with free advertising for their Internet safety education sites. Google is working with child safety organisations such as the Child Exploitation and Online Protection Centre (CEOP) and Beatbullying to develop YouTube Channels that raise awareness of safety issues. Recently, Google launched a dedicated Tips for Online Safety⁴ and an Online Family Safety Guide.⁵

Child safety online

Education and media literacy form a critical part of keeping users safe online and empowering them to manage their online experience. Responsible Internet use and online safety are essential life skills for children and young people. Google supports all efforts by the New Zealand Government to develop media literacy programmes to promote education.

⁴ <http://www.google.com/familysafety>

⁵ http://services.google.com/blog_resources/google_family_safety_guide.pdf



Google notes that in the UK, the Byron Review has resulted in a report that recommends a combination of regulation through voluntary industry codes and improving information and education.⁶ Google supports this method of promoting child safety online.

Google believes that child safety in the online environment is best achieved through education, media literacy, cooperation with law enforcement and the use of safety tools. Google further believes that industry is incentivised to promote and deploy these initiatives as child safety is imperative to success.

Network issues

Investment issues

Google supports all efforts by the Government to promote greater broadband investment throughout New Zealand. Broadband is a key driver of productivity and economic growth. It is an important investment that will ensure New Zealand is internationally competitive.

Maintaining openness

The Discussion Papers correctly identify open access regulation as an important network issue. Google encourages the Government to reach a view that the Internet's inherently decentralised, open nature is an essential feature to be retained and preserved.

Google strongly supports maintaining the non-discriminatory architectural principles that have made the Internet an unparalleled engine for economic growth, innovation and social discourse. The Internet was designed to maximise user choice and innovation by making the network itself neutral with regard to the applications it supports. That is, the network is essentially unaware of the actual applications for which it is used – network intermediaries, such as Internet service providers (ISPs), do not favour particular sites or applications over others and data is routed equally on a 'best efforts' basis.

For entrepreneurs, innovators and creators, this fundamental neutrality of the network allows innovation without permission. New applications, from the revolutionary to the merely useful, can be deployed and embraced by millions of individual users worldwide without the need for approval from gatekeepers. The users at the edges of the network essentially determine the uses to which the network is put.

Google submits that the Government should evaluate emerging threats to this openness and how, if at all, they impact the local market. Certain ISPs around the world have begun altering this fundamentally open architecture, such as by degrading or blocking certain applications or content. Particularly in the absence of robust competition in the last-mile broadband market, Google submits that the Government should be alert to the possible threat arising from the ability of ISPs to discriminate against applications and content providers in an anti-competitive

⁶ <http://www.dfes.gov.uk/byronreview/>



way.

Wireless Internet access

Just as it is important to preserve the Internet's openness in the context of fixed line broadband, Google submits that it is also critical in the context of wireless or mobile Internet access.

Increasingly, consumers are accessing the Internet through mobile, handheld devices. As in the case of fixed line broadband, users, not the intermediaries offering access, should be in control of the devices, content and applications they access on the Internet.

Spectrum policy

Google further submits that the 'innovation without permission' ethos of the Internet should extend to spectrum policy. New Zealand has a tremendous opportunity to maximise spectrum, particularly as the analogue switch-off proceeds as an important element of the Government's Digital Strategy. As a part of Google's charter to make information universally accessible, Google supports initiatives that give consumers access to more broadband choices and innovative new software applications.

Google would be concerned if the spectrum available following analogue switch-off were to be allocated in a fragmented, inefficient and under-utilised manner. It is important that companies are able to secure the spectrum they need to provide end users with advanced Internet applications over fixed and mobile broadband networks.

Google supports opening additional portions of spectrum to unlicensed uses, where the benefits include dramatically lower network costs, facilitating quicker deployments and increasing service flexibility. Advances in technology, such as spectrum sensing, have allowed spectrum to be made available by a multiplicity of devices and users, rather than exclusively licensed or sold to one entity; users need only comply with an established set of technical standards in order to use the spectrum. For example, Wi-Fi currently operates on unlicensed spectrum. As the recent increased uptake of Wi-Fi internet access services has illustrated, unlicensed spectrum holds the unique promise of enabling innovation and significantly expanding the reach of broadband.

In the United States, Google has joined several leading technology companies to support opening unused channels in the broadcast TV band ('white spaces') to unlicensed use for innovative new technologies. This segment of spectrum holds great promise for building and deploying fixed and mobile low-power devices for a variety of potential uses, including serving as new broadband platforms. The availability of such unlicensed spectrum, coupled with advanced signal processing techniques made practical by the exponential growth in computing power (Moore's law), can make data rates in the gigabits-per-second available in the not-to-distant future. As a result, a low-cost and open infrastructure may develop, supporting a near-unlimited bandwidth Internet service, improving every year as computer and radio technologies continue to evolve.



Outside of the United States, OFCOM recently released the Digital Dividend Review proposal to allow unlicensed use of comparable spectrum ('interleaved spectrum').⁷ In its report, OFCOM describes the high social benefit and low opportunity cost of turning this spectrum into an innovation commons in which many devices can operate.

With respect to licensed spectrum, Google supports a spectrum allocation system that encourages the licensing of new market entrants. Key priorities include enabling secondary markets in spectrum, structuring auctions to create a level playing field and using mechanisms to ensure open platforms.

Copyright issues

Copyright law plays a number of extremely important roles: part cultural policy, part innovation policy, part consumer protection policy and part competition policy. The interests served by copyright law are varied and while it is sometimes difficult to achieve the right balance among these interests, it is critical to do so.

Whilst inadequate copyright protections can eliminate incentives to create, excessive copyright protections can stifle creativity, choke innovation, impoverish culture and block free and fair competition.

As an intermediary that respects both the need for adequate incentives to creators and the need of the public to have access to information, and also as an innovator in online technologies, Google supports a flexible and adaptable legal framework that provides those who create and invest in new technologies the freedom to innovate without fear that their efforts will be hindered by an overly-restrictive approach to copyright. Google recognises that one of the fundamental objectives of copyright regimes internationally is the promotion and incentivisation of innovation. Copyright protection is essential to this goal. Equally important to innovation, however, is ensuring that appropriate transformative and socially beneficial uses of content are not constrained or precluded by a copyright regime that does not have sufficient flexibility to enable new uses permitted by technological developments to be assessed and, where appropriate, permitted.

Google considers that the most effective way to improve access to content and address rights holders' interests in the online environment is to develop innovative content services that meet consumers' expectations and needs. Google supports effective stakeholder cooperation and development of industry self-regulation to improve the respect of copyright in the online environment. Google has created and continues to develop powerful tools that enable creators to manage and control their copyright rights online, such as the YouTube Content ID system.

Google supports the promotion of consumer understanding of copyright, including the rights of

⁷ <http://www.ofcom.org.uk/radiocomms/ddr/>



both creators and the public. Google would be happy to provide constructive assistance in assessing the form such a consumer understanding campaign might take.

Copyright (New Technologies) Amendment Bill

Google is aware of the *Copyright (New Technologies) Amendment Bill* presently before Parliament. If appropriate, Google would welcome the opportunity to discuss the operation and practical effects of the Bill with you. The issues raised by the Bill, including ISP safe harbours, fair dealing, and technological protection measures (TPMs) are all issues that Google has experience with in other jurisdictions.

Orphan works

Google submits that orphan works represent an untapped wealth of material that, if usable, have the potential to vastly benefit the public, promote innovation and support artistic and cultural progress. As mentioned above, Google has the aim of 'making the world's information universally accessible and useful'. Therefore, Google supports an orphan works framework that will facilitate the appropriate use of orphan works by connecting more works to owners and eventually allowing the use of truly orphaned works.

The difficulty facing those who want to use orphan works is essentially a search challenge – finding the owner. Over time, this may become easier as owners are encouraged to come forward and as technology advances.

Google submits that legislation should assist potential users of works by setting an objective standard for a reasonable search. Absent such a standard, a user does not know when to stop the search for the rights holder. In that case, the user, which may be a business, archivist, library, university, museum or individual, is likely to avoid using such works altogether.

An objective standard set in legislation should only require users to base their search for a rights holder on the information at their disposal. The potential user of a book, for example, likely knows the title, author and other key information to help find the current owner of the copyright, unlike a user who merely has a few minutes of video, without details of the creator or other contextual information.

Where the rights holder cannot be located – when a work is truly orphaned – Google submits that legislation should allow the use of that work. Allowing use in these circumstances will provide an effective balance, benefiting the public without harming the rights holders.

Google believes that resolving issues surrounding orphan works is an important element of ensuring that the public is able to make full use of the wealth of resources in the public domain. Google is currently considering other ways in which public domain materials can be made more effectively available for the benefit of people across the globe and would be pleased to discuss this issue with the Government if this would be of interest.



Conclusion

The above submission sets out Google's preliminary comments on a number of the issues highlighted in the Discussion Papers.

Google would be pleased to provide further details on any of the issues raised in this submission and looks forward to constructively engaging with the New Zealand Government as it continues to consider these important issues for the digital media landscape in New Zealand.

Kind regards

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