



Internet Society of New Zealand (Inc)

Response to the Ministry for Culture and Heritage's
*Consultation Paper - Broadcasting and New Digital Media:
Future of Content Regulation*

4 April 2008

Public Version

(There is no confidential version)

I. Introduction

- 1.1. This submission is from InternetNZ, the Internet Society of New Zealand Inc, in response to the Ministry for Culture and Heritage's "Consultation Paper - Broadcasting and New Digital Media: Future of Content Regulation."
- 1.2. InternetNZ is a membership-based not-for-profit organisation. It has management responsibility for the administration of the .nz domain name registry, a critical component of the Internet infrastructure in New Zealand.
- 1.3. Our mission is to protect and promote the Internet for New Zealand. We advocate the ongoing development of an open and uncaptureable Internet, available to all New Zealanders.
- 1.4. The Society is non-partisan and is an advocate for Internet and related telecommunications, public and technical policy issues on behalf of the Internet Community in New Zealand – both users and the Industry as a whole.
- 1.5. We are not addressing all of the questions raised in the Consultation Paper. Our focus is on issues relevant to InternetNZ's objectives and mission.

2. Executive Summary

- 2.1. InternetNZ agrees that changes to the nature of what we call broadcasting, due to convergence and the rise of digital platforms and the Internet, require a review of the regulatory approach.
- 2.2. While for the purposes of this submission, our focus is on the Internet, it is apparent that there may be lessons arising from the development of the Internet, for example around self-regulation in a new technological environment, which have applicability to broadcasting in a converged world.
- 2.3. It was clear at the Broadcasting Review workshops that InternetNZ has attended that there needs to be increased public representation and consultation to balance industry self-interest and a perhaps unintentional broadcasting industry bias, so as to align with how people actually access content today across multiple technologies.
- 2.4. The future of content will include rich media across high speed broadband. But as importantly, user-generated content has been enabled by the Internet and is increasing in popularity through services such as YouTube. Wikipedia lists 40 such user-generated video sharing sites at: http://en.wikipedia.org/wiki/List_of_video_sharing_websites YouTube, as one example, has recently upgraded its resolution to enable content to be uploaded that can be viewed on a regular computer screen at full size.
- 2.5. Also, the availability of broadcasting content through services such as YouTube undermines the usefulness of concepts such as watersheds, and mobile Internet services create further content challenges for parents and

regulators – regulatory solutions can be difficult to conceive, even for those who work closely with the technologies and would likely lead to unintended consequences.

- 2.6. We would support a tiered approach with less regulation around the Internet as compared to traditional broadcasting.
- 2.7. Content regulation through self-regulation appears to be working at this point in time. Lack of central control makes simply extending regulation to the Internet unenforceable and creates challenges in continuing to regulate content from Broadcasters that also appears on the Internet.
- 2.8. The emphasis also needs to shift to dealing with the regulation of content based on the type of content provider involved rather than their method of distributing that content. For example, there is a difference between TVNZ placing its 6pm news online vs. an individual uploading a holiday video.
- 2.9. There should also be further emphasis on public education and media literacy and NetSafe (the Internet Safety Group) has demonstrated itself to be a useful partner for Government in these endeavours.

3. Specific answers to the questions provided by MCH below are included in *italics*.

Questions of scope

In New Zealand it is possible to make complaints about broadcast content – to broadcasters and then, if unsatisfied, to a regulatory agency. The first set of questions asks about the scope of content regulation: what regulation should be concerned with, and whether it should extend beyond conventional broadcasting. It also asks whether different levels of regulation should apply to content delivered in different ways – for example content that we choose to receive at our demand, compared with content broadcast generally.

What the regulation of content should be concerned with

In regulating broadcast content, certain concerns are common internationally. These include the protection of minors, the portrayal of violence, accuracy in reporting, the protection of privacy, and the fair treatment of people who are the subjects of programmes.

Q 1:

What concerns are appropriate to be addressed through content regulation?

Our focus is on the Internet only and what does and doesn't work in that environment. There are large practical hurdles to simply replicating the content regulatory regime that applies to broadcasting and applying it to the Internet. Besides these practical hurdles, there are also differences in the nature of the technology that make wholesale replication unwise. InternetNZ believes that the question of what standards should apply in any given situation depends on the nature of the content provider, not the method of transmission. The rest of our submission is based on this approach.

A single regime?

At present the content regulation regime in New Zealand established under the Broadcasting Act 1989 only applies to conventional, scheduled television and radio broadcasts. But internationally, broadcasters are increasingly using digital technology to make their content available in other ways (such as over the internet or on mobile devices), at the demand of individual viewers and listeners. Some content providers are only operating on these newer platforms (for example, radio stations that only podcast, TV stations that operate only over the internet, telecommunications companies that provide content only on mobile devices).

Q 2:

Should a single regulatory regime apply to all broadcasting-like content no matter how it is distributed?

It is impractical to do this.

Please give reasons for your answer.

A tiered approach to content regulation and self regulation taking into account the characteristics of the Internet, would provide the best approach. The simplest and most appropriate method of tiering would be to apply varying codes for content regulation depending on the type of content provider. As a simple example, home video posted on YouTube should not be required to meet the same standards as TVNZ programming made available on YouTube.

It must be acknowledged that there are huge difficulties in applying existing broadcasting standards to content on the Internet, and there would be potential unintended consequences in attempting to do so.

Self-regulation is already working in the Internet content market in New Zealand and this should be encouraged. Self-regulation is also working in large areas of the broadcasting market and this should continue to be encouraged as it provides more responsiveness in a changing environment. Agencies working across both deserve support in tackling convergence.

Q 3:

Should the same general regime apply, but with a less strict or detailed code for content received on the demand of individuals than for content broadcast conventionally?

Yes

Please give reasons for your answer

Receiving content on demand is one characteristic of the Internet or IP technology, albeit there are other infrastructure platforms where this is also applies, such as mobile.

We support a tiered approach, where the practicalities of regulating the distribution system are taken into account. As already mentioned, we regard the difference between

different classes of content provider as being more important than the difference in method of transmission, including whether content is accessed on demand or conventionally.

Q 4:

Publicly-owned broadcasters have special mandates to set standards of quality (such as the Charters of TVNZ and Radio New Zealand or the legislation of Maori Television).

Should their content be regulated differently from the content of private-sector broadcasters or the same?

Not answered

Please give reasons for your answer.

Outside the ambit of InternetNZ.

Broadcasting-like material provided from outside New Zealand

While an increasing variety of broadcasting-like content is being made available through various media from New Zealand sources, much else is available to New Zealanders directly from overseas sources, especially via the internet. Of this content, some would not meet New Zealand's broadcast standards if it was broadcast from here. Some may violate other laws, such as the Crimes Act or the Film, Videos and Publications Classification Act (for example, material which encouraged the commission of crimes or incited racial hatred).

It is difficult to regulate such overseas-sourced content. Some measures that have been used in other countries include: instructing

local internet service providers not to provide access to certain content; or requesting regulatory authorities in other countries to take action to prevent certain content being provided in the country of origin. Other regulatory approaches overseas have included the subsidised provision of internet filtering software to the public, and an increased emphasis on media literacy, so that people are better enabled to identify and avoid undesired content.

If overseas-sourced content were not regulated at all, it could be argued that New Zealand broadcasters and other providers of content would be disadvantaged. Alternatively, however, there may be an advantage to a local provider's reputation in being seen to uphold standards which other sources cannot be relied on to follow.

Q 5:

Should broadcasting-like content provided to audiences from overseas be subject to New Zealand's regime for content regulation?

It depends

Please give reasons for your answer.

The question of applying content regulation to traditional broadcasting is outside of our ambit.

InternetNZ has already identified that there are very serious practical difficulties in applying the standards to overseas content, where it is delivered over the Internet. Content can be moved so quickly that the effort to enforce New Zealand standards would be greater than any benefits gained. New Zealanders that rebroadcast such content would be subject to content regulation.

Q 6:

If you answered yes, what form should regulation take, and who should regulate such content?

Not answered

The role of a regulator

New Zealand's regulatory regime is mainly reactive – that is, it is mainly concerned with assessing complaints. This next group of questions is about the role an agency involved in regulation might play. It asks how far an agency should be involved in activities other than ruling on complaints – such as monitoring the broadcasting environment or promoting media literacy. But it starts by asking whether there should be a regulatory agency at all.

A regulatory agency vs. self-regulation

Like several countries, New Zealand has a state agency, independent of government, to determine complaints, when complainants are dissatisfied with a broadcaster's response, and to approve the codes of practice that must be followed by broadcasters. Broadcasters are involved in devising the codes and receive complaints in the first instance. An alternative to this system is for broadcasters to regulate themselves, though still in accordance with legislation. (Self-regulation is already practised in the case of advertising.)

Q 7:

a) Should there continue to be a state agency available in New Zealand to operate a system of content regulation?

See below

Or

b) Should broadcasters be able to regulate themselves, within the requirements of legislation?

See below

Please give reasons for your answer.

InternetNZ's ambit does not include traditional broadcasters, except where they also use the Internet.

However, a higher degree of self regulation in broadcasting may well overcome some of the issues that arise in convergence of broadcasting and the Internet and through the shift to "pull" technologies over "push" in broadcasting. Self regulation is already working in New Zealand across both the Internet and broadcasting and could well be a better approach when attempting to take account of a quickly changing environment. We would be concerned about any attempt to do the opposite; to apply existing broadcasting regulation directly to the Internet, as we see this as largely impractical and likely to lead to unintended consequences.

In this framework of self-regulation, the ability of citizens to appeal to an independent agency may be useful, but that would depend on the specifics of the regime proposed. InternetNZ would not support such an approach until it saw the detail and could judge whether the proposal suited the Internet environment.

A broader role for an agency?

The government receives advice on broadcasting policy and on trends in broadcasting from its officials. Government departments monitor the performance, against their statutory objectives, of the public broadcasters. There is no body *independent* of government in New Zealand charged with the oversight of public broadcasting, or with monitoring whether public broadcasting objectives are being met. New Zealand also does not have the media ownership laws that, in other countries, are used as a means of encouraging diversity or quality in broadcast content.

Q 8:

a) Are the current arrangements for monitoring public broadcasting and the broadcasting environment adequate?

Not answered

Please give reasons for your answer

Public broadcasting is outside InternetNZ's ambit.

b) Are there any gaps in the current arrangements?

Not answered

Please give reasons for your answer.

An idea raised in the government's broadcasting Programme of Action is for an independent agency to play a "watchdog" role in relation to broadcasting in ways that go beyond content standards. Such an agency could, for example, comment on the state of the broadcasting and wider media environment, conduct research more widely, and make reports to government.

Q 9:

If you believe that there are gaps in the current arrangements, would such an agency play a useful role?

Potentially.

Please give reasons for your answer.

A role for the regulatory agency in analysing and monitoring media markets could potentially add a useful element of knowledge about the development of converged media markets if its research programme and publications were well-conceived, and to the extent that this included analysis of Internet-related issues, InternetNZ would support it.

If you answered “no”, what other ways of monitoring the broadcasting environment could be explored?

Existing agencies or departments could be funded to develop such a research programme. It does not have to be a role for the sector-specific regulator.

Media literacy and education

The current content regulatory regime in New Zealand is essentially protective, although the Broadcasting Standards Authority is also involved in projects to promote media literacy initiatives and education. Some take the view that the way to respond to the greater variety of ways of transmitting content is to place more responsibility in the hands of individuals to make informed choices about what they watch and listen to. Promoting media literacy – an awareness of how broadcasting and other media work and the effects they can have on audiences – can be a way of helping people to make such choices.

Q 10:

Do you favour a stronger role for a state agency in encouraging media literacy?

See below

Please give reasons for your answer

There may well be areas where the state can contribute further to media literacy. We would commend, however, the work of NetSafe, which is already supported by the Government through the Ministry of Education, as well as by InternetNZ – both as key major sponsors.

NetSafe has had considerable success in cybersafety and has a new version of its NetBasics campaign. It would seem logical for the Ministry of Culture and Heritage to develop its relationship with this organisation, which has considerable experience and has leveraged significant additional funding from other sources.

Q 11:

Would a greater emphasis on media literacy be useful to New Zealand audiences in order to identify and avoid undesired content sourced directly from overseas?

Yes

Please give reasons for your answer

This complements our position that self-regulation is key to content issues on the Internet.

Are there any other measures that should be considered?

Not answered

Media education and violence

The 2004 Working Group report on TV Violence recommended that the Broadcasting Standards Authority's role be widened to mandate it to undertake an educative and collaborative role with relation to violence on television.

Q 12:
Should these roles be part of the mandate of New Zealand's broadcast content regulator?

Not answered

Please give reasons for your answer

Outside InternetNZ's ambit

Q 13:
Should it have a similar educative and collaborative role in relation to other matters, such as, for example, the interests of children and young people?

Not answered

Please give reasons for your answer

Outside InternetNZ's ambit

The concepts guiding broadcast standards

Any system of content regulation, whether operated by an agency or through self-regulation, needs to be based on some principles or concepts, to determine *what* is regulated and for what reason. The Introduction to this paper quotes the concepts that the Broadcasting Act

requires broadcasters to take into account in maintaining standards: “the observance of good taste and decency”; “the maintenance of law and order”; “the privacy of the individual” - and the principle of balance, by which differing points of view on controversial issues should be aired within the same programme or “within the period of current interest”. The following set of questions seeks your views on these concepts – or alternatives to them.

A single set of concepts?

As noted in the Introduction, broadcasting-like material is appearing in different media, under different regulatory regimes. The first question to answer, then, is whether we want a single set of regulatory concepts to apply, and how *far* it should apply.

Q 14:

Are a single set of broad concepts as a basis for content regulation more, or less, important in an era of increased choice in content and in the ways of receiving it?

Please give reasons for your answer.

More important, to ensure there is consistency in approach and state input if desired into a tiered model incorporating self-regulation. It would seem that different levels of applicability of common concepts, applied to classes of content providers, would be more sensible than developing different concepts. However it is possible to conceive of a workable model incorporating different concepts for different providers. An argument in favour of the former, single-set model is its simplicity and consistency.

Q 15:

a) Should the concepts currently guiding the standards applying to broadcasting continue to apply to broadcasting?

Not answered

b) If yes, should they apply more widely across the scope of content regulation, - that is, beyond conventional broadcasting?

Yes, but distribution practicalities must be taken into account, along with the ability of the Internet to provide niche content.

Please give reasons for your answers.

As per answer to Question 2 but also the niche nature of the Internet may require a different take on the principle of balance, as Internet viewing does not commonly occur at scheduled times and the technology encourages different views to be expressed through more extensive interaction and a lower barrier to entry. The existing balance principle is based on the idea that entry to the media market is difficult, that barriers are high. This is not the case on the Internet.

c) Are there different concepts that should be added or substituted for those in the Act, and applied either to broadcasting or to a wider range of content?

As per 15(b) above

Particular concepts

The concepts in the Act include “good taste and decency”, meaning what people currently think is decent or indecent, or in good taste. An alternative concept might be that of actual social harm, where the concern would be with the likely effect of content on the audience or society at large. (Such a concept, of content that is “injurious to the public good”, is a guiding idea in the Films, Videos and Publications Classification Act.)

Q 16:

Do you have a preference between these two possible approaches?

Not answered

Please give reasons for your answer.

Outside InternetNZ's ambit.

The current Act includes a principle of balance: “the principle that when controversial issues of public importance are discussed, reasonable efforts are made, or reasonable opportunities are given, to present significant points of view either in the same programme or in other programmes within the period of current interest” (Section 4(1) (d)).

Q 17:

Does this principle, as currently expressed in the Act, remain important in an era of an increasing variety of outlets for information?

No

Please give reasons for your answer.

As per question 15(b). It remains important for providers of content which are public broadcasters or aim at mass audiences. It is not important for individually produced content made available over the Internet.

Q 18:

If the principle of balance remains important in conventional broadcasting, should it apply more widely if the scope of regulation is widened beyond conventional broadcasting?

No

Please give reasons for your answer.

As per question 15(b). It depends on the nature of the content provider.

Q 19:

To what extent is the achievement of accuracy dependent on the availability of a balance of views

a) within a broadcast programme, or other audio-visual content?

Not answered

b) across broadcast programmes, or other content, by the same provider of content?

Not answered

c) across the media as a whole?

Not answered

Other ideas and comments

Q 20:

Do you have comments on aspects of content regulation that are not covered by the questions above? If so please include them here.

Not answered