

Online Content Control

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COMMONWEALTH
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Introductory remarks

- Content providers
 - Distinguishing illegal content from harmful content
 - Regulated activity?
 - Provision or exercising editorial control
- Regulation as facilitation
 - Facilitating Internet access services
 - Protecting freedom of expression
 - Balancing conflicting rights
- Intermediary liability
 - User-generated content
 - Liability for copying, publishing, possession, encouraging

Online challenges

- Applying traditional legal concepts in an online environment
 - Criminal content, e.g. indecent photographs
 - Regulated content, e.g. video-on-demand
- Flexibility of content location
 - Identifying source
 - Transparent borders
- Distinguishing supply from demand
 - e.g. P2P networks

Regulating providers

- As telecommunication providers
 - Licence or authorisation
 - Conditions
 - Contract
 - 'acceptable use policy'
 - 'Network neutrality'?
 - Traffic management and quality of service
- As broadcasters
 - 'television-like'?
 - Codes of Practice
 - Enforcement
- As 'something else'?

Legal protection

- Immunities / defences for certain conduct....
 - Mere conduit
 - Caching
 - Hosting
 - Location tool services
 - Provision of hyperlinks
- But, obligation to act with 'actual knowledge'
- No general obligation to monitor
 - Broader than prohibition on interception, includes self-provision
 - Nor "seek facts or circumstances indicating illegal activity"

Tackling internet content

- Catch the content provider
 - A policing activity
- Remove it
 - Notice and take-down (NTD)
 - Domestically hosted content
 - International notices
- Prevent access to it
 - Filtering, blocking & monitoring
 - By the state ('Great Firewall of China'), ISPs (IWF) and users (Net Nanny)
 - Foreign hosted content



Distributed enforcement

- Disrupt online activities
 - Domain name registries & registrars
 - 75% of commercial child sexual abuse domains are linked to just 10 Registries/ Registrars
 - Contractual terms
 - Disconnection of service
 - France, UK
- Follow the money...
 - Commercial 'pay-per-view' & organised crime
 - IWF 2008 Annual Report: 3000 sites
 - European Financial Coalition
 - 'Combating the commercial distribution of child abuse'



Removal

- Noticed by someone
 - The public or the professionals
- Reported to someone
 - Host, law enforcement or specialised entities
 - Volume issues
 - e.g. IWF, ActionFraud
- Acted-upon by someone
 - Content taken-down
 - Evidence gathered
- Efficiency of the process?



Removal

- State jurisdiction
 - Territorial limitations
 - Mutual legal assistance procedures
 - Extending jurisdiction into cyberspace
 - Territorial & extraterritorial jurisdiction
 - e.g. Cybercrime Convention, art. 32
- Private reach
 - ‘spillover effect’
 - e.g. Google & Yahoo!
 - International notice & take-down
 - e.g. INHOPE network



Preventing access

- Content and communication attributes
 - different traffic, mechanisms & services
 - e.g. Deep packet inspection
- As crime prevention (filtering/blocking)
 - deter & disrupt
 - virus scanning, bandwidth shaping, ‘spoofing’ & child sexual abuse images
 - IWF list targets inadvertent & casual visitors
- As criminal investigation (monitoring)
 - investigate & prosecute
 - e.g. Virtual Global Taskforce & ‘Operation PIN’

Preventing access

- List source, assembly & integrity
 - Location
 - Domain names, URLs & the ‘Wikipedia’ incident
- Deployment verification & validation
 - Over-blocking
 - e.g. Middlesex
- Transparency
 - User notification
- Costs & benefits

Questions & Discussion