
Affinity - Submission on the draft copyright Code of Practice for S92A

Thank you for giving people the opportunity to provide feedback on the Draft CoP.

I congratulate the working party on its efforts, but would like to provide feedback on 3 issues, which I consider are not adequately covered.

1. People who access the Internet anonymously

I run a small business operating out of serviced offices. The serviced office provider makes Internet access available to all tenants through a wireless router. The tenants use a shared password and do not have individual Internet user accounts. So perhaps 30 people in 10 different businesses are provided anonymous access to the Internet through a single Internet account. There are many examples of this situation in New Zealand: public libraries (contrary to item (b) of the definition of Internet Account, libraries provide anonymous access and do not give their patrons individual Internet Accounts), a student flat, a group of neighbours who share a single "all the Internet you can eat" account, probably most small businesses.

There appear to be 2 possible interpretations of the CoP for the treatment of anonymous Internet access:

(a) This practice will in future be illegal and all organisations providing anonymous Internet access through a shared Internet account will be required to change their current access method; for example to incur the time and cost of setting up an account-based access scheme and becoming a Downstream ISP. The consultation notes on the TCF site (What is an Internet Service Provider?) imply that this is the TCF's interpretation, but presumably it will need to be tested in court.

(b) Under the CoP, the Internet account holder providing such access is liable for all the actions of all the people accessing the Internet using the account. This seems contrary to the spirit of Principle 4.9. It seems "inappropriate and unacceptable" that a serviced office provider or public library should become liable for the online actions of everyone using their shared Internet services.

I would like to see the case of anonymous Internet access, such as the examples given above, explicitly covered in the CoP.

2. Duration of termination

The CoP is silent on the duration of any account termination carried out, or any mechanisms for account reinstatement. I therefore assume that termination of an Internet Account is a life sentence. Either:

(a) this interpretation is correct, in which case it seems out of all proportion to the alleged infringement; under scenario 1b above, any business disconnected from the Internet in this way would no longer be able to trade. Or:

(b) termination expires after some specified period, in which case the termination period and reinstatement mechanisms need to be spelled out in the CoP; for example, the account could be automatically reinstated after 30 days.

In either case, I strongly disagree with clause 29, preventing termination requires an order of a Court. I consider that it is for a Court to determine whether termination is justified and if so, to set the length of the sentence. Let us remember that preventing somebody from having Internet access means the person cannot easily get an education, apply for a

job, earn a living, deal with the IRD, stay in touch with family, and so on. Denying Internet access, perhaps for life, without following a proper legal process, is not an action I expect in a democracy. I strongly urge the working party to reconsider this clause.

3. Public education

I must admit that I found the CoP hard going and urge the working party to consider re-writing the draft into plain English. From the scenarios given above and the examples in the Defined Terms, it is clear that the CoP affects every home, school, business, library, and person in the country. The working party may wish to consider making recommendations for how ISPs might go about educating their customers, most of whom will be unaware of the CoP's potential impact on their Internet access practices. The person who runs the serviced offices where my business is located, for example, had no idea that her business could be affected.

For example, as a general reader, I would find it really helpful if the CoP included annexes that set out various common end user scenarios (school, small business, student flat, big business, and so on). If organisations need to be seeking legal advice about their obligations, this needs to be communicated, or people will not know.

Once again, I congratulate the working party on what must have been a very difficult job and hope that these comments contribute to making the next version of the CoP more robust. However, if the working party concludes that section 92a of the Act is unworkable and makes recommendations to that effect, I would strongly support this position.

In my view, the CoP is in many ways a distraction from the real issue, which is that the legislation is a doomed attempt to protect outdated business models from market forces, and shifts the costs onto every other person, business and organisation in the country.

Kind regards
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