

SYDNEY SESSIONS

The IIC's TMF in Sydney was packed with high-level speakers from a region at the forefront of regulatory issues, as **CRISTINA MURRONI** reports

Robert Picard (Reuters Institute for the Study of Journalism) gave the keynote to open the debates at the IIC's Telecommunications and Media Forum (TMF) in Sydney. Noting that several rationales may underpin policymaking in communications, he compared the regulatory settings in Australia, the UK and the US. In all three countries, policies are driven by opportunities to develop industries and services, and by the desire to maintain dominant social arrangements. The main regulatory agencies are independent and funded through regulatory fees and spectrum auctions, with a high degree of involvement with the industry players. However, they differ in size (the FCC being the largest with 1,600 employees, followed by Ofcom in the UK with 800 and the Australian Communications and Media Authority, ACMA, in Australia with 400) and the geographies they preside over. Regulation is preferred to other policies, like incentives, or the promotion of good behaviour, which should receive much more attention. Greater connections across overlapping agencies (antitrust, industry development) is also increasingly important. Policymaking ought to be principles-based, and while technology is

important, harnessing and directing technologies for the use of collective benefit has to be the primary objective.

CAN REGULATORY PRINCIPLES KEEP UP WITH PRACTICE?

Addressing the first panel in her keynote, Nerida O'Loughlin (ACMA chair) highlighted that the

government reinforced ACMA's remit to ensure that all layers of the communications market are covered and that the sectoral regulator is fit-for-purpose. It also provided the broad principles that should guide ACMA's work: its actions should be timely, transparent, accountable, proportionate, consistent and targeted and the regulator should have regard to the importance of promoting competition, innovation and efficient investment. Rules need to have a sound legal and empirical base. But she stressed the need to be pragmatic, and use regulatory and other tools in innovative ways to address issues in the sector as quickly as possible when they emerge. Fast moving times require fast regulatory responses even if the tools can only be 80% effective; that is 80% better than nothing.

Ben Heap (H2 Ventures) explained that confidence in the policy environment is critically important for venture capitalists, because their investments, by definition, fund opportunities which have a very high likelihood of failure, and they cannot afford that those investments that do well may fail because the regulatory landscape has changed.

Belinda Moffat (New Zealand Broadcasting Standards Authority) gave an overview of the New Zealand regulatory system, which has several regulatory bodies addressing various content providers. A regulatory review is planned but key policy principles have been set. The purpose of content regulation, she said, is to promote the right to freedom of expression, subject to the obligation not to cause harm. Regulation needs to be technology and platform agnostic to enable growth and innovation, and to ensure a fair playing field for competition. It also needs to be simple, transparent and accessible to the public.

Mike Mrdak (Department of Communications and the Arts, Australian government), spoke about his country's Next Generation Network (NBN), saying that the next challenge after building it will be to make it profitable and ensure future investments can be financed. He noted that even though the NBN will go some way towards achieving the goal of bridging the digital divide, this issue is likely to re-emerge with 5G and other technologies.

The conversation expanded on possible ways of regulating firms' behaviour, emphasising the need to focus on customers and greater reliance on consumer research by regulators.

PLATFORMS ARE ALL THE RAGE

Rod Sims (chair, Australian Competition and Consumer Commission, ACCC) reported on the ACCC's enquiry into digital platforms, and the effect that digital search engines and social media platforms have on media and advertising markets, with a particular focus on the impact on the quality of news and journalistic content in Australia. Advertising today is about data and user engagement, he maintained, where the platforms are dominant and expected to continue to grow. But there are other questions, such as the platforms' market power, their transparency and fairness using consumer data, and their regulatory treatment compared with other players. While the internet has created plurality in a concentrated media market, the issue of personalised newsfeeds creating a filter bubble is non-trivial, and so is the explosion of non-rigorous journalism. The answers to these



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questions will be complex and challenging, and they will define our new media age.

Robert Picard argued that while social media platforms bring potentially huge audiences to content providers, they also compromise revenues and limit companies' direct contact with their consumers, reducing the quality of the data they have about consumer interactions to the advantage of the platforms. It is not clear, however, whether regulation should intervene. These are issues affecting business relationships, but competition law tends to focus on the effects on competing firms offering similar products and services, and on the consumers of those products. The application of competition law to business relationships and effects on downstream users is often very challenging.

Commenting on the lack of a level playing field across media players, Bridget Fair (Free TV Australia) called for independently verifiable standards, rather than just relying on social media's own viewing figures, to allow advertisers to compare the platforms' metrics. Simon Milner (Facebook) addressed myths about the popular social media platform, such as the suggestion that Facebook extracts value from publishers and does not generate any. By providing another channel for journalism in the concentrated Australian market, Facebook has enabled new players to enter the journalistic and news market for the first time, he said. As for the idea that advertising is finite and Facebook is crowding out the other players, in reality Facebook has tapped into the long tail of advertising, the millions with extremely small budgets who could not buy TV ads. Is Facebook a media company and should be regulated as such? Milner said it is a platform that connects people and organisations. It is up to people who are using its services to determine what they see in their news feeds. Finally, there is the competition myth: Facebook is in a fiercely competitive market for people's attention, since it is just one of the many apps that people have on their phone.

Tom Burton (The Mandarin) said that the bigger issue is that we still do not really understand the value of data: accountants and economists can't agree about it; in balance sheets there is no line to say what the data is worth.

John Broome (Australian Association of National Advertisers) explained that self-regulation is channel neutral; its codes apply equally to TV, radio and also to social media and digital platforms. The participation of all media owners, new and old, is necessary for supporting responsible advertising and the industry is working to measure things consistently, and to make sure that ad fraud and brand safety measures are in place.

CONTENT AND DEMAND

Content on social media is poorly understood by commentators and policymakers, argued Stuart Cunningham (Queensland University of Technology). One common misconception is that user-generated content is not viable as a business: this is ignoring the business models that have



A question from the floor, speakers and a panel at the Sydney TMF

consolidated and changed over the past 10 years. They have evolved over time to include a growing range of revenue sources, including merchandising, live appearances, licensing, crowdfunding, brand integration and the rise of the influencer. Every kind of revenue model in this entrepreneurial practice depends on activated community support. Mainstream arts, culture and screen industries, with all their talk of audience building, have much to learn from this practice.

Another misconception has to do with the quality of the content. It is not only about the quality of content, it is about the quality and diversity of engagement: debates about quality need a strong dose of demand-side thinking. Cunningham said we need to work these points about the demand side and business models into our established policy instruments at the agency support levels.

Also on the content panel was Bárbara Navarro (Google), who provided an overview of the success stories and opportunities available to Australian creators on the internet, and warned against over-regulating the internet, which stifles innovation. Deanne Weir (Hoodlum Entertainment) provided the perspective of the content producer, arguing that the internet has enabled companies like Hoodlum to access international markets and raise the average budget of productions. Unfortunately, higher budgets are not matched by higher licence fees from broadcasters, so new ways of filling that gap need to be found. She argued that a quota of independently produced content could improve the situation.

Dean Ormston (APRA AMCOS, a music rights organisation) echoed the view that Australian creators are getting more successful on the international stage, with foreign revenues from the music community having doubled in the past 5 years and enormous growth in streaming and video on demand. For this community, a good copyright regime is essential for monetising its work, and rights and innovation should be considered together and not separately.

David Anderson (Australian Broadcasting Corporation, ABC) highlighted that 91% of Australians trust ABC and 12.3 million people watch it every week, the result of producing as much quality Australian content as possible and believing that quantity doesn't equal quality: it's about maintaining a high quality of distinctive Australian content, and not getting distracted by a quantity requirement that could otherwise result in a different decision.

Richard Hooper (Broadband Stakeholder Group, UK) expanded



◀ on the existential threats to public service television: prominence in the world of internet broadcasting, is one, political threats another, as is the competition of big players with huge budgets for content creation, such as Netflix and Amazon. There is a strong debate on whether platforms are also publishers and should be regulated as such; perhaps the winning approach may be to argue that whatever the definition, these companies have a duty of care towards their customers.

This was expanded on during the Q&A session: the idea is that just like physical amusement parks or sports stadiums, electronic platforms have a duty of care towards those who go there, i.e. both content creators and users. When big players invest millions in technology to protect intellectual property rights, for example, they are showing duty of care. A corollary of this approach would be that anonymity could no longer be used to protect misusers.

CYBERSECURITY IN THE IoT ERA

Alastair MacGibbon (Australian Cyber Security Centre) opened the session on security with the news that cyber threats to national security are on the increase for all actors: government, businesses and citizens. He added that, with the internet of things (IoT), we will need to worry not just about the confidentiality of information, but also about its integrity and availability when facing potential attacks. The approach adopted by Taiwan was presented by Hong-Wei (Howard) Jyan (Department of Cyber Security, Executive Yuan), who explained that Taiwan's strategy consists of two main planks: defining security standards and legal frameworks, and establishing how to cooperate with critical infrastructure service providers. Darren Kane (NBN) argued that security needs to be factored in at the start of any digital project, otherwise it will be an ongoing risk that is very difficult to fix.

Frank Zeichner (IoT Alliance of Australia) expanded on the ingredients in the formula for security that apply to the new world of IoT. Since there will be many more sources of data, and we will need to know what's the right data, rather than fake or "not-data"; metadata will be especially useful, and organisations will need to learn when and how to use data that they are not generating themselves. The key implication is this will change the way in which we react and measure data, which will be different for every industry.

Instead of only talking about regulations and frameworks, the panel felt that we should think about educating the public, which could go a long way to solving some of the most frequent cybersecurity issues. We have pushed far too much responsibility onto end users, and not driven responsibility back to industry, which is another reason why awareness and education are key issues.

TELCO TRANSFORMATION

After years of industry disruption powered by innovation and by non-traditional entrants that have set new benchmarks of customer experience, telcos are now transforming, illustrated Brendon Riley (Telstra). They will evolve into platforms,

delivering next-generation service experiences, such as connected vehicles, smart metering and locate and sense technology that enables self-driven wheelchairs for airlines and pallets at supermarkets. These developments imply huge investments, and greater incentives to invest should be provided.

Guillaume Mascot (Nokia) added that while 5G means more opportunities for diversification – new services and new verticals – it also means even greater demands for spectrum, and significant labour displacement. As a result, education will grow in importance and the employee/employer relationship will need to evolve. Chris Althaus (Australia Mobile Telecommunications Association), said we should think about the 4G/5G mix instead of just focusing on 5G. The real question, he highlighted, is whether the community is ready for the infrastructure deployment needed to see the benefits of IoT.

Teresa Corbin (Australian Communications Consumer Action Network) also stressed how services should be trusted, reliable, available and affordable, especially if they are essential services. A key issue is the fact that consumers have too little awareness of the exchange implied when they get



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something free of charge and provide their data. John Stanton (Communications Alliance, Australia) highlighted several benefits of technology developments,

such as 5G enabling enhanced broadband and intelligent machines that will help us double food production by 2050, while reducing food waste.

PUBLIC INVESTMENTS, PRIVATE INVESTORS

Many elements of public infrastructure, like hospitals, have a communications component, said Deena Shiff (BAI Communications), and the two will be increasingly enmeshed in the future. There are many examples of public-private partnerships providing communications in public contexts, such as the subways in New York, Toronto and Hong Kong where the infrastructure provider pays for coverage in subways, and then rents it to telcos. Dan Lloyd (Vodafone) added that there also several different infrastructure-funding models, and they should not be viewed as mutually exclusive. Co-funding and seed funding can provide catalysts for investment.

For Henry Ergas (The Australian), private ownership and market forces should be the default, where the risk is borne by those who choose to bear it, not taxpayers who have no choice. Indeed, there should be no benefits given to the private sector without transferring the risk. Only in some circumstances is the government the best risk-bearer. David Havyatt (Havyatt Associates) remarked that in the 1990s there was excitement about infrastructure-based competition but even though equipment prices have fallen consistently over time, this cannot provide all the answers in all regions.

TRUST IN AI, TRANSPORT AND RISK MANAGEMENT

The importance of trust for new technology products and markets to develop was highlighted by Megan Brownlow (PwC). She illustrated a tool developed by PwC to help businesses and organisations identify the drivers of trust. Clayton Noble (Microsoft) added that trust is built on behaviour that is considered responsible and acceptable, and the consensus grows out of norms that we exhibit every day, sometimes backed up by laws and regulation. There are principles that need to underpin any technology development if we want them to be trusted: reliability, safety, privacy, security, fairness. Artificial intelligence (AI) should not replicate the bias that human data will naturally contain, and it should aim to eliminate existing digital divides. It should also strive to be as transparent as possible and AI developers need to be accountable for the systems they create.

Michelle Zeibots (University of Technology Sydney) reported on a project developed for Sydney Trains, which provides a “dynamic passenger information system” where information comes from sensors monitoring what people are doing in the busiest stations, for example. This will reduce congestion by advising passengers of the actual arrival of trains with “nudge” messages, so that they can wait in places other than the platform.

Sebastian Robertson (BIRDI) described his firm’s drone management platform, developed to help businesses integrate drone technology into their operations to capture data in a safe, reliable and compliant way. Toby Walsh (University of New South Wales) reminded the audience that AI changes the scale and the speed of what we can do, creating both fresh opportunities and challenges. That we give machines the right to make decisions of their own is one AI development that does require a serious think about ethics. Machines should be held to higher standards than humans, he said, and independent, transparent bodies are needed to provide ethical approval processes.

DATA USE AND PRIVACY – THE AUSTRALIAN WAY

Peter Harris (Productivity Commission, Australia) opened the final panel with the Australian approach to data management, which might provide a long-term foundation for a new regime that looks at the opportunities that will come from control of one’s data, rather than starting from the threat of privacy infringements. The commission has proposed a comprehensive consumer right for continued access to data as a form of guaranteed control, rather than ownership. Governments will only be better trusted with data if consumers feel that they too are sharing in this right. First, Australians will get standards on the safe exchange of data, he said. Presently, there is no public standard for data trading, but there will be a consumer data right applicable to both public and private data collectors. Australia is likely to go beyond the informed consent provision of the EU’s GDPR, and propose regular “push updates” from the collector, and the publishing of who is receiving individuals’ data, for maximum transparency.



More speakers in action in Sydney, while participants pay attention

Aileen Chia (Infocomm Media Development Authority, Singapore) reported on data portability in Singapore. In the health sector, for example, the government has announced that it will mandate that medical institutions have to provide data for the national electronic health record, and this central system will allow access by licence to medical practitioners, so that they can have a comprehensive understanding of the history of the patient.

Sophie Dawson (Bird & Bird) expanded on the differences between the GDPR, which is focused on individuals, and the proposed Australian regime. Peter Leonard (Data Synergies/IoT Alliance Australia) said that there are three main approaches to privacy. One is to look at it from the viewpoint of user control, or as an economic right, which in essence is at the heart of the Australian recommendations. Then there is the concept of privacy as a human right, which has been the basis of EU regulation of privacy, and with which the right to be forgotten is particularly attached – along the lines of the right to have a sentence “spent” after several years of good behaviour. Finally, there are countries that see privacy as part of their digital trade agenda, to market the country as a safe place to store data, compared with other jurisdictions that may not have effective data privacy regimes.

Trust is difficult to gain and very easy to lose, stated Harry Iles-Mann (patient/consumer advocate), who said that in healthcare, data ownership would be more appropriate than just data control, considering how patients traditionally have been disempowered in the patient-clinician relationship. Nadia Levin (Research Australia) added that the lack of consumer data literacy – even understanding what data is – is an even bigger issue than data ownership vs control. Transparency is imperative, and we need to understand how much transparency we are prepared to sacrifice for the opportunity of betterment, particularly in the health sector.

Transparency, the panel argued, is about informing customers in a way that is meaningful to them rather than providing legal T&Cs that nobody reads. The discussion showed that consumer expectations for transparency and the deal that the consumer has on the distribution of benefits with platforms have changed since the GDPR and the Cambridge Analytica/Facebook story.

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