

UNITING CHURCH IN AUSTRALIA

SOCIAL RESPONSIBILITY AND JUSTICE COMMITTEE

**SUBMISSION IN RESPONSE TO
THE REPORT ON**

**THE REGULATION OF ON-LINE
INFORMATION SERVICES**

SOCIAL RESPONSIBILITY & JUSTICE
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**SUBMISSION TO THE REPORT ON
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BACKGROUND

The church is aware that it has to keep up with the changes taking place in society. One of these changes is the impact that the increased capability of computers have for storing, condensing, selecting, integrating and re-presenting reality-data. This coupled with the ability to use computers for personal communication means that this technology is being extended into most of the areas of our daily lives, literally reshaping our ability to perceive and communicate. This can take place instantaneously or in considered silence and also can be responded to in the same way. With this ability to communicate with each other Walter Ong has postulated that electronic culture has characteristics more resemblant of oral cultures than literate cultures. It also has the characteristics of considered letter writing where intimate thoughts and feelings can be shared along with the regular sharing of information. Like letter writing there needs to be a respect for confidentiality and freedom of creativity. The length of communication is only limited by the technology so there is the ability not only to send short documents but letters, books and access to whole libraries. With the development of digital technology there is also the possibility of sending photographs, pictures and film clips. Pornography, abusive and indecent messages, gambling and defamation are some of the undesirable by-products beginning to appear on the system. Thus there is the equally important question about how can the users of the Internet be ethical and responsible in their use of the such a facility.

With an estimated 30 million computers connected, the Internet is demonstrating the greatest experiment in the freedom of sharing information and interaction that the world has ever seen. The benefits are enormous. Some of these benefits are beginning to appear within the church. Besides the sharing of information and communication in general other uses include using on-line computers for counselling services, Christian apologetics, and the provision of a library of church related resources.

The Internet, What is it?

The big question is. What is the Internet? Is it a postal system, a bookstore, a publisher, a telephone system or a broadcaster? It has the characteristics of each. Regulators and the courts in the USA are dealing with cases as they emerge. According to some commentators the courts are confused and hence are passing conflicting rulings and regulations. (Christian Science Monitor, June 1995)

General opinion seems to indicate that it would be a travesty if government intervention was used to try to regulate it or worse still use it as a means of surveillance. The last thing that is needed is an arbitrary system that scares people from using the net or arbitrarily punishes people for using it by making it risky to write a love letter or send a serious artwork. Even though there is the possibility of pornography on the Internet nobody wants to reduce the adult population to use it only in a way suitable for children. It is important not to demonise the Internet.

VALUES:

Apart from supporting the need to protect people, particularly minors, from material deemed damaging to the well being of individuals and society and to enable freedom of expression, the church supports an approach which does not reduce people's access to technology. This has two elements.

First, regulation of on-line information services should not be too onerous so that small operators, particularly those providing a not-for-profit community service, are discouraged or effectively excluded from operating such services. In other words, we would not want to see only large-scale commercial operators providing on-line information services.

The second element involves the access to such services. In line with the Minister for Social Security's concern not to have information rich and information poor, the government needs to seriously consider the issues of accessibility to on-line information services. Women in particular are grossly under-represented in their participation on the Internet. Many of those that do are experiencing harassment and as a consequence are using male signatures. This issue, however, is not directly related to the discussion paper.

SELF-REGULATION - Method of classification: We agree with the importance of simplifying the process of classification through uniformity. However, we are not convinced that the classification categories can be unproblematically translated between different media. For example, computer games are interactive, whereas movies are not. Thus, the process of watching a violent video is quite different to the process of actively participating in a violent computer game. In the latter, one learns the physical responses to enemies, that is to shoot them down. What is learnt then, in the computer game is of more social significance. To extend this analysis consider the computer- based product called virtual reality.

On-line computer services can provide an increased level of reality. It can mix highly descriptive text, realistic graphics and sound, physical interaction with joysticks, and immediate interaction with other individuals. Such a complex of media make it difficult to equate classification methods with more basic media. For instance, consider the vast difference between a magazine of pictorial pornography and the personal communication with a stripper whose real life activities are directly relayed through electronic communications to you (WIRED, May 1995, 98-105). Classification categories need to acknowledge the differences in media and the effects the use of various materials have on the users.

RESPONSE TO THE PAPER: "The Regulation Of On-line Information Service". In order to stimulate discussion the Minister for Communications and the Arts and the Attorney-General have established a Computer Bulletin Board Task Force to examine the regulatory options for computer bulletin boards (BBS). This group published a paper entitled *Consolation Paper on The Regulation Of On-line Information Services*.

In setting the parameters the paper identified a number of potentially competing objectives:

- protecting freedom of expression, especially with respect to private communication between adults;
- limiting children's exposure to harmful material;
- supporting the development of new services that enhance Australia's competitiveness;
- ensuring that emerging service industries are not burdened with unnecessary costs; and
- aligning censorship regimes for new services with the regimes that have been adopted for other media.

To achieve these objectives a self regulatory scheme for on-line information services is proposed, reinforced by an educational program and legislative sanctions to enhance its effectiveness. This strategy will incorporate:

1. An effective self-regulatory scheme including a code of practice and complaints procedure;
2. A comprehensive education strategy; and
3. The introduction of appropriate offence provisions.

Self Regulation

Whilst we support the idea of self-regulation we wish to draw attention to the differences between operators in their ability to regulate their services. Large-scale commercial operators similar to pay TV operators have a great degree of control on what is put on their on-line information servers. Further, those who do allow posting by users are able to employ people to scrutinise postings to ensure that it meets the appropriate standards. In contrast, small, not-for-profit operators who operate for a community service do not have the resources to apply such a scrutiny. So that such services are not unduly disadvantaged we would not want to see regulation which gives them more legal responsibility for infringements than they could afford. We would point out that this is a difficult area to enforce because it cuts across privacy considerations and in a recent court case Prodigy Services Company was deemed liable for a user's libellous message because when the company screens out indecent messages it technically becomes an editor and publisher of the materials it carries.

People who post unacceptable material on on-line information services, even though they do not operate such services, should also be held responsible for the circulation of unacceptable material. For this reason we are supportive of the self-regulation proposal, of the avenues of defence proposed in the "Outline of possible offences ..." and of the ability to prosecute those who use on-line information services to post or transmit objectionable or restricted material.

In addition, we recommend that the legal code take a considered account of the particular on-line service when infringements are prosecuted. We do not think that large commercial operations should find it as easy to avoid prosecution as small-scale not-for-profit public service operators. Operators should be expected to have appropriate levels of control of their on-line information service. Large operators should employ people to have regular audits, whereas small operators should be able to place more responsibility on those who post information on their servers. Thus, consideration should be given to such variables as the financial size of the organisation running the on-line information service - whether for-profit or not-for-profit - and the market penetration - whether the service is for a small section of the population, possibility in a restricted locality (eg. the trial Department of Social Security's Community Information Platforms), or whether it is a national service like TV.

We would support the suggestion on the top of page 4 that the system be one of self-regulation which would "encourage on-line information service providers, and their representative bodies, to develop and implement appropriate procedures under a code of practice". **This seems an appropriate way to go but must be backed up with reasonable provisions for regulation and appropriate penalties.** We understand that Standards Australia is developing an appropriate set of standards for information technology security.

We would also draw your attention to the following agreed-upon international privacy principles:

1. Personal data should be collected only for specific legitimate purposes.
2. The dissemination, sharing and re-use of information should be compatible with purposes for which it was originally collected.
3. Personal data should be accurate, relevant, and up-to-date.
4. Individuals should be informed of how data will be used and should be allowed to examine and correct this information.
5. Transmission of personal data should not be unduly restricted or subject to burdensome authorisation procedures (Global Information Infrastructure: Agenda for Co-operation, US Government, February 1995) Published in *Privacy Law and Policy Reporter*, 2, 1995.

Another concern for security pertains to the use of credit cards and cash transfers on the net. Unless security precautions are taken credit card details and records of transactions could be easily obtain by other parties.

It is obvious that the provision of on-line services is a growth industry with many commercial service providers scrambling to gain customers. People will want to know that the highest standards of service, security, accessibility and reasonable freedom from criminal activity. Because of the potential for serious violation of present criminal and legislative codes in the areas of pornography, indecency, copyright and fraud there is a need for strict standards for the operation and conduct on BBS and on-line services. We are concerned that on page 3 the comment "if an accreditation scheme is introduced" is too weak. **The strongest way to achieve this would be an accreditation scheme to licence all operators of all commercial BBS providers or failing that at least a system of registration of commercial service providers so that there is clear identification of those who will provide a better class of service.** Anything less than this would make it difficult to enforce compliance. Only by doing so can suitable industry standards be kept and if they are not kept then an appropriate system of complaints and a process of sanctions such as deregistration be enforced.

Educational Strategy

We would agree with the report that there is a need for standards and strategies for managing access of on-line services, and the implementation of safeguards by government educational agencies and concerned parents in order to manage such services.

As an adjunct to self regulation we would support the need for regulation of access to educational materials on on-line services. One way would be to enable schools and concerned parents to have some control over access to the less desirable parts of the Internet. This could be done by the development of software with built in filters that enable people to browse the Internet and at the same time allow access only to the areas of the Internet that carry encrypted seals of approval. This would need the co-operation between on-line service providers and suitable software manufacturers. We understand that three leading computer companies in the United States: Microsoft, Netscape Communications and Progressive Networks are working on such developments and indicate that such programs could be ready by the end of the year (SMH, 15/8/95). Again licensing or registration is one way to regulate the standards of service providers for schools and concerned parents.

Offence Provisions

Because of the nature of electronic networks we know that there are practical difficulties catching offenders and enforcing legal sanctions. However it is important to make it illegal to defame, annoy, alarm or terrorise another person by computer just as it is by stalking or making obscene phone calls. Given the serious nature of offences that could take place it is important to have community standards and ensure compliance.

Therefore we would support a licensing process with a system for dealing with complaints. There needs to be an ombudsman type system where complaints can be laid and if there is a defective system or provider then these cases can be investigated. Where criminal infringements can be proved then suitable penalties be provided for. The system of licensing and withdrawal of recognition could be one such penalty.

MISCELLANEOUS:

Although not directly related to the discussion paper, we would like to raise a couple of similar issues which we think should be addressed by the Government.

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First, if the criminal code has not been amended already, we would ask that electronic versions of illegal material become an offence. This ensures that an electronic version of an illegal book, for example, obtained overseas and stored on computer is an offence just as if the person had the book.

For example there is the need to provide for penalties for the on-line possession of pornographic material that is demeaning to women and men, and materials that depict sexual activity with minors.

Second, concern is expressed at the possibility that anonymous remailers like anonymous mail can allow the widespread dissemination of defamations, invasion of privacy, materials that breach copyright, erotic or violent or offensive material and threats without the sender being traceable. Unlike conventional mail, anonymous e-mail makes possible very cheap mass distribution. It is possible to operate anonymously via remailers who could be located anywhere in the world on the Internet. It may be very difficult to sue or prosecute the remailer until there are uniform global laws governing the Internet. Will anonymous remailers be made illegal, just as anonymous radio or TV stations or newspapers are illegal in most countries of the world. For example what would be the response to a bomb threat delivered via an anonymous remailer? There are ways to overcome this through the compulsory leaving of electronic signatures.

Gambling on the Internet.

I draw your attention to an article in the Adelaide Advertiser reporting the "world's first cyberspace casino" to be launched. Such an enterprise would enable gamblers to bet from home on everything from "roulette and racing to X-lotto and election results". Other sources indicate that such gambling facilities already exist on the Internet in overseas locations.

It has been well documented that there are parallels between the addiction characteristics of alcohol and gambling. The more outlets that are available for gambling the greater will be the social cost associated with people who face financial ruin for themselves and their families. Australia has been a nation of gamblers and it is important not to increase the ease and forms of gambling. As all forms of gambling are already regulated in Australia it is important that the provision of gambling services within Australia be banned on the Internet. There are also associated problem of overseeing and monitoring standards of such operations.

Robert Stringer
Secretary for Social Justice
September 1995