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THE IIA CODE OF PRACTICE

"Co-regulation" of the Internet starts here!

by Jay Forder, Consultant Editor

Introduction

The “Publication for Adoption” version of the Internet Industry Association’s ("IIA") Code of Practice was released on 9 December 1998.1 It has since undergone minor revisions and the latest version [4.2] is dated 12 February 1999.2 The IIA has worked on this Code since 1996, making drafts public and seeking feedback. With this version [4.2] they feel that the time has come to invite industry players to subscribe. But the Code isn’t fixed in concrete – IIA contemplates that it will continue to evolve.3

The Code is intended to apply to content providers, Internet service providers (ISPs), programmers, vendors and web page developers. According to Peter Coroneos, Executive Director of IIA, some of the big names have already signed – notably Ozemail, Zip Internet and Telstra – and he hopes most IIA members will have signed by June.4

The aim of this report is to summarise the Code’s provisions rather than comment on their effect. Note that a summary can never be 100% accurate because detail is omitted. Please refer to the Code itself if you need to be sure about any of its provisions.

Outline of the main provisions

The introductory sections

The first five clauses of the Code are introductory and scene-setting. They contain a Preamble, Objectives, Principles, Terminology and Scope.

Promotion of the Code (cl 6)

This section provides that Code Subscribers will be entitled to use a Code Compliance Symbol, which, on a web page, may link to information provided by the IIA’s Administrative Council. Subscribers will also have to “use reasonable endeavours to ensure that their employees and agents are aware of the obligation to comply with the Code”.

General conduct (cl 7)

The general aim of this clause is to require Code Subscribers to act openly and fairly. It mentions complying with the Australian Association of National Advertisers’ Code of Ethics, and the Trade Practices Act 1974 in relation to unconscionable or misleading and deceptive conduct. It specifies that Subscribers will not “knowingly exploit lack of knowledge of users". Subscribers are also obliged to be open about their own details (name, physical location and telephone number); to notify users of the IIA’s recommended guidelines for lawful and ethical use of the Internet; and to provide details of other “Relevant Authorities” to whom users can complain.

In view of their prominent role, it is worth noting that a “Relevant Authority" is defined in cl 4 to mean “a body authorised by statute, ministerial direction or parliamentary intent to adjudicate on matters relevant to this Code, including questions of fact. Without limitation, Relevant Authorities include the Telecommunications Ombudsman, the Australian Competition and Consumer Commission, the Australian Broadcasting Authority, the Federal Police, each State Police service and the Racing and Gaming Authorities of each state of Australia.”

Secrecy, privacy and collection of data (cl 8 & 9)

Subscribers are required to comply with the National Principles for the fair handling of personal information.5 In addition Subscribers will have to keep records confidential; not sell or exchange a user’s data except when selling the business as a going concern to another Code Subscriber; refrain from examining or tampering with a user’s data without consent (unless necessary for system security or integrity); and treat email as private. The Code is not intended to release a Subscriber from more onerous privacy requirements in law or another code. On the other hand, it is not intended to prevent a Subscriber from “collecting anonymous aggregate information regarding its users or the use of its services”.

Subscribers must only collect data about a user where “relevant and necessary” for the provision of a service or product, or for other legitimate purposes made known to the user prior to collection. User details will only be used for internal marketing, billing or other necessary purposes, or purposes made known to the user prior to collection or with the users’ consent. Reasonable steps will be taken to allow a user to check information about them; to ensure that data is accurate and up to date; and that it is erased at the request of the user and/or when no longer reasonably required.

Conduct of content providers; content classification (cl 10 & 13)

These are some of the more controversial provisions in the Code. “Illegal Content” and “Unsuitable Content” are defined. Illegal Content means content that is illegal to publish or possess under the law of the jurisdiction where the server is located. Unsuitable Content means content that isn’t illegal, but is determined by the Relevant Authority to be unsuitable for minors in accordance with the National Classification Code.

Content Providers must not knowingly place Illegal Content on the Internet or allow it to remain on the Internet if they have control and the ability to remove or block it. Content Providers are deemed to have complied with this if they remove the content when advised by a Relevant Authority that it is illegal. ISPs must also take reasonable steps to prevent their users from placing, obtaining or transmitting Illegal Content. ISPs are deemed to have done this if they inform their users not to do so and, when they become aware that a user has done so,

• they request the informant to refer the matter to the Relevant Authority;
• if the Relevant Authority informs the ISP that the material is Illegal Content, they remove it where feasible;
• they inform their user of any breach of conditions or criminal offences they may be committing; and
• they cancel the account of any repeat offender.

Providers must also not knowingly place invitations, directions or links to Illegal Content.

This does not apply to the results of automated search engines, catalogues or directories. Content Providers must also not use misleading metatags.
As for Unsuitable Content, providers must [where technologically feasible] ensure that it is “segregated and [has] clearly defined labels which can be recognised by filter software or technologies” and is “accompanied by suitable screen warnings” or has “access managed by subscription enrolments to exclude under age subscribers”. Reasonable steps must be taken by Content Providers to ensure that content supports appropriate ratings technologies and that it is classified and labelled according to systems recommended by the Administrative Council. ISPs will also encourage their Content Providers to use these systems. ISPs are encouraged to provide their users with the means of finding out about PICS based rating and filtering.

Content Providers will also “not knowingly place on the Internet material which, if accessed, would infringe copyright”.

Conduct of vendors (cl 11)

Subscribing vendors of products, information and/or services over the Internet must advise users whether the method of payment is considered secure (according to guidelines issued by the IIA’s Administrative Council); what refund or exchange policy applies; and what legal jurisdiction applies. Where products are sold, a vendor must disclose all terms and conditions of sale prior to the sale, including all costs, specifications and characteristics of the product, and time for delivery.

Where software is sold and delivered on the Internet, a vendor must disclose the terms of the software licence and details about the size of the software and the relevant operating system required. Similar provisions apply where other content is sold and delivered over the Internet.

Clauses 11.5 and 11.6 relating to unsolicited email are in suspension at the time of writing. Following concern expressed by members about their limited “opt-in” approach, the board decided to suspend the provisions on 11 February and to seek member feedback. On 22 February, it announced a clear preference amongst members for an “opt-in” policy. Accordingly these clauses are being re-drafted.

General conduct of ISPs (cl 12)

Amongst other things, ISP subscribers are required to make available to each user a copy of rules identifying unacceptable posting or conduct that may lead to removal of the unacceptable content, suspension or cancellation of the users account or prosecution. These rules will be made available by the Administrative Council. Agreement must also be reached on the extent of itemised billing; procedures for querying an account; the extent of telephone or other support; an acknowledgment that the user won’t do anything that would require the ISP to take remedial action under the Code; termination and transfer of service provisions; and any limitations on connectivity.

The Code of Practice on Prices, Terms and Conditions by the Australian Communications Industry Forum applies to subscribers. Those who host web sites must also recommend that users obtain advice regarding potential liability.

Conduct of Web page developers and programmers (cl 14)

Web page developers and programmers must agree on the ownership of copyright or licence terms with their clients.

Administrative Council (cl 15)

The Council is made up of 5 members: an independent chairperson (nominated by the Federal Minister for Communications, Information Technology and the Arts), two IIA representatives, a user representative and a lawyer. Its duties include reviewing and monitoring the effectiveness of the Code, monitoring international developments, producing an annual report, obtaining adequate finance for administration of the Code, and reporting suspected breaches of the law to Relevant Authorities.

Handling of difficulties and complaints (cl 16)

Subscribers must use reasonable endeavours to resolve difficulties and complaints within certain time limits. Where a satisfactory resolution is not achieved, users must be referred to a Relevant Authority or industry dispute scheme with jurisdiction to resolve the complaint, or to mediation under the Code. The Code mediation provisions contemplate the Administrative Council chairperson appointing a mediator acceptable to both parties, with the subscriber bearing the reasonable costs. For disputes within the jurisdiction of the Australian Broadcasting Authority (and subject to legislation empowering it to act), subscribers agree to the ABA’s jurisdiction as a last resort. Parties can also seek legal remedies.

Registration and deregistration under the Code (cl 17)

Code Subscribers include current financial members of IIA or appropriately affiliated organisations, or anyone that has applied to be a Code Subscriber. The Administrative Council may investigate a complaint that a Code Subscriber is not complying with the Code. It may issue warnings or order remedial action (such as requiring that the Subscriber send a corrective letter or engage in corrective advertising). If the Subscriber fails to comply with the Council’s warnings, a member of the Council may consider whether to deny permission for the Subscriber to use the Code. Compliance symbol or represent that it complies with the Code. The Subscriber may appeal to the full Administrative Council. If the appeal fails, the Subscriber must notify its users that it has ceased to be a Code Subscriber. A deregistered Subscriber can apply for registration again after 12 months.

Conclusion

This is a far-reaching Code. It regulates many aspects of Internet activity. One of the most interesting features of the Code is the attempt to take account of government views. The preamble openly states:

“Specifically, by agreement with the government matters have been dealt with in the code as a substitute for statutory intervention or as part of a scheme that reduces the role of legislation.”

This heralds a new approach – co-operative regulation [or “co-regulation”] between governments and industry bodies. Is a code sanctioned by government and enforced by industry bodies on the advice of semi-government administrative bodies an appropriate model for regulation of the Internet? It is bound to be controversial, and has already generated considerable critical comment. It will be interesting to see how well this model is accepted.