

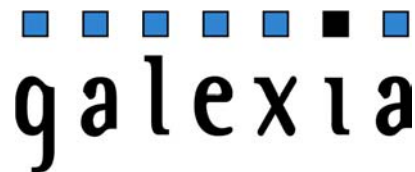
Australian and regional regulatory responses to consumer protection in electronic commerce

CHOICE / Cyberspace Law and Policy Centre UNSW
Roundtable Seminar: Consumer Rights in the Information Age

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Overview

- Key issues
 - » Consumer protection
 - » Electronic contracting
 - » Privacy and data protection
 - » Spam
 - » Jurisdiction

- Developments in Australia

- International developments
 - » The harmonisation movement
 - » UN Convention
 - » ASEAN E-Commerce project
 - » Pacific Spam project

Australia – Consumer protection

- No overall plan or foundation:
 - » No central agency
 - » Distributed responsibility
 - » Heavy reliance on individual complainants and litigants
 - » Heavy reliance on voluntary codes

- Despite this, some occasional successes:
 - » TPA
 - ACCC investigation of Google Australia and Trading Post
 - Third line forcing protection (iPhones?)
 - Cross-border protections

 - » EFT Code
 - Resisting the push by financial institutions to shift liability to consumers for spyware and phishing vulnerabilities

 - » Spam Act
 - Prohibits both unsolicited commercial emails and the harvesting of email addresses – and it has been enforced!

Australia – Virtual consumer protection

- A major issue in Australia is the number of virtual protections in place that make it appear consumers are protected
- SOCOG case – Bruce Lindsay Maguire v Sydney Organising Committee for the Olympic Games
 - » SOCOG decided it was cheaper to pay the fine than to fix their website so that it was accessible to the visually impaired.
- Australian Guidelines for Electronic Commerce (Treasury, 2006)
 - » Do not apply to a single transaction in Australia
- The Internet Industry Association (IIA) 'Responsible Internet Business Program'
 - » Respect the privacy of end users
 - » Take reasonable steps to inform customers of internet safety issues (by directing them to appropriate resources etc)
 - » Provide reasonable assistance to law enforcement authorities acting within their legal powers in investigating online fraud or crime
 - » Ensure your business respects copyright and intellectual property rights and applicable Australian content regulations

 - » Q: How many members? A: Three.

The Harmonisation Movement

- Growing support for the harmonisation of e-commerce laws, including consumer protection, electronic contracting, privacy, spam and cybercrime.

- Soft harmonisation
 - » UNESCAP
 - » SAARC
 - » Pacific island Forum (general Cyberlaws)

- Hard harmonisation
 - » ASEAN
 - » SADC
 - » EU
 - » Pacific island Forum (spam)

- Note: harmonisation of jurisdiction approaches has, to date, failed.

Global harmonisation: OECD

- OECD Guidelines for Consumer Protection in Electronic Commerce
- OECD Guidelines for Protecting Consumers from Fraudulent and Deceptive Commercial Practices Across Borders



Global harmonisation: UNCITRAL

Convention on the use of electronic communications in international contracts

- Adopted in November 2005
- Signing ceremony in June 2006 (Eighteen signatories to date)
- Covers more than just the contract (eg negotiations)
- Complex scope and application
- Comprehensive coverage of time of dispatch and receipt, error and automated contracts.
- Limited (or no) coverage of disclosure of terms and conditions, jurisdiction and enforcement.



Regional harmonisation: ASEAN E-commerce legislation

Member Country	Status – Project Inception (January 2004)	Status – Current (January 2007)
Brunei	Enacted	Enacted
Cambodia	None	Draft
Indonesia	None	Draft
Laos	None	Draft
Malaysia	None	Enacted
Myanmar	Draft	Enacted
Philippines	Enacted	Enacted
Singapore	Enacted	Enacted
Thailand	Enacted	Enacted
Vietnam	None	Enacted

Regional harmonisation: Pacific Spam legislation

- Harmonised spam legislation, enforcement and co-operation regime in the Pacific.
 - » Funded in part by AusAID's Pacific Governance Support Program (PGSP)
 - » Galexia and the Department of Broadband, Communications and the Digital Economy (DBCDE) are implementing partners

- Includes harmonised spam laws in:
 - » Australia (enacted)
 - » Tonga (enacted)
 - » Cook Islands (enacted)
 - » Niue (draft)
 - » Samoa (draft)
 - » Vanuatu (under consideration)

Lessons

- Consumers need real protection, not virtual protection
- Some impressive ad hoc successes in Australia (e.g. EFT Code)
- Australia is yet to achieve internal harmonisation (e.g. inconsistent State ETAs)
- Hard harmonisation projects can deliver quick results – especially where global discussions have stalled
- International models are available:
 - » Consumer protection – OECD guidelines
 - » Electronic contracting – UN Convention
 - » Spam – OECD guidelines
 - » Cybercrime – EU Convention

Group Discussion

Discussion and questions