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**REGULATORY APPROACHES TO MANAGING CONTENT ON  
THE INTERNET (Draft speaking notes)**

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(These views are not necessarily those of the Broadcasting Commission)*

**Objectives of Information and Communication Technology (ICT) Policy**

1. Any discussion on regulating the Internet should properly begin with an appreciation of ICT policy objectives. Usually they relate to competition matters, non-discriminatory access and a legal framework that is adequate and flexible (for example, regarding IPR: Fair sharing of network created values, sufficient security for creators, no unnecessary barriers to meeting public demands).
2. It is not common practice to include “public interest” considerations. Although the argument could be made that all policy objectives should be “in the public interest.” Nonetheless, a specific public interest consideration, I think, should be ensuring public service in network environments, particularly diversity of content regarding culture, religion, language etc and real access to resources, including media literacy.
3. My focus on public service considerations is predicated on the increasing social relevance of some online services, for example webcasting and search engines. This gives rise to the question whether the variety of Internet services undermine the legitimacy of public broadcasting or whether there is a need for instruments to ensure the application of public service standards to on-line services.

4. Different solutions or responses will come from different societies, but there should not likely be any disagreement that although creating competition and ensuring public interest are not contradictory objectives, competition does not necessarily lead to all public service objectives being met.
5. To be specific, it must be fully appreciated that new regulatory approaches such as self-regulation or co-regulation are not synonymous with regulation in the public interest. This is unless, the notion of “self” in self-regulation is liberally interpreted to integrate NGO’s, interest groups and civil society into the regulatory process.

#### **CAN CONTENT REGULATION BE AVOIDED?**

6. From all indications, all of the content broadcast today over the air will eventually be transmitted via the Internet. Asymmetric Digital Subscriber Lines (ADSL) may be unable to carry the quality images broadcast on television. However, Fibre to the home (FTTH) technology has the necessary capability. The only issue is the extent to which FTTH will prevail on consumers, in other words, the extent to which there will be household take up of broadband Internet.
7. One compelling view, is that people will depend more on computers whenever broadband Internet is capable of securing wavelength bands close to those of television images, or of forwarding files with high-quality images. If that view proves correct, then broadcasting will not maintain its current advantage as the major source of entertainment.
8. Given that new media, for the most part, are complementary to conventional media the question arises whether regulatory approaches in the field of broadcasting should be transferred into the network environment. There is also the option of learning from the experience obtained in the field of broadcasting without transferring broadcasting regulatory models to the Internet.

9. Now, we should proceed first by accepting that Internet content is on a continuum that on the one extreme are private communication (email), and on the other video streaming and webcasting, akin to conventional broadcasting. There is no question that regulating any content that constitutes private communication cannot be countenanced. But there is a real difficulty in construing an argument that conventional media should be proscribed from broadcasting content that is inimical to the public interest, for example, promoting sedition, but that the very same broadcasters should have no constraints were the identical material broadcast on the Internet.
10. Having said that, I concede that unlike traditional media of expression, such as paper and film, new media is elusive, intangible and therefore difficult to control. Which is probably why it is found attractive by most countries to favour non-regulatory approaches to Internet content. Indeed the FCC Internet working Paper says as much. However, it is a mistake for us to proceed without making the distinction between the existing technological and jurisdictional hurdles that confront anyone proposing to regulate the Internet, and the entirely different matter of whether, as a principle, there should be an unqualified right to bring any content into the public domain without responsibility.
11. I think the US Congress will be proved right in the intention behind the Communications Decency provisions of 1996. Those provisions criminalized transmission, via the Internet, of indecent material to persons under the age of 18. They were struck down by the US Supreme Court in 1997 for violating the First Amendment (guarantee of freedom of speech).
12. In most other jurisdictions the guarantee of freedom of speech is not quite the albatross it appears in the American context. What then should be the response in those jurisdictions, to undesirable content, such as child pornography, on the Internet?
13. I think the approach should be two pronged. Firstly, content providers, as distinct from on-line providers, should be held

responsible for what they put in the public domain, via the Internet. That Herculean challenge, should prove no more difficult than the war against phantom terrorists. Secondly, self-regulation should be required of the on-line service providers industry, through the development of Codes of Practice. If they fail to do so, government should not resile from its duty to act in the public interest and would be justified in adapting regulatory treatment of conventional media, to deal with problematic content produced by new media.

13. I think the perceived dichotomy between the regulation of conventional media which is generally regarded as desirable and regulation of the Internet (generally regarded as undesirable) will be whittled away as conventional media suppliers produce more new media and vice-versa.
14. Finally, some points of general agreement. Naturally, I support any intervention that seeks to protect creators of content and promote the creation and distribution of local content. I am also inclined to the view that regulation must never undermine access and growth. However, I do not subscribe to the postulation offered by Dr. Wext yesterday, that a *laissez-faire* attitude to regulation is a good thing.