Prometheus, Vol. 23, No. 2, June 2005

Mobile Message Services and Communications Policy

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Abstract *Something of a design after-thought, mobile phone SMS (Short-Message Services) have been enthusiastically adopted by consumers worldwide, who have created a new text culture. SMS is now being deployed to provide a range of services and transactions, as well as playing a critical role in offering an interactive path for television broadcasting. In this paper we offer a case study of a lucrative, new industry developing internationally at the intersection of telecommunications, broadcasting, and information services—namely, premium rate SMS/MMS. To explore the issues at stake we focus on an Australian case study of policy responses to the development of premium rate mobile messaging services in the 2002–2005 period. In the first part, we give a brief history of premium rate telecommunications. Secondly, we characterise premium rate mobile message services and examine their emergence. Thirdly, we discuss the responses of Australian policy-makers and industry to these services. Fourthly, we place the Australian experience in international context, and indicate common issues. Finally, we draw some conclusions from the peregrinations of mobile message services for regulators grappling with communications policy frameworks.*

Keywords: mobile; wireless; communications; policy; cultural citizenship; consumer protection

Over the past decade, there has been a long debate on what transformations in policy-making, regulation, and institutions are required to achieve desired goals in the face of transformation in the communications and media industries. A starting point for such debates is the now commonplace proposition that existing policy frameworks have been inherited from specific national, regional, and international histories of regulating broadcasting, telecommunications, and media, as distinct entities, and are not well-placed to deal with contemporary communications technologies that blur the boundaries among these. There has been extensive discussion regarding the Internet, in particular, and how this eminently convergent technology poses challenges for existing law and policy—something to which governments have responded in various fashions over the past decade. Another area of contention has been the interweaving of broadcasting and telecommunications,

Prometheus ISSN 0810-9028 print/ISSN 1470-1030 online © 2005 Taylor & Francis Group Ltd
http://www.tandf.co.uk/journals
DOI: 10.1080/08109020500085601

to which a number of governments have responded by seeking to converge their regulation.

In this paper, we probe unfolding convergence by examining a niche area that has operated in the margins of regulation but that now is moving centre-stage: mobile data services, especially mobile messaging. Mobile telecommunications are already a huge and growing business, and the new products and services represented by mobile messaging promise to open new markets and opportunities. There are large matters at stake here also. Mobile message services—especially those developing in the area of premium rate telecommunications—are also an intriguing yet under-recognised instance of the shifting relationships between consumers and producers that are the hallmark of convergence. The premium rate services business model is facilitating the rapid global extension and expansion of user-pays markets for customised, mobile, audiovisual information and entertainment. Premium rate services illustrate the 'reconfiguration of media power and reshaping of media aesthetics' that Henry Jenkins associates with the cultural logic of institutional, technological and service-level convergence.[2] They are also the site of a range of important media consumer/producer (and in this case carrier) tensions. We focus here on consumer protection issues.

Around the world, governments and regulators are finding that their policy, legal and regulatory frameworks are not well-equipped to deal with mobile message services. Broadly, the difficulty is that mobile message services are not well captured by the still conceptually separate regimes designed for telecommunications or broadcasting; nor are they captured by the new policy responses to the mass diffusion of the Internet from the mid-1990s onwards. At stake in this transition are crucial issues of industry and market development but also consumer protection and cultural citizenship.

To explore the issues at stake we focus on an Australian case study of policy responses to the development of premium rate mobile messaging services in the 2002–2005 period. In the first part, we give a brief history of premium rate telecommunications. Secondly, we characterise premium rate mobile message services and examine their emergence. Thirdly, we discuss the responses of Australian policy-makers and industry to these services. Fourthly, we place the Australian experience in an international context, and indicate common issues. Finally, we draw some conclusions from the peregrinations of mobile message services for regulators grappling with communications policy frameworks.

Understanding Premium Rate Mobile Services

With the advent and widespread deployment of digital systems, mobile phones were used by an estimated 1,158,254,300 people worldwide in 2002 (up from approximately 91 million in 1995), 51.4% of total telephone subscribers.[3] In Australia, mobile penetration (mobile phone services per 100 inhabitants) in June 2003 was 71.9%, an increase of 7.4 percentage points from June 2002.[4] Australia's 71.9% figure compares with an international average of 21.91% and a regional (Oceania) average of 54.45%.[5] Comparable OECD figures for 2002–2003 are not yet available, but the 2001 figures showed Australia at 57.1%, just above the OECD average of 53.9%.[6]

An important aspect of mobile phones and their staggering diffusion is text messaging. In late 2003 Australia's 14.3 million mobile users sent approximately 4 billion text messages in the 2002–2003 financial year.[7] The history of SMS is an

intriguing one.[8] SMS was built into the European Global System for Mobile (GSM) standard as an insignificant, additional capability. Yet in many countries SMS was perceived as cheap, and it offered one-to-one, or one-to-many, text communications that could be read at leisure, or more often, immediately.[9] SMS was avidly taken up by young people, forming new cultures of media use.[10] (We are mindful here that mobile and SMS use varies quite widely. In Hong Kong, for instance, SMS did not take off so quickly not least because of an extremely competitive market in which voice mobile call charges were set at a relatively low level.)

Once SMS became well-established as a means of communication in many countries, a range of industry participants, especially new and aspirant entrants, became very interested in this technology. In a sense, although it was never expected originally to play this role, SMS conditioned markets for data services. Presently, SMS also supports a myriad of substantial new businesses ranging from specialist software developers for SMS traffic management, marketers, and content vendors, including television networks enhancing their programme offerings with mobile interactivity (voting, competitions, or audience feedback, for instance). Capitalising on this unexpected boon, mobile carriers are seeking to position MMS (multimedia services) as the successor to SMS, supported by heavy marketing to promote consumer adoption of new mobile phones with picture and video capacity.

The premium rate service value chain in premium rate fax and telephony services can be quite complex. For fixed network carriers, the revenues derived from premium rate services account for a very small proportion of total revenue, but the rate of return is much higher than for standard calls. Now telecommunications has become much more complex. At the same time, theorists of value creation have suggested that more attention needs to be paid to the network concepts.[11] Li and Whalley have suggested, for instance, that the 'telecommunications value chain is increasingly being deconstructed, and is giving way to a complex value network'.[12] In the area of wireless and mobile services, especially mobile data, this reconstruction of value chains is striking, fast-moving, and has not yet been adequately mapped. Maitland *et al.* have suggested that:

> Mobile data services result from the convergence of mobile telephony, data communications, and features of the Internet. When industries converge, the new value chain is in part formed through a merger of the value-adding processes from the original industries.[13]

One of the difficulties faced here, however, is that analyses of the economics of mobile data have been focussed on structural characteristics of 3G services and predictions of take-up, even after the 3G licensing debacle rather than examination of the text, audio, and video messaging services via the SMS/MMS platform. So Maitland *et al.* see SMS as a 'first step towards mobile data',[14] in an evolution to 3G.[15] Certainly mobile network operators, however, are looking to premium rate services to accelerate call volumes and returns on costly spectrum investments. They are also developing new multimedia value added and premium rate services to entice consumers to wireless communications platforms, thereby preparing markets for 'next generation' location-based interactive and m-commerce services. However, one of the problems in the current work on mobile data is that neither scholarship nor policy appears to have inquired into the nature of information, or culture, in SMS/MMS, and what this implies for understanding consumption and production. For consumers a central feature of what is purchased in many of these

premium rate services is doubtless information but also something intangible—experience, including the opportunity to become 'interactive partners in further development of the creative product', identified as a defining feature of creative industries.[16] Before proceeding with our discussion of policy responses to premium rate mobile message services, we now need to turn to understanding the history of premium rate telecommunications and how it has been regulated.

The History of Premium Rate Services: Origins and Regulation

Premium rate services have been a diverse class of telephone services that have a layer of value added to the standard telephone service. This can take a number of forms. It can be content or interactive functionality, or both, and is charged at a higher rate than a standard telephone call. Services can be pre-recorded or live, and assume a range of media forms including premium rate SMS/MMS. Some examples of premium rate telephone information services are: specialised weather or sports information services; competition entry lines; live counselling services; 'psychic' lines; 'adult entertainment' services. The most common method of billing is for premium rate services to be charged to a telephone account. In Australia, premium rate services provided through the fixed telephone network now use a '190' prefix and mobile premium rate services use a '19' prefix. Although the commonality of '19' will assist consumer awareness of higher costs associated with services in these number ranges, consistency in consumer protection arrangements for 19 and 190 services has not yet been achieved. At the time of writing mobile carriers were arguing strongly that they should be allowed to offer premium rate services in their proprietary 'walled gardens' on different number ranges.

Premium rate services started to be offered in the 1980s, focussing on voice services, such as dial-it information. As international industry association, the Network for Online Commerce (formerly the International Telemedia Association) describes it: 'In the early 1980s, many years before the deregulation of the telecommunications industry around the world, incumbents such as BT in the UK, AT&T in the USA, and Deutsche Telekom in Germany, began offering premium rate telephony as a payment mechanism for independent service providers'.[17] Premium rate telephony services emerged at a time when the digitisation of telephone exchanges was in full swing, which made third-party interconnection with the public switched telecommunications network (PSTN) easier, especially later when interconnection with the PSTN was being liberalised. Typically a service provider offers its facilities to smaller information or content providers. The service providers buy network access from a carrier. As of August 2004 in Australia, only Telstra offers wholesale services for fixed line premium rate services. Optus was also involved in this industry in the 1990s, but subsequently withdrew. All carriers are involved in mobile data premium rate services. Reliable figures on the size, scope and revenue of the industry are difficult to find. However, in July 2003 it was estimated that: 'The 190 premium services industry is said to generate gross revenue of between $150–$170 million each year'.[18]

The content and applications of premium rate services have evolved and innovated in the ensuing years. The media and communication platforms they are associated with have also diversified. For example, premium rate services are increasingly the means by which fixed and mobile telephone networks are integrated with television. Because they are convergent they do not fit comfortably into the current media and communications policy frameworks. Until recently most

public debate of these services has focused on the presence and conditions of access to adult premium rate services. These debates have tended to obscure a larger underlying problem of unanticipated high bills also known as consumer 'bill shock'. The need for an integrated, overarching set of consumer protection principles that applies to the business model rather than whether premium rate services are delivered by means of fixed or mobile networks has yet to find acceptance for premium rate services.

While there are legislative restrictions on the supply of sex services consumer protection for fixed line premium rate services has largely been taken up by an industry self-regulatory scheme called the Telephone Information Services Standards Council (TISSC; www.tissc.com.au). For over a decade TISSC has been charged with the development and operation of a Code of Practice, adjudicated by an independent Arbitrator. It is a tripartite industry self-regulation agency and a company limited by guarantee, with a Board comprising equal numbers of industry and consumers representatives, an independent Chair, and an independent Arbitrator. Industry representation comprises Telstra, the only carrier presently active in fixed line premium rate services, and two service provider-elected representatives. Three 'public members' are nominated by consumer groups.

While not well known outside its sphere of operations, namely the premium rate services industry, TISSC has made a reputation as a 'niche' regulatory body. It is a member of the international association of premium rate telephony regulators, the International Audiotex Regulators Network (IARN), which was established in 1995:

> as a forum for exchanging information and good practice among its members. The members are all involved in the regulation of, or setting standards for, content and promotion of all premium rate services ('audiotex' in their own countries). Most of these bodies have been appointed to protect the interests of the general public. Their structure and methods of control vary from country to country, nevertheless independent consumer protection formally exists. It is not left to the industry alone to police itself.[19]

Also a member of IARN is the British premium rate service regulator, the Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS; www.icstis.org.uk), the closest counterpart in structure to TISSC.

What is significant for our purposes here is that TISSC is genuinely self-regulatory. Its mandate comes from a consensus on the part of the service provider community itself, which have benefited from considerable leadership, as well as the carrier. TISSC does not derive its power from legislative or regulatory backing; rather it comes from the good-will and support of the parties involved, especially for its Code as a regulatory instrument. TISSC's legal basis and enforcement powers lie in contract law, specifically in the contracts Telstra as the carrier signs with service providers requiring compliance with the TISSC Code. This is quite different from the other major complaints-handling body in Australian telecommunications, the Telecommunications Industry Ombudsman (TIO), which handles billing matters. Compliance with the TIO scheme is a licence condition upon all telecommunication carriage service providers and Internet service providers, provided for in legislation.[20]

Because of its self-regulatory nature, TISSC is able to respond quickly and flexibly to new issues. Changes to the Code need to be approved by the Council, which meets every six weeks, and so can be made very quickly and put into force. TISSC

relies on its good standing in the industry, consumer movement, and general community to be trusted to make responsive amendments in good faith. Examples where TISSC has amended its code to include fast-changing industry developments are amendments on premium rate facsimile, Internet diallers, and, in July 2004, subscription television premium rate back channel services (such as Foxtel's digital television service which uses 190 premium numbers to bill consumers for taking part in competitions or voting).

There is also a countervailing weakness, however, in the TISSC model. This is precisely to do with the legal basis of enforcement in the contract between the carrier and service provider. TISSC is reliant upon the carrier to enforce an ultimate remedy of closing down a service, or operator. In most cases to date, this has worked efficiently. However, there are odd cases where the carrier has had concerns that closing down a service may expose it to legal action on the part of an aggrieved service provider. There are also issues where the government has taken specific, additional responses regarding premium rate services, usually with less than optimum results.

The most recent case is that of unexpected high bills. In many respects, this is the key consumer concern that premium rate services raise—as certainly the case of Internet diallers does. In the absence of adequate information those consuming premium rate voice services, for instance, can easily generate very high bills (into the tens of thousands of dollars), without appreciating they are doing so. While the TISSC Code places obligations on service providers to offer services in a fair way, to provide value for money, and to provide adequate information for consumers of services, this is not sufficient for many consumers. They would also be interested in options such as being able to nominate a limit or cap of their desired expenditure on a particular service or class of services. In March 2003, then Minister Alston directed the Australian Communications Authority (ACA) to make a determination requiring call capping on premium rate services.[21] By late 2003, the new Minister Williams changed the policy, and instituted a review by the Communications Authority of unexpected high bills and credit management issues.

Premium Rate Mobiles and Australian Policy Responses

Like fixed line premium rate services before them, premium rate mobile data services in Australia—as in many other countries—were not covered by existing legislation. Policy-making in this area, however, is potentially more important than the previous case of fixed line premium rate services—because the revenues and reach of the premium rate mobile services are expected to be—or already are—much greater.

In Australia, premium rate SMS/MMS services were introduced on a 'trial' basis in September–December 2003, to 'assess commercial and community interest in these services'.[22] Short numbers in the 188 range were used. The terms of the trial were set by the ACA and agreed to by participating carriers but this memorandum of understanding was not made public on the basis that it was commercial-in-confidence. Consumer organisations raised criticisms regarding a lack of public consultation, input and overview of these arrangements (for instance, the monitoring and evaluation of the trial).

Ideas about the need for regulation in premium rate mobiles and the forms it might take had been discussed from at least 2002 by industry, consumers, and policy-makers. Following a discussion paper (October 2002) and options paper

(January 2003), the ACA decided the 19 number range was most suitable for the new premium rate messaging services.[23] At this stage, the ACA's preliminary position was that: 'In order to ensure the successful introduction of messaging services it is important that well developed consumer protection and complaint handling mechanisms are in place … an important factor in public confidence in the new services …'.[24] In contrast, at least some carriers in the industry believed that there should be a 'wait-and-see' attitude taken on regulation, as the ACA observed in a report to the Minister: 'They consider that pre-emptive regulation of the new number ranges would act as a disincentive to customer use of the services, thereby affecting potential revenue unreasonably. Further, they have argued that the new premium messaging services are expected to be low cost fixed flat rate charges'.[25] Other sections of the industry (for example, the majority of service providers) thought a self-regulatory approach based on the TISSC model was the way forward. TISSC itself took the initiative and commenced drafting a potential Code, as well as approaching industry participants to discuss whether the TISSC model could be extended to cover premium rate mobile services and holding a Forum.

With debate on premium rate issues proceeding and the trial well underway, the ACA held a Forum for industry discussion. At this Forum there was one group of participants (largely service providers and consumer groups) that favoured a TISSC, industry self-regulatory model—while the carriers, under the banner of the Australian Mobile Telecommunications Association (AMTA), put forward their own self-regulatory model based on the Australian Internet Industry Association Codes for regulating Internet content. After the Forum the ACA worked to consult with stakeholders, and tried to arrive at a consensus view on the preferred option for regulatory arrangements. It appeared close to releasing its model immediately before Christmas 2003, but then did not do so as expected. Instead, in January 2004 it released a set of interim consumer protections principles and procedures for premium rate services.

One of the difficulties the regulator believed it faced was the legal and regulatory underpinning for the scheme. The ACA did not feel adequately empowered to regulate consumer protection let alone content regulation aspects of premium mobile services. During the second half of 2003, and into early 2004, the ACA explicitly relied on its powers to regulate telecommunications numbering as a basis for consumer protection. It was a creative approach to the problem but was unlikely to succeed.

It was here, on the shoals of regulatory and legislative uncertainty, that ACA's efforts to introduce appropriate consumer protection and content regulation arrangements for premium messaging ran into an impasse. From late November 2003, it had been clear to observers that some sections of the industry had taken the opportunity of a change of Ministers (with Daryl Williams assuming the portfolio in early October 2003), and an interregnum at the ACA (with Chair Tony Shaw stepping down), to exert pressure to delay or diminish signalled regulation of premium rate mobile messaging services. The ACA appeared confident of determining a framework by early January 2004, but delays and subtle yet telling change of directions eventuated instead. In April 2004, the Department and Minister stepped in, to formally and publicly enunciate what had become the new approach, and, the ACA, despite its earlier assurances, released the new 19 number ranges without consumer protection in place.

It was not until the end of 2004 that the regulator—with the government behind the scenes—was able to revise and release a proposal for a regulatory regime in

premium rate mobile message services. Still under debate in early 2005 at the time of writing, this took the form of a rule that would mandate some detailed rules on appropriate content of premium rate mobile messages, and some rather more sketchy rules on other consumer protection issues.

Participants in the industry, individually or in groups, would be obliged to put in place an escalated complaints-handling scheme—either via an approved self-regulatory scheme, or a default scheme. Most participants in the industry had already embarked on an industry self-regulatory scheme on the TISSC model, which appears likely to be adopted. However, carriers were still fighting a rear-guard action to have their own proprietary mobile message network services dealt with by a complaints-handling body of their own choosing, rather than the TISSC. It remains to be seen whether they will be successful in this gambit but in any case a safeguard has been proposed that consumers and industry will have a right of review to the regulator from any escalated complaints-handling body. If this avenue of review is to proceed it will lead to an awkward situation where decisions of an industry self or co-regulatory scheme can be appealable not only to the regulator; but decisions then affirmed or changed by the regulator can ultimately be appealed under administrative law applying to government agencies through a series of higher tribunals and courts.

Policy Dilemmas in Consumer Protection

The difficulty faced by the ACA and the government speaks to the genuine policy and regulatory complexity of this new area of converged networked communications services. There are quite a number of important consumer issues that require attention and have been raised in public debate. These include: definition of children and youth for premium rate SMS/MMS; and what restrictions will apply, with respect to content, guidelines for premium rate services aimed at children, message introduction periods (or any advice to consumers regarding services to ensure they receive informed consent), instructional messages at no cost to consumers, how to provide appropriate call duration or call cost warnings to consumers in services such as SMS/MMS and text/MMS group chat; clear information on the total amount payable for a service; regulation on advertising and promotional issues; credit limits and consumer controlled as well as stipulated caps on expenditure; fair terms in contracts; source of dispute resolution relating to the purchase of a product or service from a third party provider via a mobile service (as it is presently unclear what consumer options are).

The case of the UK offers a useful comparative perspective on consumer and content issues relating to premium rate message services. Here the self-regulatory body ICSTIS regulates premium rate services. ICSTIS bears a number of similarities to TISSC, not least that it develops and administers its Code of Practice[26] and guidelines.

What is internationally significant, however, is that ICSTIS's strictures have a statutory basis through the UK *Communications Act*, enforced by the converged regulator Ofcom. Ofcom is given the power to set conditions on the 'provision, content, promotion and marketing of premium rate services' (s. 120). It also has the power to approve a code regulating the content and provision of premium rate services made by someone else as long as this meets stipulated conditions (s. 121), and to enforce this or other determinations it makes. Ofcom has relied on this power to authorise ICSTIS and its code and guidelines. Importantly ICSTIS has

universal coverage of premium rate SMS/MMS services across the industry in the UK, including services provided by third-party content providers, as well as those provided by the carriers on their proprietary networks. For instance, ICSTIS has a specific, authorised guideline on premium rate SMS which addresses a range of consumer protection issues specific to these services such as instructional messages, group text chat, text chat and dating services, and text chat and the youth market.[27]

It is the contention of ICSTIS that it represents effective regulation of the British market, not just in the interests of citizens and consumers, but also for the benefit of the industry. ICSTIS argues, as did its director George Kidd, on his February 2005 Australian visit sponsored by the ACA, that its scheme has safeguarded a now £2 billion market for premium rate mobile message services in the UK.[28] In contrast, Kidd pointed to other markets, such as the US, where the premium rate mobile message industry has been surprisingly low (an estimated US$150 million in 2004) because no effective regulation is in place, consumer confidence is correspondingly low, and the market is underdeveloped. Such an argument has been hotly contested, if in suitably muted tones, by some larger carriers, who would contend that such regulation is unnecessary because it is in their own interests, and their 'brand values' (as the fashionable phrase goes), to have good corporate policies, customer service, and dispute resolution in place. Such arguments about the economic benefits of responsive regulation, of course, go not only to the merits of various possible responses to mobile message services;[29] they obviously have larger implications for questions of regulation.

Returning to the Australian policy debates, the most obvious feature of the policy development process here has been the domination of the debate by fears about inappropriate and undesirable content. The government and the regulator have been keen to avoid any perception in the community that it will allow 'adult' content on mobile to be available to children or young people under the age of 18, let alone the 'tweens' who are very often heavy users of mobiles. Nor indeed does a majority of the industry, including carriers and large service providers, wish to permit certain sorts of content to be available to adults (such as X-rated material, but also, in a pragmatic vein, R-rated content). Mobile providers do believe that adult services are lucrative, but wish to be careful in introducing these with safeguards—to avoid heavy-handed regulation of what is believed to be a very lucrative market. The industry has advocated an opt-out rather than opt-in regime for adult services (at least for 'post-paid' customers), seeking to convince consumers that they have an appropriate access restriction system in place. Much of the policy discussion about consumer safeguards in premium rate SMS/MMS has revolved around such measures to prevent or restrict access to undesirable content. Other consumer protection issues, like those we list above, have not received such attention.

The fixation of government and industry with issues of undesirable content, especially adult content, became more salient in the developments that occurred once the policy process broke down. In the absence of a regulatory framework, Hutchison broke the default carrier consensus, and moved in where angels feared to tread by launching its '3' adult service on 16 April 2004 (almost a year exactly after the 15 June 2003 launch of the '3' service),[30] a move later criticised by competitor Vodafone.[31] Minister Daryl Williams responded quickly with his directive to the ACA to make a service provider determination to set out appropriate restriction on access by minors to adult content on new premium mobile services.[32] At this stage also the Minister moved to provide the ACA with additional powers to

make regulation relating to premium rate services,[33] so addressing the weakness in its position that became painfully evident over the late 2003/early 2004 period.

The policy-by-press-release approach here is reminiscent of the earlier telephone sex law, or the internationally queried Australia legislation governing the Internet—when a moral panic around porn was a powerful shaping force in swift but fragmented and ineffective legislative responses. In this regard, we see the premium rate message services policy debate having an uncanny resemblance to earlier premium rate voice telephony debates too as well as characteristic features of Australian media policy developments more generally.

One of the difficulties so far in these debates has been that the industry has been prepared to make decisions about what is or is not acceptable content, without much public involvement or discussion, or indeed reliable research on consumption and use of services.[34] If mobiles are indeed an emerging and important site of cultural consumption, then there is a need for governments and regulators to take a broader view on content regulation, as well as consumer protection.

Conclusion: Fragmentation or Convergence in Mobile Message Policy?

Although the ACA has allocated the 19 prefix for the permanent development of premium rate services on mobile networks, and has finally articulated consumer protection arrangements for these services, all the signs are that a cohesive and integrated regulatory framework incorporating mobiles with Internet, telecommunications, and broadcasting is well over the horizon. There appears to be not only a failure of policy learning,[35] but a woeful lack of vision on the part of a medium-sized national government.

As the experience of complaints bodies such as TISSC in Australia and ICSTICS in the United Kingdom has shown, consumers of premium rate services continue to be defrauded by a small number of innovative and imaginative scammers who often operate internationally, and move from market to market, jurisdiction to jurisdiction, taking illegitimate earnings with them.[36] Information sharing within domestic jurisdictions and between countries is vital to preventing and remedying these abuses. On a national level, a responsive regulator and complaints body is essential to make an important difference here—and to gather the information that allows public policy makers to determine whether the terms, conditions and costs of these services for consumers are fair and reasonable. To date, however, the interests of the people who are paying for and using these services—consumers and citizens—have not been adequately framed or understood. Instead, policy-making on premium rate messaging services in Australia has been an unusually convoluted and unproductive affair, and we suspect this is due to a lack of an international consensus on effective regulation for these services. It remains for us to consider why this might be.

Firstly, we think there is a problem in the current legislative and regulatory arrangements in Australia, that, unlike the UK, for instance, have not provided a coherent or timely response to making stable and secure the market for this important new area of mobiles. Fortunately, the government has now decided that the Australian Communications Authority and the Australian Broadcasting Authority will merge in July 2005. The early indications are that this merger will be a modest and incremental affair, and that it will not precipitate the far more difficult, but sorely needed transformation—namely an overhaul of the legislative framework for communications in Australia with a merger of the *Telecommunications* and

Broadcasting Services Act. The response of Australia's law-makers to the Internet has been characterised by Jock Given as 'evolutionary constitutionalism',[37] and this may be apposite here also. Regardless, in Australia as elsewhere, there is a pressing need for a creative and secure legal and regulatory framework to deal with cultural and consumer policy issues arising from new services that have a mix of content, carriage, and information features. In July 2004 the government released its discussion paper for a review of mobile content—an important opportunity to debate some of these concerns; unfortunately it focussed narrowly once more on content regulation and censorship matters, rather than broader consumer protection principles and what might be termed cultural citizenship issues.

Secondly, while self-regulation certainly has its place (and TISSC is a genuinely independent example of this) and has developed some important codes of practice, there is now a real need for strong co-regulatory arrangements to underpin such activity—and for regulators and governments around the world to make it clear to industry participants what is expected as a routine part of doing business fairly. The value chains (or networks) of premium rate messaging services are now quite complex. Consumers are faced with the routine possibility of having contracts with multiple parties supplying elements of a mobile data service. This multiplies the possibilities for misunderstandings between consumer and supplier, as well as increasing the difficulties in resolving complaints should they arise and the problems in enforcing consumer protection. The Australian premium rate mobile messaging industry is only by early 2005 arriving at an uneasy consensus on an industry self-regulatory scheme, buttressed by an improvised and peculiar regulatory instrument. We suggest this dilatory approach to effective regulation of mobile messaging has been to the detriment of consumers and industry participants alike.

Thirdly, we suspect there are deeper matters at play here, that are very much related to the global as well as local politics of convergence as suggested by Braithwaite and Drahos's magisterial account *Global Business Regulation*.[38] In the twists and turns of the premium rate messaging policy debates, different actors have taken different positions. Newer entrants—mobile carriers, service providers, broadcasters, content and information providers—have brought different philosophies to the policy debates to those ideas around which a consensus developed in the 1990s regarding the balance between consumer protection and freedom of carriers and service providers. Some new entrants operating in a number of jurisdictions, such as Hutchison/Orange and Vodafone, have been keen to resist or delay consumer protection and content regulations in the Australian market, having lost such battles elsewhere (such as in the UK, for instance).

There are important issues of public participation in policy-making also. Much of what the regulator has done can be followed in the various documents they have issued, and public hearings conducted. The consumer movement also has tended to make its views clear in public submissions. Other parties, including the Department of Communications, Information Technology and the Arts, as the lead policy agency of government itself, have been much more circumspect. Debates over these new mobile services really matter to participants, not least because they are harbingers of future policy dispensation relating to important matters of convergent content. All the more reason for governments to underwrite democratic and open policy formulation processes.

Returning to Henry Jenkins' account of the cultural logic of convergence to which we alluded at the beginning, the premium rate policy episode raises key issues about regulating media content (and market-based narrowcasting solutions

to these problems), the design principles of the digital economy, and consolidation of ownership and control (which in the Australian context also extends to the question of full privatisation of Telstra). Underlying our concern about the Australian premium rate debacle is a deeper concern about whether the newly merged convergent communications and media regulator will get the wide-ranging cultural and creative industries remit we believe they might need—in addition to improving performance on consumer protection; or whether, as Jenkins alternatively suggests, the responsibility for cultural policy in the convergent media environment will continue to be vacated by national governments to be set by convergent, consolidating media and communications companies.

Notes and References

1. Dr Goggin and Dr Spurgeon are both public members of the Telephone Information Services Standards Council (TISSC), and their paper represents their private views.
2. Henry Jenkins, 'The cultural logic of media convergence', *International Journal of Cultural Studies*, 7, 1, 2004, pp. 33–43.
3. International Telecommunications Union, 'Mobile cellular, subscribers per 100 people', *World Telecommunication Indicators*, 2003, ⟨http://www.itu.int/ITU-D/ict/statistics/⟩, accessed 13 October 2003.
4. Australian Communications Authority (ACA), *Telecommunications Performance Report, 2002–2003*, ACA, Melbourne, 2003a.
5. International Telecommunications Union, *op. cit.*
6. Australian Communications Authority (ACA), *Telecommunications Performance Report, 2003–2004*, ACA, Melbourne, 2004, p. 6; Organisation for Economic Co-operation and Development (OECD), *Communications Outlook 2003*, OECD, Paris, 2003.
7. Australian Communications Authority, 2003a, *op. cit.*
8. For example, Finn Trosby, 'SMS, the strange duckling of GSM', *Telektronikk*, 3, 2004, pp. 187–94; F. Hillebrand (ed.), *GSM and UMTS: The Creation of Global Mobile Communication*, John Wiley, 2002; Jon Agar, *Constant Touch: A Global History of the Mobile Phone*, Icon Books, Cambridge, 2003.
9. On the take-up of SMS see H. Lacohée, N. Wakeford and I. Pearson, 'A social history of the mobile telephone with a view of its future', *BT Technology Journal*, 21, 3, 2003, pp. 203–11.
10. Eija-Liisa Kasesniemi, *Mobile Messages: Young People and a New Communication Culture*, Tampere University Press, 2003; Rich Ling, *The Mobile Connection: The Cell Phone's Impact on Society*, Morgan Kaufmann, 2004.
11. C. F. Maitland, J. M. Bauer and R. Westerveld, 'The European market for mobile data: evolving value chains and industry structures', *Telecommunications Policy*, 26, 2002, p. 488. See also Hemant Kumar Sabat, 'The evolving mobile wireless value chain and market structure', *Telecommunications Policy*, 26, 2002, pp. 505–35.
12. Feng Li and Jason Whalley, 'Deconstruction of the telecommunications industry: from value chains to value networks', *Telecommunications Policy*, 26, 2002, p. 468.
13. Maitland *et al.*, *op. cit.*, p. 489.
14. *Ibid.*, p. 489.
15. An assumption shared by P. Olla and N. V. Patel's, 'A value chain model for mobile data service providers', *Telecommunications Policy*, 26, 9–10, 2002, pp. 551–71.
16. John Hartley, *Communication, Cultural and Media Studies. The Key Concepts*, Routledge, London and New York, 2002, pp. 43–4.
17. Network for Online Commerce, 'The story so far', ⟨http://www.noconline.org/storysofar.aspx⟩.
18. Australian Communications Authority, *Investigation into the Need for Additional Regulatory Measures in Relation to the Supply of Premium Services*. Report to Senator the Hon. Richard Alston, Minister for Communications, Information Technology and the Arts, ACA,

Melbourne, July 2003b, ⟨http://www.aca.gov.au/telcomm/premium/PS_Report_03.rtf⟩, accessed 28 July 2004. The ACA appear to have relied on industry estimates here.

19. 'IARN', ⟨http://www.icstis.org.uk/icstis2002/default.asp?node=28⟩.
20. For a basic introduction, see Anita Stuhmcke, 'The rise of the Australian Telecommunications Industry Ombudsman', *Telecommunications Policy*, 26, 2002, pp. 69–85.
21. *Australian Communications Authority (Service Provider Determination) Direction*, No. 1, 2003.
22. Australian Communications Authority, *Options for Numbering of Short Message Services (SMS) in Australia Following Feedback Received on an ACA SMS Public Discussion Paper*, ACA, Melbourne, January 2003c, p. 7, ⟨http://www.aca.gov.au/telcomm/telephone_numbering/new_numbers/optionspaper.rtf⟩, accessed 28 July 2004.
23. Australian Communications Authority, *Messaging Services Industry Communiqué*, an ACA report outlining an approach to the introduction of short digit premium rate SMS and MMS numbers, ACA, Melbourne, June 2003d, ⟨http://www.aca.gov.au/telcomm/telephone_numbering/new_numbers/communique_june.rtf⟩, accessed 28 July 2004.
24. *Ibid.*
25. Australian Communications Authority, 2003b, *op. cit.*
26. Independent Committee for the Supervision of Standards of Telephone Information Services (ICSTIS), *Code of Practice*, 10th edn, ICSTIS, London, 1 January 2004, ⟨http://www.icstis.org.uk/icstis2002/pdf/code_tenth_edition_january_2004.pdf⟩, accessed 28 July 2004.
27. ICSTIS, *Guideline No. 20: Premium Rate SMS*, version 3.1, ICSTIS, London, January 2004, ⟨http://www.icstis.org.uk/icstis2002/pdf/Guideline_20.pdf⟩, accessed 28 July 2004.
28. George Kidd, Director, ICSTICS, speech to the public meeting on Australian Communication Authority's proposed regulation of mobile premium services, Sydney, 8 February 2005.
29. For instance, Annegret Groebel, 'Should we regulate any aspects of wireless?', *Telecommunications Policy*, 27, 2003, pp. 435–55.
30. Alan Hartstein, 'Hutchison launches 3 adult services on the quiet', *Communications Day*, 2289, Friday 23 April 2004, p. 1.
31. Michael Sainsbury, 'Vodafone backs carriers', *The Australian IT*, 15 July 2004.
32. Daryl Williams, Minister for Communications, 'New measures to make Internet and mobile use safer', media release 62/04, 13 May 2004.
33. *Telecommunications Service Provider (Premium Services Determination)*, No. 2, 2004.
34. For rare research-based insights into pornography consumption and the Internet, see Alan McKee, 'Pornography and sexuality online: implications for Internet censorship policy', in G. Goggin (ed.), *Virtual Nation: The Internet in Australia*, UNSW Press, Sydney, 2004, pp. 102–15.
35. Michael J. Zarkin, 'Telecommunications policy learning: the case of the FCC's computer inquiries', *Telecommunications Policy*, 27, 2003, pp. 283–99.
36. Respectively, for TISSC and ICSTIS complaints-handling statistics and reports, see ⟨http://tissc.com.au⟩ and ⟨http://www.icstis.org.uk/⟩.
37. Jock Given, 'Evolutionary constitutionalism: Australian law and the Internet', in Goggin (ed.), *op. cit.*, pp. 211–28.
38. John Braithwaite and Peter Drahos, *Global Business Regulation*, Cambridge University Press, Cambridge, 2000.