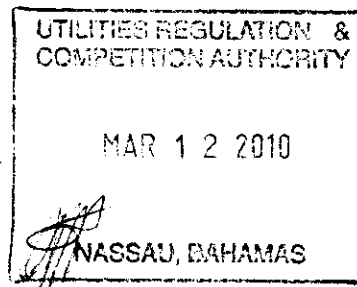


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IPSI's response to Consultation Document ECS 02/2010
Content Regulation: Process for developing Codes of Practice

The aim of IP Solutions International, Ltd. (IPSI) is to provide services in all categories of communications including broadband Internet, IPTV, video and telephony. The services will be made available across the entire archipelago and the company is currently focusing on the installations of the required technology to handle digital transmission of video and the provision of high speed broadband and VoIP telephony.

IPSI does not foresee that it will engage in content creation in the proximate future but nevertheless recognizes its clear obligation to address those citizen interests that lie beyond basic market supply.

IPSI also appreciates that although acting as a conduit of content not created by it that there is a necessity to have regard to whether such content may cause harm or offence or other negative impact on the public interest. Having said that, the provision of iterate online services means that the users determine the content received and it has proved impractical elsewhere to contain that choice without block censorship at the distribution end.

The concept of co-regulation is an acceptable route though not without pitfalls. The alignment of interests is challenging and with no opening clarity as to what public interests need to be served in The Bahamas there will be the need to identify those first. The Ofcom template is admirable but it is the only comprehensive one yet to emerge and it has to be recognized that Ofcom has conducted much work (including a formal content board) for over 10 years to reach this goal.

Relevant licensed organizations have significant commercial responsibilities, and as has been experienced in other jurisdictions, non aligned or conflicting decisions by the working group can make it difficult to service equitably these obligations. Codes of Practice issued by the working



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group must have the force of law to obtain compliance. This puts special emphasis on the composition of the working group and the need for a formal review by URCA before issue.

Q1. Overall Table 1 does seem an optimum route for content co-regulation in The Bahamas. The need to have been regard to the industry's position on Codes of Practice is seen as necessary and a mechanism that ensures easy access to the deliberations on suitability of Codes is important for all licensed organizations. Regardless of size nearly all licensed organizations have significant commercial responsibilities and, as has been seen in other jurisdictions, non-aligned or conflicting decisions by the working group can make it difficult to service adequately these obligations. Codes of practice issued by the working group will have the force of legislation [Sect. 3.2.2] to obtain compliance which emphasizes the need for alignment.

Q2. URCA is required to determine complaint handling procedures and it is felt that wherever feasible a complaint should be dealt with in the first instance by the licensed organization to which it is directed. It is believed that most complaints will be settled satisfactorily at this level. Some of the other regulatory jurisdictions have instituted a Trade Body to act in this first instance or as an appeal body. The smallness of the market in The Bahamas means that the attendant cost of layered complaints procedures should if possible be avoided.

From Fig. 1 [section 1.5] it seems that URCA may directly operate the complaints procedure. The ability to have direct access to a government body with a complaint may prove to be a magnet for unfounded or vexatious complaints. Provided that URCA has an effective oversight of the complaints procedure it is felt that, excepting clear breaches of the law, it should only be involved in this area as a final appeal body for major issues.

There is reference to porous borders in 2.2 - 42 of the consultation and it refers to the difficulty in controlling the inward flow of content to The Bahamas through online services through the internet. It is noted that this is a similar finding by regulatory bodies elsewhere and short of block censoring there seems no effective and acceptable means to halt those flows which have unacceptable content.

IPSI anticipates that the creation of the new Bahamian regulatory regime will allow better control of another kind of porous border situation. This is the many stranded entry into The Bahamas content market of counterfeit and pirated material. It comprises content which has been illegally copied or wrongly taken from a source that has not given permission for its product to be used in The Bahamas.

Widespread practice can create a situation where infringements, which are literally visible to all, become tacitly accepted by the consumer market. As a result they receive little or no serious sanction



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from the regulators. The pattern is encountered in the Caribbean and beyond and its eradication is one of the prime aims of the World Trade Organization and the World Intellectual Property Organization with its Copyright Protection Treaty. The latter forbids any one to distribute, import for distribution, broadcast or communicate to the public, without authority, works or copies of works knowing that they are infringing the owners' rights.

It is hoped that the tacit collusion between the illegal marketeer and the consumer and, in some jurisdictions, also the authorities can now be monitored effectively here in The Bahamas. Films which are still in their first run in cinemas and which have not been released by the copyright owners for any other kind of showing are openly available in stores and on the streets in The Bahamas, and in many cases on pay TV. This black market means that revenues to content creators are diminished and ultimately less content will be funded. Many films use special effects and treatments e.g. 3D and these are not capable of coming through an illegal copying mechanism thereby reducing the viewers experience to a considerable degree and devaluing the process.

Illicit downloading of copyright material from open circuit satellite sources is another form of piracy which deprives the content creator and the legitimate satellite provider of revenue. It also will impact the sale of legitimate video services in The Bahamas will result in a reduced revenue payable to URCA through the license fee mechanism.

The actions of this illegal trade has created an unlevelled playing field as legitimate companies who have negotiated and secured the rights to carry and distribute content are at a disadvantage in having to compete with neither pay for their content nor pay the requisite fees to URCA for the conduct of their businesses.

This is an invidious activity which elsewhere frequently ends up in the hands of organized crime and so should be a priority for our new regulatory approach. If lack of attention to such illegal activity generates a feeling of distrust in the major content providers they will be wary of contracting with our newly licensed providers for supply of their product with a consequent loss to the market.³

Yours sincerely,

IP Solutions International Ltd.

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