

Outline

Regulation

- ✦ Lessig and Code
 - ✦ Online and Social media impacts
 - ✦ Technological changes
 - ✦ Legal disconnects
 - ✦ Struggle for regulators to keep up
 - ✦ Infinitely Long and Short
 - ✦ Australian v International material
 - ✦ IT security: Perimeter must fail
 - ✦ Four horsemen of the personal info security apocalypse
 - ✦ Challenges for regulation
 - ✦ Recent Prosecutions
 - ✦ Where are we left?
- Special Features of the online social environment
- ✦ A 'wicked problem'?

Lawrence Lessig's *Code*

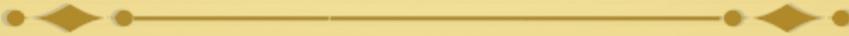
- ✦ Lessig identifies possible sources of regulation (*Code and other laws of cyberspace – 2.0*)
<http://codev2.cc/>
- ✦ **Law** (black letter, *cf.* actually enforced? Privacy?)
- ✦ **Technology** itself, a.k.a. '*Code*' (functions/limits)
- ✦ **Social norms** (netiquette, social practices?)
- ✦ **Business practice** (new social host business models, where the user is product, not customer?)

Online and social media impacts



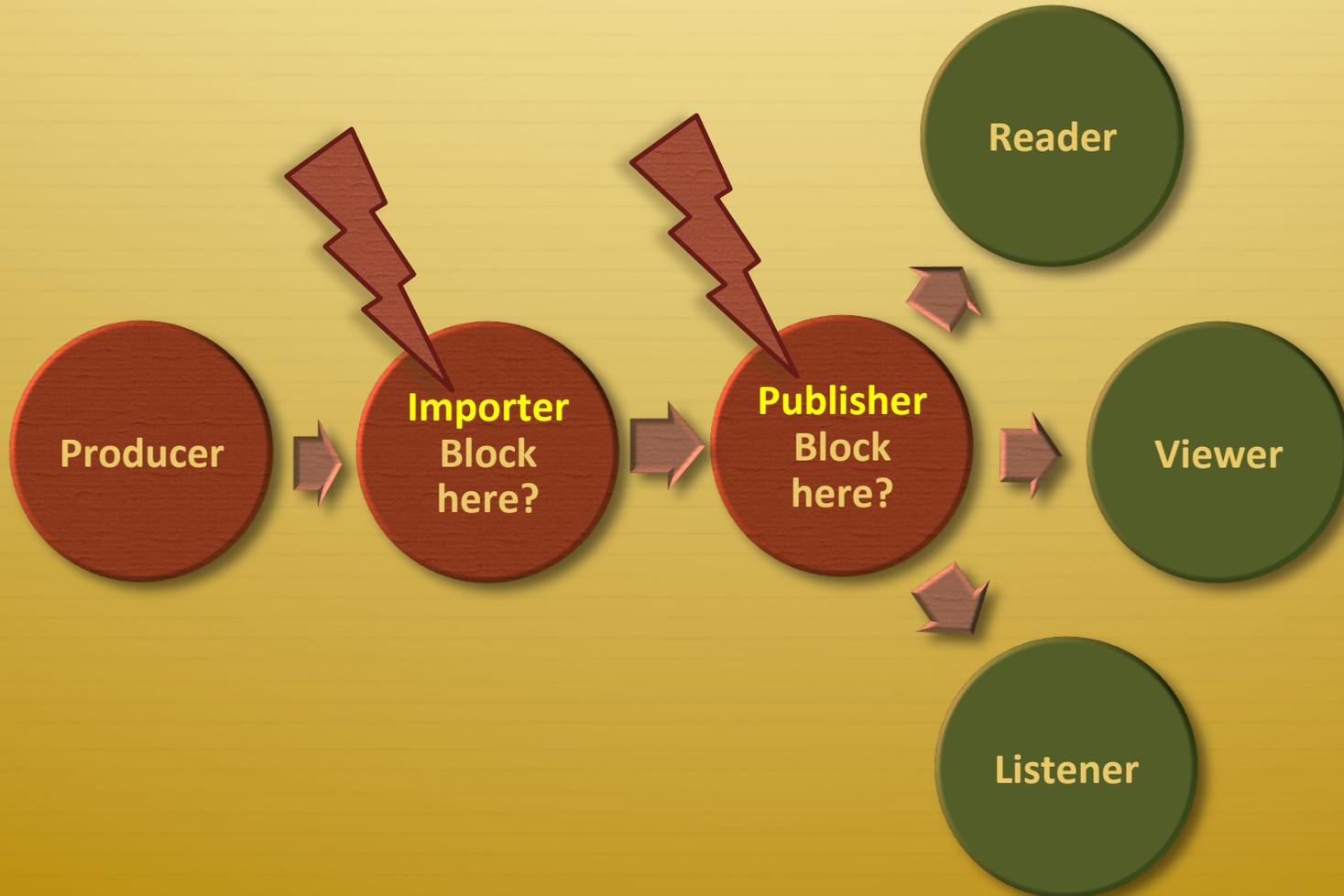
Tech changes
Cultural changes
Legal changes

Technological changes underlying

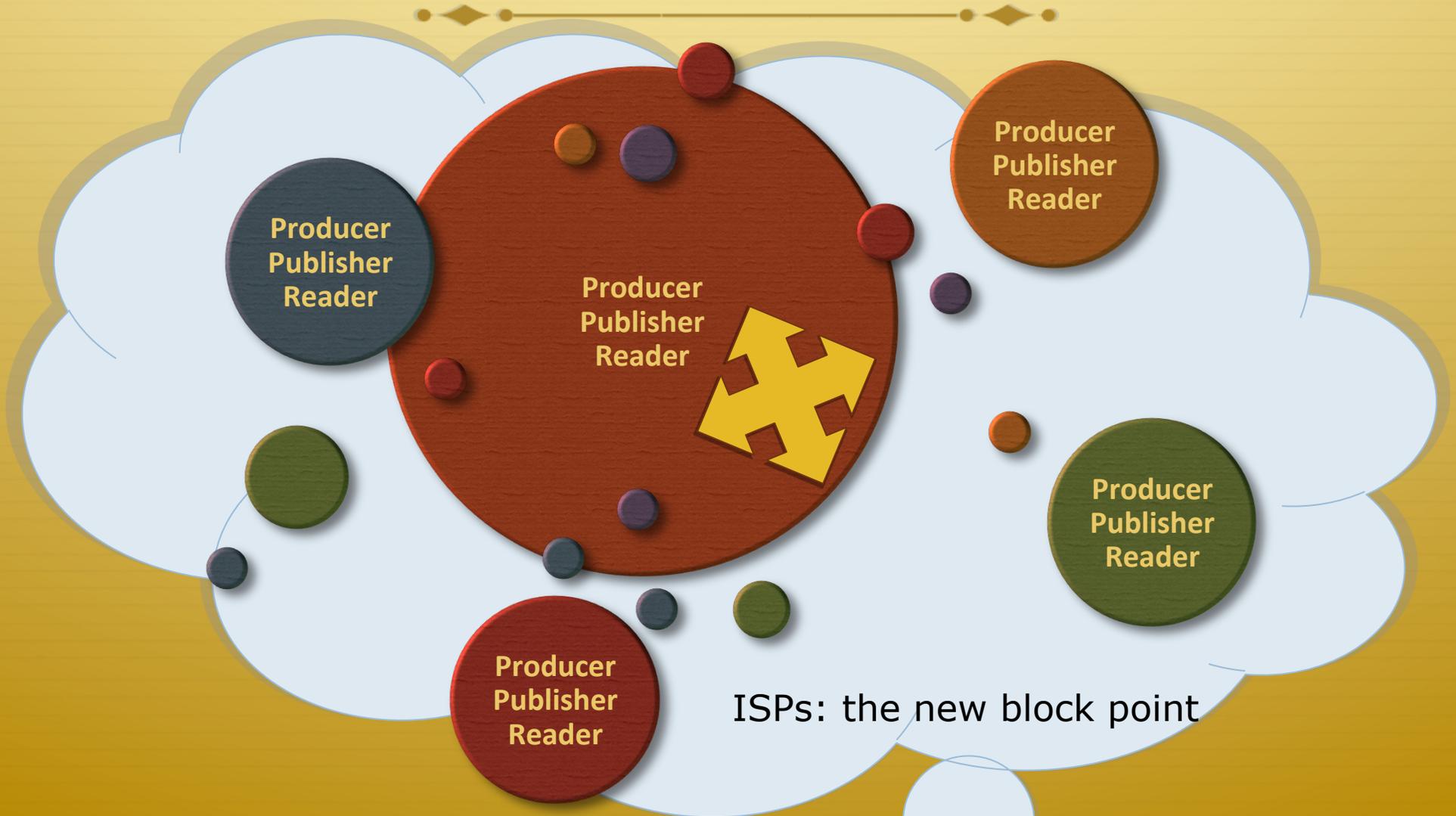


- ✦ Offline world was nice and simple, for regulators and courts
- ✦ Web 1.0: global publication, old media publish models: AustLII
- ✦ Web 2.0: social networking, user generated content: Facebook 1
 - ✦ Convergence of producer and consumer, + distributor
- ✦ Web 3.0?: mass personalisation, semantic web, wearable tech.
 - ✦ It's not just your friends who know you and what you mean
- ✦ Attack of the killer toddlers – we are so old!
 - ✦ Hackers retire at 15, kids turning tech. tables on parents, 'slash'
 - ✦ Facebook does not enforce own entry test of 'at least 13 yrs old'

Ye Olde Worlde (-2006)



New fangled (SNS/UGC)



And then there was '2.0': Features

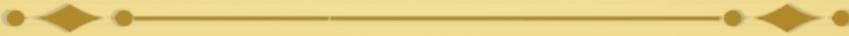


- ✦ Social networking, user generated content, degenerate narcissism
- ✦ Blurs boundary: Publishing *cf.* Personal Communications
- ✦ From centralised one-to-many topology to distributed network
- ✦ Everyone is both consumer and producer ('prosumer')
- ✦ Everyone is a permanent global publisher; can be intermediary
- ✦ Every device is an endless movie source: deluge of data
- ✦ No editorial brain involved (both users and ISPs)? No selection?
- ✦ ISP replaces Publisher as key point – very significant? *iiNet*

Legal disconnects: 'Info just wants to be free'?

- ✦ Cyberlibertarian fantasies still delude and excite (*Decl. of Indep.* '96)
- ✦ Reality: Jurisdiction out of control, hyper liability (for you)
 - ✦ Intensification, not escape, from jurisdiction (revenge of the States)
- ✦ Or: no care, and no responsibility? (for the Cloud)
 - ✦ Your data and business go offshore, but not legal protection?
- ✦ The rise of the sub-human: minors at the frontier
 - ✦ Deficit in 'consequences' cognitive development: paternalism?
 - ✦ 'Under the age of 18 or appears to be under 18': kids make porn?
- ✦ The fall of the 'common carrier': ISPs reluctantly change masters?
 - ✦ Agents of a foreign power, or a hostile litigant interest? CoE CC
 - ✦ Enforced discipline of their customers, on pain of sharing liability?

The struggle for regulators to keep up



- ✦ Offline: centralised distribution, choke points: edit/publish
- ✦ Web 1.0: more distributors, easier importation
- ✦ Web 2.0: everyone is a creator, (re)-publisher, exporter
- ✦ Web 3.0: the Cloud knows what you like, and makes it?
- ✦ Encryption and roll-your-own protocols already in use
- ✦ The long cyber-war: endless arms race between the straiteners and those seeking to avoid the blocks? Enlivened by real armies.
- ✦ When is publication not publication?
- ✦ Confused discussion: Surely it *is* censorship? No *First Amdt.*
- ✦ Chinese solution: you never know: the Panopticon:
(no-one home, but you self censor)

Special Features of the Online Social Environment



Lifespan
Cultural changes
Legal changes

Why online media control might be a 'wicked problem'

- ✦ Rapid constant evolution of technology, cultures and practices
- ✦ Scope is unmanageable? A billion FB users, a trillion items
- ✦ Classification model unviable? Urge to 'filter' - terminology
- ✦ Design philosophy of the net – under attack? Or net resists all?
- ✦ Supposed beneficiaries of protection also main perpetrators?
- ✦ Moral panic: 'The Panic Button' as solution? Overcriminalised?
- ✦ Real targets are parents? Wishful thinking? Or real victims?
- ✦ Temptations of 'policy-based evidence'? Filter, safety, retention...

Infinitely long and short lifespans

‘The Document that Never Dies’

- ✦ Google Cache: days [*next*]
- ✦ Internet Archive/
Wayback Machine: years
<http://archive.org/> [*next*]
- ✦ Pandora (NLA)
<http://pandora.nla.gov.au/>
- ✦ Legitimate personal copies
- ✦ Illicit personal copies
- ✦ Facebook’s ‘inactive’ accounts:
creature from the black lagoon?

‘Document that Hardly Ever Lived’

- ✦ Instant messaging, text:
Arab Spring 2.0 demonstrates they are not really transient, but used as if... ?
- ✦ **Snapshot**: www.snapchat.com
A smartphone app shares photos and videos that self-destruct after viewed once for up to 10 seconds; warns if recipients attempt to capture screen? [*Next*]
- ✦ **Tor**: encrypted onion router/VPN
- ✦ **Fast Flux injection**: malware staple
- ✦ Roll your own protocols and tools!
- ✦ DFAT, former ASIO, chief declines to commit to writing (*Zygier* case)

Cache

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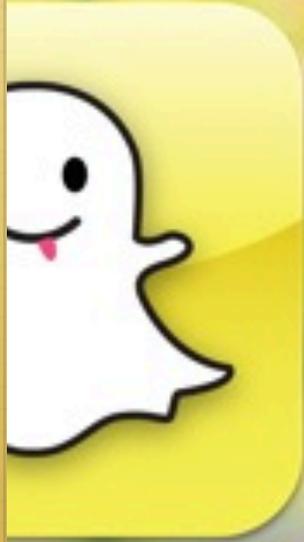
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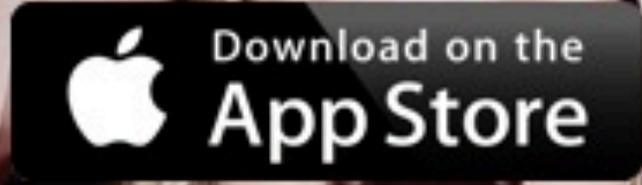
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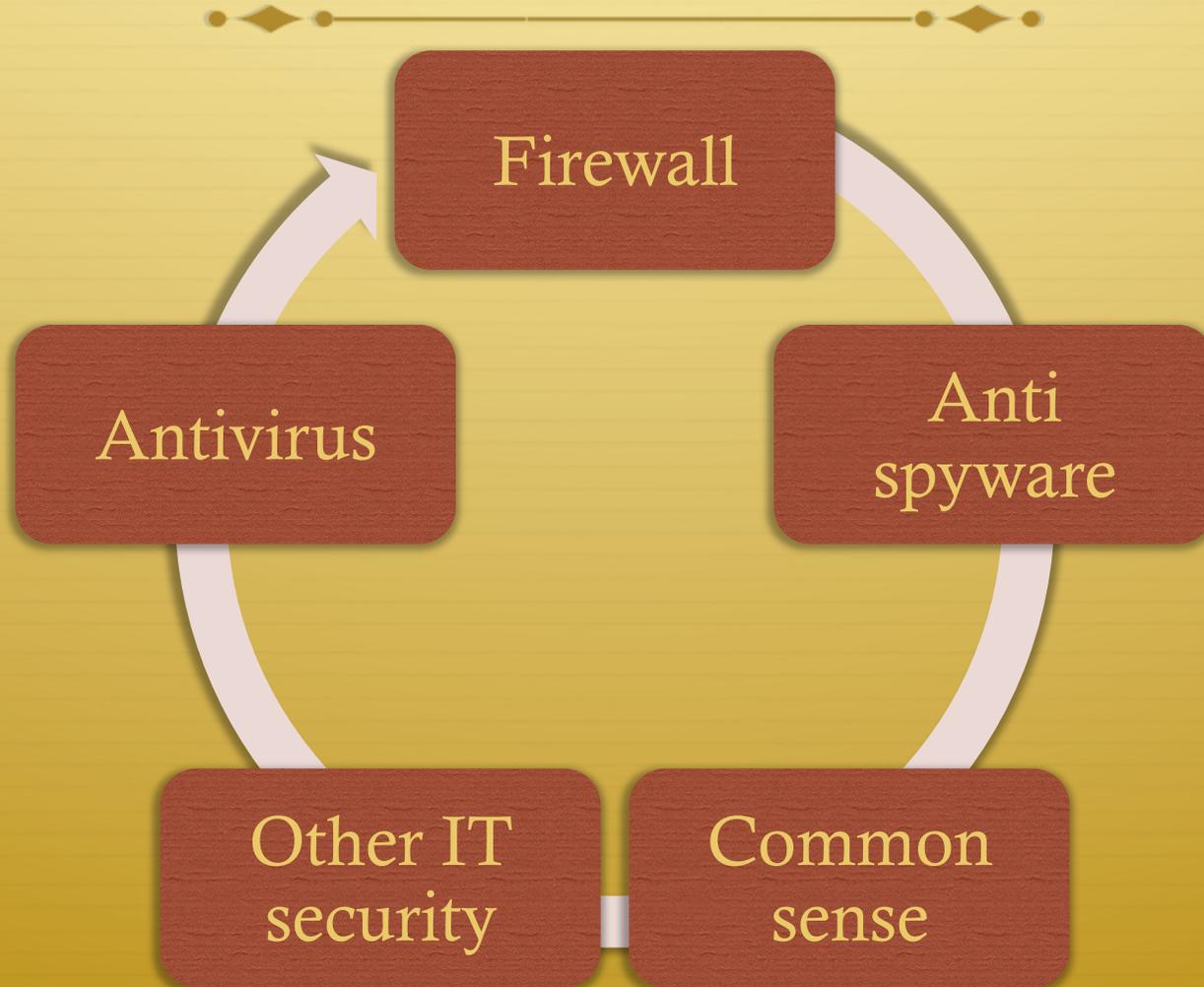
snapchat



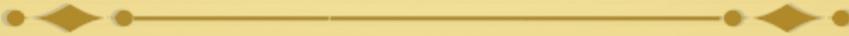
Australian cf. international material

- ✦ Extraterritoriality, foreign jurisdiction limits, 'data sovereignty'
- ✦ Difficulties for censorship, suppression, takedown, prosecution
- ✦ Onshore: Notices (Content Takedown, Link deletion, Stream cessation) for items hosted in Australia from ACMA, Courts
 - ✦ Directed not at author or owner, but ICH, intermediary
 - ✦ No motive to resist? Or seek actual classification, review?
 - ✦ No obligation online to classify, check, edit (*cf* film, game, publ.)
 - ✦ 'Prohibited' or 'Potentially prohibited': RC, X18+, some R18+, MA15+
- ✦ Offshore: ACMA blacklist based on complaint, Interpol C.P. blacklist in 'voluntary' ISP 'filters'. Otherwise? Most untouched.
- ✦ Potential to use Council of Europe Cybercrime Convention by, and in, USA and EU to streamline criminal prosecution: 1/3/13!

Perimeter security: FAIL

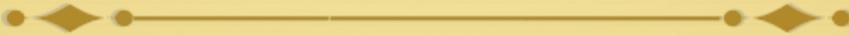


Why IT perimeter security must fail



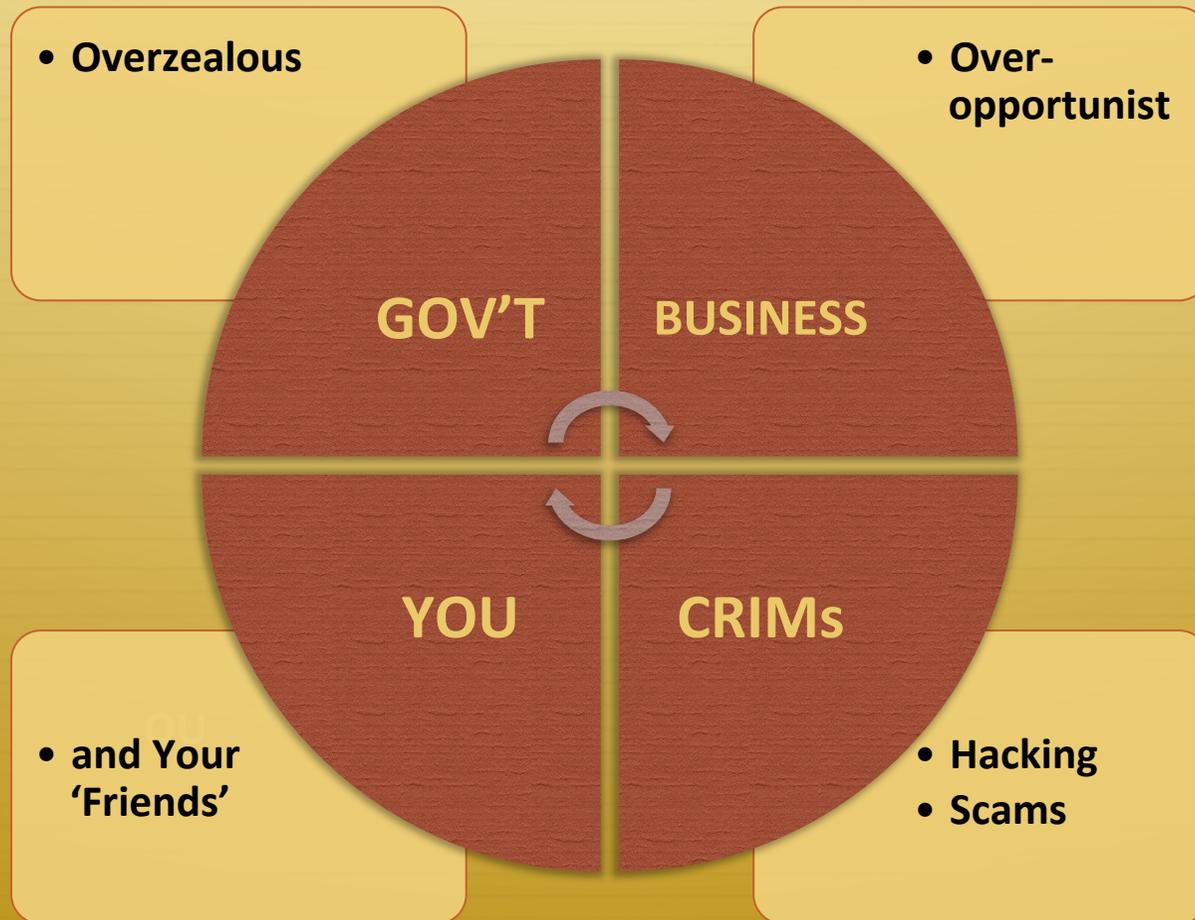
- ✦ Needs to be 100% effective
- ✦ For a connected device, 99.9% means that 0.1% loophole will be found, in seconds or weeks.
- ✦ No IT security tools is even 99.9% effective.
- ✦ The other side are in a constant arms race with the IT security providers and other vendors trying to keep them out.
- ✦ They only need the tiniest crack – easy to achieve eventually
- ✦ Constant innovation by some of the smartest IT people on the planet, and legions of ‘script kiddies’ using auto-mutating tools

Is IT security broken?

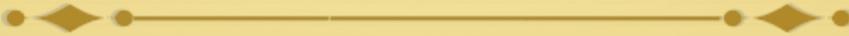


- ✦ Unix IT security model (WinNT, Mac, *nix) doomed
 - ✦ Assumes informed user. But complicated, we're all bozos.
- ✦ Perimeter defence model is doomed: 0.01% v 99.99%
 - ✦ Hacktivists and crims can get into anything
 - ✦ Minutes/hours before any honeypot compromised?
- ✦ No basis for user decision to agree, click; false alarms.
- ✦ Zombies & malware industrialise rapidly, mass customise
- ✦ Implications: we definitely can't keep them out, or info in.

Four Horsemen of the [online privacy/security] Apocalypse



Why do these 'Four Horsemen' matter?



- ✦ Presumption by many that government and industry are 'here to help', rather than 'part of the problem'.
- ✦ Much cyber-safety and cyber-security education material is distorted by this assumption
- ✦ Good players in all four sectors, but serious risks from all too.
- ✦ Failing to see this may blind users to the worst risks for them in a given situation. Courts may look in the wrong place.
- ✦ Also conveniently avoids focusing attention on governance and public policy failures which create such institutional risks!

Challenges for regulation



- ✦ Impossible to treat online content same as offline mass media
 - ✦ Human classification, processing, review: orders too expensive
 - ✦ Machine classification, automation: intrinsically ineffective
 - ✦ Transparency and accountability (old) v. secrecy (new)?
- ✦ No ambition/hope to classify/control all – but what to say to parents, victims, or litigants?
- ✦ Complaints/reporting as a visible response... Then what?
- ✦ Problem of the social network giants: too big to care, too big to afford to deal with individuals? ‘Customers’ *cf.* ‘Products’?
- ✦ Potential of exemplary prosecutions? Shock of consequences?

Recent prosecutions



- ✦ NSW Dist Ct.: *Police v Ravshan USMANOV* [\[2011\] NSWLC 40](#)
- ✦ Publish Indecent Article, s578C of *Crimes Act* 1900 (NSW)
 - ✦ Non-internet offence, old offence!
 - ✦ Former partner, pictures posted, created during the relationship
 - ✦ Intent to cause distress, a means of ‘getting back’ at former GF.
 - ✦ Plea of guilty, failed bid to minimise sentence, 6 mo. suspended
 - ✦ Poor legal advice, Dep CM unimpressed with ‘it was nothing’.
 - ✦ No precedents, magistrate picks middle of range to start.
 - ✦ Discount for plea (25%), then adds 25% for lack of contrition
 - ✦ Dist Ct. approved 6 months result, agreed shd be suspended

Recent prosecutions (*cont.*)

- ✦ Vic Bendigo Mag. Ct: Henderson 2011, breach intervention order
 - ✦ Full admissions, said it was only harmless fun. No relationship.
 - ✦ “couldn’t understand how she had proof he posted the comment”
 - ✦ Illustrates lack of appreciation of both the harm and the evidence gathering capacity of online systems. Importance of data forensics!
- ✦ McCrory and Turner, Aug 2012, same town! Revived 2013!
 - ✦ ‘Root Raters’ – FaceBook’s original purpose?
 - ✦ ‘Use carriage service to offend’: Criminal Code (Cth) s474.17?
 - ✦ ‘publishing objectionable material online’: ??
 - ✦ Jail terms reduced to Community Corrections Orders on appeal

Where does this leave us?



- ✦ Ignorance of consequences a key driver
- ✦ Will prosecutions make any difference?
- ✦ The politics of gesture? Or just the shock needed?
- ✦ Will we ever have a proper discussion of needs of young pp?
- ✦ Failure of local and US regulators to hold giants to account creates culture of impunity – rewards ‘see if you can get away with it’ not compliance. Absence of auditing and protection for individuals’s data?
- ✦ Uncertainties in user requesting or court ordering takedowns.

Questions?



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