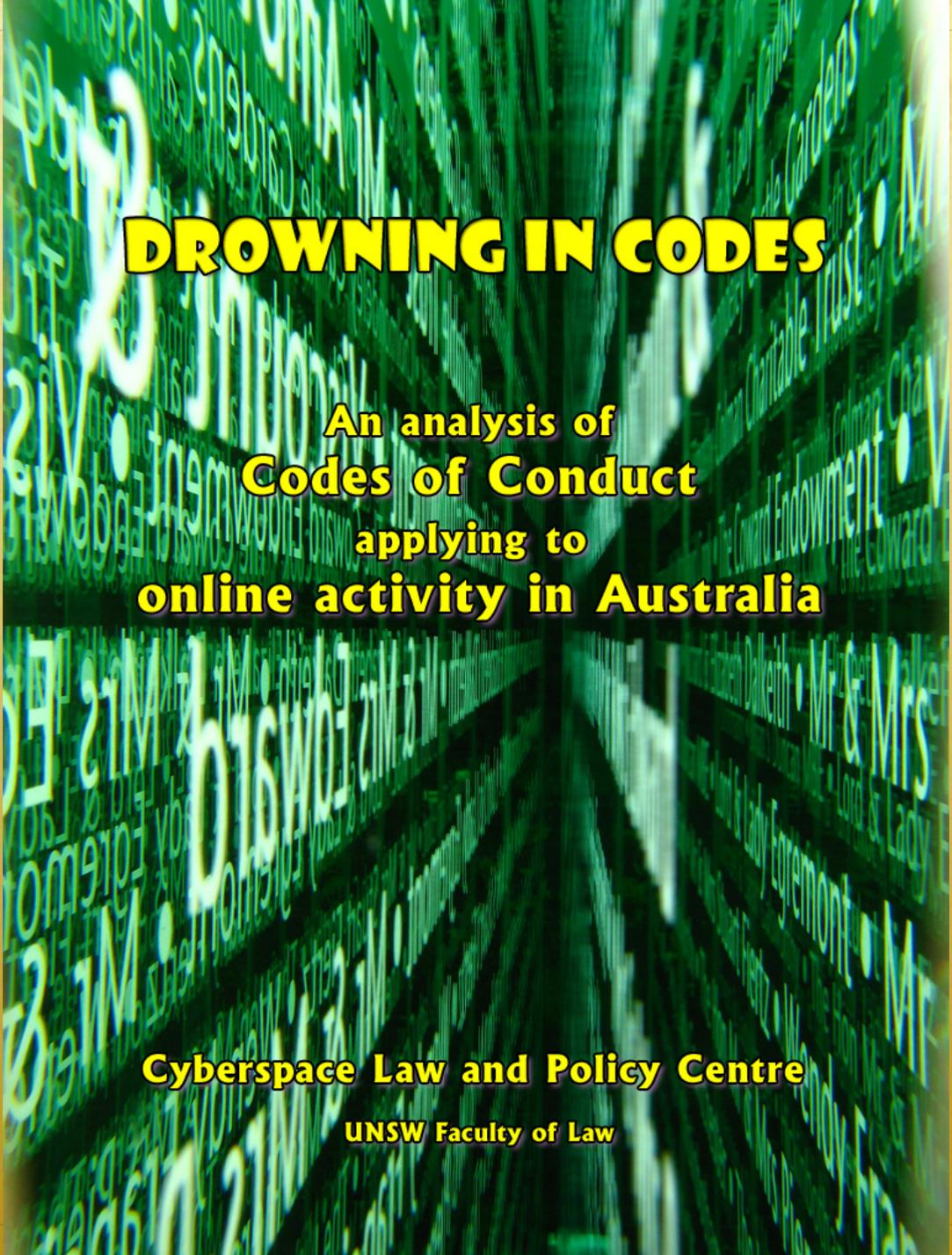


Drowning in Codes of Conduct: An analysis of codes of conduct applying to online activity in Australia

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<http://cyberlawcentre.org/onlinecodes/report.pdf>



DROWNING IN CODES

**An analysis of
Codes of Conduct
applying to
online activity in Australia**

Cyberspace Law and Policy Centre

UNSW Faculty of Law

Outline



The Survey

- ✦ auDA Foundation support
- ✦ Initial: 10 Codes
- ✦ Final: 13 + 3
- ✦ Best Practice Guidelines
- ✦ Detailed questions
- ✦ Feedback and consultation
- ✦ Tables of results
- ✦ Issues for consumers extracted

Observations

- ✦ Many codes – even more in wings?
- ✦ Many issues for consumers:
- ✦ Coverage
- ✦ Compliance with Guidelines
- ✦ Inconsistencies
- ✦ Referrals inadequate
- ✦ Complaints process issues
- ✦ Complexity

The survey



Background

Our research



- ✦ Report examines 16 Codes of Conduct relevant to Australian consumers' online activity (13 active, 3 draft but 'alive' enough to consider)
- ✦ First report to analyse codes of conduct developed in Australia for online conduct
- ✦ Individually & together, they potentially offer online users the prospect of assistance with unsatisfactory conduct by businesses and others
- ✦ but whether they meet expectations is unclear.

Guidelines and coverage



- ✦ We compare each code against best practice guidance on the development and implementation of codes of conduct issued by Australian regulators
- ✦ We examine the coverage of codes through an analysis of the code coverage amongst
 - ✦ the top 50 websites visited by Australian consumers, and
 - ✦ the top 19 ISPs by Australian market share.
- ✦ Results: very mixed

Our research



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The Codes

Completed Codes

1. Telecoms Consumer Protection Code
2. ePayments Code
3. [Internet] Content Services Code
4. Interactive Gambling Industry Code
5. Internet Industry Spam Code of Practice
6. e-Marketing Code of Practice
7. AU Best Practice Guidelines for Online Behavioural Advertising
8. IIA Family Friendly ISP Seal
9. AU Assn. Nat. Advertisers Code of Ethics
10. iCode (E-Security Code for ISPs)
11. IIA Codes for Industry Co-Regulation in Areas of Internet and Mobile Content
12. IIA Responsible Internet Business Program
13. AU Group Buying Code of Conduct

Draft Codes w. realistic chance finalised/implemented

1. IIA Privacy Code
1. IIA Industry Copyright Code
2. Best Practices for Dating Websites

Best Practice Guidelines for Codes

Codes of conduct often integrated with other forms of regulation. Direct references to codes in legislation increasingly common. Regulators often given power to register, approve or authorise codes of conduct, arising from diverse circumstances and stakeholders. Guidance emerged on best practice in development of codes of conduct; not always binding, but intended to ensure that codes meet basic tests of quality and inclusiveness.

- ✦ ACCC, Guidelines for developing effective voluntary industry codes of conduct (2005)
- ✦ ACMA, Developing Telecommunications Codes for Registration: A Guide (2003)
- ✦ ASIC, Regulatory Guide 183 - Approval of financial services sector codes of conduct (2007)
- ✦ Office of the Australian Information Commissioner, Privacy Code Development Guide (September 2001)

Observations

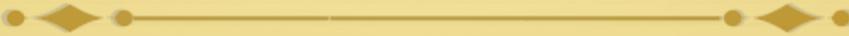


Results

Issues for Consumers

- ✦ the very **number of codes** which could potentially be applicable to a given online transaction or issue
- ✦ the **complexity of their overlapping coverage**
- ✦ wide variations/inconsistency in **language, procedure, remedies and robustness**
- ✦ uncertainty about coverage and **'jurisdiction'** broadly considered, including an often limited or non-existent capacity to involve dominant online service providers operating offshore
- ✦ **patchy or very low sign-up** by industry participants, and in some cases difficulty in ascertaining who is a **'member'** of the code, and what this means
- ✦ inconsistent approaches to **effective complaint handling**
- ✦ inconsistent or undeveloped approaches to **cross-referral to other codes** or code bodies where an inquiry may be outside scope of the first code considered (to prevent 'falling through the cracks')
- ✦ a tendency to focus on **industry rather than consumer convenience** in regulatory scheme design.

The Future



- ✦ Only the beginning of our analysis. And more codes...
- ✦ See the *Appendices* for details of our comparison of the Codes, and incidence of coverage of ISPs and sites
- ✦ Raises questions about effectiveness for consumer needs: how would you know which to use, or how?
- ✦ What is special about the Internet or IT that this Code proliferation has been allowed to develop, with little evidence of planning or coordination for consumers?
- ✦ [Centre conversion to a 'community': all welcome!]

Questions?



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References



- ✦ CLPC research project, current to early 2012.

Connolly C and Vaile D, *Drowning in Codes of Conduct: An analysis of codes of conduct applying to online activity in Australia*, Cyberspace Law and Policy Centre, UNSW Sydney, 2012. Available at:

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