



Internet Society of Australia
A Chapter of the Internet Society

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Via email: codefunding@acma.gov.au

OUR SUBMISSION:-

In response to the Australian Communications and Media Authority, discussion paper, 23rd December 2005, on 'Reimbursement of costs of development of consumer-related industry codes.'

Synopsis

The Internet Society of Australia ([ISOC-AU](http://www.isoc-au.org.au)) is a non-profit society founded in 1996 which promotes Internet development in Australia for the whole community - private, academic and business users: *the Internet is for everyone!* ISOC-AU is a chapter of the world-wide [Internet Society](http://www.isoc.org) and is a peak body organisation, representing the interests of internet users in this country. We have a longstanding and ongoing commitment to the effective representation of these interests in code development and self regulatory processes in the telecommunications, domain name and internet-related services industries.

Our not for profit organisation welcomes the opportunity to comment on the scheme proposed to be adopted by the Australian Communications and Media Authority (ACMA), for reimbursing eligible industry bodies, specific costs involved in the development of industry codes registered by ACMA. Specific points on the questions raised in the discussion paper follow in the body of this document, but in general our responses are tempered by the following overarching comments:-

- We give our in-principle support to the concept of having **an accountable and transparent process for eligible entities to receive reimbursement of specific and reasonable costs involved in code development**, where that code both relates wholly or mainly with the relationship between telecommunications carriage service providers and their customers (excluding those defined as wholesale customers) and which involves and enhances the effective participation of consumer representation in that process.
- We applaud the clear recognition, in the discussion paper, of the importance of **real and effective consumer consultation in the code development process**, and support the critical tie between these processes and the requirement that the "the interests of those retail¹ customers are adequately represented in relation to the development of the code;" under subsection 136B (1) part c of the Act.

¹ Where 'retail' is defined by its common meaning as outlined in the discussion paper, i.e. that it "applies to residential customers, small businesses and corporate customers with a retail relationship with a CSP."

- We are concerned however that such costs, as defined and outlined in the discussion paper, fall well short of compensating or indeed recognizing, the actual costs and benefits of such effective consumer representation in code development processes and indeed would **suggest an expansion of eligible expenses to include sitting fees²** for all consumer representatives actively (and this should be subject to audit and statutory declaration) involved in approved Working Committees/Working Parties / Reference Groups / Sub Committees for consumer- related Codes and Guidelines, in the code development processes of eligible bodies and organisations.

² Where such Sitting Fees are **not** separately funded (directly or indirectly) under any other Australian Government grant or scheme, such as the DCITA Telecommunications Consumer Representation Grants.

Preamble

ISOC-AU has been an integral and active part of various code development processes in self regulatory frameworks, over the last 4 years these include [Name Policy Review Panel](#) - reviewed policy rules for domain names in asn.au, com.au, id.au, net.au and org.au (2004) [Registry Competition Review Panel](#) - reviewed the selection process and revenue model for .au registry services (2004); [Code of Practice Committee](#) - drafted and reviewed .au Domain Name Suppliers' Code of Practice (2002-2004); [National Reference Group](#) - developed policy for new community-based geographic 2LDs (2003-2004); [New Names Advisory Panel](#) - evaluated proposals for new 2LDs (2002-2003); [Dispute Resolution Working Group](#) - developed a dispute resolution framework for the .au domain (2001); [Name Policy Advisory Panel](#) - reviewed policies for allocating .au domain names (2000-2001); [Competition Model Advisory Panel](#) - determined how competition in the .au domain name industry would be introduced (2000-2001).

In particular it has been extensively involved in the resource-intensive consumer code development work with ACIF via Working Committees and its role as a Full Member of the ACIF Consumer Council, (which receives limited funding for the ACIF CC in the form of a small grant under subsection 593(1) of the Act for purposes of sitting fees for 12 days of sitting and preparation to participate as a full member of the Australian Communications Industry Forum (ACIF) Consumer Advisory Council) and numerous of its subcommittees and working groups. See http://www.acif.org.au/projects/consumer_council & http://www.acif.org.au/projects/consumer_council/meetings

Since June 2003 ISOC-AU has also secured partial funding from the Department of Communications, Information Technology and the Arts, Telecommunications Consumer Representation Grant Program under subsection 593(1) of the Act to carry out a program of discussions with users of Internet services across Australia.

Our granted objectives are:

- (a) to foster consumer input into the development of the Internet and self-regulation of the Internet industry in Australia, to fulfill the vision that 'the Internet is for everyone!' and,
- (b) to ensure that maximum benefits flow to individuals and businesses as participants in society and the global information economy, and to draw input from all relevant stakeholders and organisations.

This partial funding allows us to run our TCCM program, where by we meet with and discuss issues of interest (including those of a telecommunications and code development nature) with a wide variety of internet users across Australia reports from these specifically funded meetings are found at <http://www.isoc-au.org.au/TCCM/> . Whilst it is clear that these partially funded TCCM activities both enhance and facilitate our role as an effective, well informed and truly emblematic consumer representative body which draws not only on our own Membership for input and opinion but on the wider community of Internet users. And that that in turn is a significant part of our effectiveness in consumer representation in the code development process by organisations such as ACIF, it can not be validly claimed that such grant funding which is specifically allocated and acquitted in accordance with the specifics of our Grant funding agreements and schedules are allocated to or cover the extensive costs of involvement in the Telecommunications Consumer Code development processes during the aforementioned time.

With diligent reporting requirements and audit of such grant funds, acquittal and as long as such funding provided to consumer representational bodies is of a highly specific and focused nature (so

that expenditure can be acquitted against specific milestones and key performance indicators) ISOC–AU believes there is **no argument in support of avoidance “the possibility of duplication of reimbursement”** (p.13 of the discussion paper) and therefore that part C of the discussion paper where non-refundable costs are defined to include “costs incurred by consumer bodies who have been granted financial assistance by the Minister for Communications, Information Technology and the Arts under subsection 593(1) of the Act for purposes in connection with the representation of the interests of consumers in relation to telecommunications issues” require significant review.

Specific Responses

Having reviewed the discussion paper in detail and deliberated at some length with our executive, ISOC-AU provides the following short form answers to each of the questions posed, which are to be read with reference to and in conjunction with our points and opinions made earlier in this document:-

Q.1 Are the proposed criteria for assessing whether a code ‘deals wholly or mainly with one or matters relating to the relationship between CSPs and their retail customers’ appropriate?

A.1. Yes – though we would strongly suggest an option for discretion by ACMA to be maintained in the Act, to have the ability to make exceptional or extraordinary case by case determinations from time to time, so that the possibility of essential consumer codes being ‘held back on development’ through ‘lack of available funding’ can be avoided where a requirement for such a code is clearly demonstrated yet an other than 1:1 relationship of CSP : retail customer (as defined in the discussion paper) exists.

Such need may conceivably develop in the future in this rapidly changing industry as a result of as yet unexplored business models or as a result of Convergence and Next Generation Network development and uptake in the Australian communications marketplace.

Q.2 Are the proposed criteria for assessing the content of a code and code development processes appropriate?

A.2. Yes – as previously supported in our overarching statements, we see this as not only a matter of an enhanced emphasis. The specifically required documentary evidence for code registration (Appendix E of the discussion paper) forms both an excellent and auditable guide as well as provides a clear framework for better project management of consumer code development by eligible bodies and organisations.

Q.3 Are the proposed definitions of ‘approved auditor’ and approved auditing requirements’ consistent with standard business practice?

A.3. Yes – these definitions are ‘consistent with standard business practice’ **BUT** in our opinion **should further require that the audit is conducted by an auditor or authorised audit company registered with ASIC** so that the community can be assured that such audits of public money use is being conducted by individuals and entities who have committed to operate in and maintain their skills at an industry best practice level and so that an established disputes handling mechanism is in place. see http://www.asic.gov.au/asic/asic_infoco.nsl/byheadline/Auditors+homepage?openDocument

Q.4 Are the proposed categories of non-refundable costs reasonable?

A.4. No – whilst the majority of the details and definitions of Costs that cannot be reimbursed Part C of the discussion document including sections involving parties ‘at arms length’; overhead costs of the industry body or organisation and excessive costs from any category are both reasonable and agree with we have serious concerns about “costs incurred by consumer bodies who have been granted financial assistance by the Minister for Communications, Information Technology and the Arts under subsection 593(1) of the Act for purposes in connection with the representation of the interests of consumers in relation to telecommunications issues” being maintained as a non-reimbursable category.

In addition to the points and arguments raised earlier in this document regarding this matter, we perceive the possibility that the maintaining of such categorisations could lead to the effective exclusion (or selection against) involvement of such funded consumer representational organisations in consumer code development so as to maximise reimbursable costs to an eligible body or organisation, when it may in fact be that the separately funded and acquitted activities of the consumer representative organisation are significant in the enhancement of outcomes for consumers in code development and the effectiveness (including cost effectiveness) of the representative body in the code development process.

Cheryl Langdon-Orr

Director / Hon Treasurer ISOC-AU