
Internet marketing standards: institutional coherence issues

Patricia Ryan

Graduate School of the Environment,
Division of Environmental and Life Sciences, Macquarie University,
Sydney, Australia, 2109
E-mail: pryan@gse.mq.edu.au

Abstract: This paper reflects upon the mosaic of institutional issues associated with gaining credibility for internet marketing standards. Strong claims for a predominantly self-regulatory approach are reviewed in conjunction with other factors that inhibit credibility, namely: competing internet worldviews, weak moral coherency and offline ambiguity about respective institutional roles, especially as regards moral dimensions of notions of regulation and self-regulation. The nature of the internet does not alleviate or weaken the need for either formal regulation or ethical responsibility. Rather, enhanced institutional coherence between regulatory and non-regulatory systems is needed to ground credibility in internet marketing standards.

Keywords: institutional coherence; internet marketing ethics; internet marketing standards; internet moral coherence; internet self-regulation.

Reference to this paper should be made as follows: Ryan, P. (2004) 'Internet marketing standards: institutional coherence issues', *Int. J. Internet Marketing and Advertising*, Vol. 1, No. 1, pp.85-103.

Biographical notes: Emeritus Professor Patricia Ryan was most recently, prior to her retirement in March 2003, Professor of Business Law in the Department of Business, Division of Economic and Financial Studies, at Macquarie University, Sydney, Australia. She is a former dean of the Division and currently holds an Honorary position as Adjunct Professor in the Graduate School of the Environment at Macquarie University.

1 Introduction

Business planning, strategy and operations take place in a dynamic 'standards environment', which requires consideration in terms of existing and probable influences on industry standards of behaviour. Consensus in this environment is complicated because moral outlook, worldview standpoint, actual experience and locations of seats of power variously either support, or check, each other to help shape the internal and external culture, which creates expectations about what is right and wrong, or acceptable and unacceptable. Multiple global forces add further complexity, and uncertainty, in the case of internet commerce (i-commerce).

So that business plans and operations may benefit from a more certain outlook, institutional influences in the form of industry self-regulation and government regulation

need to be reasonably well settled and aligned in their scope and purpose. This 'institutional coherence' also helps sustain credible standards. In this regard:

- 'Institutional' refers both to laws and informal standards of conduct that are consciously shaped by bodies or groups with influence. At a broad social level, institutions encompass relevant governmental, legislative and judicial authorities, the mass media, non-government organisations and industry bodies. The concept also embraces the internal norms and standards of conduct set by individual business organisations.
- 'Coherence' requires a confluence of different institutional influences, which complement each other and grow together in an intelligible way, despite particular points of conflict.
- 'Credible' indicates that standards are sufficiently well founded to create an expectation that they will be acted upon and sufficiently accepted so as to be actually acted upon. This implies the need for integrity and transparency regarding how the governing standards are settled and complied with, as well as trust in these processes despite differences of opinion about the need for specific standards or any accountability standards at all.

In order to sustain credible standards, the formal and informal institutions, therefore, must move in a common direction, supported by their interest-holders. This requires a developmental, long-term view, which understands different institutional positions and the needs of different interest-holders. In the specific context of internet marketing standards, four linked factors inhibit institutional coherence:

- competing internet worldviews
- strong self-regulation advocacy
- poor moral coherency, in terms of ethical values that affect institutional choices in relation to standards and personal choices about acceptance of, and adherence to, standards
- ambiguity about institutional roles, especially as regards notions of self-regulation.

Whilst all of these factors may apply to i-commerce more broadly and all, except the first, have relevance in both online and offline business settings, contemporary self-regulatory advocacy, in conjunction with internet worldview conceptions, specifically concerns internet marketing standards. The internet, it is argued, is so different in nature from other electronic commerce (e-commerce) media that regulatory regimes are largely inappropriate with respect to marketing standards. The International Chamber of Commerce accordingly advocates business self-regulation and technological innovation as the primary forces of internet marketing standards, in order to 'create and foster trust' in i-commerce [1].

This paper reviews those self-regulatory claims, notions about the nature of the internet and roles of moral values and institutions, as a basis for inquiring whether there is sufficient institutional cohesion to sustain credible internet marketing standards. General ways of enhancing institutional coherence are also canvassed.

Since popular meanings of 'standard' and 'standards' are inconsistent, a threshold issue relates to the notion of 'standards' of behaviour. 'Standards' meaning either ideals,

moral principles, ethics or virtue might be contrasted, for instance, both with 'rules' and with 'what is up to the individual'. Meanings of 'standard' encompass 'small', 'median' or 'average', what is 'typical' or 'common', 'high' and 'perfection'. This variability in meanings is a particular problem in discourse about standards, since the meanings are usually assumed and rarely disclosed.

Although the broad nature of the review in this paper makes it unnecessary to distinguish between, say, 'moral' and 'ethical' or 'legal' and 'regulatory', 'standards' of internet marketing will connote all of following:

- pre-determination, not extemporisation
- agreement, not unconformity
- uniformity, not variability or multiformity
- consistency and continuity, not inconsistency and unpredictability
- ascertainable, not unknowable or arbitrary, expectations
- levels or degrees of behaviour, which are testing and testable, and not based on open-ended criteria.

Both the expectations and levels regarding standards might be set by either formal or informal institutions. Regulatory legal standards will be externally imposed on individual actors and organisations; policy, process, values and beliefs will be partly self-imposed [2]. Recognition of the kind and level of expected marketing behaviour, however, is bound to be complicated where, as in the case of the internet, there are at least two strongly competing worldviews – one grounded in a kind of gift economy and the other in a market economy.

2 Internet worldviews

Worldview standpoints have relevance for:

- the moral values that shape choices about setting and accepting internet marketing standards
- the kinds of, and degree of conformity between, expectations that might underlie internet marketing standards
- the level of trust that might be accorded to the institution or institutions that seek to set and enforce internet marketing standards.

Where prevalent internet behaviour is arbitrary and inconsistent, there would appear to be a fundamental lack of consensus about internet expectations and moral values and/or about the institutional bases of internet power and property.

Evocative epithets, like 'viral marketing', 'spam' and 'cyber scum', allude to an unethical face of internet marketing. They also underscore the many ambiguities and informal double standards, which might hinder the establishment of authoritative standards of fit and proper behaviour in the evolving enterprise of internet marketing. Viral marketing, for instance, is openly promoted by some consultants [3], just as it is cursed by some commentators [4]. Some internet users express their moral outrage in

insults, if not in more active retaliatory efforts such as viral ad parodies [5], anti-spamming [6] or 'ethical hacking' [7]. Further examples were collected by Coombe and Herman [8].

It may be that the nature of the internet does not give rise to the need for special internet ethics [9]. As a medium, is the internet simply a channel or space for the flow of information? As a communication technology, is it simply the means for connecting senders and receivers of information? Or is it a broader technology, which has social as well as communication implications? Or has it, in the process of connecting and facilitating individuals and groups with common or exchangeable interests, given rise to a new virtual community with its own evolving standards? Perhaps none of these standpoints provides firm foundations for internet marketing standards. A cultural media perspective risks adoption of a relativist approach to the governing moral values. A narrow technocratic perspective risks omission or under-emphasis of any ethical and cultural values at all. A populist 'virtual reality' perspective risks trivialisation or over-generalisation of what might constitute the underlying values of internet communities, as well as overlooking the absence of 'real' institutions of civic order in virtual domains.

Although an extremist view rejects the relevance of an internet 'community' altogether, by conceiving of the internet simply as undeveloped territory ripe for the taking [10], the notion of some kind of community is generally central to online business models. Paradoxically, however, the models increasingly make use of an imaginary, or virtual, organisation where resources, processes and people "exist and are managed outside of the legal boundaries, the official accounting reports, and the organisational descriptions" [11]. Indeed, much of the internet terminology is either intentionally or unintentionally ambiguous, maintaining the tension in pre-internet dictionary definitions of the word 'virtual', which suggest a sense of unreality that does not matter for all practical purposes.

Text-based systems of the internet are seen as masking identities and changing the nature of offline experiences and functions of verbal and written communications [12]. Yet, as Evans [13] argues, this view of the internet maintains linguistic exchange as an actual world function and so is distinguishable from the 'virtual reality' meanings of computer-generated sensory worlds or the informational space of flows. He contends that the internet, as originally conceived, reveals human communities consisting of "dialogical exchanges among voices", which produce new voices and exemplify a gift economy. As such, the internet provides publicly accessible, emotional and cognitive space that is open to dynamic contests in terms of time, positioning and opinion. Consequently, the idealised citizens of this unsegmented, government-free world may feel a need to resort to crude Resistance-type tactics [14] in order to counter commercial efforts to establish transformative marketing enclaves [15] or thwart efforts "to commodify and privatise the online community, to police and regulate social interaction, and to control practices of online knowledge production" [16].

Werry [16], however, believes in the need for independently maintained protocols and sees a critical role, especially for academics, in safeguarding and expanding spaces for community formation, which are "not entirely dominated by the market, that are open, participatory, diverse, and democratic". Dismissing lyrical citizenship and ecosystem metaphors used in commercial promotional material to describe the organisation and development of internet marketing communities, he suggests that the power of online marketing communities is "largely in terms of consumption rather than the production or

control of community resources". This is why commercial interests need to promote "a 'consumer' model of power, politics and participation" in preference to "a 'citizen' model that requires deliberative interaction". He highlights how children, volunteerism and gift economy tradition are exploited in strategies prompted by "a more sophisticated way of inscribing commercial imperatives into communication and interaction".

In the alternative vision provided by Henshall [17], the notion of empowered consumers is a 'disruptive idea' for business. He foresees an enormous growth in information assets, generated as a result of i-commerce transactions, which will be owned and controlled by individuals rather than by businesses. As a result, communities of interest and action, based on personal data sharing would generate 'information funds', 'information markets', real consumer power, and real interest and influence in the setting of standards. His 'COMsumer Manifesto' (for communities of consumers) promotes ownership of personal data to maximise its value, with the help of information fund managers, "for the common good of the planet". Business would, therefore, not be able to maximise profit by mining its own closed, proprietary data mines. I-commerce strategies would need to take genuine account of soft processes, such as information transparency and community learning, as well as technological hardware and information architecture, including environmental sustainability issues related to the need for longevity and upgradability. Henshall muses that "the main chance for a return to stability from the present dotcom-driven hyper competitive land grab is for organisations to sponsor sustainable COMsuming communities".

Such worldviews assume the presence of aligned groups of internet users and intermediaries, but extreme gift economy and market economy worldviews promote non-inclusive moral values in the internet environment. Yet the very exclusiveness of these worldviews is the stuff of real world politics that has helped fashion so many forms of institutions concerned with setting and upholding responsible standards of human behaviour. The 'right-mindedness' of the metaphorical internet worlds thus helps focus attention, not just on competing internet moral values and the divisiveness of primitive power-seeking tactics, but on real world institutional controls over the abuse of power and property.

3 Self-regulatory advocacy

Self-regulatory advocacy:

- is characterised by a right-mindedness, which is concerned directly with gaining institutional control of internet marketing standards
- leverages a market economy worldview of the internet
- challenges the capacity of regulatory institutions to devise credible internet marketing standards.

By seeking to restrict the role of formal institutions, more than promote institutional coherence, self-regulatory advocacy not only has implications for credible internet marketing standards but poses risks for internet business. As Frynas [18] observes, in the absence of a well-developed and uniform international regulatory framework, there is a real business risk when the internet is treated as unregulated in disregard of the growing

body of national and regional level regulation. Self-regulatory advocacy potentially adds to this confusion about the institutional environment of internet marketing standards.

Self-regulation advocacy in the Global Action Plan for Electronic Business [19] is premised on an historical record of business having "set its own standard rules and practices" to lower transaction costs, avoid and resolve conflicts and create consumer confidence. The Plan postulates that business will invest in promoting "a trustworthy environment through self-regulation and technological innovation", which will "foster the empowerment of users", provided that business "can trust that governments will recognise and reinforce the leadership of business in responding to the highly dynamic nature of electronic business." Government intervention is to be limited to providing the underlying facilitative infrastructure and "minimal rules necessary for a stable and predictable electronic environment", which ought to sustain economic activity and also help overcome the global "digital divide". Self-regulatory, industry norms of best practice and enforcement mechanisms would complement existing legal instruments to promote "high standards of consumer protection" and displace incompatible national laws that impede cross-border sales.

Assertions by the International Chamber of Commerce [20] also promote minimalist government intervention, because the internet "provides significant consumer empowerment through increased competition, evolving business models and technology". According to this view, the government role is to provide a formal framework, which should provide certainty and confidence for both businesses and consumers with respect to assessing cost, risk, competition and price, whilst also allowing consumers an accessible, cost-effective avenue of redress. This regulatory role need only focus on protecting the public interest through preventing abuses of market power and promoting fair competition. Any intervention should be no more than what is "essential" and should be clear, transparent, objective, non-discriminatory, proportional, flexible and technologically neutral. Accordingly, the Chamber endorses the role of internationally coordinated, compatible, government policies for the primary purpose of facilitating interoperability within an international, voluntary, and consensus-based environment for setting standards.

The International Chamber of Commerce has been steadfastly optimistic too about the emergence of mutually supportive transnational regulatory and market environments, which could simultaneously deter irresponsibility and empower all i-commerce participants:

"Although non-legitimate businesses on the internet cannot be effectively 'regulated' by self-regulation as such, and will try to evade government regulation, increased consumer empowerment based on easy recognition of brands and trustmarks and the increased availability and use of filtering and rating technologies – coupled with international cooperation within law enforcement and effective cooperation with the private sector – offer practical means of protecting consumers against fraud and crime on the internet." [20]

Under the self-regulatory scenario, marketing ethics would be expected to continue to adapt to the online environment. A quite different scenario, however, postulates that:

"As systems of univocal proprietary control give way to an interactive ethics that interrogates the claims of property with questions of propriety we have a unique opportunity to challenge the impositions of privilege and insist upon new forms of responsibility and social accountability." [8]

That is, a new inclusive moral coherency might lead to new institutional forms and new institutional coherency. Self-regulatory claims will, therefore, be reviewed further firstly, in terms of broader moral coherence and, secondly, in terms of institutional coherence. Moral coherence here means shared institutional pursuit of inclusive moral values, as a foundation for the integrity needed to sustain credible internet marketing standards.

4 Moral coherence

Weak moral coherence will be particularly associated with:

- no, or poorly assured, institutional moral bases for internet marketing standards
- conflict over ethical rationales for internet marketing standards
- disregard for, or indifference to, moral values of special relevance for credible marketing standards, such as honesty, equity and justice.

Since worldviews may form a rallying point for prioritising some moral values and for dismissing or distorting others, the integrity of internet marketing standards that are closely associated with a particular worldview may be open to question. Mere conformity between values of different institutions may involve only weak moral coherence or no moral coherence at all, since conformity might merely represent a coalition of like-minded worldviews or be intentionally tokenistic or a pragmatic compromise that abandons important points of difference about ends and/or means to ends. If, however, a major goal of genuine cooperation between different institutions was to achieve a wider, not narrower, inclusiveness of core values, then moral coherence might at least be an ultimate outcome, if not an initial input, of marketing standards.

Difficulties of achieving moral coherence internally in a single organisation are multiplied at inter-institutional levels. A significant practical barrier is that the optimum conditions under which moral coherence might develop are not fully clear, since values may differ both between and within groups and be held with varying strengths of conviction at different times. Strategies for achieving a goal of moral coherence need, therefore, to incorporate a range of the very best practices for overcoming unproductive confrontation, alienation of institutional lobbyists, perceptions of unfairness and irrelevance, and other obstacles to constructive institutional cooperation.

Self-interested behaviour is one such obstacle, which demands an intensely coherent pursuit of moral values by businesses and formal regulatory institutions to enable self-regulation, coupled with a regulatory framework, to deliver credible internet marketing standards. The concept of 'enlightened self-interest' [21], which merges business self-interest with shared social values and an ethical regard for the interests of others, superficially suggests that this is possible. In practice, however, laws in democratic jurisdictions and good business practices tend to reflect dominant ethical norms, at best, in very general ways. Moreover, not all prevailing ethical norms need be translated into law or business practice and some laws and business practices might be at odds with socio-political expressions of moral standards. In any event, ethical cultural homogeneity cannot be assumed, even within the one nation [22].

Yet it has been suggested that common standards of marketing behaviour, premised upon core moral values, might eventually evolve across nations, as an outcome of

ad hoc cooperation between multinational corporations and individual national governments [23]. These values would have to transcend country-specific statements of marketing ethics and particular cultural, religious and philosophical variations within and across different nations. Whilst the socio-political institution of law is not generally believed to practise universal moral precepts, profound teachings and beliefs from quite different religions have been tentatively argued to provide a common base for business social responsibility under the Caux Round Table Principles for Business. With both law and market forces being "necessary but insufficient guides for conduct", the Principles affirm the additional "necessity for moral values in business decision making" [24].

For these moral responsibilities to have real meaning, the virtual metaphor of the internet must not be contrived so as to construct a nonsensical virtual morality that permits unethical behaviour [25]. Also, even though unethical communication issues may be accentuated because of technological features of the internet, it is important not to attribute irresponsible behaviour to a particular technology [26]. The Computer Ethics Institute [27] accordingly founded its Ten Commandments of Computer Ethics on familiar, offline, moral precepts, which may be summarised as: diligent avoidance of harm to others and their property; respect for others and their property rights; and honesty. By contrast, the five principles underlying the Code of Online Business Practices of the Better Business Bureau [28] address specific online business issues of truthful and accurate communications; disclosure; customer satisfaction; protection of children; and privacy and security practices. Whilst couched in terms of e-commerce 'standards', the Code was intended to provide "practical, performance-based guidelines, rather than dictating methods for achieving the goals that could interfere with particular business models". It drew on a review of more than 5,000 commercial websites for the BBBOnLine Reliability Seal and Privacy Seal programs and was designed to complement guidelines of the Electronic Commerce and Consumer Protection Group and the E-Commerce Group.

Gaski [29] looked beyond the treatment of specific issues to allege that broad marketing ethics principles, analogous to the computer ethics commandments, offer nothing new or distinctive from common standards involved in obeying the law or acting in self-interest. He argued that typical marketing ethics prescriptions to avoid or limit harm coincide approximately with legal prescriptions and self-interest constraints to avoid marketing harmful or dangerous products, which are likely to be unprofitable in the long run. Similarly, prescriptions against misleading, deceptive and unfair conduct were argued to cover much the same ground as legal requirements and basic business survival prudence. Whilst appreciating that marketing ethics prescriptions were not fully coextensive with the law or the same as lawful, efficient self-interest, Gaski contended marketing ethics were "sufficiently accounted for by the guidelines of law and self-interest combined or aggregated". Based on his analysis of general marketing ethics prescriptions as distinct from particular ethical marketing issues, he further believed that even those ethical marketing issues, which required consumer safety to be balanced with freedom of choice, were no more than legal or economic issues.

Smith [30] strongly criticised any assumptions by Gaski that unethical conduct is necessarily subject to either legal or market sanctions, or that the law is adequate in terms of its scope and enforcement, or that all markets are very competitive or that business always attempts to maximise customer satisfaction. Smith was most concerned about inattention to specific ethical marketing issues; ethical prescriptions that did not have wide public support, or which conflicted with law and self-interest; and factors and

stakeholders that influence complex ethical choices. Smith contended that, if law and self-interest alone guided marketing practice, the likelihood of good conduct would be substantially reduced. His instances of good conduct, not covered by law and self-interest, included respect for consumer privacy, family values, virtue development and special susceptibilities, say, of children. That is, for Smith, ethical marketing prescriptions are independent of law and self-interest and ultimately reside in 'ethical theory'.

Ironically, Smith, who was counter-criticised by Gaski [31], endorsed those approaches that justify breaches of prima facie moral responsibilities, such as in some cases of bribery. Nevertheless, his insistence that it is essential to have industry-level responses to specific ethical marketing issues gains some support from a 1998 survey of North American workers [2], where one in six employees agreed with the statement that traditional standards of right and wrong were not relevant to new workplace technologies. Sama and Shoaf [32] go so far as to conclude that any ethical rationale in the 'new media' has been reactive and driven by utilitarian or relativistic rationales. Moreover, although organisational self-interest in reputation, based on common understandings of right and wrong, should not be overlooked, characteristics of reputation markets are poorly understood [33] and effects of experience and culture are not clear, despite indications of a heightened influence of negative reputation in i-commerce [34].

In the end, there is no way to assure a moral base for self-interest, including 'enlightened self-interest'. The same is true of the formal institution of law since it does not exist or operate independently of complex self-seeking influences, but the law does engage with ethical issues and is popularly seen as an important tool for trying to control or discourage behaviour that is considered to be dishonest, inequitable or unjust by prevailing community standards. Although they have a decidedly moral tone, aspirations for business-wide moral coherence as envisaged by the Caux Principles and actual industry-based marketing codes are self-regulatory, and so are insufficient in themselves to give moral integrity to internet marketing standards. Hence moral coherence is unlikely, either as an input or outcome, of internet marketing standards that rely primarily on self-regulation and technology, regardless of whether there is also a regulatory framework.

Moral integrity of standards may be weakened equally by the optional nature of self-regulatory mechanisms and the non-choice nature of some regulatory mechanisms. Nevertheless, offline marketing standards typically occur in an environment that comprises the formal institutional involvement of a supportive regulatory framework with self-regulation. As illustrated above, there is no agreed ethical rationale for marketing standards in general, so perhaps coherency between law and self-interest might not, after all, need a strong moral base in order to sustain credible internet standards? Where interactive ethics have no clear function in delineating institutional roles and standards of behaviour, it is difficult to generalise, however, about whether formal regulation is merely a pragmatic business compliance factor or whether also the law and/or individual businesses play some particular role that gives integrity to standards.

5 Ambiguity in institutional roles

Institutions, consciously and unconsciously, may help condition the roles of one another. Ambiguity about institutional roles:

- partly signifies the contemporary complexity of the bases on which individuals, groups and institutions interact with one another, as well as difficulties of proving what really influences one behaviour over another
- is apparent in loose, offline notions about moral dimensions of business ethics, global corporate citizenship, regulation, self-regulation, law-lessness (meaning law-free or obligation-free) and *laissez-faire*
- fails to provide positive conditions for actualising moral notions connected with consumer empowerment and business social responsibility in a standards environment that does not avowedly pursue moral coherence
- may implicitly encourage lawlessness in a *laissez-faire* market climate.

This ambiguity negatively impacts upon internet marketing standards associated with:

- marginalised obligations
- misguided objectives
- loose citizenship notions.

5.1 Marginalised obligations

Self-regulation is associated with discretionary organisation-centred compliance, but the 'self' in self-regulation is not necessarily at individual business levels and some self-regulatory mechanisms may discourage non-compliance. For instance, compliance with self-regulatory codes may be a condition of membership of industry associations [35] or enforced by bodies with professional interests at stake in online marketing, such as associations of journalists, search engine optimisation practitioners or interactive marketing researchers [36]. These are very limited responses, however, to the non-mandatory nature of self-regulation. The situation is complicated by fuzzy distinctions between business attempts, on the one hand, to oust regulation altogether and, on the other, to solicit regulation that adds corporate value. An ambiguous business view of regulatory roles is connected with the instrumentalist progression and economic orientation of law, in western and non-western societies, away from an embodiment of universal moral precepts [37]. There is further ambiguity about the proper domains of business ethics and business social responsibility [38], as well as the reach of national regulation in view of such unresolved issues as whether there is a distinctive internet marketplace, or whether it is partly online and partly geographic [39].

In particular, contradictions between national laws are believed to exacerbate business uncertainty, consumer wariness, enforcement and compliance difficulties when a website is available worldwide and intermediaries are employed. The International Chamber of Commerce [20] accordingly argued that technological neutrality should be used as a concept to promote competition, not to extend existing regulation to new activities, and urged governments to avoid expansive jurisdictional claims based on

'country-of-origin' principles and party autonomy. At the same time, where regulation exists, the Chamber preferred a 'country-of-origin' principle to the 'country-of-destination' principle advocated in the draft Convention on Jurisdiction and the Enforcement of Foreign Judgements in Civil and Commercial Matters.

The recent Australian High Court *Gutnick* decision [40] rejected a 'country-of-origin' solution yet upheld technological neutrality, in the context of alleged defamatory material. The material, housed on a New Jersey computer server in the USA, was viewable as a subscription news site in *Barron's Online* and downloaded to a personal computer in Victoria, Australia. For the purposes of maintaining a defamation lawsuit, which would be decided according to legal principles more favourable to the defendant if the material had been published in the USA, the Australian court found that the material was published in Victoria. Interveners included Amazon.com Inc; Associated Press; Cable News Network LP, LLLP; Guardian Newspapers Ltd; The New York Times Company; News Limited; Time Inc; Tribune Company; The Washington Post Company; Yahoo! Inc and John Fairfax Holdings Ltd.

Difficulties in effectively controlling internet access and regulating its content by reference to geographic, national and subnational boundaries squarely raised an issue for the High Court about one particular jurisdiction having a regulatory advantage over another jurisdiction. This did not mean that "the internet is, or should be, a law-free zone", but it was contended that the law should facilitate and encourage advances made by internet technology and not impede them by inconsistent and ineffective, or partly effective, interventions. Although parallels were drawn with the necessary and common-sense development of the Law Merchant in response to the growth of transnational trade and to previous adaptations of the Common Law to new technology, the court was not convinced that the internet was so different from pre-existing technology that it should abandon a technologically neutral approach. In any event, it was undesirable to express the law in terms of a particular technology that might soon be out of date. This was a particularly important consideration in an area as sensitive as the law of defamation. The Australian court was not prepared to impose upon Australian residents "an American legal hegemony in relation to internet publications" and confer a financial advantage on publishers in the USA to the disadvantage of injured persons and publishers elsewhere.

On the other hand, in both consumer and Business-to-Business (B2B) contexts, neither differences between national laws nor jurisdictional concepts for widening or narrowing the reach of national laws have practical relevance, if parties lack resources for cross-border litigation or lack power to impose model contracts as solutions to different regulatory standards. So, standardised market solutions, which focus on technical interoperability, standardisation and certification of codes of conduct in a market-sensitive regulatory environment [41], hold greater appeal for B2B micro-enterprises. As this self-protectionist, technocratic environment downplays both legal and moral obligations, credible internet marketing standards would have to address not only scepticism about substituting technological fixes for moral obligations, but consumer empowerment and protection issues.

5.2 *Misguided objectives*

Internet environments are argued to increase consumer empowerment and so justify minimal regulatory intervention on behalf of consumers [1,19,20]. Regulation becomes necessary when non-regulation is considered to be an unreliable base for avoiding harm to others or for remediating harm, and there is a public interest in having formal systems of rule-making and enforcement. In practice, formal regulatory systems may help protect consumers, but without supplying the resources needed for consumer empowerment. In practice too, there may be a variety of initiatives and instruments that supplement, or substitute for, formal regulatory regimes.

These include rules of conduct and behaviour unilaterally drafted by organisations or organisational groups, guidelines, performance measures, checklists or recommendations compiled by consultative bodies, standardisation processes, pilot schemes, voluntary consumer consultation and conflict resolution systems, information and competition tools, and accreditation or endorsement schemes. This 'soft law' generally has no legally binding effect, but is not fully identical with non-regulatory, or obligation-free, mechanisms. Soft legal strategy may actually be legislated for in deregulatory forms, such as framework legislation, flexible legal norms, abstract controls and increased reliance on court or tribunal proceedings [42]. Some breaches of commercial codes may also attract regulatory enforcement mechanisms.

Rather than empower consumers and protect the public interest, however, industry-level commercial codes of conduct may merely increase confusion [43] and actually demonstrate the need for formal regulation of commercial and consumer relations [44]. Commercial codes take a producer's or trader's point of view [42] and even 'fair trade' objectives often become enmeshed with corporatist, self-protectionist or promotional reasons. Industry support for formal standards typically turns on whether benefits, obtained by facilitating competition and policing anti-competitive behaviour, are perceived to outweigh the potential adverse effects of imposing standards on the market. Acceptable regulatory standards might, for instance, curtail abuses of market power that impose proprietary standards on others, prevent or impede market entry or otherwise distort what is regarded as fair competition, without being concerned with consumer protection or empowerment. Furthermore, conventional business activities adapted for the internet may have to be distinguished from activities that evolve in internet environments, not in a scarcity-based economic system associated with conventional proprietary attitudes and standards [45].

Bambury [45] also identified misguided regulatory objectives on the part of governments, which tended to view the internet either as a public enterprise enabling efficient communication between the public and business or as a private initiative requiring little government involvement. In his opinion, ideological confusion by some governments and some 'netizens' (network citizens) about regulation, coupled with the extra-national nature of the internet, had produced regulation of activities that should be self-regulated (pornographic content, free speech and the use of cryptography) and non-regulation of activities that require government involvement (spamming, clickstream surveillance, intrusive marketing and privacy intrusion). Ferraro [46] was similarly concerned about reactionary regulation that could harm businesses and consumers alike, but also gave examples of failed self-regulation, such as poorly explained business website postings of self-regulatory privacy policies and under-performance by TRUSTe [47] in verifying whether certain self-regulatory standards were met. His solution of joint

government and business (not consumer or 'netizen') development of specific standards in a uniform business code for transacting i-commerce, however, did not address misguided self-protectionism objectives.

5.3 Loose citizenship notions

Citizenship notions have been advocated as being able to redirect institutional objectives more efficiently and fairly than laissez-faire notions. Citizenship notions are grounded in a form of self-regulation whereby individual actors assume ethical responsibilities. Business ethical responsibilities, for example, involve making deliberate choices out of regard for someone other than the business making the choice. Where 'the other' is an unknown person or body in the wider community, the prospect of behaving ethically is greatly diminished, but, because business operates in a context of social goals and values, there has been an increasing movement towards blended business and social moral roles [38].

The World Business Council for Sustainable Development [48] defines Corporate Social Responsibility, for instance, as the continuing commitment by businesses to behave ethically and contribute to economic development, while improving the quality of life of the workforce and their families as well as of the local community and society at large. The International Code of Advertising Practice recognises social responsibilities towards the consumer and the community and the International Code of Environmental Advertising requires advertising to be consistent with environmental regulations and mandatory programs as well as conforming to fair competition principles that are generally accepted in business [49]. Yet the ambit of a legitimate business role in social responsibility is far from clear, since ethical dimensions are clouded by self-interest in enhanced brand image and corporate reputation or by social consciousness and other warm feelings [38].

Calls for global corporate citizenship follow on from attempts to link business ethics and social responsibility into the wider citizenship agenda inspired by the two World Summits on Sustainable Development [50]. New forms of global governance are said to require new forms of citizenship including corporate citizenship [51]. Global citizens respect and value social and ecological diversity and take responsibility for acting to make the world a more equitable and sustainable place. Corporate citizenship arguably moves beyond Corporate Social Responsibility, since it requires businesses, as social actors, to recognise, refocus and strategically manage their full range of business functions with social and environmental dimensions. Like successful business models, corporate citizenship models will develop according to needs and circumstances, but pose special challenges where there are multiple interest holders.

Global citizenship concepts, deriving from concepts of environmental responsibility and sustainable development and interconnecting with goals of peace and human rights, are typically resisted because:

- it is difficult to have serious obligations to all human beings
- citizenship is an institutional concept that does not make sense outside the nation-state
- ethical arguments are strong enough without the need for an idea of global citizenship.

On the other hand, a robust global ethic, which identifies individuals with specific communities in a global civil society, is said to be crucial to “the development of a more environmentally sound, peaceful, safe and humane world” [52].

The final Plan of Implementation of the 2002 World Summit on Sustainable Development (Earth Summit), in relation to sustainable consumption and production, accordingly contained commitments to increase eco-efficiency and financial support for capacity building, technology transfer and exchange of technology with developing countries and countries with transitional economies. Production and consumption pattern issues were to be integrated into sustainable development policies, programs and strategies, including poverty reduction strategies. The Summit clearly acknowledged the need for enhanced corporate responsibility and accountability, ethics, and community partnerships with both businesses and governments [53].

Ideological confusion and misguided objectives, however, carried through to the Summit so that the most contentious Summit issues involved promoting the rule of law, respect for human rights and fundamental freedoms, good governance and strengthening of governmental institutions. The final text did not provide a regulatory platform for corporate accountability and merely emphasised the need for multidimensional approaches in the context of loss of confidence in democratic systems, poor corporate accountability in the private sector, and the evolutionary nature of the processes that are needed to strengthen international institutions.

Regardless of whether the notion of an internet community is more, or less, illusory than the notion of an offline global civil society, similar citizenship questions arise. This is reflected in the reaction of a new internet user, who asked, after being informed that “The people on the internet made the rules and they enforce them”:

“What people? I didn’t make the rules and I am on the internet. I am not enforcing them.” [54]

Internet users, who have called themselves ‘netizens’ (network citizens), have done so to emphasise their membership of a new community with its own culture and guidelines of behaviour. Originally unwritten guidelines among relatively few users were consciously developed into a more formal ‘netiquette’, explained by Rinaldi [55] as follows:

“The guidelines are not to be misconceived as laws, nor rules that detract from the concept of free expression in the internet. Rather the guidelines are meant to provide helpful hints on some common and frequently addressed questions or global ‘standards’ ... Each organisation on the internet should provide and inform its users on expected standards of conduct”

That is, these guidelines, which are more to do with manners than ethics [25], offer no participatory rights, obligations or enforceability. The capacity for anonymity of internet users and for disengagement from any harm resulting from their actions is, moreover, not conducive to civic virtue founded in concern for the common good or with behaving responsibly, honestly and fairly towards other citizens. Generally, the internet therefore seems less capable of anchoring marketing ethics at the level of individual commercial actors than the offline world – and there, the motivations and outcomes of both corporate citizenship and consumer behaviour are far from settled.

6 Conclusion

Whilst issues about the roles of hard and soft law, self-regulation and business ethics are longstanding, the bold force of self-regulatory claims, based on the novelty of the internet, led to reflections in this paper about institutional coherence issues. Ambiguity about institutional roles and moral notions, together with contradictory internet worldviews, form part of an untidy mosaic that confronts decision makers in the internet marketing standards environment. Rather than a complete picture, there are many imperfect pictures constituted by multiple issues that sometimes accentuate and sometimes obscure each other.

No new institutional consideration, or mix of considerations, which would clearly shore up self-regulatory claims was uncovered by research for this paper, which highlighted instead that:

- whether taken singly or together, regulatory and self-regulatory institutions are at present unable to support credible internet marketing standards
- unethical internet behaviour and treatment of the internet as an obligation-free zone underscore ambiguities about institutional roles
- there is no assured uniformity or certainty in self-regulatory approaches, which largely emulate the uneasy double standards both of market behaviour and of regulatory treatment of social responsibility
- self-regulation may play a role in promoting ethical business responsibility; alternatively, ethical business practices may help promote socially responsive and effective self-regulatory and legal systems, but none of these outcomes is assured
- law has a role in conditioning the capacity to self-regulate, although “the fragile and elusive nature of moral conditions and the consequent problem of securing non-infringement of them” create effective limits to legal rules for new technologies and organisations [37] and the role of neither the law nor the internet should be romanticised within complex socio-economic processes [56]
- internet marketing standards, like other aspects of global commerce, need to be founded in a judicious blend of ethical self-regulation with national and transnational regulatory regimes that comprehend positive and negative features of technological developments, market conditions, business and consumer behaviour.

The nature of internet technology does not alleviate or weaken the need for regulatory and ethical responsibility. Rather, enhanced institutional coherence is required, built by ongoing interactive negotiation and agreement in regulatory and non-regulatory systems. Two World Summits on Sustainable Development emphasised that this interaction must be driven by a shared global ethic between governments, businesses and communities across the world, in order to find environmentally, socially and economically sustainable solutions to problems created by consumer and profit-driven agendas. Whilst this ethic remains largely unoperational, broad-ranging interest in the 2002 Summit suggested that it might provide the cornerstone for future cross-institutional initiatives. Also, the numerous pilot programs presented at the Summit, which attracted participants from 191 governments, intergovernmental and non-governmental organisations, the private sector,

civil society, academia and the scientific community [53], offer a rich resource for empirical research.

There is still much to learn about how to develop productive interaction at large-scale institutional levels; ensure effective involvement of all affected internet interests, including consumers; and tackle marginalisation of law and morals in an internet economy. Whilst some actors may opportunistically exploit the ensuing ambiguity, others may enhance institutional coherence, and their own standing, by adopting internet standards of marketing ahead of what is currently mandated. Credible standards will develop from formal and informal initiatives, which:

- engage fully in the pursuit of integrity
- recognise that limitations on self-regulation involve more than uneven playing fields and fraud
- comprehend how markets, technology and law may disempower consumers
- interrogate assumptions and assertions that fracture, not build, institutional coherence.

Acknowledgement

The author gratefully acknowledges suggestions made by the anonymous referees for the final version of this paper.

References and Notes

- 1 International Chamber of Commerce. (2002) 'Government over-regulation could endanger e-business', 12 September, Available from: <http://www.iccwbo.org/>
- 2 Mahoney, A. and Noonan, D. (1999) 'Giving values a voice, and how technology raises unchartered issues (Talking About Ethics, Part 2)', *Association Management*, Vol. 51, No. 4, pp.49–59.
- 3 E.g., <http://www.doctorebiz.com/>; <http://www.intrapromote.com/>
- 4 E.g., Monbiot, G. (2002) 'Corporations are inventing people to rubbish their opponents on the internet', *ATTAC Newsletter*, p.128.
- 5 E.g., Harvest (2002) *Fwd: This Made Me Laugh: How Viral Ad Parodies Impact Your Brand*, Harvest Communications LLC, New York.
- 6 E.g., <http://www.mall-net.com/spamfaq.html>
- 7 E.g., Hoe, N.S. (2001) 'Ethical hacking', *MNCC Information Systems Security SIG*, 17 March, Available from: <http://www.mncc.com.my/infosec/doc/ehack1.html>
- 8 Coombe, R. and Herman, A. (2001) 'Culture wars on the net: intellectual property and corporate propriety in digital environments', *The South Atlantic Quarterly*, Vol. 100, No. 4, pp.919–947.
- 9 Graham, G. (1999) *The Internet: a Philosophical Inquiry*, Routledge.
- 10 Canter, L. and Siegel, M. (1994) *How to Make a Fortune on the Information Superhighway*, Harper-Collins, New York.
- 11 Gummesson, E. (1996) 'Relationship marketing and imaginary organisations: a synthesis', *European Journal of Marketing*, Vol. 30, No. 2, pp.31–44, citing Hedberg, B., Dahlgren, G.,

- Hansson, J. and Olve, N-G. (1994) *Imaginara organisationer (Imaginary Organizations)*, Liber-Hermods, Malmo, p.16.
- 12 Rheingold, H. (1993) *The Virtual Community: Homesteading on the Electronic Frontier*, Addison-Wesley, New York.
 - 13 Evans, F. (2000) 'Cyberspace and the concept of democracy', *First Monday*, Vol. 5, No. 10, Available from: http://firstmonday.org/issues/issue5_10/evans/index.html
 - 14 Meikle, G. (2002) *Future Active: Media Activism and the Internet*, Pluto Press, Australia.
 - 15 Morgan, R.F. (2002) 'A framework for defining internet marketing strategy through inter-organisational collaboration', 10 September, Available from: <http://www.corex.net/>
 - 16 Werry, C. (1999) 'Imagined electronic community: representations of virtual community in contemporary business discourse', *First Monday*, Vol. 4, No. 9, Available from: http://firstmonday.org/issues/issue4_9/werry/index.html
 - 17 Henshall, S. (2000) 'The COMsumer manifesto: empowering communities of consumers through the internet', *First Monday*, Vol. 5, No. 5, Available from: http://firstmonday.org/issues/issue5_5/henshall/index.html
 - 18 Frynas, J. G. (2002) 'The limits of globalization -- legal and political issues in e-commerce', *Management Decision*, Vol. 40, No. 9, pp.871-880.
 - 19 Alliance for Global Business. (2002) *A Global Action Plan for Electronic Business*, 3rd ed., Available from: <http://www.iccwbo.org>
 - 20 International Chamber of Commerce. (2001) 'Jurisdiction and applicable law in electronic commerce', 6 June, Available from: <http://www.iccwbo.org/>
 - 21 E.g., United Kingdom Company Law Review Steering Group. (1999) *Modern Company Law for a Competitive Economy: The Strategic Framework*, Annex C. Department of Trade and Industry, UK. The notion of 'enlightened self-interest' did not shape the Group's final recommendations.
 - 22 Sarwono, S. and Armstrong, R. (2001) 'Microcultural differences and perceived ethical problems: an international business perspective', *Journal of Business Ethics*, Vol. 30, No. 1, pp.41-56.
 - 23 Rallapalli, K. (1999) 'A paradigm for development and promulgation of a global code of marketing', *Journal of Business Ethics*, Vol. 18, No. 1, pp.125-137.
 - 24 Young, S. (2001) 'Redeeming the promise: making capitalism work in a moral context: a suggestion for business leadership from the Caux Round Table', Available from: <http://www.cauxroundtable.org/>
 - 25 Hauptman, R. and Motin, S. (1994) 'The internet, cyberethics, and virtual morality', *Online*, Vol. 18, No. 2, pp.8-9.
 - 26 Herschel, R. and Hayes Andrews, P. (1997) 'Ethical implications of technological advances on business communication', *The Journal of Business Communication*, Vol. 34, No. 2, pp.160-170.
 - 27 Computer Ethics Institute. (1992) *The Ten Commandments of Computer Ethics*, The Brookings Institution, Washington DC, Available from: http://www.brook.edu/its/cei/cei_hp.htm
 - 28 Better Business Bureau. (2000) *Code of Online Business Practices*, Available from: <http://www.bbbonline.org/reliability/code/code.asp>
 - 29 Gaski, J. (1999) 'Does marketing ethics really have anything to say? - a critical inventory of the literature', *Journal of Business Ethics*, Vol. 18, No. 3/1, pp.315-334.
 - 30 Smith, N.C. (2001) 'Ethical guidelines for market practice: a reply to Gaski and some observations on the role of normative marketing ethics', *Journal of Business Ethics*, Vol. 32, No. 1/1, pp.3-18.
 - 31 Gaski, J. (2001) 'Normative marketing ethics redux, incorporating a reply to Smith', *Journal of Business Ethics*, Vol. 32, No. 1/1, pp.19-34.

- 32 Sama, L. and Shoaf, V. (2002) 'Ethics on the web: applying moral decision-making to the new media', *Journal of Business Ethics*, Vol. 36, No. 1-2, pp.93-103.
- 33 Tadelis, S. (2002) 'The market for reputations as an incentive mechanism', *The Journal of Political Economy*, Vol. 110, No. 4, pp.854-882.
- 34 Standifird, S. (2001) 'Reputation and e-commerce: eBay auctions and the asymmetrical impact of positive and negative ratings', *Journal of Management*, Vol. 27, No. 3, pp.279-296.
- 35 Direct Marketing Association (1997) 'The DMA announces plan for new mandatory ethics compliance requirements by all members', *Direct Marketing*, Vol. 60, No. 7, pp.6-8.
- 36 Blumenthal, R.G. (1997) 'Woolly times on the web', *Columbia Journalism Review*, Vol. 36, No. 3, pp.34-5; Clay, B. (2002) 'Search engine optimization code of ethics', Available from: http://www.bruceclay.com/web_ethics.htm; Interactive Marketing Research Organization (2000-2001) 'Imro code of ethics', Available from: <http://www.imro.org/code.htm>
- 37 Arup, C. (1982) 'Soft values, policy analysis and the legal process', *Australian Journal of Law and Society*, Vol. 1, No 1, pp.10-31.
- 38 Buchanan, J. and Ryan, P. (2002) 'Private and public faces of ethics: convergence and divergence', *International Institute for Public Ethics Conference, Reconstructing 'the Public Interest' in a Globalising World: Business, the Professions and the Public Sector*, 4-7 October, Brisbane, Australia, Available from: <http://www.iipe.org/conference2002/papers/Buchanan.pdf>.
- 39 Ryder, R. (2002) 'Evaluating cyber laws: a primer on regulatory norms in Indian cyberspace', *Lawasia*, September, pp.11-13.
- 40 Dow Jones & Company v Gutnick. [2002] *HCA 56, High Court of Australia*, Available from: http://www.austlii.edu.au/au/cases/cth/high_ct/2002/56.html#fn98
- 41 European Commission Enterprise Directorate-General. (2002) *Final Synthesis Report - Benchmarking National and Regional e-Business Policies*, Available from: <http://europa.eu.int/comm/enterprise/ict/policy/benchmarking/final-report.pdf>
- 42 Bourgoignie, T. (1988) 'On the use of soft law in consumer law and policy', *Australasian Universities Law Schools Association 43rd Annual Conference*, 31 August, Sydney.
- 43 Baron, P. (1992) 'Informed choice', *Alternative Law Journal*, Vol. 17, No. 5, pp.245-246.
- 44 Reich, N. (1988) 'Commercial codes of conduct - evaluating German and EEC experience', *Australasian Universities Law Schools Association 43rd Annual Conference*, 31 August, Sydney.
- 45 Bambury, P. (1998) 'A taxonomy of internet commerce', *First Monday*, Vol. 3, No. 6, Available from: http://firstmonday.dk/issues/issue3_10/bambury/index.html
- 46 Ferraro, A. (1998) 'Electronic commerce: the issues and challenges to creating trust and a positive image in consumer sales on the World Wide Web', *First Monday*, Vol. 3, No. 6, Available from: http://firstmonday.dk/issues/issue3_6/ferraro/index.html
- 47 TRUSTe website, <http://www.truste.org/>
- 48 World Business Council for Sustainable Development website, <http://www.wbcsd.org>
- 49 International Chamber of Commerce. (1996) *International Code of Environmental Advertising*, Available from: <http://www.iccwbo.org/>
- 50 World Summit on Sustainable Development website, <http://www.wssd.info>
- 51 Sarumpaet, R. (2001) 'Globally speaking - the politics of globalisation', *Program 6*, Australian Broadcasting Corporation Radio, Available from: <http://www.abc.et.au/global/radio/radio06.htm>
- 52 Dower, N. (1999) 'Global citizenship program', *Idea Newsletter*, September, pp.1-5, Available from: http://www.carleton.ca/idea/newsletter/reports_101999_3.html
- 53 International Institute for Sustainable Development. (2002) 'Summary of the World Summit on Sustainable Development', *Earth Negotiations Bulletin*, 6 September, Vol. 22, No. 51, Available from: <http://www.iisd.ca/linkages/2002/wssd/>
- 54 Rinaldi, A. (1998) Untitled, Available from: <http://www.fau.edu/netiquette/net/whorules.txt>

- 55 Rinaldi, A. (1995) 'Internet guidelines and culture', Available from: <http://www.fau.edu/netiquette/net/culture.html>
- 56 Drawing on Arup, C. (1992) 'Introduction', in C. Arup (Ed.) *Science, Law & Society*, La Trobe University Press, Australia, where Arup spoke of technology generally, without specific reference to the internet, p.5.