



## Information and Security Law Division

23 December 1999

The Manager  
Convergence Review  
Department of Communications,  
Information Technology and the Arts  
GPO Box 424G  
MELBOURNE VIC 3001

Dear Madam/Sir

### CONVERGENCE REVIEW

Thank you for the opportunity to contribute to the Convergence Review ('the Review').

2. We note that the Review is intended to provide an authoritative and comprehensive analysis of the issues related to the convergence of technologies and markets in the telecommunications, information technology, broadcasting and media industries, and the wider economy, over the next five to ten years. We therefore consider it important that the Review be aware of the need to consider privacy issues and of the Government's self-regulatory approach to privacy regulation in the private sector.

3. One of the characteristics of digital technology described in the Convergence Review Issues Paper ('the Issues Paper') was that it allows services to be reprogrammed by users to better meet their needs. The need to customise services makes it necessary for businesses to utilise information provided by users. The Issues Paper goes on to note that:

- The contribution of users to service definition is a powerful source of economic value in convergence service markets. This value is multiplied if information about users' preferences can be exploited.
- A service provider in possession of detailed information on a user's preferences will be in a strong competitive position. This is likely to result in the consolidation of activity around the businesses which can best manage and exploit user information databases.
- Databases, and the capacity to manage them, will become new bottleneck assets and a key source of economic power in convergence markets.

4. The economic imperative to utilise personal information in order to compete in convergence markets brings with it the possibility of individual's privacy being interfered with. It may be necessary, therefore, to consider privacy regulation as an integral part of any regulatory regime to deal with convergence markets.

5. Additionally, community concern about the commercial use of personal information may result in privacy protection being considered an important social outcome in the context of convergence markets. This issue was not fully addressed in the parts of the Issues Paper which dealt with social outcomes and objectives.

6. We note the difficulties inherent in establishing a workable regulatory regime for convergence markets. The Issues Paper notes that non-regulatory schemes may become of greater use as traditional regulation declines in effectiveness as a result of convergence. However, the use of self-regulatory and co-regulatory mechanisms may also be beneficial. The Government's proposed private sector privacy legislation, for example, will be designed to strengthen self regulation in the private sector.

7. In December 1998, the Government announced that it would develop light touch legislation to support and strengthen self-regulatory privacy protection in the private sector. The legislation will set a benchmark standard for privacy protection, based on the Privacy Commissioner's *National Principles for the Fair Handling of Personal Information*. The scheme will allow businesses to develop their own privacy codes that are consistent with the benchmark standard. Such codes must be approved by the Privacy Commissioner. In the absence of an approved code, the legislative standards will apply.

8. This light touch approach may be of value when considering appropriate regulatory responses to convergence markets. It is designed to provide a supportive environment for self-regulation while at the same time ensuring that minimum community standards are met.

9. We hope that this information has been of interest. We would also be happy to provide the Review with assistance in dealing with privacy issues should the need arise. If you would like to discuss any of the issues raised above, please do not hesitate to contact Richard Glenn on (02) 6250 5823.

Yours sincerely

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