
Guidance and information

E-Commerce and the 1999 Internet sweep day

Introduction

There is little doubt that e-commerce has become one of the buzz words of the late 90s. The Internet is a new and exciting medium and an increasing number of businesses and consumers are going online to buy and sell goods and services.

E-commerce has the potential to deliver great benefits to consumers and businesses. However, it would seem that there is still a long way to go before the promise and potential of e-commerce is delivered.

The Commission has been active in handling e-commerce complaints and advocating for fair business practices and consumer protection guidelines at a national and international level.

Global Commerce Conference

In November 1998 *Commerce Conference*. The conference was the second part in the Commission's global enforcement project, the first being the release of the discussion paper *The Global Enforcement Challenge: Enforcement of Consumer Protection Laws in a Global Marketplace* in September 1997.

The main aims of the conference were to discuss the consumer issues surrounding global and electronic commerce, and to initiate the development of specific strategies to enforce consumer protection laws across borders more effectively and improve compliance with consumer protection laws.

Internet commerce and competition project

The Commission has also dedicated resources to developing its own Internet enforcement

strategies through its Internet commerce and competition project (ICCP).

The project's goal is to enhance the welfare of Australians by fostering consumer confidence and participation in e-commerce by:

- promoting fair trading and providing consumer protection to those participating in e-commerce; and
- promoting competition among those providing goods or services necessary for consumers to participate in e-commerce.

The Commission is focusing on the following tasks:

- identifying existing and potential future conduct within e-commerce or involving the Internet that may contravene the Trade Practices Act;
- developing strategies to prevent such conduct and, if it occurs, to stop it and gain remedies for consumers;
- developing educational strategies to assist industry and consumers who engage in e-commerce to do so with confidence and in compliance with the Trade Practices Act; and
- identifying and seeking to stop anti-competitive conduct by those providing goods or services necessary for consumers to participate in e-commerce, including telecommunications carriers, internet service providers, domain naming authorities and software and hardware suppliers.

The Commission is giving priority to working cooperatively with overseas counterparts, such as the US Federal Trade Commission (FTC), to tackle conduct that involves a number of jurisdictions.

For example, it recently worked closely with the FTC to break a global Internet scam which

took unsuspecting users to pornographic sites and then prevented them from quitting a series of 'adult erotica' sites.

When users attempted to examine legitimate sites they were, instead, 'page-jacked' onto a webpage offering various types of explicit pornographic material. The users were then 'mouse-trapped' by the site. This means that the users' Internet browser was disabled so that when the user tried to quit the site, more pornographic web sites were displayed. This 'mousetrapping' process occurred up to 20 times before the consumer was able to shut down the browser.

The Commission provided information on the Australian end of these operations and is conducting its own investigation into possible involvement by Australian parties.

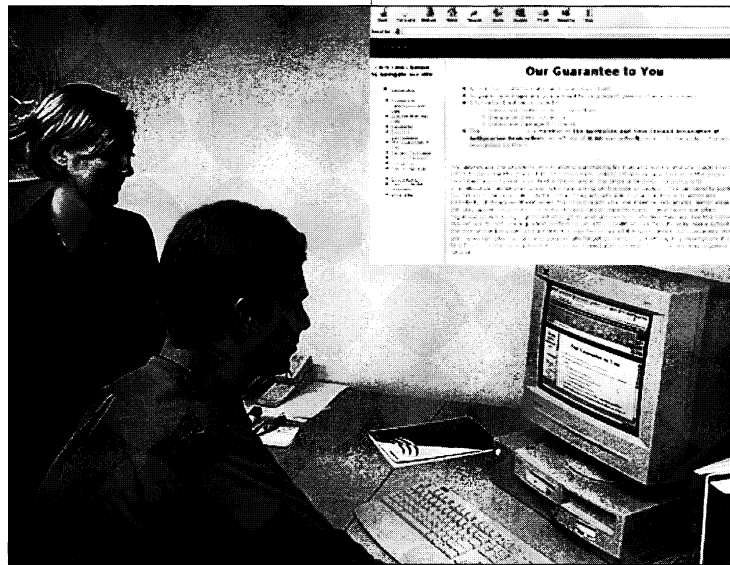
Internet sweep days — background

On 16 October 1997 and 10 September 1998 the International Marketing Supervision Network (IMSN) held a world-wide sweep of the Internet for scams. Both sweep days were coordinated by the Commission with about 70 consumer affairs enforcement agencies from 30 countries contributing. In 1997 the sweep day targeted 'get rich quick' schemes and in 1998 the focus was on websites promoting 'miracle cures' and other potentially misleading health claims.

Once suspicious sites were identified, the operators of those sites were sent an educational e-mail message, outlining the fact that the activities they appeared to offer may be regulated in some countries, and referring them to the regulatory body in their country to obtain information on how to comply with the appropriate legislation.

The results received indicated that more than 1100 suspicious websites were identified in the 1997 sweep and 1400 in 1998. In both years the follow-up sweep gave a good indication of the success of the educational messages on website operators with approximately 25 per cent of those sites revisited having been removed or altered.

In view of the success of the previous ones, the Commission in conjunction with the IMSN, held the 3rd Internet Sweep Day on 23 September 1999.



Internet sweep day 1999

The 1999 Sweep Day differed from the others in that it did not focus on a particular type of behaviour or 'scam'. Instead it assessed e-commerce websites according to a number of key consumer protection

principles. These were partly based on the Draft OECD Guidelines for Consumer Protection in the Context of E-Commerce expected to be finalised by the end of 1999. The Commission has been actively advocating that these guidelines be completed.

The sweep provided a valuable opportunity to publicise these principles to consumers and online traders, and allowed the Commission to collect important information about the characteristics of e-commerce websites.

Method

On 23 September (and during the following two weeks) staff from various consumer protection agencies around the world examined e-commerce websites and completed a checklist of 10 Yes/No questions on what sort of information could be easily accessed before entering into a transaction.

Each site that was examined was sent an e-mail explaining that the Sweep had taken place and giving details for obtaining further information. The e-mail did not make any allegations about the 'quality' of the website. The results were then forwarded to the Commission for compilation and analysis.

Results

The results indicate that there is still a long way to go before the potential and promise of e-commerce is fully realised.

Some notable findings were:

- 62 per cent of sites had no information about refunds or exchanges;
- 75 per cent of sites had no statement about how they would handle a consumer's personal information (i.e. a privacy policy); and
- 90 per cent of sites did not specify the applicable law for the purchase.

E-commerce has a huge potential for businesses to reduce costs and reach a wider market but there would appear to be significant room to improve information disclosure, particularly on consumer redress mechanisms.

It is possible that many sites simply have not thought to disclose certain information or explain their policies on particular issues. For these it should be very easy for companies to simply add the relevant text to their website.

However, it may be that some companies have no policy on particular issues in the 'offline' world and consequently provide no information in the 'online' world. This may indicate that a business has shortcomings not specific to e-commerce.

Conclusion

The Commission will continue to play an active role in e-commerce through its enforcement work and involvement in national and international forums such as the IMSN and the OECD. Through this work the Commission hopes to raise the standards of e-commerce traders and ensure that consumers have appropriate access to means of redress when necessary.

(More information about the Commission's e-commerce activities is available from the ACCC website at www.accc.gov.au)

Information disclosed by e-commerce websites ^{1,2,3}	%
Q1 – Physical address of the business	75%
Q2 – E-mail or phone number for the business	95%
Q3 – Itemisation of costs for a potential purchase	66%
Q4 – Information regarding the security of online payment mechanism	44%
Q5 – Applicable currency for a purchase	75%
Q6 – Restrictions that may apply (i.e. geographical, parental approval)	27%
Q7 – Information about refund and exchange policies	38%
Q8 – Information about how to lodge a complaint	22%
Q9 – Statement of applicable law for the transaction	10%
Q10 – Privacy policy	25%

- 1 If participants in the sweep day could not find the requested information within a few minutes they were asked to answer 'No' to that question. This is based on the premise that if consumers cannot find the information easily then they are unlikely to access it.
- 2 The questions regarding refunds, complaints and privacy policies (7, 8 and 10) did not attempt to assess the content or quality of these policies, but simply whether the website provided any information on these issues.
- 3 Some websites did not have an online payment mechanism. For these sites sweep participants may have answered 'No' to question 4. This has probably led to a slightly lower figure than is actually the case.

New guide to access undertakings

Part IIIA of the Trade Practices Act established a legal regime to facilitate access to the services of certain facilities of national significance. The Commission has a role in arbitration of disputes over access to facilities declared to be essential under the terms of the Act and in assessing undertakings by owners/operators of facilities. The Commission has published various reports to promote understanding about the new Part IIIA provisions. One was *Access undertakings: a draft guide to access undertakings under Part IIIA of the Trade Practices Act* which was first published in 1996 and reprinted with corrections in 1997. In September 1999 a new version of this guide entitled *Access undertakings: A guide to Part IIIA of the Trade Practices Act* was released. The updated guide draws on the experience gained since the original was released. It outlines in detail:

- procedures for assessing and lodging access undertakings;
- the legislative criteria for assessing undertakings and the main factors that the Commission will take into account in applying them; and
- guidelines on what an owner/operator of a facility should include in an undertaking.

The Commission recognises the complexity of applying Part IIIA and sees feedback as important in formulating its approach to undertakings. Therefore the guide is intended not to be prescriptive but aims to assist interested parties understand and use undertakings. This guide is structured to help service providers and other interested parties understand the process of having an access undertaking accepted by the Commission.

Conference

Advertising medical services — in whose interests?

On 14 October in Sydney, the ACCC and the NSW Health Care Complaints Commission jointly hosted a conference entitled *Advertising medical services – in whose interests?*

The conference was designed to discuss some of the issues raised by recent changes in the various laws regulating advertising in the medical and health sectors. These changes have created an environment that allows practitioners a greater degree of freedom to advertise and to communicate directly with consumers. However, the transition to this new environment appears to have created some problems. Members of the community, regulators and medical and health professionals have raised concerns about inappropriate or unfair advertising.

The conference addressed questions such as:

- Are there any special characteristics about advertising in the health sector?
- Do the changes in law mean ‘anything goes’? Is it a ‘free for all’?
- What restrictions apply or should apply to the advertising or promotion of health and medical services?
- What are the roles of the Trade Practices Act, the State and Territory Fair Trading Acts, and the NSW Health Care Complaints Act in the advertising or promotion of health or medical services?

Speakers at the conference included:

- Allan Asher, ACCC Deputy Chairman
- Sitesh Bhojani, ACCC Commissioner
- Merrillyn Walton, NSW Health Care Complaints Commissioner
- Dr Rosanna Capolingua-Host, President Australian Medical Association (WA Branch)
- Dr Paul Hemming, Honorary Treasurer Royal College of General Practitioners
- Matthew Blackmore, Executive Director Consumers’ Health Forum

The conference was well attended, with representatives from the medical profession, professional associations, consumer organisations and regulators, and the debate was often lively.

At the conference the ACCC and HCCC released a consultative draft *Guide to the Trade Practices Act for the promotion of medical and health services*.

The purpose of this draft guide, *Fair treatment?* is to clarify the application of the consumer protection provisions of the Trade Practices Act in this sector. It is hoped that the guide will help the medical and health sectors to develop strategies to improve compliance with the Trade Practices Act and relevant fair trading legislation and to take advantage of the opportunities that advertising and promotional activity can provide.

Copies of *Fair treatment?* are also available on the ACCC website. Comments on the draft guide are welcome, and should be made by 17 December 1999.