

The Convergence Bill

1. Introduction

Good Morning Members of Parliament, Ladies and Gentlemen. My name is Paul Esselaar and I am the head of the public voice portfolio for the Internet Society of South Africa. I am joined today by our Chairman Alan Levin who is no stranger to many of you in the communications committee.

The Internet Society aims to provide a voice to those people who – before the Internet Society existed – did not have a voice. An indication of our focus can be found in our internet fiesta which we held in Belhar in March this year. It is with a focus on the tremendous potential benefits that the Internet can provide to individuals that the Internet Society addresses you today.

The South African chapter of the Internet Society currently boasts 282 members and is a non-profit organization staffed entirely by volunteers.

2. Welcome additions to the Convergence Bill

The Internet Society welcomes the Convergence Bill as hopefully the conclusion to the decade-long process of the liberalisation of telecommunications in South Africa. We believe that a technology-neutral piece of legislation which is enabling is an appropriate, albeit novel, method of legislating a remarkably fluid and dynamic industry.

ISOC-ZA also welcomes the addition of competition clauses in the Convergence Bill which would allow ICASA to deter anti-competitive behaviour, although it is also concerned that concurrent jurisdiction with the Competition Tribunal will lead to forum shopping and create uncertainty – this in a particularly litigious and delicate area.

ISOC also supports the increased power of ICASA and the focusing of the Minister of Communications on communications policy rather than on regulations. We believe that a clear policy on communications – something that was meant to emerge 24 months after promulgation of the Electronic Communications and Transactions Act in August 2002 – is an essential component to encourage investment in the South African telecommunications sector.

The provision for interconnection among network service providers is a welcome and necessary addition to the Bill but we are of the opinion that exception to this provision in terms of s48(4)b that excludes communications network service providers significant market power or control of essential facilities from having to interconnect is unnecessary and will not assist new entrants into this area. Rather an amended obligation to interconnect as provided in s48a would, we believe, be more appropriate.

The repeal of the Telecommunications Act, the Independent Broadcasting Authority Act and sections of the Broadcasting Act and Sentech Act are to be welcomed. ISOC-ZA welcomes the integration of these pieces of legislation but is concerned that there does not

appear to be a complete integration of all the diverse pieces of legislation. This will be again be referred to later as this is one of the primary philosophies that we believe should underlie the Convergence Bill.

Bearing in mind our focus on individual users we also welcome the consumer code of conduct, but feel that some improvement could be made to this section to further improve the information that is readily available to consumers who do not have the resources to approach the court in terms of the Access to Information Act. A meaningful penalty that could be applied to network service providers would also assist in the protection of consumers.

3. Definitions

Much has been made of the definition section of the Convergence Bill and rightly so, since the entire Bill hinges on the many and often confusing definitions in section 1. The definition of an application service is confusing. In addition the definition of convergence cannot be found and the complaints and compliance committee is defined in terms of a non-existent s17H of the ICASA Act.

4. Licencing of application and content providers

While ISOC-ZA appreciates that the Convergence Bill, by its very nature, seeks to be inclusive rather than inclusive, it considers that even the potential possibility that applications and content services providers will need any kind of licence to be counter-productive and

extremely likely to be not only financially damaging but vastly unenforceable. The concept of licensing an email application such as Microsoft's outlook express or Mozilla's Thunderbird, the Voice over Internet Application of Skype or the instant message service application provided by Yahoo are all excellent examples of these points.

5. Public Participation

As before ISOC-ZA is concerned that public participation is not mandatory before the implementation of regulations. ISOC-ZA believes that civil society has a great deal to offer when it comes to assisting with the understanding of technologies that are cutting edge and the logical implementation of regulations that would affect these technologies. On the other hand ISOC-ZA is alive to the possibility that public hearings can be time-consuming and so suggests that if necessary interim regulation could be imposed by ICASA which would have a limited lifespan thus forcing ICASA to hold public hearings after the fact in order to allow the regulation to remain in force.

6. Holistic approach

As mentioned earlier ISOC-ZA believes that this type of legislation - which is a first for South Africa – be seen from a holistic rather than a piecemeal point of view. We believe that many of the fears of the public, as have been expressed by numerous commentators over the past few months since this Bill was unveiled, could be assuaged by the consideration of the amendments to the ICASA

Act, along with the necessary regulations relating to this Bill – to name a few. While ISOC-ZA applauds the the use of a modern and innovative approach to legislation in order to govern a notoriously difficult area to legislate, it wishes to stress that this is legislation that South Africa simply has never dealt with before. We should not make the mistake of treating this piece of legislation in isolation – not only because it goes against the spirit of a convergence which aims at bringing all the pieces together, but also because it is only with all the pieces of the puzzle that the whole can be accurately assessed.

7. Conclusion

At the Internet Fiesta that I mentioned at the beginning of my presentation I was at one point helping an elderly gentlemen to download various forms he needed from the companies and intellectual property registration office or CIPRO. When he saw the ease in which he could get a form that he had been trying for weeks to get he asked me how he would be able to get access to the internet, because while he hadn't used the internet before, he did have an old computer in his home. When I explained to him that he would have to pay for both the dail-up costs and the internet connection fee, and that the dial-up costs could be substantial – especially if he was new to surfing the web - I could see his face cloud over and I knew that he wouldn't be able to afford the Internet. Essentially all that we were doing at the Fiesta was presenting a wonderful, but unobtainable, tool. It was almost like putting sweets in front of a child and then telling him that he can't eat them.

Ultimately ISOC-ZA is desperate to support any effort that will erode the monopoly of Telkom in order to bring down the costs of the internet. A recent study by the Link Centre at Wits University calculated that 84 percent of the cost of a dial-up internet connection was paid to Telkom, which has effectively doubled the cost of a local call since its privatisation. Another report by the South Africa Foundation in 2005 found that local call prices were 199 percent more expensive than the 15 other countries surveyed, with ADSL being 139 percent more expensive than the same 15 countries.

If South Africa truly wishes to emerge into the information age, to service the underprivileged areas and promote employment and small businesses it must remove this barrier to entry.

Thank you for hearing our submission. Along with our chairperson Alan Levin I would welcome any questions related to our submission.