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S1 00:00   Tree, two, one. Hello and welcome to another episode of the Moxie Podcast, the companion web show to the Moxie Sessions, an Internet economy discussion group held once a month in Auckland, New Zealand. This is episode 45 recorded on the 29th of March 2017, though the actual session this podcast relates to was held in September last year. I'm Andrew Patterson with you here in Auckland. I'll introduce our panel shortly, but first let me outline the topic we'll be considering in this session - the Internet enables firms to operate more easily in multiple jurisdictions. Laws, mostly made in one country at a time, struggle to keep up. Is this really a problem? Is New Zealand's best bet to align its rules with other places or should we define our own path?

S1 00:49   Joining me to discuss the topic, Dr Stephen Gale, the Telecommunications Commissioner responsible for regulating telecommunications services, including setting prices that influence what we pay for fixed line Internet, and James Ting-Edwards is an issues adviser for Internet New Zealand, the organisation responsible for dot NZ domain names. He has a background in intellectual property and also as a university philosophy lecturer. Welcome to you both. Stephen Gale, to you first, what do you see as some of the shortcomings with the current framework or areas you believe more attention will be required in the future in this space?

S2 01:29   We don't see many great changes to the need for regulation in the near-term future. As you probably know, the Ministry for Business Innovation and Employment MBIE, is doing a review of the regulatory framework for New Zealand at the moment, and the highlight so far has been the way that fibre will be regulated from 2020. But there've been no proposals so far to expand the realm of regulation, in particular. Nobody's identified a particular problem with issues like neutrality.

S1 02:11   So, overall, your assessment is that things are working reasonably well at present?

S2 02:19   Yes, I think competition's intensifying if anything, rather than new monopolies emerging.

S1 02:26   James Ting-Edwards, your thoughts on where we stand at present?

S3 02:32   I agree with Stephen in terms of the big picture for a fixed line. We have a review of the framework for 2020 on, and that's looking really positive we're going to have a really clear framework. And, in terms of the broader question, this is a great example of a domestic New Zealand issue. We can set the scope of our regulations for Internet access and the infrastructure that governs that. And we've been engaged with the process, and we're pretty pleased with the latest set of proposals that have just been backed for consultation at the beginning of this month. So the fixed line world is going to be a fibre future, and the focus on that makes things relatively clear and straightforward, although I'd be interested in Stephen's views on the implementation at some point in this discussion.

S1 03:28   Do you want to comment on that now, Stephen?

S2 03:30	We could come back to issues of implementation. It's all sort of in play at the moment. The policy proposals aren't finalised yet, but we think the road ahead's all doable.
S1 03:42	All right. Well, let's come back to that. One of the points that came up in the discussion session was this idea that, if we're going to regulate things, then we should do so in a way that mimics others where we can, and that will lower costs overall. And it was proposed perhaps that there may be a special case for harmonising with Australia in some circumstances, given that a number of companies in New Zealand, and obviously in Australia operating on both sides of the Tasman. Stephen Gale, what are your thoughts about where we sit at present vis-à-vis Australia and harmonisation in those areas?
S2 04:25	I think there are places where you'll see common practices in things like broadband monitoring apart from the regulation of prices for networks you'll also be aware of the commission and forces the Fair Trading Act which prevents companies across the economy, but telecom companies in this instance, from making any misleading claims about the services they offer. We have also been policing to look out for unfair contract terms, which was a new piece of legislation a couple of years ago. And we've been looking through the contracts that telecoms put before customers that most of us never read in detail. And working with those companies to strip out unfair contract features. And these are the same sorts of things that are happening in Australia. A place where we'll probably move along a similar track is on the information that's provided to customers about the service they get. Because Internet service is something that's quite hard for customers to know what they're buying and whether they're getting it. And so improved information and scrutiny is something that both the ACCC and the commission are pursuing.
S1 05:37	Now, the challenge with regulatory control is always in the practical application. The basic rules are reasonably well understood, but exactly how they turn out in practise after the long processes of control are followed of course is much harder to predict. What's your assessment about I guess, the areas of regulatory controls that currently exist and where that might be moving to in the future?
S2 06:07	Well, at the moment, the prices for copper-based broadband on the old phone lines and the prices charged on the new fibre network are both settled now for the next few years. And so the regulatory work that will be going on up until 2020 will be how to design the new framework because the fibre prices come off contract in 2020. So, at the moment, the prices are settled and aren't a contentious matter, network's being delivered, there's competition at the fringes, the mobile sector's largely unregulated. So we're not really sort of seeing problems of implementation in the meantime. The challenge in the near term is setting up first, and then implementing the pricing regime for a few years hence. But that's a long way away now.
S1 07:06	And James, from an Internet New Zealand perspective, how do you access things?
S3 07:12	So I think Stephen's right that, in terms of the people who are getting service, we've got for the next years a pretty set arrangement. There are some real or potential complications around the edges of that. So, I for one, am in a fibre area, but I haven't been able to get an install for two years now because I haven't been able to get every one of my five neighbours to sign off a consent form, and [crosstalk]--
S1 07:41	Oh, I'm in exactly the same situation, so you have my full sympathy [laughter].
S3 07:47	So there's that. There's cases where the install has been substandard quality,, or it's taken too long to get consents, or just to get people to turn up and do the work. And I

suspect that we're going to continue to see those complications at the edges of the system as people come and particularly as the proposals for 2020 and beyond are kind of setting a path towards a move away from copper. So, as an economy, we're going to move from being based on copper landline services to alternatives - fibre, and mobile, and maybe fixed wireless - but that involves a transition for everyone. You could compare it with the digital switchover from analogue TV. Lots of people are going to need to get the right equipment, and there's going to be lots of work at the edges for retailers, and wholesalers, and maybe government, to help people with that transition.

S1 08:48	Stephen, just on that point, because this seems to be a real, issue particularly where there is sort of cross-party agreement required obviously, I don't need to get my neighbours' consent to install power or any other services, but I do for UFB. I mean, is this going to become an issue, given that obviously many people are caught up in multi-tenancy dwellings and operations down the track and essentially they are being deprived of a service that they can't access but want to?
S2 09:25	Yes. I'm not across the detail, but I'm aware that there are moves in legislation to change the consent process especially for multi-dwelling units so that there's no hold-up. But I think it's also becoming a matter of competition between retailers. Some of them are wanting to subscribe to a sort of common process for connecting further lead-ins for fibre. And some are wanting to make it something where the retailer can control it itself, in order to see whether the job can be done better. Because James is right, this is going to be a project that takes several years to get the majority of people across onto fibre, so there will be a continuing stream of connections from the road, where by 2020 all the lines'll be in the roads but there'll still be a lot of lead-ins to be installed. And it's [crosstalk]--
S3 10:20	And that also has--
S2 10:20	Sorry?
S3 10:21	Sorry, Stephen.
S2 10:22	It's quite likely that that'll become a quality measure in the new regulatory regime, because the idea of a regulatory regime that mimics the electricity regime, is a price and there's a quality element, and that quality is very likely to include some element of a measure of the lead-in provision.
S3 10:47	So that makes sense, and I think I'd say those complications for fibre probably are manageable, and at the edges. We should also mention that planned USB 2 rollout is going to reach 85% of people but if you put that on a map of New Zealand, we're concentrated very much in the cities and towns. And so there's large swathes of the country that are going to be relying on alternatives. Not everyone in those places is going to be reached by commercial rollout, so there's still plenty of room for sensible public investment to reach people who'd otherwise miss out, particularly with the prospect of copper becoming increasingly uneconomic as people move away.
S1 11:33	Just returning to this regulation topic, this point that I mentioned in the lead-in - is New Zealand's best bet to rely on its rules about other places or should we define our own path? I want to look specifically at one example of New Zealand going its own way with the Harmful Digital Communications Act. Stephen Gale, is that likely to be an example of where New Zealand can think independently and perhaps create some leadership in this space in the future?

S2 12:10	I'm really not across the detail of the harmful communications, so I'm not aware of the degree to which it's following other already. James, have you been advising on that? Internet New Zealand [inaudible] on that?
S3 12:27	Yes. So the Harmful Digital Communications Act is, as far as I know, a unique approach to the set of issues of people being harmed online. It's a tricky set of issues. I mean, governments around the world are responding to the same thing, but there's this difficulty where people saying true things, and maybe on their own they wouldn't be that harmful, but when you get 100 or 1,000, or maybe even, in a more intimate context, a dozen classmates in a classroom saying something, that can have a severe emotional impact on people. We're all human. We might have iPhones and 21st-century devices, but we've still got little primate brains ticking away that care deeply about how other people think of us.
S3 13:23	So our Harmful Digitial Communications Act tries to address that, tries to balance the need for protecting against that harm, from allowing reasonable free expression and not putting an unreasonable burden on people who put content online or host content from others. And we're watching with interest as that develops some. So NetSafe has been confirmed as the approved agency. They're going to be the first port of call. One interesting thing, as framed, the Harmful Digital Communications Act was largely about cyber-bullying in schools - so protecting particularly younger people from harm - but the criminal cases, the criminal provisions, have been in effect for a wee while now. Criminal cases have focused on adults and intimate relationships, and particularly when they've broken up. So the application has been a bit different from what was anticipated.
S1 14:23	And you noted in the discussion that the online community has gone from a small informed crowd with a known etiquette to a mass market of newbies still developing its communication norms. So does this suggest that this process will be evolutionary in identifying other areas where perhaps these sorts of acts are going to be required?
S3 14:46	So, yeah, I think that's right. I think that online communications maybe is kind of in a class of its own. We're all almost tentative and experimental because we're in unknown territory, but how you communicate with people, and so much - people are socialising with their friends or with their colleagues - now is facilitated through the Internet. And the scale that enables isn't what we're used to historically or in evolutionary terms, and it depends a lot on norms rather than formal laws. So I think it's a really, particularly challenging area because you can't really legislate people being nice to each other. All you can do legally is try and catch things when they go wrong. And it will be interesting to see the extent to which NetSafe and other leaders - people who are promoting more positive modes of interaction - will be able to drive the norms. Because that's key here as well, is how people expect one another to behave, as well as the legal and regulatory back stuff.
S1 15:59	Which leads us to-- another point that was discussed in the session, was this question, "Why are we not regulating privacy on the Internet more effectively?" Interested in your thoughts on that.
S3 16:13	So I think New Zealand actually has a reasonably effective approach. Our Privacy Act is due for an update, but the Privacy Commission has been working on that and there are definitely some things that need review. But we've got a bit of law there from 1993 but because it sets out broad principles that align with people's intuitions on they'd want their information treated, the change in technology in the intervening 24 years hasn't required massive change in that law, because those same expectations about how your information is treated - when your car is at the mechanic - also work

reasonably well when you're selling or buying something on Trade Me. So that broad principles-based approach is potentially a very effective way to allow change in technology and change in how people interact while protecting our intuitions about how that should go.

S1 17:19	Stephen Gale, any thoughts in that area?

S2 17:23   Yeah, this has been discussed continuously over the years. The impression that most of us have even though this is outside the commission's role, is that our personal information is something that we've all been giving away without thinking about every time we sign up for an application. We tick a box that says, "Yes, you can look through my photos, and contact list," and so on, and it's not until we start to understand better the way that data can all be put together, that I suspect people will start to monitor how much information is actually uploaded from their personal devices and then may pull back on the amount of consent they give.

S2 18:14   But I think it goes to James' point about norms. It's not something really you can regulate. It's not something if people are willingly just saying, "Yes, you can have it," because nobody's worried. I think it requires a sort of maturing as we all understand how the information gets put together that people say, "Well, I'm no longer happy for it all to be-- to just say yes every time." And I think this is what's happening in the advertising space. People are thinking about whether they like adverts and whether they're prepared to pay to avoid watching adverts online. Part of the resistance is knowing that each time you click through onto the ad, there's information uploaded about who you are, where you are, and what the associated history is. Over time, if privacy becomes a concern for lots of people, I think people are going to start to resist that and increase the resistance to advertising.

S1 19:14   Also--

S3 19:15   I agree with--

S1 19:16   Yep, sorry.

S3 19:15   Sorry, Andrew.

S1 19:16   No, you jump in, James. Three, two, one.

S3 19:20   I agree very strongly with what Stephen said about the change where it's possible to put lots of information together and you often don't even have to click on an advertisement. If it's loaded in the website, then it can be associated with a tracking cookie, and if that persists across your browsing sessions, then the people managing that know that you've visited this series of websites. And that brings us back to the theme, because this is international. Most of the organisations that are tracking us. Whether through our conscious, voluntary participation - so the likes of Facebook or Twitter or Snapchat or Instagram - or through that kind of less obvious tracking cookie, most of those organisations are overseas and that data's going to be stored overseas. And so, as much as we might like to have New Zealand norms, and even potentially New Zealand regulations, it's very hard to see how that would work at the systemic level. You can realistically get something like a court order on a specific case where something's gone catastrophically wrong and the major providers overseas tend to be reasonably responsive when presented with that, but at the systemic level, it's about the choices people make and the way tools enable or nudge people into making those choices to share information.

S1 20:49   And, Stephen Gale, just to conclude, you noted in the discussion the prospect of significant further disruption. You gave the example, for instance, if Amazon added

voice services into the Kindle and went around the world finding operators to provide it with service, as it has done with data - Kindle is powered by Vodafone globally. What other examples of significant future disruption do you think we might be looking out for?

S2 21:16	I should make a plug for Commission Conference in July this year where Richard Feasey, a worldwide specialist on disruption in the telco sector is giving a talk, because he identifies the one you mentioned, but he also identifies the way that revenue might be stripped out of the Internet sector with an increased recourse to ad-blocking, in that, as people get more and more annoyed about ads - and they are already paying quite a lot either by moving programs or by paying to subscribe to services to be ad-free - a lot of money will be moving around the telco sector to find another way of financing all the websites.
S2 22:03	The positive side of all that might be that the information gathering that we've just been talked about will have to get a lot better to the point where we're actually happy to see the adverts that are thrust in front of us, that are personalised and put in front of us, if it's to resist the temptation for everyone to subscribe to the ad-free service, because when we subscribe to an ad-free service, the advertisers are losing exactly the people they want. The ones who can afford to opt out are probably the ones the advertiser want most. So they really have to make the advertisements much more perceptively focused, less annoying, and more genuinely useful.
S1 22:41	James, closing final thoughts from you?
S3 22:45	So I think the thing the Internet has given us is cheap communications at a certain level. And one set of things that might change that further are-- technology is distributing that, so people talk about blockchain. That enables a whole lot of payment systems and things that rely on trust and verification in the real world - things like banking services, but all sorts of tracking. When you decentralise that, it will be really interesting to see whether that moves to a more community-based model or whether we still get central aggregators as the gatekeepers, like a Facebook or a Google. And that's going to depend on what people want. How do you get the information together? How do you make it useful? How do people make a buck on the Internet?
S1 23:38	Thank you both for joining us. Speaking to Dr. Stephen Gale, Telecommunications Commissioner, and James Ting-Edwards, Issues Adviser for Internet New Zealand. I'm Andrew Patterson. This has been another Moxie Podcast. I hope you can join us again at some point in the future.