

# BUCHANAN LAW COMMUNICATIONS UPDATE

JULY 2008

## Planning for the regulatory future

This edition of the Communications Update is all about change: or more accurately, preparing for change. Australia's regulatory bodies have been busy addressing the issues arising as a result of an ever changing communications landscape that is seeing the convergence of a range of technologies. In this Update you will find articles on proposed and recent changes to the regulatory environment in which the communications industry operates. We encourage all members of industry to actively consult with the relevant regulatory bodies in an effort to collectively develop a regulatory regime that gives consideration to the different technologies operating in the communications space.

## VoIP Regulation Overhaul

Australian telecommunications regulatory bodies are becoming increasingly aware of the disconnect between traditional telecommunications regulation and new and emerging technologies. There are a number of difficulties that arise when trying to squeeze new communications technologies, such as the figuratively round-pegged VoIP, through the square hole that is the arguably PSTN-centric Australian regulatory regime.

ACMA has formed a strategy to address the application of communications regulation to VoIP services. ACMA has acknowledged that the ideal outcome of any changes to VoIP regulation will achieve a balance between the need for effective and uniform regulation of VoIP services, whilst simultaneously encouraging and promoting ongoing innovation and improvements within the VoIP industry.

ACMA's approach to its proposed VoIP is an engagement strategy which reflects ACMA's desire to develop and implement a VoIP-specific compliance program in consultation with industry and community. ACMA is currently seeking input from the industry and consumers and is keen to meet directly with any interested VoIP service providers.



**BUCHANAN LAW**  
Intellectual Property and Technology

[www.buchananlaw.com.au](http://www.buchananlaw.com.au)

Office Buchanan Law Pty Ltd  
Level 3,  
54 Marcus Clarke Street,  
Canberra ACT 2601

Postal GPO Box 579,  
Canberra ACT 2601

Tel 02 6221 9555

Fax 02 6162 3202

Email [info@buchananlaw.com.au](mailto:info@buchananlaw.com.au)

ABN 55 121 082 388

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Buchanan Law Pty Ltd  
Level 3, 54 Marcus Clarke Street  
Canberra, Australian Capital Territory 2601

T +61 2 6221 9555

F +61 2 6162 3202

E [info@buchananlaw.com.au](mailto:info@buchananlaw.com.au)

[www.buchananlaw.com.au](http://www.buchananlaw.com.au)

ACMA has identified the areas that will be the focus of the compliance reform:

- ✦ Access to emergency call services;
- ✦ Input into and notification to the Integrated Public Number Database;
- ✦ Membership of the Telecommunications Industry Ombudsman scheme;
- ✦ Assignment of geographic numbers;
- ✦ Customer Service Guarantee requirements;
- ✦ An increase in the number of VoIP service providers offering local number portability.



ACMA has also expressed its commitment to providing education and advice to VoIP service providers on how the new VoIP regulatory program will apply and what obligations will be imposed upon service providers.

If your business is interested in making a submission to ACMA and would like some assistance in understanding your regulatory compliance obligations, please contact us.

## **.au Domain Name Transfer Policy**

On the 1<sup>st</sup> of June, the Australian Domain Name Administrator auDA's new domain name registrant transfer policy was implemented. Prior to the implementation of the new Transfer Policy, a domain name registrant was only permitted to transfer the domain name licence in limited circumstances. The new Transfers (Change of Registrant) Policy (2008-08) not only broadens the ability for a domain name registrant to transfer a domain name licence to an eligible entity; it has simplified the process.

The new Policy permits a domain name registrant to transfer a domain name licence to any party that is eligible under auDA published policies to hold the domain name licence. The ability of a domain name registrant to transfer the domain name licence is subject to a restriction: a domain name registrant must not register a domain name for the sole purpose of resale. The Transfer Policy gives effect to this rule by introducing a prohibition on the transfer of a domain name licence within the first six months after registration of the domain name. The prohibition only applies to newly registered domain names and does not apply to renewed or transferred domain names.

The Transfer Policy prescribes standard text that must be included in the executed Transfer Form that must be submitted to auDA to give effect to the transfer.



## ACCC Proposes Procedural Rules to apply to Telecommunications

The ACCC recently called for public submissions on the proposed implementation of new Procedural Rules which would apply to the telecommunications regulatory regime. Section 152ELA of the Trade Practices Act provides the ACCC with the power to implement rules relating to telecommunications-specific processes, including procedural rules relating to access undertakings, access disputes, declarations, pricing principles inquiries and exemption applications.

The ACCC anticipates that the Procedural Rules, once made, will provide clarity and certainty to the ACCC's various powers and functions in relation to telecommunications regulation. Specifically, the ACCC intends to introduce uniform processes that will apply to both access providers and access seekers; provide transparency and certainty in the ACCC's decision making processes; and to enable the ACCC to improve the timeliness in which it performs its functions in relation to telecommunications regulation.

One of the many ~~red tape~~ improvements offered under the Procedural Rules will allow access providers to make minor modifications to exemption applications, access undertakings and variations of undertakings. The ACCC will have the power to specify when a variation to a declared service is a ~~minor modification~~. As a result of these changes, the ACCC will be able to quickly and efficiently give effect to variations of a minor nature without the need to hold a public inquiry into the proposed modification or requiring the relevant party to resubmit an application, undertaking or variation (as is the case under the current scheme).

The due date for public submissions on the proposed Procedural Rules was 23 June 2008, and the ACCC expects that the final rules will be made and released on 31 July 2008.

## Internet Protocol Television Services (IPTV)

ACMA recently released a report that examines the future delivery of multi-media services over internet protocol. The Australian IPTV and video market is in its early stages of development and the report, which included input from industry participants, looks at the various regulatory and commercial road blocks that may hinder the growth of online content provision. ACMA recognises the media and en-

tertainment industry is evolving in line with developments in communications technology and the concept of converging technologies. The ACMA report provides a high level analysis of the Australian IPTV market and will act as the foundation for future research by ACMA and industry bodies into the potential expansion of IPTV and video services. The report can be found on ACMA's webpage.

## Buchanan Law – who we are

Buchanan Law is often described as a boutique firm because we are a specialist commercial law services provider with expertise for servicing the needs of clients with ICT and related interests.



We regularly advise on a broad range of telecommunications, commercial, intellectual property, procurement and associated transactional matters.

Please visit our website at <http://www.buchananlaw.com.au> for more details about us and our services.

## Sectors & Services

Buchanan Law is organised along both sectors and service lines. We work this way to better reflect our clients and to provide a service where our lawyers can provide thorough industry expertise.

Sectors	Services
Telecommunications	Telco regulation
Information Technology	Information Technology
Advertising & marketing	Intellectual Property
Media	➤ Commercialisation of IP
Digital services	➤ Trade mark registration and opposition services
Sport, Events & Entertainment	➤ Patent licensing
Internet & E Commerce	➤ Copyright
Biotechnology	Corporate & commercial
	Privacy & Data protection
	Employment

## The Buchanan Law Difference

Because Buchanan Law has a recognised focus and a small, specialist team, we are able to respond quickly and flexibly to the complex, technologically-driven issues that our clients so often refer to us.

Name	Does	Contact
Scott Buchanan	Director, Principal Lawyer & Principal Trade Mark Attorney	<a href="mailto:scott@buchananlaw.com.au">scott@buchananlaw.com.au</a>
Monica Dawes	Lawyer	<a href="mailto:monica@buchananlaw.com.au">monica@buchananlaw.com.au</a>
Gary Lea	Associate & Senior Trade Mark Assistant	<a href="mailto:gary@buchananlaw.com.au">gary@buchananlaw.com.au</a>
James O'Connell	Paralegal & Trade Mark Assistant	<a href="mailto:james@buchananlaw.com.au">james@buchananlaw.com.au</a>

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