

Message in a bottle

Stored communications interception as practised in Australia

Rob Nicholls

Consultant

29 October 2007

Michelle Rowland

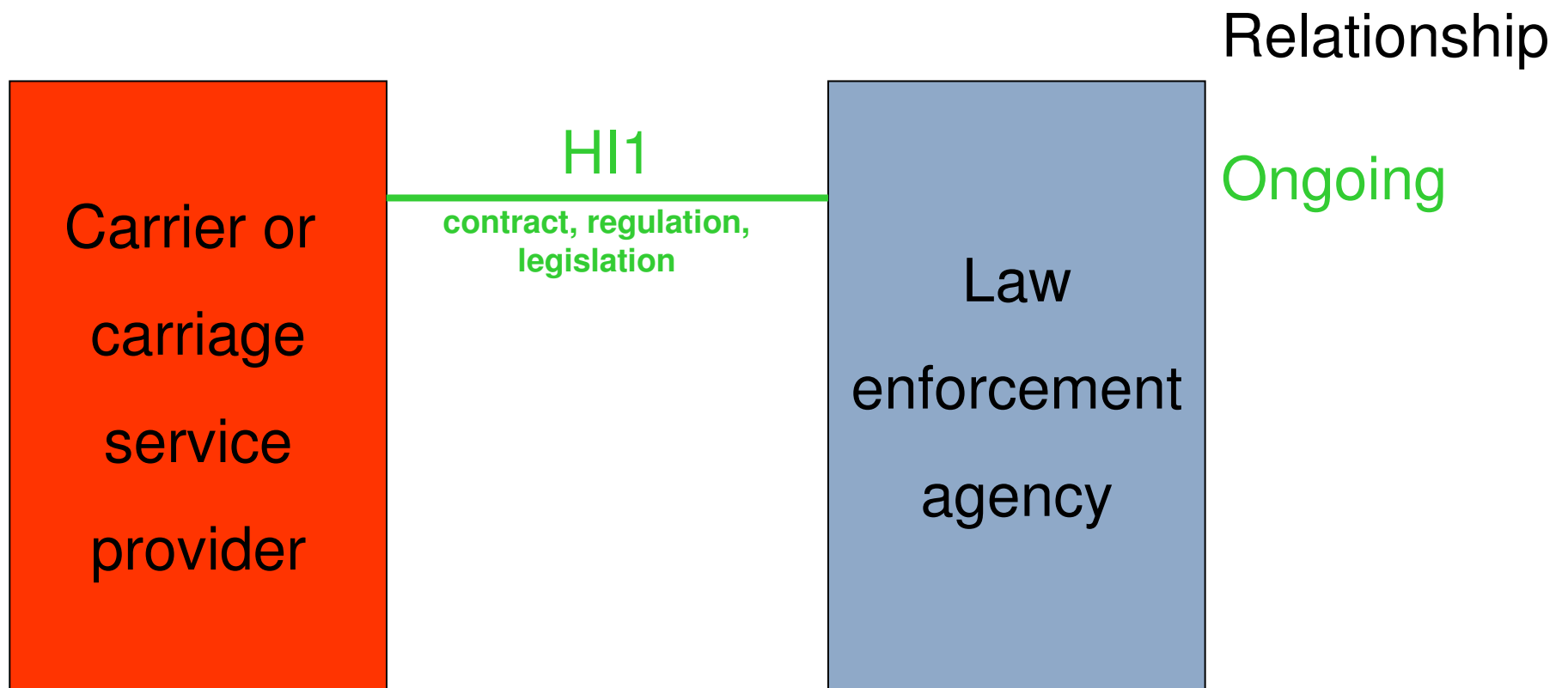
Lawyer



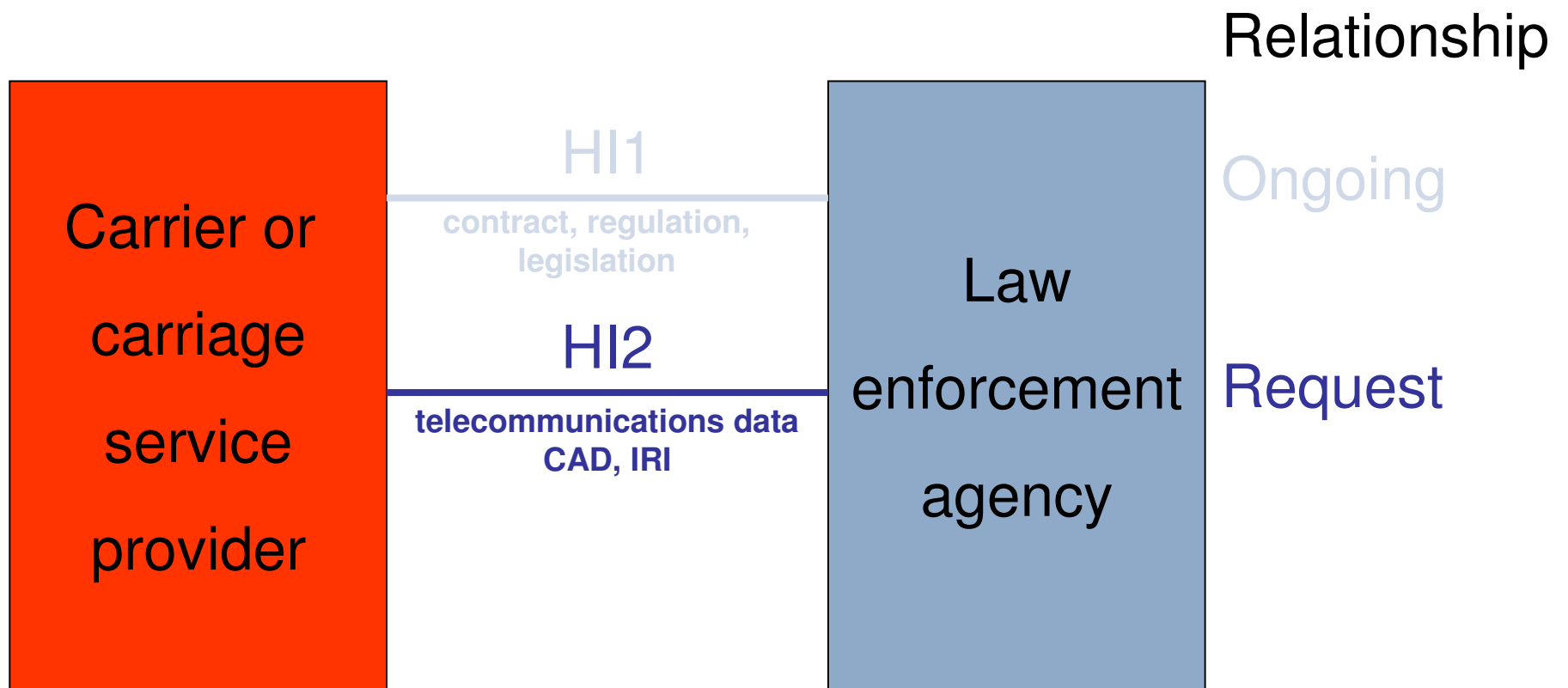
Issues

- Interception theory
- The legislative framework
- Stored communications
- Application of the legislation

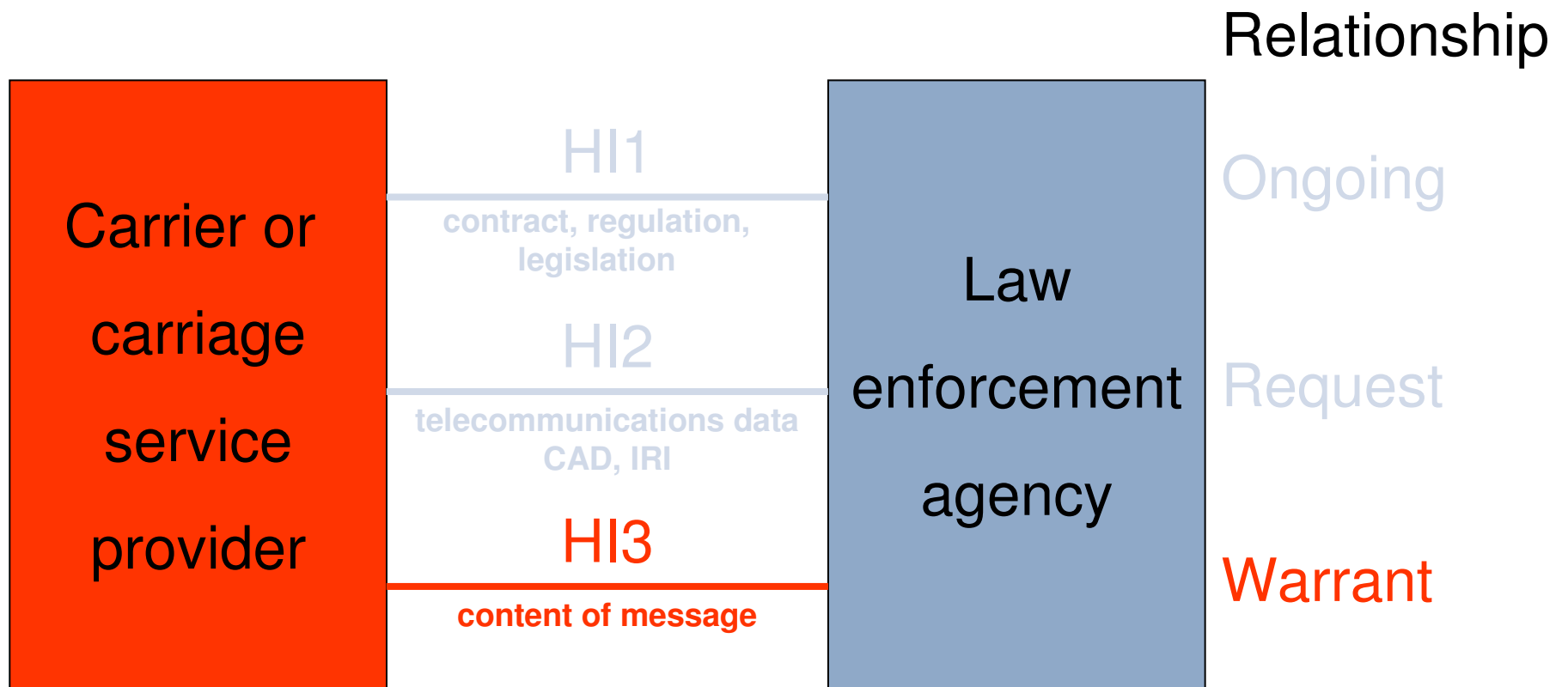
Handover interfaces – HI1



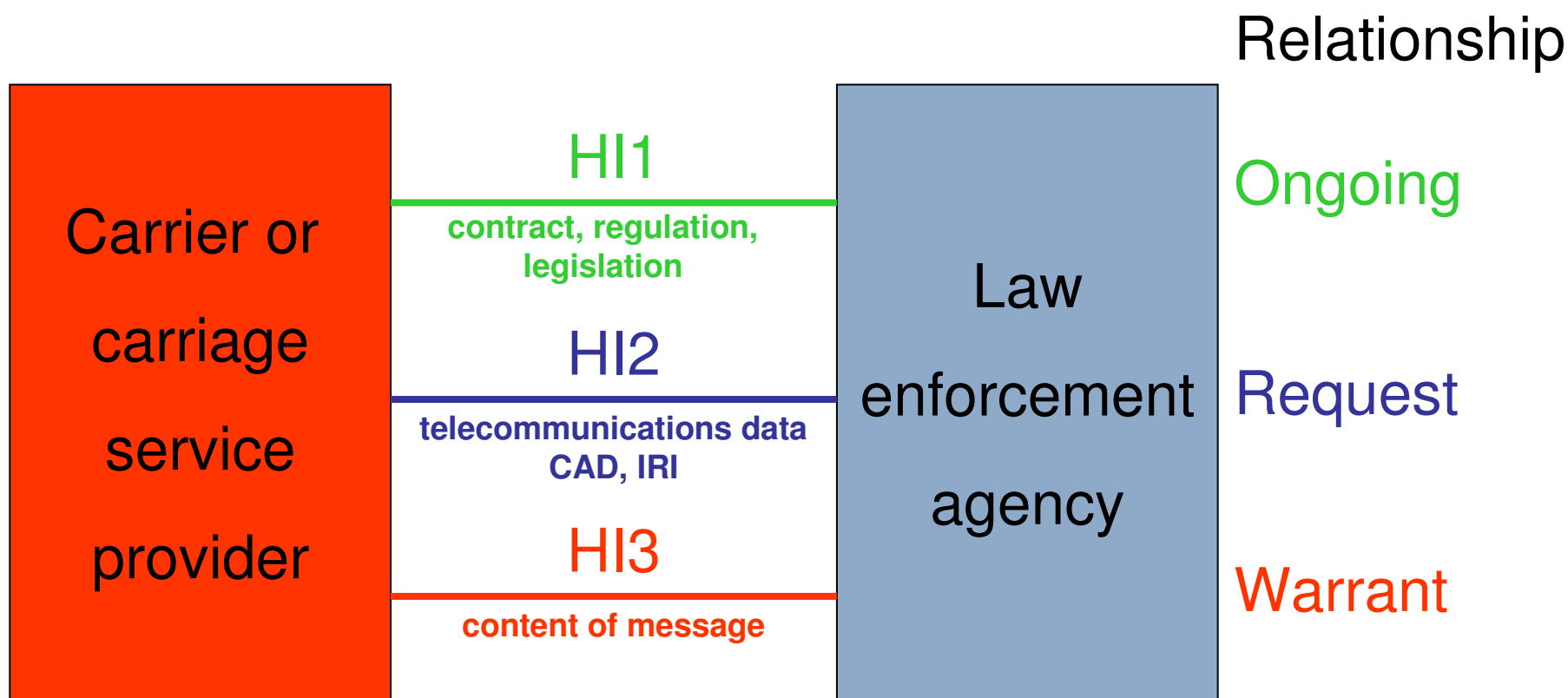
Handover interfaces – HI2



Handover interfaces – HI1



Handover interfaces



Interception legislation

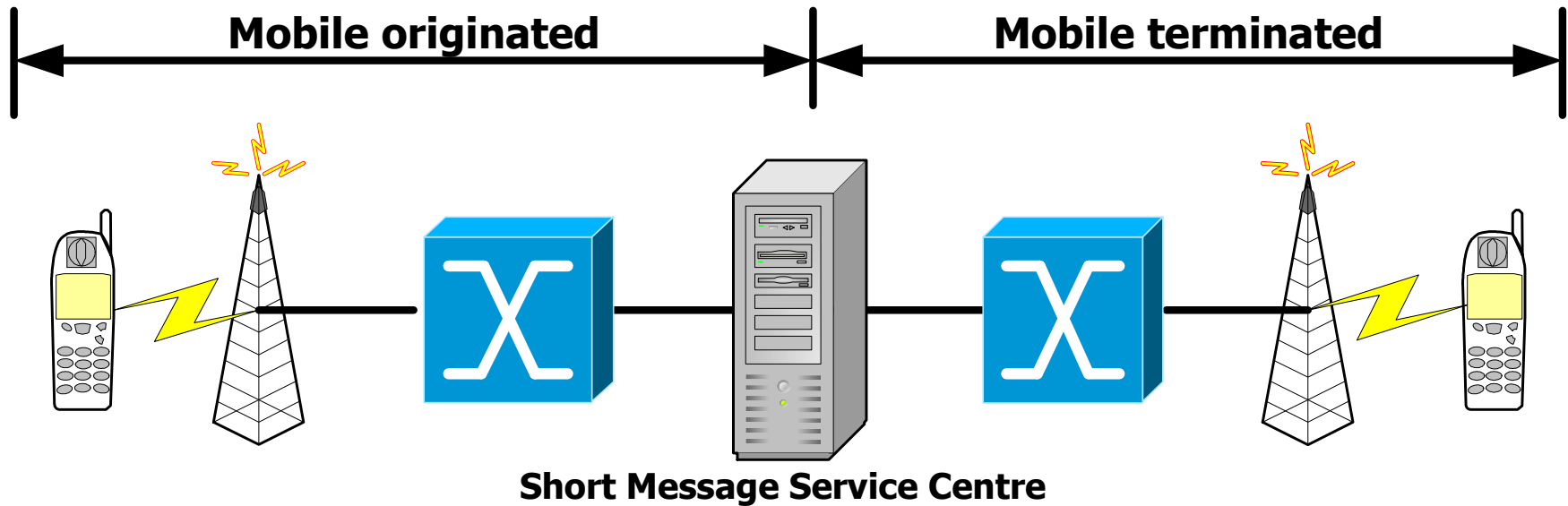
Telecommunications Act 1997 (Cth):

- states that a carrier or carriage service provider (C/CSP) must “give help” to law enforcement agencies as is “reasonably necessary” to:
 - enforce criminal laws and laws imposing pecuniary penalties
 - protect public revenue
 - safeguard national security
- Intercepting live communications and accessing stored communications is separate from “reasonable assistance” and is performed in accordance with a relevant warrant
- Primary prohibition on *all* interception: section 7(1) of Telecommunications (Interception and Access) Act 1979

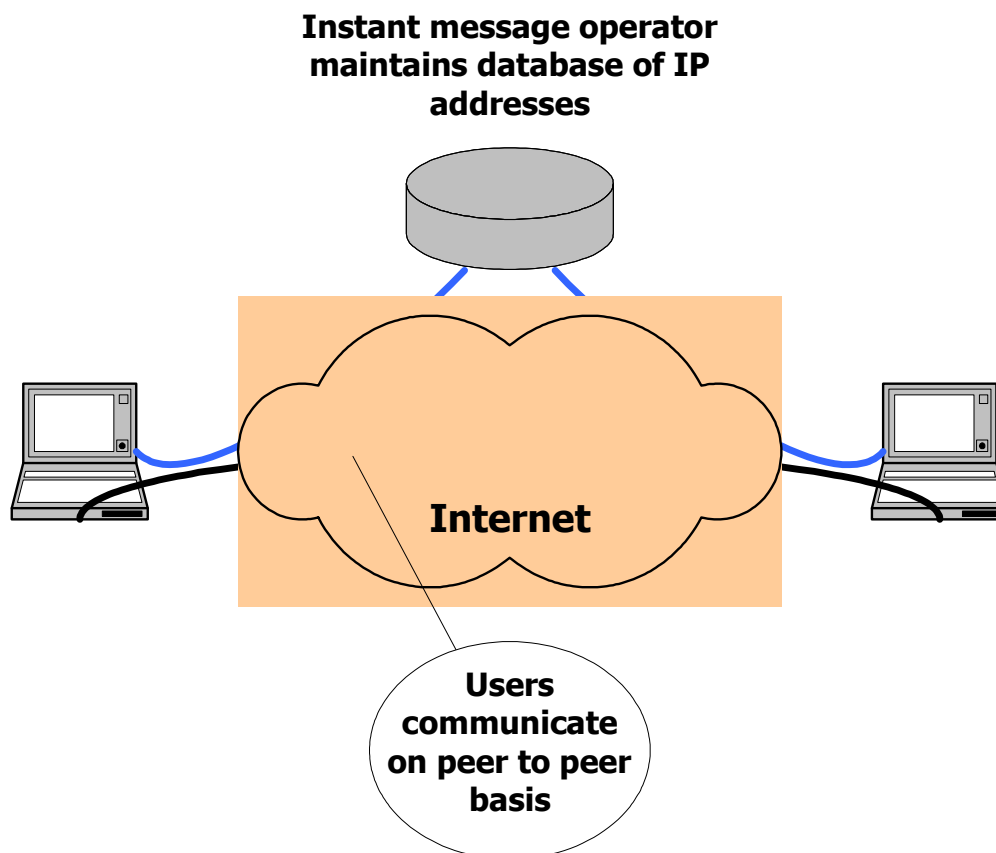
Stored communication

- Has 4 specific elements prescribed in s.5 of the Act:
 - the communication must have passed over a telecommunications system;
 - the communication must not be passing over that or any other telecommunication system;
 - the communication must be held on equipment operated by the telecommunication carrier at its premises; and
 - the communication must be accessible to the intended recipient of the communication.
- Likely that the parliamentary draftsman was given an explanation of the operation of email

SMS – is there a stored communication?



IM – is there a stored communication?



In practice

- Operators receiving stored communications warrants for SMS
- Operators receiving stored communications warrants for instant messages
- State bodies seeking assistance in contravention of Commonwealth statute
- Requests for information or action without a warrant

Conclusions – 1

- Telecommunications operators in Australia are being increasingly compelled to compromise their strict obligations under the law with a desire to be viewed as co-operative
- Too many “commercial calls” and “one-off relationship decisions” are made
- Regulation should be applied seriously and with the strictest and most robust legal standards

Conclusions – 2

- There is an individual expectation that calls will not be intercepted and that communications will not be accessed because there is a strict prohibition on such interference
- This strict prohibition has been compromised under the banner of commercial expediency and an over-zealous support of the spirit (but not the letter) of the law
- The results of this enthusiasm are a reflection of the inadequacy of parliamentary drafting and the appropriate course is to redraft the legislation

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