



21 November 2016

Senator David Bushby
Chair
Senate Standing Committees on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

RE: Inquiry into the *Interactive Gambling Amendment Bill 2016*

Dear Senator,

Thank you for giving Communications Alliance and the Australian Mobile Telecommunications Association (Associations) the opportunity to provide feedback to the inquiry into the *Interactive Gambling Amendment Bill 2016* (Bill).

The Associations have previously made a submission on the suggested amendments of the *Interactive Gambling Act 2001* (IGA) as part of a limited stakeholder consultation in September 2016. We are pleased to see some of those suggestions have been incorporated into the Bill, including the change from a public ACMA register of illegal services to a register of eligible regulated services.

Our key concerns continue to relate to the potential implications of Recommendation 19 of the *Review of Illegal Offshore Wagering* (Review) which the Explanatory Memorandum references. Therefore, the Associations reiterate a few general observations on the telecommunications industry's role in assisting Government achieve its social law enforcement policy goals.

We also take the opportunity to place the Bill against the background of existing regulatory frameworks and recommend incorporating flexibility to allow for the development of a more technology and content-neutral framework in the future.

Industry's role in assisting Government achieve its social law enforcement policy goals:

We note that the Bill does not address the issue of legislated website blocking, i.e. the notion that internet service providers (ISPs) could be required by law to block access to websites that contain undesired or illegal content.

The Outline of the Explanatory Memorandum (Outline) notes (as per Recommendation 19 of the Review) Government's intent to enter into consultation with ISPs to:

“assess the potential options and practicality of voluntarily disrupting access to overseas based online wagering providers who are not licensed in Australia.”

The Outline also states that:

“Part 4 [dealing with the relationship of the IGA and the Code] may be subject to subsequent legislative amendment following consultation with internet service providers.”

Industry is keen to engage in open dialogue with Government to explore this issue and would welcome initial discussions in the next few weeks. In this context, Industry considers it is important

that this discussion also include the broader issue of any future expectation of Government that the telecommunications industry should assist with policing and enforcement of the law.

Telecommunications no longer simply constitute a service to connect two people for the purpose of a telephone conversation. Rather, telecommunications services have become an enabler for virtually all aspects of modern life. It appears that Government increasingly has an expectation that our industry should assist with policing of the internet and various related activities. If this is the case, all stakeholders must engage in a discussion as to the appropriateness of this approach, the role of judicial or other decision makers, potential consequences for ISPs (including cost impacts), impacts on third parties, and required legislative changes.

Without reiterating all observations submitted¹ to the Senate *Inquiry into the use of subsection 313(3) of the Telecommunications Act 1997 by government agencies to disrupt the operation of illegal online services* and the Senate *Inquiry into the Harm being done to Australian children through access to pornography on the internet*, we again highlight our concern with the idea that website blocking through ISPs constitutes an effective means to prevent access to undesired or illegal internet content.

The blocking of websites through ISPs – or mandatory ISP-based internet filtering schemes as previously proposed (and withdrawn) in political debate – are regularly considered by those outside the industry as a solution to issues associated with illegal, fraudulent or socially undesired activities and content on the internet.

Industry recognises that website blocking has a legitimate place in law enforcement and, accordingly, under s313 of the *Telecommunications Act 1997*, the Australian telecommunications industry already assists law enforcement agencies with the blocking of sites which are classed as the 'worst of' (Interpol blacklist) and other illegal content.

However, it should be noted that some techniques risk extending blocks beyond their intended targets to impact other legitimate sites or content, potentially hampering legitimate internet activities and causing disadvantage to consumers. Even where such blocks are correctly targeted, they only provide a partial solution to the problem due to the large number of ISPs (over 400) in Australia and the complexity of requesting all ISPs to install a block.

Importantly, while website blocking may be seen as the only practical tool available to prevent access to targeted websites, it must be recognised that it can be easily avoided by average users through readily available tools that allow consumers to access a blocked website through the use of VPNs, the Tor network or Tor browser, anonymous proxies, HTTPS access, SSH tunnels, remote desktop clients and purpose-built programs.

Recent public debate around the use of VPNs in the context of data retention regimes is also leading to increased availability and popularity of such tools. For example, the Opera browser now comes with an integrated unlimited and free VPN (as the default setting), i.e. consumers require no or minimal technical knowledge (which is easily conveyed in a short 'how to') to circumvent blocking of websites.

¹ http://www.gph.gov.au/Parliamentary_Business/Committees/House/Infrastructure_and_Communications/Inquiry_into_the_use_of_section_313_of_the_Telecommunications_Act_to_disrupt_the_operation_of_illegal_online_services/Submissions and http://www.commsalliance.com.au/_data/assets/pdf_file/0006/52269/160310_Comms-Alliance_Submission_Senate-Inquiry-Children-Online-Access-to-Pornography_Final.pdf

Future regulatory framework:

The internet has been regulated in an ad-hoc way since its inception. The IGA was enacted and the *Interactive Gambling Industry Code* was registered by the ACMA in 2001. Since this time, access to the internet and the internet itself have changed dramatically. For example, internet content can be accessed from various devices through the use of multiple technologies, via browsers and apps and from almost anywhere in the world. Similarly, platform-specific content is no longer a market reality, with delineations of 'mobile content' and 'internet content' no longer relevant.

Against this background, over the past year Industry has been engaging with the Office of the Children's eSafety Commissioner to discuss a future co-regulatory framework that takes into account this changed environment. These discussions have included canvassing options to streamline the broad number of content and internet related codes into one technology and content-neutral industry code, provided the necessary changes to the relevant underlying legislation have been made.

While we appreciate that the creation of such a new framework would be a significant undertaking, we recommend that flexibility be incorporated into the Bill for the development of aggregated content and internet-related industry codes. Consequently, the Associations recommend consideration of the appropriateness of the *Statement of Regulatory Policy* as set out in s36 of the IGA.

We look forward to engaging with Government on this matter. Please contact us if you have further questions or would like to discuss.

Yours sincerely,

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