

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

THE SENATE

COMMITTEE OF PRIVILEGES

PERSONS REFERRED TO IN THE SENATE

**BOARD MEMBERS OF
ELECTRONIC FRONTIERS AUSTRALIA INC.**

115TH REPORT

SEPTEMBER 2003

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REPORT

1. On 17 September 2003 the President of the Senate, Senator the Honourable Paul Calvert, received a letter from Ms Irene Graham, Executive Director, Electronic Frontiers Australia Inc., on behalf of the Board members of Electronic Frontiers Australia Inc., seeking redress under the resolution of the Senate of 25 February 1988 relating to the protection of persons referred to in the Senate (Privilege Resolution 5).

2. The letter referred to statements made by Senator the Honourable Richard Alston, Minister for Communications, Information Technology and the Arts, and Senator Brian Harradine on 9 September 2003. The President, having accepted the letter as a submission for the purposes of the resolution, referred it to the Committee of Privileges on 17 September 2003.

3. The committee met in private session on 18 September 2003 and, pursuant to paragraph (3) of Privilege Resolution 5, decided to consider the submission. In agreeing to the attached response, the committee has decided to recommend the submission's incorporation in *Hansard* without change.

4. The committee **recommends**:

That a response by the Board members of Electronic Frontiers Australia Inc., in the terms specified at Appendix 1, be incorporated in *Hansard*.

Robert Ray
Chair

Appendix 1

17 September 2003

The Hon. Paul Calvert
President of the Senate
Parliament House
CANBERRA ACT 2600

Fax: (02) 6277 3108

Email: senator.calvert@aph.gov.au

Dear Mr President

We, the individuals listed below, seek redress under the resolution of the Senate of 25 February 1988 concerning the protection of persons referred to in the Senate ([Privilege Resolution 5](#)). We are readily identifiable as the persons referred to by Senator Harradine and Senator Alston during the debate on the *Communications Legislation Amendment Bill (No. 1) 2002* on 9 September 2003 ([Hansard](#) pages 14049 – 14061 inclusive), that is, the members of the Board of Electronic Frontiers Australia Incorporated (EFA):

Chair	Mr Greg Taylor, B.Sc, B.Econ, Dip.Inf.Proc., Grad.Cert.Law
Vice Chair	Mr Danny Yee, BSc (Hons)
Secretary	Mr Nick Ellsmore, B.Com (ISM), CISSP, MAIC
Treasurer	Mr Dale Clapperton, J.P. (Qual.)
Ordinary Members	Dr Roger Clarke, BCom (Hons I), MComm (Hons), PhD, FACS Mr Kimberley Heitman, B.Juris Llb, AACS, MAICD Mr Andrew Pam Mr Craig Small, BE (Hons), GradDip Management, MBA, MIEEE
Executive Director	Ms Irene Graham

Senator Brian Harradine stated that we are "the spokespeople of the porn industry". Senator Richard Alston, Minister for Communications, Information Technology and the Arts, stated that we want to access and then peddle sites involving child pornography; that we are the "ultimate doctrinaire libertarians"; that we support "unrestricted access to offensive material in all its manifestations"; that we "do not believe in trying to find a sensible way of dealing with offensive material on the Internet" and implied that we are dishonest and not a word we say should be believed.

All these allegations are unsubstantiated and false. The Senators' remarks impugn our individual good characters, reputations, honesty and integrity, and those of the thousands of members and supporters of the organisation we represent. In addition, the Senators' remarks are factually incorrect. We hereby seek the opportunity to set the record straight.

The following facts are pertinent.

1. Senator Brian Harradine stated:

"Electronic Frontiers Australia are the spokespeople of the porn industry". (p.14052)

Senator Harradine's statement is factually incorrect. EFA does not speak for the porn industry and never has done so.

Evidently some commentators inadvertently or otherwise confuse Electronic Frontiers Australia Inc. ("EFA") with the adult goods and services industry association, which recently changed its name from The Eros Foundation to The Eros Association Inc. Electronic Frontiers Australia is and always has been a completely separate organisation from The Eros Foundation/Association. The two organisations have quite different aims, objectives and policies. Further, EFA policy on censorship is not the same as that of The Eros Association, for example the two organisations had different positions in relation to the "NVE" Bill in 2000.

Electronic Frontiers Australia Inc. is a non-profit national organisation representing Internet users concerned with on-line freedoms and rights. EFA was formed in January 1994 and incorporated under the South Australian *Associations Incorporation Act* in May 1994. EFA members come from all parts of Australia and from diverse backgrounds. They are people concerned about matters such as censorship, privacy and intellectual property.

EFA's major objectives are to protect and promote the civil liberties of users and operators of computer based communications systems; to advocate the amendment of laws and regulations in Australia and elsewhere (both current and proposed) which restrict free speech and to educate the community at large about the social, political and civil liberties issues involved in the use of computer based communications systems.

EFA is independent of government and commerce, is not a subsidiary or affiliate of any other organisation, and is funded by membership subscriptions and donations from individuals and organisations with an altruistic interest in promoting civil liberties.

EFA policy formulation, decision making and oversight of organisational activities are the responsibility of the EFA Board of Management. Board members are elected by the members-at-large each year and act in a voluntary capacity; they are not remunerated for time spent on EFA activities. The Executive Director is a non-voting member of the Board appointed by and reporting to the Board. Board members are subject to compliance with a Board Code of Conduct approved by the members-at-large which ensures, in addition to the provisions of the S.A. *Associations Incorporations Act*, that in the event of any Board member having a conflict of interest in relation to any matter under consideration by the EFA Board, that they are not entitled to vote in relation to that matter.

2. Senator Alston stated:

"Senator Lundy said:

'The idea that FOI could allow people to access and then peddle sites [- for example, that could relate to child pornography -] is completely absurd.'

I do not why it is completely absurd. That is precisely what this EFA outfit wanted to do. ... They wanted access to the sites that have been subject to take-down orders.

Why would you want to see all that material? They want the URLs and the content."
(p.14056)

Senator Alston's claim is factually incorrect. EFA's FOI application did not request copies of content of any description whatsoever, nor did EFA want URLs relating to content involving child pornography. EFA has previously addressed such false claims in the [Frequently Asked Questions \[1\]](#) page on our web site which includes the following:

'Was EFA seeking information identifying content containing child pornography?

No. While many of the ABA's arguments against full release of the 129 documents appear to imply that the documents refer to child pornography, EFA believes that some 117 of the documents do not contain information about such material. If the ABA had only claimed exemptions for documents that credibly seemed likely to refer to such material, EFA would not have appealed the ABA's decision.

EFA expects that the ABA would refer content involving child pornography to police. According to a [speech by Mr Gareth Grainger \(then Deputy Chair of the ABA\) on 10 March 2000 \[2\]](#), at that time only "four (4) of the complaints investigated have involved material that has...been referred to the police for investigation". However, information the ABA and AAT exempted from disclosure concerns many more than 4 complaints received by the ABA before the end of February 2000.'

Furthermore, EFA informed the Administrative Appeals Tribunal ("AAT") during the hearing in July 2001 that we considered the Australian Broadcasting Authority ("ABA") should be required to point out to the AAT which documents concerned material involving child pornography and that information should be exempt from disclosure. (A relevant extract from the AAT hearing transcript is available in [EFA's media release of 13 June 2002 \[3\]](#).) The information deemed by the ABA and the AAT to be exempt from disclosure included information relating to content the ABA had determined was **not** prohibited content and also to material that is legally available to adults in cinemas, videos and offline publications.

3. Senator Alston stated:

"Organisations such as the EFA are the ultimate doctrinaire libertarians. They do not believe in any form of censorship. They do not believe in trying to find a sensible way of dealing with offensive material on the Internet." (p.14056)

and

"You are in favour of giving them the URLs and the pornographic content. ... You were in favour of the EFA. You clearly, therefore, are on the side of unrestricted access to offensive material in all its manifestations." (p.14061)

Senator Alston's statements concerning our views are factually incorrect. EFA's position on censorship is not that of "doctrinaire libertarians" and we do not support "unrestricted access to offensive material in all its manifestations".

EFA does not support availability of, nor access to, material depicting child sexual abuse and accordingly we have never opposed laws prohibiting production, publication, distribution and knowing possession of such material. We also do not oppose laws prohibiting publication of various other types of material, one example of which is material directed to inciting or producing imminent lawless action that is likely to incite or produce such action.

We have consistently made our views known to Senator Alston's department (and parliamentary committees) since at least as long ago as 1997 in EFA's response to the proposed *Principles for a Regulatory Framework for On-line Services in the Broadcasting Services Act 1992* issued by the (then) Department of Communications and the Arts. As stated therein "The precise definition of [content that is universally condemned] in a new Internet-Illegal guideline statement would be the appropriate response by an Australian government intent on making an effective contribution to dealing with criminal content. Obviously, the narrowest definitions of illegal content are most likely to be successfully prohibited – a wide definition that includes material routinely available in other countries and protected as free speech in the United States would be pointless and unenforceable. ... EFA submits that the only material that can be plausibly prohibited is that which is prosecuted in the USA and in all major countries – specifically authentic child abuse images and text which is criminal under laws of general application (for example death threats or terrorist conspiracy)."

Senators Alston and Harradine should by now be well aware that our principle objection to the Commonwealth Internet censorship regime arises from the fact that it makes a broad range of material that is legal offline in Australia, illegal online.

Senator Alston's statement that we "do not believe in trying to find a sensible way of dealing with offensive material on the Internet" is also factually incorrect. EFA has been contributing suggestions and comments to the numerous government and parliamentary committee inquiries into ways of dealing with "offensive" material, and protecting children online, since EFA's formation in 1994. There is no universally agreed definition of what is "offensive", globally or even within Australia, and EFA's position in regard to such contentious material has been and remains in accord with the long established principles in Australian offline censorship law that:

- "adults should be able to read, hear and see what they want";
- "minors should be protected from material likely to harm or disturb them";
- "everyone should be protected from exposure to unsolicited material that they find offensive".

The Commonwealth Internet censorship regime does not achieve any of those objectives. Hence, EFA opposes the regime.

4. Senator Alston stated:

"I would not believe a word the EFA said, even if they said, 'We're just going to keep it to ourselves for "research purposes" ', but they have not said that. They just wanted access to it, ... and then make it available to all the world. Of course, what would you do? You would simply load it onto an offshore web site and you would stand there thumbing your nose at the authorities and saying, 'There, there, we've put it beyond your reach.' " (p.14056)

Senator Alston provided no justification for his implication that not a word EFA says should be believed. Furthermore, it appears apparent from other remarks made by Senator Alston that he has been misinformed regarding EFA's views and what EFA has and has not said in the past.

Allegations that EFA intended to publish URLs of prohibited content, if released under FOI, apparently originate from a newspaper article in 2000. As EFA informed the AAT when the ABA's Counsel quoted the newspaper article during the AAT hearing, that article contained incorrect information misrepresenting EFA's intentions. Moreover, EFA did not seek copies of prohibited content under FOI and hence clearly had no intention or wish to receive material that could,

theoretically, be loaded onto any site. Furthermore, EFA does not and would not publish information in breach of Commonwealth and/or State/Territory laws.

5. Senator Alston stated:

"...all we ever get is this ridicule about the global village idiot which, as I recall, was a term used by someone who wandered out here from the American Civil Liberties Union as a guest, I think, of Electronic Frontiers ... It was just the usual sort of abuse as you are going to the airport". (p.14055)

The President of the ACLU did not visit Australia as a guest of EFA and EFA had no involvement whatsoever in her visit. The ACLU President was in Australia as a guest of the University of Melbourne to speak at a seminar on 'Censorship Versus Free Speech on the Internet' which was organised by the University's Centre for Media, Communication and Information Technology Law, according to the information in *UniNEWS Vol 8 No 30, 30 August 1999* [4] and *The Law Report, Transcript, ABC Radio, 9 November 1999* [5].

6. Finally, remarks by Senator Richard Alston appear to imply that EFA is, or is associated with, "the Lions Foundation" (p.14052). We have no association with any such organisation, nor with the "Lion club" or the "Lion forum" which were also mentioned by Senator Alston (p.14055). We had not even heard of such organisation/s prior to reading Senator Alston's remarks.

We tender the above in good faith and request that our response be incorporated in the parliamentary record.

Yours faithfully

Irene Graham
Executive Director, Electronic Frontiers Australia Inc.
on behalf of the Board members of Electronic Frontiers Australia Inc.

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1. [Frequently Asked Questions about EFA's FOI Request to ABA](http://www.efa.org.au/FOI/faq_foi_aba.html)
http://www.efa.org.au/FOI/faq_foi_aba.html
 2. [Speech by Mr Gareth Grainger, Deputy Chair of the ABA, 10 March 2002](http://www.aba.gov.au/abanews/speeches/online_serv/pdftrf/ggcaudit_2000.pdf)
Co-regulatory scheme for Internet content: Operation of Australia's online-hotline
http://www.aba.gov.au/abanews/speeches/online_serv/pdftrf/ggcaudit_2000.pdf
 3. [EFA's media release of 13 June 2002](http://www.efa.org.au/Publish/PR020613.html)
Veil of Secrecy Remains Over Internet Censorship
<http://www.efa.org.au/Publish/PR020613.html>
 4. [UniNEWS Vol 8 No 30, 30 August 1999](http://www.unimelb.edu.au/ExtRels/Media/UN/archive/1999/430/internetcensorship.html)
<http://www.unimelb.edu.au/ExtRels/Media/UN/archive/1999/430/internetcensorship.html>
 5. [The Law Report, Transcript, ABC Radio, 9 November 1999](http://www.abc.net.au/rn/talks/8.30/lawrpt/stories/s64808.htm)
<http://www.abc.net.au/rn/talks/8.30/lawrpt/stories/s64808.htm>