

Senate Standing Committee on Economics

ANSWERS TO QUESTIONS ON NOTICE

Treasury Portfolio

Budget Estimates

4 – 6 June 2013

Question: BET 152-172

Topic: Blocking of Websites

Written: 13 June 2013

Senator BOYCE asked:

On March 22 this year ASIC revealed it had cause to try and block websites it believed were part of an - a cold-calling internet investment scam using the name 'Global Capital Wealth', which ASIC said was operating several websites — www.globalcapitalwealth.com and www.globalcapitalaustralia.com designed to defraud Australian citizens.

ASIC stated: "*ASIC has already blocked access to these websites.*" This was done via section 313 of the Telecommunications Act.

152. What were the websites ASIC was seeking to block?
 - a. On what legal grounds was ASIC seeking to block those websites?
153. Were the IP addresses you were attempting to block individual addresses or a range of addresses?
154. Did the redirection explain why access was unavailable and did it direct users to a location where they could provide feedback or request that blocking be removed?
 - a. If not, why not especially as you claim you were devoted to getting the message out there about these sites and their claimed 'illegal' activities?
155. What exactly did ASIC do wrong that led to the blocking of websites in no way connected to the target?
156. Given the response to date of ASIC in relation to this issue would it be fair to say that ASIC and its responsible officers did not understand what was involved in blocking these websites and do not have sufficient understanding of the technology involved to be making these decisions?
157. Did you supply the address to be blocked as an IP address or as a specific domain name?
 - a. Would it have been clearer to have supplied the specific site to be blocked?
 - b. Would you regard this approach as "inaccurate"?
 - c. What telecommunications carriers did you make this request to?
158. As I understand it you **did not ask** Australia's second largest telecommunications IP address carrier, 'IINet', to block this IP address. Why not -as it would seem that's a bit like only blocking half the access routes?
159. How many innocent web sites were effectively de-commissioned by this action?
 - a. For how long were these innocent sites out of action?

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160. During the May Budget Estimates ASIC claimed that they had only received one complaint, as if that meant this issue was not significant. Does that mean ASIC has no regard for the possible consequences of neither its actions nor the important issues these actions have raised?
161. One fairly assumes that these events could have led to a number of innocent businesses being greatly inconvenienced and suffering financial and other business losses as a result. What procedures are in place to provide recompense?
162. As the law stands at the moment what other organisations are you aware of that can request IP addresses be blocked?
163. Does the relevant Minister, Department or target have to be informed before the blocking takes place?
164. Is there any system in place for such decisions or the subsequent blocking of sites to be appealed or challenged in any way?
165. Is there a register of all site blocking requests, and is it publicly available?
- a. Are they requests or demands – what rights do the carriers who have contracts with the addressees have to decline the request or challenge it?
- b. So there is no oversight, no transparency, no avenue for appeal?
166. How many IP addresses would ASIC have covertly blocked in the last 12 months?
- a. Do you have to prove anything to a court before you can block a site?
167. What is the view of ASIC as to the legality of the use of section 313 of the Telecommunications Act in this way?
168. Subsection 3 of s313 lets all "**officers and authorities of the Commonwealth and of the States and Territories**" make these requests. So does anyone in ASIC have this power or do you have internal processes that limit what staff can seek a closure or a blocking of a web site?
169. A spokesperson for Senator Conroy in responding to this issue said: "**The government is working with enforcement agencies to ensure that Section 313 requests are properly targeted in future.**" What work has ASIC done with the Minister in this regard?
170. Would you agree therefore that the present 'system's', for want of a better word, for the blocking of IP addresses leaves a lot to be desired?
171. What is the response of ASIC to the following observation of these events by Brendan Molloy, Pirate Party Senate candidate for in NSW in the upcoming 2013 Federal Election:
- "It is an inappropriate and reckless reaction by ASIC, an authority that should not even have the powers to order mass censorship, to censor an IP address that has multiple websites associated with it. The flawed legislation that is being abused by our technologically illiterate enforcement agencies needs to be amended,"***
172. liNet regulatory chief Steve Dalby is quoted in the Financial Review saying this about the actions of ASIC; "***They have an enforcement role to perform but they also have an***

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obligation to do it in such a way that it complies with the normal tests of evidence and onus of proof. Would you agree with that proposition?

Answer:

152. www.globalcapitalwealth.com and www.globalcapitalaustralia.com.
- a. ASIC requested that the relevant telecommunications carriers block access to the specified IP address relying upon section 313(3) Telecommunications Act (Cth).
153. Individual.
154. No redirection was in place.
- a. No redirection processes were in place.
155. ASIC's request inadvertently resulted in the IP address of a server that hosted more than the targeted fraudulent websites being blocked.
156. At the time ASIC was unaware that the IP address hosted more than the targeted fraudulent website.
157. IP address.
- a. At the time ASIC believed that it was the IP address was required to be provided.
- b. At the time ASIC was unaware that the IP address hosted more than the targeted fraudulent website.
- c. Telstra, Optus, AAPT, PacNet and Pipenetworks
158. IP blocking requests were sent to those telecommunications carriers who own/control international telecommunications infrastructure in Australia. ASIC understands that the blocking requests it sent to carriers was sufficient to block access by most Australian users to overseas hosted fraudulent websites.
159. ASIC's request impacted 253,156 websites, with in excess of 99.6% appearing to contain no content.
- a. ASIC's request was for 1 month.
160. No, ASIC was merely providing accurate information to the Committee.
161. ASIC will consider any claims as required. To date, ASIC is not aware of any financial or other losses having been incurred.
162. Under section 313 of the Telecommunications Act 1997 (Cth) officers and authorities of the Commonwealth, States or Territories are able to require telecommunications carriers and carriage service providers to provide reasonable assistance in enforcing the criminal law and laws imposing a pecuniary penalty.
163. ASIC is not required to seek any approval before using the power in section 313 of the Telecommunications Act 1997 (Cth).

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164. A request for help under section 313 of the Telecommunications Act is not a reviewable decision. However, a person affected may be able to challenge the blocking of the site in Court proceedings.
165. Not to ASIC's knowledge.
- a. They are requests to telecommunications carriers and carriage service providers to provide reasonable assistance in enforcing the criminal law and laws imposing a pecuniary penalty. Telecommunications carriers and carriage service providers may decline the request or may seek further information regarding the request. Section 314 of the Telecommunications Act 1997 provides recourse to an arbitrator.
- b. See 164 above.
166. 12
- a. ASIC has requested the assistance of the telecommunication providers and carriage service providers to block access to 12 IP addresses in the last 12 months. ASIC usually publishes this action rather than act covertly.
167. ASIC is of the view it has acted legally in its use of the section.
168. The notice is signed by a senior manager within ASIC's enforcement division.
169. ASIC is liaising with a number of government agencies and telecommunications carriers regarding the use of s.313 of the Telecommunications Act.
170. ASIC is liaising with a number of government agencies and telecommunications carriers regarding the use of s.313 of the Telecommunications Act to determine how it can best disrupt websites that are part of criminal operations without impacting on legitimate sites.
171. ASIC will continue to seek to disrupt the websites of criminal syndicates that are often based outside of Australia and that have taken many millions of dollars from thousands of Australians, often with devastating consequences. ASIC will work with other government agencies and telecommunications carriers to determine how it can best disrupt websites that are part of criminal operations without impacting on legitimate sites.
172. ASIC is of the view it has acted legally in its use of the section 313 of the Telecommunications Act.