

The Senate

Committee of Privileges

Persons referred to in the Senate

Mr Geordie Guy on behalf of Electronic Frontiers
Australia Inc.

145th Report

June 2010

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Report

1.1 On 7 April 2010 the President of the Senate, Senator the Hon. John Hogg, received a submission from Mr Geordie Guy, board member, 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).

1.2 The submission referred to comments made in the Senate by Senator Conroy, both orally and in a tabled document, in response to questions by Senators Boyce and Collins during questions without notice on 15 and 16 March 2010. The President, having accepted the submission as a submission for the purposes of the resolution, referred it to the Committee of Privileges on 9 April 2010.

1.3 The Committee met in private session on 13 May 2010 and, pursuant to paragraph (3) of Privilege Resolution 5, decided to consider the submission.

1.4 The committee noted that the comments to which Mr Guy was responding were primarily located in a document which was tabled in the Senate, but not incorporated in *Hansard*.

1.5 The committee contacted Mr Guy advising that it would consider publishing his submission if the tabled document to which he was referring was also incorporated in *Hansard*. Mr Guy agreed to this course of action.

1.6 The committee again considered the matter in private session on 17 June 2010 and resolved to recommend that the document titled "Summary of Electronic Frontiers Australia (EFA)" tabled by Senator Conroy on 16 March 2010 and the submission of 7 April 2010 by Mr Guy, be published together in *Hansard* in full and without change.

1.7 The committee draws attention to paragraph 5(6) of the resolution which requires that, in considering a submission under this resolution and reporting to the Senate, the committee shall not consider or judge the truth of any statements made in the Senate or of the submission.

1.8 The committee **recommends:**

(a) that the document "Summary of Electronic Frontiers Australia (EFA)" (see Appendix One) tabled in the Senate by Senator Conroy on 16 March 2010 be incorporated in *Hansard*; and

(b) that the response by Mr Geordie Guy, board member, Electronic Frontiers Australia Inc., on behalf of the board members of

Electronic Frontiers Australia Inc. in the terms specified at Appendix Two, be incorporated in *Hansard*.

Senator David Johnston

Chair

Appendix One

Summary of Electronic Frontiers Australia (EFA) 16 March 2010



No	Date and source	EFA Comments	Response
1	19 December 2009 4ZZZ, 'Brisbane Line Weekend' Nic Suzor, Chair, EFA	"Now, the second problem is that the filter is, really, a waste of money in that it technologically can't achieve its aims.	The live pilot has shown that filtering a defined list of URLs (i.e. a page or an image on a website) can be done with 100% accuracy and negligible impact on network performance. ISPs in many western democracies have shown for many years that filtering works.
2	19 December 2009 4ZZZ, 'Brisbane Line Weekend' Nic Suzor, Chair, EFA	"So the people who are going to be trafficking in the worst of the worst material, things like child sexual abuse material, child pornography, this material is not traded on the open internet.	As at 28 February 2010 ACMA had identified 355 'live' URLs of child abuse material which was available on the 'open internet'. It is reported that some people's first encounter with child pornography is on the open internet before they are lured into more sophisticated arrangements.
3	19 December 2009 4ZZZ, 'Brisbane Line Weekend' Nic Suzor, Chair, EFA	"So it won't stop access to that sort of material, and it won't stop the trade. What's needed there instead is police activity."	The Government's cyber-safety plan includes ongoing funding for an additional 91 AFP officers for the Child Protection Operations Team.
4	19 December 2009 4ZZZ, 'Brisbane Line Weekend' Nic Suzor, Chair, EFA	"The other reasons put in favour of the filter seem to be that we're going to be making the internet safe for Australian kids, and the problem with this is that with any fairly small list, and we're looking at about 1000 to 10,000 web sites, so not a huge proportion - a very tiny proportion of material on the internet - you're not going to make the internet any safer for children.	The Government has consistently acknowledged that ISP filtering is not a 'silver bullet' solution. ISP filtering is one element of a broad range of measures under the Government's Cyber-safety Plan, including law enforcement and education.
5	19 December 2009 4ZZZ, 'Brisbane Line Weekend' Nic Suzor, Chair, EFA	"I had a call recently from the administrator of Pillreports, which is a drug information site, which realistically has saved or - I don't think it goes too far to say it saved the lives of a lot of people by providing information on the safe use of drugs. These are the sort of web sites that would likely be blocked and the people who this is really going to effect are people who are not able to get around the filter and access that information."	An assessment of this website has not been made as there have been no formal complaints to the ACMA regarding this site at the time of the statement of the EFA. Before any part of a website that concerns proscribed drugs reaches the RC classification threshold, the content is usually found to either provide detailed instruction in the use of proscribed drugs such as its manufacture and/or self-administration; or the glorification of the proscribed drug with the intention

No	Date and source	EFA Comments	Response
			to actively encourage and/or promote its use. This may not be the case where the drug use is depicted in a medical or public health context.
6	19 December 2009 4ZZZ, 'Brisbane Line Weekend' Nic Suzor, Chair, EFA	<p>"But so far...the policy's been fairly vague, in that Senator Conroy says that certain things will be banned, inappropriate material will be banned, and as I said, he conflates that with child sexual abuse material, and there's no clear indication of exactly what category of material will be block... banned.</p> <p>If - at the moment it seems like it's going to be the whole of, what we call, RC, which is Refused Classification material, which is extremely broad."</p>	<p>The Government has made it very clear that the target of mandatory filtering is Refused Classification (RC) material on an RC Content list of specific URLs that are hosted on overseas servers. The definition of RC is clearly set out in the long-standing National Classification Scheme. RC-rated material includes child sexual abuse imagery, bestiality, sexual violence, detailed instruction in crime, violence or drug use and/or material that advocates the doing of a terrorist act. Under existing laws it is already illegal to distribute, sell or make available RC films, computer games and publications. This material is also subject to take-down notices by ACMA if hosted in Australia. Australian society, through the Australian Parliament, has accepted for many years the definition of RC content.</p>
7	17 December 2009 Channel 10, 'The 7PM Project' Colin Jacobs EFA, Vice-Chair	<p>"In fact, what we're talking about here is a small list of a few thousand websites compiled in secret by a government department."</p>	<p>Significant measures to increase transparency and accountability are proposed including:</p> <ul style="list-style-type: none"> • block pages that enable users to seek review of any material that they find blocked; • appeal mechanisms; • wherever practical, notification to website owners of RC content after liaison with the AFP; and • an annual review by an independent expert and a report to Parliament.
8	17 December 2009 Channel 10, 'The 7PM Project' Colin Jacobs EFA, Vice-Chair	<p>"The Government's own studies have shown that once you try and expand filtering beyond that list in any way, even in the most accurate scenarios, we're talking three or four per cent of sites being blocked that shouldn't be. That adds up to many, many millions of websites that would be denied to Australians."</p>	<p>Testing in the live pilot and Telstra's own testing found that a defined list of URLs can be blocked with 100% accuracy. ISPs in many western countries have also shown that filtering of a defined list can be done with 100% accuracy. The 3-4 percent Jacobs is quoting refers to the results of Enex TestLab's testing of optional levels of filtering</p>

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			<p>where parents may choose to have a wider range of content blocked. It would be their choice to accept some over-blocking if they wish to have more content blocked.</p>
9	<p>17 December 2009 Channel 10, 'The 7PM Project' Colin Jacobs EFA , Vice-Chair</p>	<p>"They went ahead and they've allocated \$43 billion to give us all faster and better internet. Now, in the meantime they're spending \$40 million or more on this filter which will only make things slower and more expensive if it's implemented. Also the tests that they did, tested speeds that we have now, once the new broadband network is in place, the results that they've got are completely inappropriate."</p>	<p>Enex TestLab conducted testing of ISP-level filtering on networks running at speeds of up to 8 megabits per second. This was the highest speed offered by any of the pilot participants.</p> <p>Consultations with ISPs and expert technical advice confirms that there is no reason that ISPs could not implement a technology that filters a defined list of specific internet addresses (URLs) with no, or only negligible, impact on network speeds when utilising the National Broadband Network.</p>
10	<p>17 December 2009 Channel 10, 'The 7PM Project' Colin Jacobs EFA , Vice-Chair</p>	<p>"Filtering was never going to be the answer. Parents need - and teachers - they need information from the Government on, what are the real risks kids face; what are the practical steps that you can take? A lot of the problems kids have aren't stumbling across content, it has to do with interacting with other people. Getting bullied online and so on."</p>	<p>The Government's cyber-safety plan includes significant funding for these matters.</p> <p>For example, \$32.8 million has been provided to ACMA to undertake cyber safety education, awareness and counselling activities.</p>
11	<p>17 December 2009 Channel 10, 'The 7PM Project' Colin Jacobs EFA , Vice-Chair</p>	<p>"There is a role for Government in making filters for the home more accessible and more affordable, and in terms of combating child pornography, the Australian Federal Police are out there everyday, infiltrating these networks and putting people in jail. If the Government's serious about that, better funding the police will have a much better outcome about getting these guys off the streets than this proposal which, really, is just a political smokescreen to make the Government look good."</p>	<p>The Government's cyber-safety plan includes on-going funding for an additional 91 AFP officers for the Online Child Protection Operations Team.</p>
12	<p>17 December 2009 EFA website Colin Jacobs Vice-Chair, EFA</p>	<p>"all Australian ISPs will be required to filter access to a government-supplied blacklist containing "refused classification" (RC) web content. That would include nasty stuff like child pornography, but also a broader range of content: fetishy sex, instruction in crime (such as euthanasia), any computer game not suitable for under 18s."</p>	<p>Online games will not be filtered pending the outcome of the consultation process being conducted by the Minister for Home Affairs.</p>
13	<p>16 December 2009 2SM 'Mornings'</p>	<p>"But because the list itself is secret, there are those who end up on the list, you know, won't know about it, there won't be an appeals mechanism like there is</p>	<p>See response to 7.</p>

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	Colin Jacobs Vice-Chair, EFA	for other censorship decisions. So it's not very transparent at all, which is, you know, one of our main concerns."	<p>Significant measures to increase transparency and accountability are proposed including:</p> <ul style="list-style-type: none"> • block pages enable users to seek review of any material that they find blocked; • appeal mechanisms; • wherever practical, notification to website owners of RC content after liaison with the AFP; and • a annual review by an independent expert and a report to Parliament.
14	16 December 2009 2SM 'Mornings' Colin Jacobs Vice-Chair, EFA	"So when we look at the small list, the government blacklist, yes, that can be blocked pretty accurately. The question is, who decides what's this material that's not acceptable in any civilised society. The criteria that the Government has suggested would certainly include things like child pornography that everybody agrees should be blocked, but the criteria are much, much more broader than that."	See response to item 6.
15	16 December 2009 2SM 'Mornings' Colin Jacobs Vice-Chair, EFA	<p>"We never got a good explanation for why all of those sites were on the leaked blacklist because it's secret. You know, we only knew about it from the leak. Some of those sites such as the dentist or a tuckshop supply company ended up on the list because their site was once hacked and had material on it that, you know, was offensive. But they were never notified, and once the problem was fixed, they never came off the list again.</p> <p>We think the fact that it's secret really changes the game and, you know, we have to be a lot more careful and we need a much better explanation of why this is necessary."</p>	<p>The situation of the dentist and tuckshop have been explained on numerous occasions. Some businesses based in Queensland were hacked with pages within their website having child abuse material uploaded. Complaints led to the URLs leading to those pages being added to the ACMA blacklist. It should be noted that these websites were never blocked and it was only the pages which had the illegal content uploaded that ended up on the list provided to accredited PC filter vendors.</p> <p>Significant measures to increase transparency and accountability are proposed including:</p> <ul style="list-style-type: none"> • block pages enable users to seek review of any material that they find blocked; • appeal mechanisms; • wherever practical, notification to website owners of RC content after liaison with the AFP; and • a annual review by an independent expert

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			<p>and a report to Parliament.</p> <p>A public consultation paper is available from the Department's website. Submissions closed 12 February 2010 and will be shortly published.</p>
16	<p>16 December 2009 2SM 'Mornings' Colin Jacobs Vice-Chair, EFA</p>	<p>"But who knows what future parliaments and future governments will look like. Once there's a mechanism in place in all ISPs in the country that filter the list, there's nothing stopping a future government from expanding the scope of that."</p>	<p>The Government will not expand mandatory ISP-level filtering beyond RC-rated material. This would require changes to the legislation that would have to be supported by both houses of Parliament. Any future Government would have to pass legislation – just as they would have to do to change any existing law in Australia.</p>
17	<p>16 December 2009 ABC Gold and Tweed Coasts, 'Drive' Geordie Guy EFA Board Member National Technology Policy Coordinator, Australian Democrats</p>	<p>(So, who decides what gets blacklisted, what you can't access?)</p> <p>"A random public servant, and you're not allowed to know what.</p> <p>The Australian Communications and Media Authority compile this list, and the way they do that is; people are offended by something they see online and they complain to the authority. And the authority then makes a determination to put it on the list if it's that Refused Classification material."</p>	<p>An arbitrary decision is not made by a Government official. The Government has proposed that after initial assessment by the ACMA, classification is determined by the Classification Board, an agency at arm's length from the Government, made up of representative members of the community. The National Classification Scheme Guidelines are reviewed periodically to ensure they reflect community standards. The National Classification Scheme is underpinned by legislation.</p> <p>Significant measures to increase transparency and accountability are proposed including:</p> <ul style="list-style-type: none"> • block pages enable users to seek review of any material that they find blocked; • appeal mechanisms; • wherever practical, notification to website owners of RC content after liaison with the AFP; and • a annual review by an independent expert and a report to Parliament.
18	<p>16 December 2009 ABC 936 Hobart, 'National Mornings'</p>	<p>"What we're still waiting on is an ETA on some sort of report or community engagement that tells us that this is a good idea and if it is a good idea, why it's a better idea than traditional law enforcement and education, which is the way that Australians expect our law enforcement agencies and our judiciary to</p>	<p>ISP filtering is one element of a broad range of measures under the Government's Cyber-safety Plan, including law enforcement and education. These initiatives tackle the issue of cyber-safety from a</p>

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	Geordie Guy EFA Board Member National Technology Policy Coordinator, Australian Democrats	approach illegal stuff.”	number of directions. More importantly, this approach is based on the key role parents and carers have in the online safety of children, and provides them with the necessary information to assist with this task.
19	16 December 2009 ABC 720 Perth, 'Mornings' Geordie Guy EFA Board Member National Technology Policy Coordinator, Australian Democrats	“what we also understand is that the blocked material could get larger and larger, and also the report didn't consider what should happen with high speed networks such as the Government's proposed national broadband network.”	The Government will not expand mandatory ISP-level filtering beyond RC-rated material. This would require changes to the legislation that would have to be supported by both houses of Parliament. Any future Government would have to pass legislation – just as they would have to do to change any existing law in Australia.
20	http://nocleanfeed.com EFA website	“The category of material that has been 'refused classification' includes websites about euthanasia, controversial movies such as 'Ken Park' and 'Baise-moi', and many games that are designed for people over 16 years of age.”	See response to 6. Online games will not be filtered pending the outcome of the consultation process being conducted by the Minister for Home Affairs.
21	22 December 2009 EFA website Nic Suzor	“Electronic Frontiers Australia today expressed its surprise and concern that the operators of the satirical protest site StephenConroy.com.au were given only three hours to justify their “connection to” the domain name. Under Australian domain name regulations, it is quite common for website operators to be required to identify their reasons for operating under an Australian domain name, but it is unusual for operators to be offered so little time to provide those reasons. This incident reflects worrying concerns about the power that private domain name regulators have to silence critical political speech without going through legitimate legal channels.”	This was a decision taken by auDA.
22	15 December 2009 EFA website Colin Jacobs	“We'll be interested to see how the Internet service providers respond. We know they are critical of having such intrusive Government interference in their networks.”	The Government welcomes the constructive input of Australia's four largest ISPs – Telstra, Optus, iiNet and Primus. These companies came forward to help inform the Government's approach to ISP-level filtering. Between them these ISPs account for more than 80% of internet users in Australia.
23	21 December 2009 Crikey, 'Reporters without Borders: Don't do it, Rudd!'	Jacobs discusses an open letter to the Prime Minister signed by Jean-Francois Julliard, Secretary-General on 18 December 2009 and located on the 'Reporters without Borders' website, Paris.	See responses to 6 and 7.

No	Date and source	EFA Comments	Response
	Colin Jacobs, CEO, EFA	"Firstly, the decision to block access to an 'inappropriate' website would be taken not by a judge but by a government agency, the Australian Communications and Media Authority (ACMA). Such a procedure, without a court decision, does not satisfy the requirements of the rule of law. The ACMA classifies content secretly, compiling a website blacklist by means of unilateral and arbitrary administrative decision-making. Other procedures are being considered but none of them would involve a judge."	
24	21 December 2009 Crikey, 'Reporters without Borders: Doh't do it, Rudd!' Colin Jacobs, CEO, EFA	"The letter also expresses concern at the vagueness of the filtering criteria, worrying that "subjects such as abortion, anorexia, Aborigines and legislation on the sale of marijuana would all risk being filtered, as would media reports on these subjects." Juliard notes the inherent unreliability of filtering and cites the leaked ACMA blacklist of earlier in the year as an example of how legitimate material can find its way onto a blacklist."	See responses to 6 and 7.
25	8 January 2010 Radio National, 'Breakfast', Compere - James Carleton. Geordie Guy, EFA Board Member National Technology Policy Coordinator, Australian Democrats. Clive Hamilton, Professor of Public Ethics, Charles Sturt University Higgins candidate, the Australian Greens.	"...when we talk about refused classification, we're talking about a much, much, much broader scope than simply the things that you can't see on television. It's absolutely not just illegal material. ... What we're concerned about is just how broad that RC is, and the fact that it's going to catch up a whole bunch of things that are perfectly legal to access on television, in cinemas, et cetera,....."	Only material which is Refused Classification will be subject to mandatory ISP filtering. RC-rated material includes child sexual abuse imagery, bestiality, sexual violence, detailed instruction in crime, violence or drug use and/or material that advocates the doing of a terrorist act. Under existing laws it is already illegal to distribute, sell or make available RC films, computer games and publications. RC material clearly cannot be accessed on television and in cinemas.
26	8 January 2010 Radio National, 'Breakfast', Compere - James Carleton. Geordie Guy, EFA Board Member	"Also, since 1996 it of course includes computer games which are not suitable for young children, because we don't have an adult rating for computer games in this country. This means they can't be given a rating and this means they're refused classification."	See response to 12.

No	Date and source	EFA Comments	Response
	<p>National Technology Policy Coordinator, Australian Democrats.</p> <p>Clive Hamilton, Professor of Public Ethics, Charles Sturt University Higgins candidate, the Australian Greens.</p>		
27	<p>14 January 2010 4ZZZ, Brisbane Line Compere: Various Peter Black, EFA campaigner</p>	<p>"The second reason that we're concerned about it is the idea of the cost that will go into it. So if we start from the position that we don't believe it will work, the Government will be spending, you know, millions of dollars, hundreds of millions of dollars on the technology that simply won't bring about the results. So we see it as an extraordinary waste of taxpayers' money."</p>	<p>Funding for mandatory ISP filtering is one element of the Government's cyber-safety plan, which is comprised of a range of measures, including law enforcement, education, international co-operation, research and filtering.</p>
28	<p>15 January 2010 'The Age' 'Google's China move puts focus on local censorship plans' by Chris Zappone The article refers to EFA spokesperson, Geordie Guy.</p>	<p>"We're concerned that Australia is following the sorts of precedents set down by countries like China and Iran that have maintained internet censorship," said Mr Guy.</p> <p>He said Australia's proposed plan resembles China's original censorship regime which blocked banned content at the internet service provider-level."</p>	<p>Australia's ISP filtering policy is very different to arrangements in China and Iran.</p> <p>The Australian Government will require ISPs to block the URLs (i.e. a page or an image on a website) of RC-rated material hosted on overseas servers. The Australian scheme will apply to a defined category of content with a very high level of transparency and accountability.</p>
29	<p>20 January 2010 ABC 612, Brisbane, 1.09PM 'Afternoons' Compere: Rebecca Levingston Colin Jacobs, EFA and Internet Censorship Spokesman</p>	<p>"Once there's new and secretive censorship powers in place it seems to us very unlikely that all future governments will resist the temptation to expand it, whether it might be to do with copyright or whatever the particular moral panic is of the day. Once the mechanism is there it's clearly much easier to broaden what goes on the list than it is to institute the entire system in the first place."</p>	<p>See responses to 16 and 19.</p>
30	<p>20 January 2010 ABC 612, Brisbane, 1.09PM 'Afternoons' Compere: Rebecca Levingston Colin Jacobs, EFA and Internet</p>	<p>"We still don't know what will happen when an Australian internet user tries to access a blocked site, whether they'll get a message and an explanation or simply a blank page. We don't know. And one worry that we have is if an Australian business is added to the black list they'll probably have no way of knowing, you know, how or why it's happened or when it's happened and they</p>	<p>See response to 15.</p>

No	Date and source	EFA Comments	Response
		themselves off the list again."	
31	<p>20 January 2010 ABC 612, Brisbane, 1.09PM 'Afternoons' Compere: Rebecca Levingston Colin Jacobs, EFA and Internet Censorship Spokesman</p>	<p>"Somebody could post something obscene or at least that would be refused classification to an otherwise harmless website that would therefore automatically go on the list if someone made a complaint to ACMA so even if your website is harmless now and you don't think you would be affected, it could certainly happen at some point in the future, the content could change and you could find yourself on the blacklist without warning."</p>	<p>See response to 15.</p>
32	<p>22 January 2010 Radio National, ABC 666 'PM', 5.18pm Compere: Shane McLeod Interviewees: Hillary Clinton, US Secretary of State Colin Jacobs, EFA Michael McKinley, ANU Susan Harris Rimmer, Australian Lawyers for Human Rights</p>	<p>Colin Jacobs: "China's not alone in censoring the internet and that's a club that Australia is unfortunately set to join if the Rudd Government get their way this year."</p>	<p>Australia's scheme involving a well defined and narrow category of content known as Refused Classification cannot be compared with China's filtering scheme.</p>
33	<p>26 January 2010 <i>Sydney Morning Herald</i> 'Websites fade to black in censorship protest,' Asher Moses Colin Jacobs, EFA</p>	<p>"Existing censorship is an open and transparent process but this new internet censorship power is completely secret and not subject to public review," Jacobs said.</p>	<p>As part of the introduction of mandatory ISP-level filtering of RC-rated overseas content, the Government proposed measures to improve the transparency of processes that lead to material being placed on the RC content list.</p> <p>The proposed new measures include:</p> <ul style="list-style-type: none"> • the Classification Board classifying RC-rated content which has been referred to ACMA as a complaint; • the ACMA notifying readily identifiable and contactable website owners that their content is to be added to the RC content list after liaison with the AFP; • a standardised block page that enables users to seek review of any material that they find

No	Date and source	EFA Comments	Response
			<p>blocked; and</p> <ul style="list-style-type: none"> a review by an independent expert and a report to Parliament. <p>A public consultation paper is available from the Department's website. Submissions closed on 12 February 2010 and will shortly be published.</p>
34	<p>26 January 2010 <i>Sydney Morning Herald</i> 'Websites fade to black in censorship protest,' Asher Moses Colin Jacobs, EFA</p>	<p>"The scope of the filter is quite broad – although it will block the nastiest of the nasty content that [Communications Minister Stephen Conroy] likes to talk about, our concerns are around the edges where politically sensitive topics such as euthanasia, drug use and sexuality material will be blocked."</p>	<p>The Government will shortly introduce into Parliament legislation for the mandatory ISP-level filtering of Refused Classification (RC) content. RC material includes child sexual abuse imagery; bestiality; sexual violence; detailed instruction in crime, including suicide related material; violence or drug use and/or material that advocates the doing of a terrorist act.</p>
35	<p>8 February 2010 3CR Breakfast, 7.39am Melbourne Compere: AJ 'Discussion about proposal by Federal Minister for Broadband and Communications Stephen Conroy, for a mandatory internet filter blocking material refused classification' Geordie Guy, EFA</p>	<p>"Discussion about euthanasia or abortion, as well as discussion about drug use, are all things that can get sucked up under that RC category because of the way the category is worded."</p>	<p>Classification decisions are made by the Classification Board and the Classification Review Board by applying the <i>Classification (Publications, Films and Computer Games) Act 1995</i>, the Classification Code, and classification guidelines.</p> <p>Material that provides detailed instruction or promotion of matters of crime or violence would generally be classified Refused Classification. Material that contains drug use is generally Refused Classification where the drug use is related to incentives or rewards. This may not be the case where the drug use is depicted in a medical or public health context.</p>

Appendix Two

Response by Mr Geordie Guy, Board Member, Electronic Frontiers Australia Inc. on behalf of the Board Members of Electronic Frontiers Australia Inc.

Pursuant to Resolution 5 (7) (b) of the Senate of 25 February 1988

We, the individuals listed below, seek redress under the resolution of the Senate of 25th February, 1988, concerning the protection of persons referred to in the Senate (resolution 5). We are readily identifiable as the persons referred to by Senators Stephen Conroy, Sue Boyce and Jacinta Collins during questions without notice regarding Internet content on the 15th and 16th of March 2010 in that we are members of the board of Electronic Frontiers Australia Inc. (EFA), namely:

Chair: Nic Suzor, LLM, LLB, BInfTech

Vice Chair: Colin Jacobs, BA, BSc

Board Member: Geordie Guy, Dip. I.T. (Network Engineering), CCDA, MCTS

Senator Conroy made several misrepresentations both verbally and in the tabling of a document, which are unsubstantiated and false. The senator's remarks go to our individual good characters, reputations and integrity. As members of the board of management of the association, his remarks further reflect on the integrity of the thousands of members and supporters of both EFA and online rights in Australia.

EFA seeks the opportunity to correct the incorrect assertions provided to the Senate.

The following facts apply.

1. Senator Conroy stated with regards to a Reporters Without Borders report:

"The government was very clear in its announcement that our policy is to require ISPs to block a defined list of URLs of content which have been classified as RC under Australia's existing national classification scheme." - Hansard Tuesday 16th March p21

The senator then went on to inform the Senate that Reporters Without Borders has been misled, later asserting that they were misled by EFA, as to the nature of the government's proposal.

EFA has opposed the introduction of mandatory ISP level censorship since the proposal was announced by the government, commonly in the form of expert comment to members of the press. In that time the proposal has undergone constant changes in response to criticism from EFA, bodies representing Australian technical experts, youth advocacy organisations, media and journalism organisations, members of opposing political parties and the wider Australian public. Characterising EFA as deceitful on the basis of previous expert comment on any one aspect of this constantly shifting proposal, when that comment was factual at the time it was made, is disingenuous and distracting at best.

2. Senator Collins asked a supplementary question

"I have a further supplementary question. Is the minister aware of an ABC poll that showed 80 per cent of people support the government's policy on internet filtering? Is the minister aware of any alternative approaches on cybersafety?" - Hansard Tuesday 16th March p21

The Senate may have taken from this question that EFA's position is at odds with that of the Australian people and that the association's efforts in this regard are therefore on occasion deceitful or misleading. EFA wishes to inform the Senate that on every occasion where polling has been completed of a population who understand the nature of the government's proposal, the opposition is overwhelming. The most recent example of this was a survey of users of the website Whirlpool (where participants discuss technology and other related matters). In this survey, 92.6% of 24,683 respondents rejected the government's proposal. EFA asserts that the positive response to the ABC's Hungry Beast survey is due primarily to an inadequate description of refused classification which did not include wider material that is necessarily caught in the definition. In this regard, Senator Conroy insists on drawing the attention of the media and parliament to RC as including matters of child abuse, bestiality, crime etc., but does not explain that RC can also contentiously stretch to cover other other speech discussing matters which are in no way repugnant to the standards of ordinary Australians.

3. By tabling a document of factually incorrect or irrelevant responses to a collection of hand-picked EFA public statements, Senator Conroy asserts the EFA is wrong in its advocacy and has been both misleading and incompetent. Those responses are reproduced here with an explanation of why they are incorrect or irrelevant.

3.1 The live pilot has shown that filtering a defined list of URLs (i.e. a page or an image on a website) can be done with 100% accuracy and negligible impact on network performance. ISPs in many western democracies have shown that filtering works. Item 1, Tabled Document

EFA asserts the live pilot is most politely described as inconclusive. The report classifies negligible impact as up to 10% and did not consider a high speed network such as is proposed under the government's National Broadband Network. 100%

accuracy in censorship was only achievable after the exclusion of content on highly popular websites. Patently, 100% accuracy in any affair is achievable if all errors are excluded.

The pilot participants were variously very small ISPs, business-focussed ISPs or were already providing a censorship system to their customers and unable to be relied upon to show what the implementation of a national scale mandatory censorship system would be like. All participants chose freely to be included in the trial. While optional ISP filtering has been shown to be technically feasible in some countries for the issue of child pornography only, mandatory filtering of a category as wide as refused classification has only been attempted in countries such as China and Iran. EFA cannot be considered misleading merely due to discomfort arising from the highlighting of the pilot's flaws.

The statement made by EFA Chair Nic Suzor was that a technological filtering solution could not achieve a (presumed) goal of protecting children or combating child sexual abuse. The ability of a filter to accurately block a defined list of URLs is not wholly determinative of the efficacy of the proposal as a whole. The Government has released no evidence that shows what proportion of the entire set of material that would be classified RC if a complaint were lodged is expected to be added to the list of filtered URLs. EFA asserts that since the government cannot hope to accurately regulate the entirety or even a meaningful subset of web material that could potentially be classified RC, the accuracy of the system must be much less than 100%.

EFA stands by its assertion that the technological solution proposed by the Government cannot materially protect children from exposure to material that may be dangerous to them, nor can it help to prevent the trade in child sexual abuse material. EFA also asserts that, unlike physical distribution, where the Government is able to regulate public sale and exhibition, the proposed plan cannot address the bulk of material on the internet that may fall within the broad definition of Refused Classification. For this reason, the technological filtering solution proposed by the Government cannot achieve the same goals as classification addresses for public distribution, sale, and exhibition of physical material.

3.2 As at 28 February 2010, ACMA had identified 355 'live' URLs of child abuse material which was available on the 'open internet'. It is reported that some people's first encounter with child pornography is on the open internet before they are lured into more sophisticated arrangements.- Item 2, Tabled Document refuting an apparent EFA position that there is no child abuse material on the open Internet.

EFA's position is that 355 URLs out of the one trillion websites recently reported as indexed by Internet search engine Google, is a concentration which is functionally non-existent. EFA believes that the bulk of child sexual abuse material is available not on the world wide web but in other areas of the Internet such as peer-to-peer filesharing networks, private networks and other secretive arrangements. EFA advocates law enforcement resourcing and cooperation to combat child sexual abuse

material which is already illegal in every jurisdiction. It seems unlikely EFA can be considered to be misleading the Australian public or making outrageous claims in advocating that criminals should be dealt with by the criminal justice system. Further, it seems unlikely that EFA can be considered misleading by being sceptical of tens of millions of dollars earmarked for a programme designed to address a problem which is functionally equivalent to four grains of sand in a one thousand tonne pile (355mg in one kilotonne), assuming one web site to a URL.

Without understanding what the remaining nebulous concepts in the response mean, EFA can not hope to defend itself against phantom reports or undetailed arrangements of any level of sophistication.

3.3 Various government responses attempt to refute EFA statements that resources are better deployed elsewhere, by stating that law enforcement and education elements as well as censorship formulate a comprehensive policy, or "censorship is not a silver bullet".

EFA asserts that undertaking something for which there is no mandate, which cannot achieve its policy aims, costs millions of dollars and threatens freedom of expression is not made acceptable by undertaking it in addition to acceptable measures. Put simply, EFA cannot be considered to be misleading the Australian public by pointing out that bad ideas in the company of good ones are still bad ideas.

3.4 Various government responses attempt to refute or dismiss EFA statements that computer games, the safe use of illicit drugs and other matters of crime, violence, cruelty or revolting and abhorrent phenomena come under the scope of refused classification. Examples include that the matter of computer games is deferred pending the outcome of a consultation process being conducted by the Minister for Home Affairs, and that no complaint has been made about a website that discusses the safe use of illicit drugs. - E.g. tabled document items 5, 7, 13 and 20.

EFA cannot be considered to be misleading the Australian public by highlighting areas in which the government concedes the refused classification category is at odds with the standards of Australians, even if the government is considering measures to attempt to rectify any of the many problems with the classification system. EFA further considers this evidence against the government's responses which insist on drawing allusions to refused classification material being synonymous with illegality and child abuse.

3.5 Various government responses attempt to refute or dismiss EFA statements that bureaucrats compile ACMA blacklists (either current or future) and that the process in which they do is opaque. Various other responses distinguish the original ACMA blacklist of prohibited content which was the intended instrument of the original policy, with a purpose-built refused classification list now, and accuses EFA of conflating the issues. - E.g. tabled document items 5, 6, 15, 28, 33 and 35.

With regards to the compilation of an RC blacklist, EFA asserts that it cannot be considered misleading or incompetent if we highlight any failure of Internet regulation simply because that failure is currently being considered for review by the government. With regards to the previous prohibited content list and conflation of it, EFA cannot be held accountable for confusion in the electorate and media which continues to linger after the government changes its policy dramatically. The government has done little to dispel this confusion by repeatedly failing to clearly articulate its policy proposal.

3.6 The government responds that it does not intend to expand censorship beyond RC material. - Tabled document item 19.

EFA has never suggested that the government intends to extend censorship beyond its current plan of RC material, nor did EFA assert that the previous plan of prohibited content was necessarily intended to be expanded beyond that. EFA has no plans to suggest that any further reinventions of the policy are to be expanded beyond whatever their scope may be. EFA asserts simply that any government now or in the future may expand the scope of censorship systems once they are built - as has been the case in the example of Thailand where censorship was originally implemented to censor child abuse material but now censors a much wider scope of content.

In any event, Australian restriction on free speech and expression is not contingent on an expansion of censorship beyond refused classification material. While restricted from public sale or exhibition, Refused Classification material is generally not illegal to acquire or own except in Western Australia and parts of the Northern Territory. Refused classification material has included computer games not suitable for young children (despite the government's assertions that this is under review), a computer game which includes fictional depictions of graffiti, movies such as Ken Park which are available around the world (and indeed available for purchase online by Australians), and has been thought by the ACMA to include material such as footage of Iranian protestor Neda Aghar-Soltan and abortion material until the incidental clarification from the classification board. This is all despite Senator Conroy's repeated assertions that refused classification "includes" (note: includes does not mean "is restricted to") child sexual abuse imagery, bestiality, sexual violence, detailed instruction in crime etc. Eligibility for inclusion in the category of refused classification is no difficult challenge, requirements are only an arbitrary level of offence, and someone similarly offended.

EFA cannot be considered to be misleading the Australian public simply by highlighting how broad the refused classification category is, how refused classification material is not generally illegal to possess unless it is illegal for reasons other than being refused classification, and how potential will always exist for censorship schemes to be expanded.

Each of Senator Conroy's responses to EFA's public statements are factually flawed, do not consider the entire matter or do not address the EFA statement they purport to

respond to in the tabled document. EFA has endeavoured in every respect, and are confident that we have done so successfully, to maintain a factual and accurate opposition to what we have considered to be bad public policy in line with both our organisation's objectives and the concerns of our members.

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

Yours faithfully

Geordie Guy
Board Member, Electronic Frontiers Australia Inc.
on behalf of the Board Members of Electronic Frontiers Australia Inc.