The Parliament of the Commonwealth of Australia

Balancing Freedom and Protection

Inquiry into the use of subsection 313(3) of the *Telecommunications Act 1997* by government agencies to disrupt the operation of illegal online services

House of Representatives
Standing Committee on Infrastructure and Communications

June 2015
Canberra

ISBN 978-1-74366-332-5 (Printed version)
ISBN 978-1-74366-333-2 (HTML version)

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Foreword

One of the significant challenges faced by all governments is the need to balance the safety of the community with the rights of the individual—rights that are vital to a healthy democracy and an accountable government—in this case, freedom of speech.

The internet has brought with it unprecedented economic and social opportunities—it has transformed the way we live and work—undoubtedly for the better. But there are some in our community, and abroad, who seek to use it for corrupt purposes.

The examples are varied and many. The internet has created new markets but also the means for producers and peddlers of child abuse material. It has provided a global forum for terrorist organisations and recruiters, and has put these organisations within easy reach of impressionable young people. It has facilitated the trade of illicit goods and services, and allowed scammers to anonymously target vulnerable people for their hard-earned money and personal information.

How we deal with these threats is a question of balance. To do nothing would constitute an abdication of duty—but to go too far would risk trampling those very rights and freedoms we seek to protect. So too, an overzealous censorship programme would muffle the critical voice of the electorate, and erode the accountability of government.

The Infrastructure and Communication Committee has grappled with these questions, and I believe has struck the right balance between competing priorities. The Committee examined the appropriateness and efficacy of using Section 313 of the Telecommunications Act 1997 to disrupt illegal online services, and has determined that there remains an indisputable need for government agencies to have access to these powers.

The Committee, in its Report, acknowledges past mistakes, and sets out a way forward for the effective use of s313 by government agencies.

The Committee thoroughly examined the twenty-one submissions offered and the evidence of twenty-three witnesses, and formulated two key recommendations which we believe will ensure that future uses of s313 by government agencies are appropriate, targeted, and effective. The submissions received were diverse and challenging, and the report is better for that.

My appreciation goes to the witnesses who offered submissions, and whose insights informed the Committee's Final Report. I also wish to thank my colleagues for their constructive contribution, and the Committee Secretariat for the significant way in which they have supported the work of the Committee.

Mrs Jane Prentice MP
Chairman

Membership of the Committee

Chairman Mrs Jane Prentice MP

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Terms of reference

Section 313 of the *Telecommunications Act 1997* provides that carriers or carriage service providers must, in connection with:

(a) the operation by the carrier or provider of telecommunications networks or facilities; or

(b) the supply by the carrier or provider of carriage services;

give officers and authorities of the Commonwealth and of the States and Territories such help as is reasonably necessary to:

(c) enforce the criminal law and laws imposing pecuniary penalties;

(ca) assist the enforcement of the criminal laws in force in a foreign country;

(d) protect the public revenue; or

(e) safeguard national security.

Section 313 provides Australian government agencies (including state government agencies) with the ability to obtain assistance from the telecommunications industry when upholding Australian laws. The Australian Federal Police (AFP) administers the Access Limitation Scheme which uses section 313 to block domains (websites) which contain the most severe child sexual abuse and exploitation material using the INTERPOL 'Worst of' child abuse list. When a user seeks to access one of these sites, they are provided a block page that provides certain information, including reasons for the block, and contact details for any dispute about inclusion of the listing on the INTERPOL list. Other Commonwealth agencies have also in the past used section 313 to prevent the continuing operation of online services in breach or potentially in breach of Australian law (e.g. sites seeking to perpetrate financial fraud).

How law enforcement agencies use section 313 to request the disruption of such services is an important public policy question. Section 313 is also used for other purposes, but the Committee will inquire solely into and report on government agency use of section 313 for the purpose of disrupting illegal online services.

The Committee is to consider:

(a) which government agencies should be permitted to make requests pursuant to section 313 to disrupt online services potentially in breach of Australian law from providing these services to Australians

(b) what level of authority should such agencies have in order to make such a request

(c) the characteristics of illegal or potentially illegal online services which should be subject to such requests, and

(d) what are the most appropriate transparency and accountability measures that should accompany such requests, taking into account the nature of the online service being dealt with, and what is the best/appropriate method for implementing such measures:

a. Legislation

b. Regulations, or

c. Government policy.

A final report is to be provided by 1 July 2015.

List of abbreviations

ACC	Australian Crime Commission
ACCAN	Australian Communications Consumer Action Network
ACMA	Australian Communications and Media Authority
AFP	Australian Federal Police
A-GD	Attorney-General's Department
ALHR	Australian Lawyers for Human Rights
AMTA	Australian Mobile Telecommunications Association
APF	Australian Privacy Foundation
ASIC	Australian Securities and Investments Commission
CEM	child exploitation material
CLPC	Cyberspace Law and Policy Community
EFA	Electronic Frontiers Australia
HTTP	Hypertext Transfer Protocol
IP	Internet Protocol
ISP	Internet Service Provider
NCYLC	National Children's and Youth Law Centre
TIA Act	*Telecommunications (Interception and Access) Act 1979*

Tor	Originally 'The Onion Router'; software enabling anonymous communication on the internet.
UK	United Kingdom
UNSW	University of New South Wales
URL	Uniform Resource Locater
VPN	Virtual Private Network

List of recommendations

5 Legislation, regulation or policy?

Recommendation 1

The Committee recommends to the Australian Government the adoption of whole-of-government guidelines for the use of section 313 of the *Telecommunications Act 1997* by government agencies to disrupt the operation of illegal online services, as proposed by the Department of Communications, including:

- the development of agency-specific internal policies consistent with the guidelines;
- clearly defined authorisations at a senior level;
- defining activities subject to disruption;
- industry and stakeholder consultation;
- use of stop pages, including:
  - ⇒ agency requesting the block;
  - ⇒ reason for block;
  - ⇒ agency contact; and
  - ⇒ avenue for review.
- public announcements, where appropriate;
- review and appeal processes; and
- reporting arrangements.

Recommendation 2

The Committee recommends to the Australian Government that all agencies using section 313 of the *Telecommunications Act 1997*, to disrupt the operation of illegal online services have the requisite level of technical expertise within the agency to carry out such activity, or established procedures for drawing on the expertise of other agencies.