

Communications Legislation Amendment (Online Content Services and Other Measures) Bill 2017

Victorian Responsible Gambling Foundation

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Senator URQUHART:

Also, a proposal has been received by the committee that the definition of 'geographical link to Australia' should provide an express exception for services that are geoblocked to Australia. Do you have a view on that proposal?

Answer:

Foundation view on offering exemption from the geo-blocking

1. As we understand it, the provisions of the bill are to carry out the intention of the government to create a safe and practical space whereby, any and all children in Australia watching any delivery of live sport between 5am and 8.30pm, will not be subjected to gambling advertising or promotions.
2. In order for this to be delivered consistently it needs to be applied consistently, every exemption made to service providers of live sporting content will undermine the government's intent.
3. The purpose/effect of the ASTRA claim would be to remove by exemption a category of providers. By stating that they do not require coverage due to geo-blocking, ASTRA is asking that the onus for complying with the bill be removed from the providers. Instead, in effect, it would fall on those doing the geo-blocking, which in turn will speak to the regime that provides this and the technical proficiency of the geo-block.
4. The Foundation does not claim expertise on the regime or the technical proficiency of current sources of geo-blocking in Australia. However, we think that an exemption should not be offered for the following reasons
 - a. The use of exemptions in legislation is not uncommon but it inappropriate in this legislation in our view. This is because the intent is to deliver a consistent and even experience for all Australian viewers of live sport. The argument for consistency has been argued by ourselves and many others making submissions on this bill and on the various industry proposed codes of conduct. Every exemption given threatens the consistency of experience for viewers of live sport, in particular children, and thus the efficacy of the protection offered by the bill.

- b. We see no reason for shifting the onus from the providers in this case, since the onus on providers is the mechanism being used by the bill to achieve the government's policy intent. Arguing, in effect, that some services should be exempt from the law, simply because it is harder for the law to be broken due to geo-blocking, does not appear consistent with logic or good law-making.

That geo-blocking exists and makes it more difficult for viewers to access certain live sport streams should not release providers from an obligation to be alert to preventing the streaming gambling advertisements into Australia during banned times. An analogy might be made with an interlock device fitted to a car to prevent drink driving. The presence of the device does not release a driver from the duty not to drive that car when affected by alcohol, it merely makes it less likely this will happen. Moreover, changes around geo-blocking and evasion of geo-blocking in the future are unknown but, if an exemption is granted, providers would never have any incentive to adjust to, or use, any such changes that may serve the intent of the policy or be working to defeat it.

- c. Further, we note the statement that providers might be asked to account for serving ads to Australians who have circumvented a geo-block. If, for example, the circumvention was via a VPN that accessed the service in way that the provider could not know the user was in Australia, this would be a sound defence in any specific case. However, to completely remove the need for the provider to have reasonable and defensible steps in place to check that it is not breaking the rules of the bill is overreach.
5. The Foundation therefore opposes any exception being made on the basis of geo-blocks that may (at present or in the future) be in place.