

**Senate Standing Committee on Economics**

**ANSWERS TO QUESTIONS ON NOTICE**

**Treasury Portfolio**

Budget Estimates

4 – 6 June 2013

**Question: BET 9**

**Topic: Section 313 of the Telecommunications Act**

**Hansard Page: Tuesday 4 June 2013, Page 90**

**Senator LUDLAM asked:**

**Senator LUDLAM:** I would like to bring us back to where you started. Mr Kell, I missed the beginning of your opening statement. It is probably no surprise that I am going to take you back to that topic. I think part of what I might have missed was where you told us the number of times that ASIC has used section 313 of the Telecommunications Act to knock out a particular website.

**Mr Kell:** Over the past 12 months we have used the power 10 times. Just to clarify: it is not so much to knock out a website but, rather, to block access to the website by Australian consumers or investors who go through Telstra, for example. Our objective is to ensure that they do not lose money through overseas criminal operations.

**Senator LUDLAM:** If you are trying to view that site from an Australian IP address you will not be able to see it.

**Mr Kell:** That was the basis upon which we were seeking the document. That is correct.

**Senator LUDLAM:** What about in the previous 12 months?

**Mr Kell:** No. That is the extent of our use of the power. I do not know whether you caught the end of my statement. We are making a commitment that we will publicly report on our use of the section 313 powers. ASIC wants to be as public as possible because of the nature of what we are trying to do with this to target websites. We would like the public to know about this, so we will report publicly on our use of the power.

**Senator LUDLAM:** The kinds of scammers you chase, who use sites to back up the direct social engineering—

**Mr Kell:** That is part of it, yes.

**Senator LUDLAM:** Those scammers have existed, probably, for as long as the internet has. Why have you started using these notices just in the last 12 months?

**Mr Mullaly:** We made a conscious decision to try to interrupt these kinds of criminal activities in the most efficient way that we could.

**Senator LUDLAM:** Why were you not doing this five years ago, for example?

**Mr Kell:** The evolution of our efforts to combat these activities has involved various ways of dealing with the websites over the years. We have tried in the past on numerous occasions to get voluntary compliance by domain registries and other overseas agencies to suspend or take down websites. We have found that that is not always effective. It can be far from straightforward for overseas based operations. It can be a form of disruption that is not as timely as we would like. Time is of the essence in these matters because if you can stop people getting

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in early you can reduce the losses. This appeared to us to present an additional opportunity to limit the exposure of Australian consumers and investors to these sites.

**Senator LUDLAM:** Were you inspired—that is the wrong word; I am trying to work out exactly what the right word would be. Noting that the Federal Police have started using that section of that act to knock out a set of websites that is maintained by INTERPOL, that mechanism had not been used to block content before. Is that what inspired ASIC to start using this method?

**Mr Mullaly:** No. There had been discussions as part of Task Force Galilee, which is aimed at trying to reduce the harm in relation to cold-calling scams. As part of that process, we looked at a whole range of ways that we could interrupt and take action in relation to these illegal activities.

**Senator LUDLAM:** Were you aware that the Federal Police were using that method at the time?

**Mr Mullaly:** No, I was not aware. I am not sure that ASIC was aware either.

**Senator LUDLAM:** So it is by pure coincidence that that section of the act has been there for years and years and, within months of each other, two agencies have started using those notices in a completely unique way?

**Mr Mullaly:** I am not aware that there was any discussion by one agency about its use in relation to one area that they have regulatory responsibility for. There is the suggestion that we use it in relation to illegal activity, fraudulent websites. However, there were discussions at Task Force Galilee level about how to take action in relation to cold-calling scams.

**Senator LUDLAM:** Because this is a rather unique way of using that section of the act, could you provide for us a de-identified copy of what the letter that goes to the service provider looks like? Scrub anything that would compromise a particular operation.

**Mr Mullaly:** I think we can do that.

**Senator LUDLAM:** That would be much appreciated.

**Answer:**

De-identified copy of s313 Request attached.