

Senate Standing Committee on Environment and Communications

Answers to Senate Estimates Questions on Notice

Budget Estimates Hearings May 2013

Broadband, Communications and the Digital Economy Portfolio

Department of Broadband, Communications and the Digital Economy

Question No: 214

Program No. Program 1.2

Hansard Ref: Page 11 (30/5/13)

Topic: Section 313 notices

Senator Ludlam asked: How many agencies are actually duly authorised to use notices in this way? Who else can issue these?

Mr Rizvi: The legislation does not specify any particular agency.

Senator LUDLAM: That is true.

Mr Rizvi: The legislation indicates that carriers and carriage service providers are required to cooperate with agencies that have responsibilities for enforcing the criminal law, and laws imposing pecuniary penalties, protecting the public revenue and safeguarding national security.

Senator LUDLAM: Are you able to provide us with a list of all the agencies that that would include? I would understand that to include, for example, state policing and anticorruption authorities as well, for example, and not just federal agencies.

Mr Rizvi: Yes, it could cover state authorities that have those responsibilities.

Senator LUDLAM: That is dozens and dozens of agencies, is it not?

Mr Rizvi: I cannot be specific about the numbers.

Senator LUDLAM: Could you for us, on notice? Since the department has taken carriage of this issue, if I ask you how many agencies and which agencies are authorised to knock out content online with or without an accompanying press statement, of their own volition, against no list, no criteria, no categories and no accountability, could you provide us with a list of the agencies who are able to do that?

Mr Rizvi: We would have to take that on notice.

Answer:

Section 313 of the *Telecommunications Act 1997* does not authorise agencies to undertake specific activities. Rather, it provides for officers or authorities of the Commonwealth and of the States and Territories to seek assistance from carriers and carriage service providers in relation to the following purposes:

- (a) enforcing the criminal law and laws imposing pecuniary penalties;
- (b) assisting the enforcement of the criminal laws in force in a foreign country;
- (c) protecting the public revenue;
- (d) safeguarding national security.

Section 313 does not specify particular agencies or the numbers of those agencies that are authorised to seek such assistance. Examples of agencies who seek assistance from carriers and carriage service providers include the Australian Federal Police and the Australian Securities and Investments Commission.

As requested by the former Minister, the Department of Broadband, Communications and the Digital Economy is consulting with a number of agencies on options to improve transparency and accountability in the use of s313 for blocking websites.

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Department of Broadband, Communications and the Digital Economy

Question No: 215

Program No. Program 1.2

Hansard Ref: Page 13 (30/5/13)

Topic: Section 313 notices

Senator Ludlam asked: I will put this to whomever wants to take it: in your reading of the act in question—and you have quoted a section out of it before when I asked you who could issue these notices in the first place—protection of public revenue was one of the criteria. Do local governments fit that definition in the collection of rates? Is that considered public revenue under this act?

Mr Rizvi: That would be a matter of interpretation.

Senator LUDLAM: So nobody knows.

Senator Conroy: I do not know if Mr Rizvi—and this is no reflection on him whatsoever—is a sort of legal expert. We can take some advice on that for you.

Senator LUDLAM: I am probably not even allowed to ask for legal advice at the table. It is more whether local governments are able to issue these or not.

Senator Conroy: As I was saying, I am happy to get some advice for you on that.

Senator LUDLAM: Does it concern you that you do not know?

Senator Conroy: I am not a lawyer either, so I can't give you an interpretation. But we are happy to get you some advice.

Senator LUDLAM: Whether several hundred local government authorities—no disrespect—could also at their whim—

Senator Conroy: It sounds very disrespectful, Senator Ludlam.

Senator LUDLAM: No, it is not. It is extremely alarming.

Senator Conroy: I am happy to take it on notice.

Senator LUDLAM: How many agencies are able to issue these notices and knock out internet content?

Senator Conroy: I think that Mr Rizvi has already indicated that he will take that on notice for you. You have already asked and he has already offered to take it on notice.

Senator LUDLAM: I think that it is extraordinary that we don't presently know who could be issuing these notices to knock content out. It is at their discretion to put out a press release that somebody might stumble across or not.

Answer:

The rates collected by local government bodies can be considered to be public revenue.

Whether a local authority is considered to be an authority of a State or Territory will depend on the constitution of the particular State or Territory and the legislation that establishes the authority or confers the relevant powers on it.

If a local authority was considered to be an authority of a State or Territory then it could seek assistance from carriers and carrier service providers for the purposes of protecting public revenue.

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Broadband, Communications and the Digital Economy Portfolio
Department of Broadband, Communications and the Digital Economy

Question No: 216

Program No. 1.2

Hansard Ref: Pg 58 (30/5/13)

Topic: Digital Dividend Auction (ACMA Advice on Reserve Prices)

Senator Birmingham asked:

Did the department request updated advice or views from the ACMA after the 26 September letter? Is that the reason there were two lots of views from ACMA provided to the department—one on 12 September and the other on 12 October? One before the Vodafone letter and one the other after the Vodafone letter?

Senator Conroy: We would have to take that on notice to see what correspondence was going in both directions. I do not think anyone at the table knows.

Senator BIRMINGHAM: I appreciate that you may not remember, but could you give the officials a chance to actually think before taking it on notice?

Senator Conroy: We had a look at each other. We are both shaking our heads at each other. Hansard will not record that.

Mr Rizvi: We would have to go and check our records.

Senator BIRMINGHAM: So you do not recall why were there two lots of advice from ACMA in relation to the reserve price?

Senator Conroy: We would have to take that on notice. You are asking us basically to reveal advice from ACMA. When you say why, it indicates a question of content. As I said, we considered all of ACMA's advice, Treasury's, finance's and international auctions when we took that decision.

Answer:

On 12 September 2012, the ACMA provided the Department with advice on reserve prices for the Digital Dividend auction. At this time, the bidders for the 700 MHz spectrum were expected to be Australia's three mobile carriers, namely Telstra, Optus and Vodafone Hutchison Australia (VHA).

On 26 September 2012, the Department received correspondence from VHA that indicated it did not intend to participate in the auction for the acquisition of 700 MHz spectrum. The Department requested an update on the ACMA's disposition on the reserve price for 700 MHz spectrum, considering a scenario where there would be only two parties bidding for the 700 MHz spectrum.

On 12 October 2012, the ACMA provided the Department with an update on its disposition on the reserve price for 700 MHz spectrum in a two-bidder scenario.

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Department of Broadband, Communications and the Digital Economy

Question No: 217

Program No. Program 1.2

Hansard Ref: In Writing

Topic: Legal recourse – Facebook and Twitter

Senator McKenzie asked:

Given that the Cooperative Arrangement for Complaints Handling on Social Networking Sites (the Arrangement) is not legally binding, what recourse is there on participating sites like Facebook and Twitter if they breach the guidelines?

Answer:

The Cooperative Arrangement for Complaints Handling on Social Networking Sites, agreed to by Facebook, commits Facebook to:

- Set out clear information about its acceptable use guidelines;
- Undertake education and awareness raising activities about what behaviour is acceptable and not acceptable online;
- Have a single point of contact for Government; and
- Have robust processes in place for reviewing and acting on complaints.

In addition to complaining to the company involved, there are other arrangements in place in Australia for handling concerns about content posted online.

The Australian Communications and Media Authority (ACMA) actions complaints about content on social networking sites such as Facebook and Twitter through the online content scheme set out in Schedules 5 and 7 of the *Broadcasting Services Act 1992* (BSA). The scheme regulates prohibited online content in Australia and is underpinned by and interacts with the National Classification Scheme. Online content includes internet web-pages, social networking sites, chat services, live audio-visual streaming and links to content. The scheme applies to content accessed on desktop computers, mobile phones and other convergent devices.

Content is typically assessed on the basis of a complaint from a member of the public to the Australian Communications and Media Authority (ACMA). The ACMA may also initiate its own investigations (see clause 44 of Schedule 7 to the BSA.) If the ACMA finds content hosted in Australia to be prohibited content, it will direct the hosting service to remove or prevent access to the content. For prohibited content hosted overseas, the URL that resolves to the material must be added to the ACMA's prohibited URL filter list. (These user-side PC-based filters are optional for Australians to purchase at or below cost from their ISP.) Regardless of where the content is hosted, if the ACMA considers the content to be of a sufficiently serious nature, such as child sexual abuse material, it must notify the police or another body endorsed by the police. In the case of child sexual abuse material that is hosted in a country with an INHOPE (the International Association of Internet Hotlines) member hotline, the ACMA gives notice of that matter directly to the INHOPE member for police action and take-down in the host country.

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If users are of the view that the content on Facebook or Twitter is prohibited under Australian law, they may wish to report the matter to the ACMA.

Complaints may be lodged by completing the online form at www.acma.gov.au/hotline. Further information is available at the ACMA website, www.acma.gov.au.

In addition, under the Commonwealth Criminal Code, it is an offence to use the internet to menace, harass or cause offence, carrying a maximum penalty of three years. It is also against the law to use the internet to make threats to cause serious harm or threats to kill, carrying maximum penalties of seven and ten years respectively. If internet users believe these laws have been broken, they can report it to the relevant state or territory police.