

**Senate Standing Committee on Environment, Communications and the Arts**  
**Answers to Senate Estimates Questions on Notice**  
**Budget Estimates Hearings May 2010**  
**Broadband, Communications and the Digital Economy Portfolio**  
**Department of Broadband, Communications and the Digital Economy**

**Question No: 105**

**Program No. 1.2**

**Hansard Ref: ECA 114 and 127**

**Topic: Privacy issues and Google**

**Senator Fisher asked:**

Why await the Privacy Commissioner's report? Is privacy the only aspect that may have been violated by this?

Why would you not, in any event, refer the matter for investigation for potential breach of the Telecommunications Act?

Are you in a position to say that there has not been any breach of the Telecommunications Act by this conduct by Google?

**Answer:**

The Privacy Commissioner's investigations have found that the collection of personal information through Street View constitutes a breach of Australian privacy law.

Google has now provided the Privacy Commissioner with written commitment to take steps to avoid such an issue arising again including agreeing to regularly consult with the Australian Privacy Commissioner about any personal data collection activities arising from significant product launches in Australia.

The Attorney-General's Department has requested the Australian Federal Police consider investigating whether the collection of payload data by Google's Street View cars may have constituted a breach of the *Telecommunications (Interception and Access) Act 1979*.

Given this matter has been referred to the AFP for investigation, it would be inappropriate for me to comment further.

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**Question No: 106**

**Program No. 1.2**

**Hansard Ref: ECA 115 and 116**

**Topic: ISP Online Consultation**

**Senator Ludlam asked:**

Was there any sort of non-disclosure clause that people entered into? Is it your intention or the Minister's intention for that report to be made public? Are we going to hear that it is all commercial-in-confidence and that it cannot be released or is there likelihood that that information will be put into the public domain?

**Answer:**

ISPs participating in the ISP Filtering Online Forum from 12 - 23 April 2010 were not required to enter into a non-disclosure agreement with the Department of Broadband, Communications and the Digital Economy.

The Department is preparing a report to the Minister on the forum. A decision on the public release of the report will be made by the Minister after he has received a copy of the report.

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**Question No: 107**

**Program No. 1.2**

**Hansard Ref: ECA 116**

**Topic: High Traffic Websites**

**Senator Ludlam asked:**

Could you quantify what is meant by a high-traffic website? Is there a threshold or a certain amount of traffic that would qualify as high-traffic? Could you come up with a number for what constitutes a high-traffic site?

**Answer:**

URLs being added to the RC Content list to be blocked may have an impact on network performance, for certain filtering technologies, where they meet a certain tipping point in terms of traffic. These sites have been termed 'high traffic sites' for the purposes of the discussion about internet filtering. From a customer's perspective this impact may be more obvious where they are trying to access content that requires high bandwidth, for example video content.

The Government is currently doing some further testing and consulting with ISPs as to internet usage patterns typical to their network to identify which URLs may be considered 'high traffic sites' for a particular ISP. The internet usage patterns typical for an ISP's network may mean different sites reach the point of being a 'high traffic site' for the purpose of filtering, for different ISPs.

The impact on internet performance of filtering content on 'high traffic sites' would vary with the type of filtering solution adopted by an ISP, and how that technology is installed and configured within an ISP's network.

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**Question No: 108**

**Program No. 1.2**

**Hansard Ref: ECA 116 and 117**

**Topic: Legal liability and outsourcing the filtering to a particular provider**

**Senator Ludlam asked:**

If there is a video up on YouTube, for example—owned by Google—that you are not able to put on your list of 10,000 sites but would be refused classification and you are seeking to outsource that task to that provider, in the event that they do not do that—what will you do when that happens?

**Answer:**

The Government is consulting with a number of high usage sites (such as YouTube) to seek their views on a process for dealing with Refused Classification (RC) content identified on their sites. Most high usage sites already have acceptable use policies where the owners of these sites take down a wide range of offensive material. For example, the YouTube acceptable use policies cover material such as pornography or other sexually explicit content, animal abuse, drug or substance abuse, bomb making, graphic or gratuitous violence, hate speech, and material that infringes copyright. The range of content prohibited is much broader than just Refused Classification.

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**Question No: 109**

**Program No. 1.2**

**Hansard Ref: ECA 117 and 119**

**Topic: Outsourcing of filtering - negotiations**

**Senator Ludlam asked:**

Who are the third parties with whom you are negotiating to outsource the filtering task, the high-traffic providers?

**Answer:**

See the answer to Question on Notice 107.

The Government is consulting with a number of high usage sites to seek their views on a proposed process for dealing with Refused Classification content identified on their sites. The negotiations are being conducted with potentially affected sites such as, for example, Google (YouTube) and will be undertaken with the operators of sites identified through the processes described in Question on Notice 107.

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**Question No: 110**

**Program No. 1.2**

**Hansard Ref: ECA 119**

**Topic: Legal liability of Google**

**Senator Ludlam asked:**

What is the legal liability of Google when it has a refused classification piece of content that remains on its site-regardless of whether it is a third party, first party, second party or any other party?

**Answer:**

The Online Content Scheme set out in the *Broadcasting Services Act 1992* enables the ACMA to issue take-down notices for refused classification content hosted within Australia. These prohibitions are backed by strong sanctions for non-compliance, including criminal penalties.

Where Google content is hosted overseas, it has no legal liability under the Online Content Scheme in relation to that content notwithstanding that it may be refused classification material. However, offences in State and Territory classification enforcement legislation may apply to RC content hosted online and downloaded or accessed in Australia. Google may also be subject to legal liability under the laws of the hosting country. It should be noted that the hosting of illegal or offensive material is inconsistent with Google's stated policies for Terms of Use.

The Government is consulting with a number of high usage sites (such as Google) to seek their views on a process for dealing with Refused Classification (RC) content identified on their sites. When these consultations are finalised, the Government will make known the preferred process and any necessary legislative framework.

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**Question No: 111**

**Program No. 1.2**

**Hansard Ref: ECA 121**

**Topic: Refused Classification Blacklist**

**Senator Ludlam asked:**

Given the secrecy of the refused classification blacklist, given that we have had instances of it leaking last year, what penalties will apply for possession and/or dissemination of the list beyond its stated purposes?

**Answer:**

Depending on the individual circumstances of the case, unauthorised distribution of the Refused Classification Content list might constitute a criminal offence under existing law. If so, criminal penalties would apply.

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**Question No: 112**

**Program No. 1.2**

**Hansard Ref: ECA 122**

**Topic: Blacklist**

**Senator Ludlam asked:**

Can you confirm for us that the investigation into the leaking of the blacklist last time has lapsed; has it not?

Can you tell me, or direct me to the AFP if you will, will some entities or agencies be exempt from the blacklist? I am thinking law enforcement agencies obviously, the parliament and research institutions; is there anybody who will not be behind the filter?

**Answer:**

The Australian Federal Police advised the Australian Communications and Media Authority in 2009 that it would not be proceeding with an investigation into the alleged leaking of the blacklist.

Provision will be made for organisations with a legitimate work requirement to access an unfiltered service. This will apply to organisations such as law enforcement and the Australian Communications and Media Authority.



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**Question No: 113**

**Program No 1.2**

**Hansard Ref ECA 123**

**Topic: Mandatory Filter**

**Senator Ludlam asked:**

Has the Minister either sought advice or received advice from law enforcement agencies or has the Minister, the department, or anybody that the Minister is aware of done any research on whether law enforcement agencies will find it more difficult to do their jobs as a result of an increase in encrypted traffic as a result of the mandatory filter coming into effect?

If you bring the mandatory blacklist in will we see an increase in the amount of encrypted traffic and will that make the job of law enforcement agencies harder?

**Answer:**

The Attorney-General's Department has advised that it has no evidence that an internet filter would increase the volume of encrypted internet traffic.

The AFP has confirmed that they do not foresee any significant operational issues posed by filtering.

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**Question No: 114**

**Program No. 1.2**

**Hansard Ref: ECA 123**

**Topic: Global Roaming Arrangements**

**Senator Ludlam asked:**

I am interested in global roaming arrangements within the scope of the filter. If you come into Australia with a handset device that is capable of internet access and you are from overseas, will you be subject to the filter? Conversely, if you are an Australian travelling overseas with an Australian handset, will you be subject to the filter while you are travelling overseas?

**Answer:**

Our technical advice suggests that in most circumstances the visitor to Australia would receive a filtered service because they would connect through a network in Australia.

When an Australian uses a roaming internet connection overseas, the service is usually provided by the internet service provider's (ISP's) overseas roaming partner. In this case, the Australian would receive a filtered service only if such a service is received by all of the ISP's customers in that country.