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The Secretary
Senate Environment, Communications, Information Technology
and the Arts References Committee
S1.57 Parliament House
CANBERRA ACT 2600
via E Mail: ecita.sen@aph.gov.au

Dear Ms Griffiths

Inquiry into the Interactive Gambling Bill 2001

Attached is the submission of Electronic Frontiers Australia in relation to the above Inquiry.

Yours sincerely

Greg Taylor
Board member
on behalf of the Board
Electronic Frontiers Australia

Submission to the Senate Environment, Communications, Information Technology and the Arts References Committee

Inquiry into The Interactive Gambling Bill 2001

Electronic Frontiers Australia

Executive Summary

EFA's position on the Bill may be summarised as follows:

- gambling is legal in many offline forms and it is inconsistent to ban one form of gambling with claims that this will limit "problem gambling".
- there will be little or no effect on online gambling by Australians because they will be able to access the hundreds of online gambling sites in other countries.
- because overseas gambling sites may not be strongly regulated, the likelihood of adverse social consequences from online gambling is likely to be greater under this policy than if Australian sites were allowed to operate in a well-regulated environment.
- it is patronising, insular and hypocritical to ban Australians from accessing Australian gambling sites while allowing overseas gamblers to do so.
- the proposal will penalise the 85% of gamblers who act responsibly and enjoy gambling for recreation.
- there is greater scope for implementing effective harm minimization policies with regulated online gambling than with traditional anonymous forms such as poker machines.
- the only sensible policy option is to regulate Australian online gambling operations to ensure that Australians and others who choose to gamble online are at least able to do so in a responsible, regulated environment.

About EFA

Electronic Frontiers Australia (EFA) is a non-profit national organisation formed to protect and promote the civil liberties of users and operators of computer based communications systems. EFA was formed in January 1994 and incorporated under South Australian law in May 1994.

Our major goals are to advocate the amendment of laws and regulations in Australia and elsewhere (both current and proposed) which restrict free speech, and to educate the community at large about the social, political and civil liberties issues involved in the use of computer based communications systems. EFA is independent of government and commerce and is funded by membership subscriptions and donations from individuals and organisations with an altruistic interest in promoting civil liberties.

Introduction

EFA takes no position on the morality of gambling other than to affirm that adults should be free to make up their own minds in relation to leisure activities provided they do no harm to others.

However, EFA does not dispute that problem gambling is a significant social issue in Australia. Our concerns with the proposed Bill are that that the government plans to introduce yet another Internet regulatory scheme that will fail to deliver the claimed outcomes.

The model for the proposed law is clearly the Internet censorship legislation that was introduced in 1999 through amendments to the Broadcasting Services Act. The failure of that system to deliver the outcomes claimed by the government should give cause to question why the interactive gambling legislation should fare any better.

EFA contends that the proposed legislation is ill-conceived and illogical. It is difficult to accept that the government genuinely believes that Australians will not gamble online at overseas sites. This is the most fundamental flaw with the proposed legislation. It ignores the global nature of the Internet and adopts a "fortress Australia" mentality that is totally out of touch with reality.

Evidence has been presented to the previous inquiries into Interactive gambling that, if properly regulated, it presents fewer risks of exacerbating problem gambling. Because of the user identification controls that need to be exercised in an online environment, there is greater scope for harm minimization than in traditional anonymous forms of gambling.

The 1999 Productivity Commission Report

The Productivity Commission's Inquiry *Australia's Gambling Industries* considered Internet gambling regulation options and concluded that "managed liberalisation" was the most effective policy:

In Chapter 18 of the report entitled "Policy for new technologies", the Commission concluded:

Regulation of online gambling under this "managed liberalisation" model has mutual advantages for consumers and operators, and creates a market which drives the unscrupulous operators (the "lemons") out of the market. Consumers know that regulated sites will guarantee payment, have secure databases, meet privacy concerns, have fair games and be managed by people of good character. They will also know that the site has been designed to increase their informed consent with features such as self-imposed limits, records of transactions and self-exclusion.

They face few incentives to seek to circumvent blocking to illegal offshore sites which may appear to be a little cheaper, but where the quality of the good is suspect. Operators benefit by obtaining the certification from the government that they are a reputable operator which increases the likelihood of attracting clients from Australia and abroad. A good regulatory framework is likely to be a more important feature for export success than comparative tax rates. [1]

The 2000 Senate Committee Report

In 2000, the Senate Select Committee on Information Technologies undertook an Inquiry into Internet gambling. The subsequent report, *Netbets: A review of online gambling in Australia* [2], was a comprehensive analysis of the issue and put forward strong arguments why a ban would be ineffective. No new evidence has been presented since that time to suggest that the Committee's analysis was flawed or that the conclusions reached were unsustainable.

Among the problems associated with a ban, the Committee listed:

- People would gamble on overseas-based online gambling sites.
- Difficult if not impossible to enforce and police.
- Expensive to enforce.
- Loss of taxation revenue to States and Territories.
- Loss of e-commerce technology.
- Threat to problem gambling posed by unregulated overseas gambling sites.
- Loss of Australian revenue to overseas online gambling operators and governments.
- Online gambling activities would be driven underground.
- Deprives consumers of ability to access safe and well-regulated domestic operators.

Among the Committee's findings were (Chapter 3):

3.51 The Productivity Commission found that the feasibility of a prohibition is also undermined by the possibility that the activity would be forced underground: Prohibition often leads to the illegal and secretive supply of the prohibited goods by organised crime, with none of the safeguards for the consumer provided under a legal regime. It may well be that criminal impacts under prohibition would be greater than under a legal regime.

3.52 It was for the above reasons that the Commission considers that blanket bans on specific forms of gambling to protect consumers would not be viable or desirable, although more targeted action may be appropriate in the absence of effective harm minimisation.

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Conclusion

3.118 The Committee believes that a prohibition would be difficult and expensive to implement, and is not guaranteed to prevent an increase in problem gambling. Rather than preventing access by problem gamblers to online gambling sites, it is more likely that a prohibition would steer them to overseas-based gambling sites that are only a mouse click away and fail to address problem gambling. A prohibition would also detract from the benefits associated with online gambling, such as the development and enhancement of e-commerce systems and infrastructure, and providing a legitimate entertainment outlet for responsible gamblers.

3.119 The implementation of harm minimisation policies is the favoured option as it is easier to implement and is likely to produce a more certain outcome. The policies proposed by the Committee are suited to Internet technology and could be implemented by State and Territory Governments who are skilled in the regulation of gambling. Problem gamblers would be attracted to Australian sites that are regulated and guaranteed by domestic governments, thereby minimising the risk posed by overseas-based sites. [2]

Policy Effectiveness

Even the NOIE Report released in March 2001 [3] provided no evidence of the likely effectiveness of a ban, or of the downside risks, perhaps because its brief was to find ways of implementing a ban rather than trying to justify it.

The government is ignoring the recommendations of both the Productivity Commission and the Senate Committee and has chosen to go down a track that has little support, even from groups which support problem gamblers.

Lessons can be learned from the Internet censorship legislation which has now been in force for 12 months. The ABA has recently released its report on the second six months of operation of the scheme and the report shows that out of a total of 290 complaints for the period, only 6 related to Australian sites hosting prohibited content. The vast majority of complaints were about overseas sites over which the ABA has no control. Given the high barriers to entry for interactive gambling sites, the likelihood of an Australian site offending is near zero, and no action can be taken against overseas sites since in all probability they are operating within the laws of their own jurisdiction.

The only logical conclusion about the proposed ban is that problem gamblers will use either poorly regulated overseas sites, or highly regulated sites in countries like the USA, where the state of Nevada has recently voted to legalise Net gambling [4] in order to capitalise on foreign markets.

Geolocation issues

In the Explanatory Memorandum to the Bill, reference is made to a newspaper article claiming that "geolocation software programs are available to assist in working out the location of end-users who access the Internet". It is further claimed that "based on that extrapolated location and with the use of programs such as keyword filters, the software can then block Web pages from being seen, essentially putting a tall fence around part of the Web".

Presumably this statement is put forward to demonstrate that it is possible to detect Australian users with appropriate technology. However, the same article points out that such techniques are highly inaccurate, their reliability being estimated at around 70% in the case of France [5]. Quite simply, the addressing methods used to direct Internet data packets are not structured on a geographical basis, and no improvements in technology are going to alter this fact. Furthermore, just as attempts at censorship are easily circumvented, there are anonymising and relay techniques that can readily defeat attempts to determine location.

It is therefore totally inappropriate to imply that technological solutions are available to support this legislation. It is also unfair to impose severe penalties on Australian interactive gambling sites which may inadvertently allow Australians to access them because of unreliable location methods.

Conclusion

This Bill is an ill-conceived and inept attempt to deal with a genuine social problem and should be withdrawn.

As it did with the online censorship regime, the government is adopting a "fortress Australia" mentality which fails to acknowledge the global nature of the Internet.

There will clearly be little or no effect on online gambling by Australians because they will be able to access the hundreds of online gambling sites located in other countries. Because overseas gambling sites may not be strongly regulated, the likelihood of adverse social consequences is likely to be greater. Furthermore, it is patronising, insular and hypocritical to ban Australians from accessing Australian gambling sites while allowing overseas gamblers to do so.

The only sensible policy option is to adopt a national coordinated approach in conjunction with the States, and to regulate Australian online gambling operations to ensure that Australians and others who choose to gamble online are at least able to do so in a responsible, controlled environment.

References

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