

Appendix Two

Response by Mr Geordie Guy, Board Member, Electronic Frontiers Australia Inc. on behalf of the Board Members of Electronic Frontiers Australia Inc.

Pursuant to Resolution 5 (7) (b) of the Senate of 25 February 1988

We, the individuals listed below, seek redress under the resolution of the Senate of 25th February, 1988, concerning the protection of persons referred to in the Senate (resolution 5). We are readily identifiable as the persons referred to by Senators Stephen Conroy, Sue Boyce and Jacinta Collins during questions without notice regarding Internet content on the 15th and 16th of March 2010 in that we are members of the board of Electronic Frontiers Australia Inc. (EFA), namely:

Chair: Nic Suzor, LLM, LLB, BInfTech

Vice Chair: Colin Jacobs, BA, BSc

Board Member: Geordie Guy, Dip. I.T. (Network Engineering), CCDA, MCTS

Senator Conroy made several misrepresentations both verbally and in the tabling of a document, which are unsubstantiated and false. The senator's remarks go to our individual good characters, reputations and integrity. As members of the board of management of the association, his remarks further reflect on the integrity of the thousands of members and supporters of both EFA and online rights in Australia.

EFA seeks the opportunity to correct the incorrect assertions provided to the Senate.

The following facts apply.

1. Senator Conroy stated with regards to a Reporters Without Borders report:

"The government was very clear in its announcement that our policy is to require ISPs to block a defined list of URLs of content which have been classified as RC under Australia's existing national classification scheme." - Hansard Tuesday 16th March p21

The senator then went on to inform the Senate that Reporters Without Borders has been misled, later asserting that they were misled by EFA, as to the nature of the government's proposal.

EFA has opposed the introduction of mandatory ISP level censorship since the proposal was announced by the government, commonly in the form of expert comment to members of the press. In that time the proposal has undergone constant changes in response to criticism from EFA, bodies representing Australian technical experts, youth advocacy organisations, media and journalism organisations, members of opposing political parties and the wider Australian public. Characterising EFA as deceitful on the basis of previous expert comment on any one aspect of this constantly shifting proposal, when that comment was factual at the time it was made, is disingenuous and distracting at best.

2. Senator Collins asked a supplementary question

"I have a further supplementary question. Is the minister aware of an ABC poll that showed 80 per cent of people support the government's policy on internet filtering? Is the minister aware of any alternative approaches on cybersafety?" - Hansard Tuesday 16th March p21

The Senate may have taken from this question that EFA's position is at odds with that of the Australian people and that the association's efforts in this regard are therefore on occasion deceitful or misleading. EFA wishes to inform the Senate that on every occasion where polling has been completed of a population who understand the nature of the government's proposal, the opposition is overwhelming. The most recent example of this was a survey of users of the website Whirlpool (where participants discuss technology and other related matters). In this survey, 92.6% of 24,683 respondents rejected the government's proposal. EFA asserts that the positive response to the ABC's Hungry Beast survey is due primarily to an inadequate description of refused classification which did not include wider material that is necessarily caught in the definition. In this regard, Senator Conroy insists on drawing the attention of the media and parliament to RC as including matters of child abuse, bestiality, crime etc., but does not explain that RC can also contentiously stretch to cover other other speech discussing matters which are in no way repugnant to the standards of ordinary Australians.

3. By tabling a document of factually incorrect or irrelevant responses to a collection of hand-picked EFA public statements, Senator Conroy asserts the EFA is wrong in its advocacy and has been both misleading and incompetent. Those responses are reproduced here with an explanation of why they are incorrect or irrelevant.

3.1 The live pilot has shown that filtering a defined list of URLs (i.e. a page or an image on a website) can be done with 100% accuracy and negligible impact on network performance. ISPs in many western democracies have shown that filtering works. Item 1, Tabled Document

EFA asserts the live pilot is most politely described as inconclusive. The report classifies negligible impact as up to 10% and did not consider a high speed network such as is proposed under the government's National Broadband Network. 100%

accuracy in censorship was only achievable after the exclusion of content on highly popular websites. Patently, 100% accuracy in any affair is achievable if all errors are excluded.

The pilot participants were variously very small ISPs, business-focussed ISPs or were already providing a censorship system to their customers and unable to be relied upon to show what the implementation of a national scale mandatory censorship system would be like. All participants chose freely to be included in the trial. While optional ISP filtering has been shown to be technically feasible in some countries for the issue of child pornography only, mandatory filtering of a category as wide as refused classification has only been attempted in countries such as China and Iran. EFA cannot be considered misleading merely due to discomfort arising from the highlighting of the pilot's flaws.

The statement made by EFA Chair Nic Suzor was that a technological filtering solution could not achieve a (presumed) goal of protecting children or combating child sexual abuse. The ability of a filter to accurately block a defined list of URLs is not wholly determinative of the efficacy of the proposal as a whole. The Government has released no evidence that shows what proportion of the entire set of material that would be classified RC if a complaint were lodged is expected to be added to the list of filtered URLs. EFA asserts that since the government cannot hope to accurately regulate the entirety or even a meaningful subset of web material that could potentially be classified RC, the accuracy of the system must be much less than 100%.

EFA stands by its assertion that the technological solution proposed by the Government cannot materially protect children from exposure to material that may be dangerous to them, nor can it help to prevent the trade in child sexual abuse material. EFA also asserts that, unlike physical distribution, where the Government is able to regulate public sale and exhibition, the proposed plan cannot address the bulk of material on the internet that may fall within the broad definition of Refused Classification. For this reason, the technological filtering solution proposed by the Government cannot achieve the same goals as classification addresses for public distribution, sale, and exhibition of physical material.

3.2 As at 28 February 2010, ACMA had identified 355 'live' URLs of child abuse material which was available on the 'open internet'. It is reported that some people's first encounter with child pornography is on the open internet before they are lured into more sophisticated arrangements.- Item 2, Tabled Document refuting an apparent EFA position that there is no child abuse material on the open Internet.

EFA's position is that 355 URLs out of the one trillion websites recently reported as indexed by Internet search engine Google, is a concentration which is functionally non-existent. EFA believes that the bulk of child sexual abuse material is available not on the world wide web but in other areas of the Internet such as peer-to-peer filesharing networks, private networks and other secretive arrangements. EFA advocates law enforcement resourcing and cooperation to combat child sexual abuse

material which is already illegal in every jurisdiction. It seems unlikely EFA can be considered to be misleading the Australian public or making outrageous claims in advocating that criminals should be dealt with by the criminal justice system. Further, it seems unlikely that EFA can be considered misleading by being sceptical of tens of millions of dollars earmarked for a programme designed to address a problem which is functionally equivalent to four grains of sand in a one thousand tonne pile (355mg in one kilotonne), assuming one web site to a URL.

Without understanding what the remaining nebulous concepts in the response mean, EFA can not hope to defend itself against phantom reports or undetailed arrangements of any level of sophistication.

3.3 Various government responses attempt to refute EFA statements that resources are better deployed elsewhere, by stating that law enforcement and education elements as well as censorship formulate a comprehensive policy, or "censorship is not a silver bullet".

EFA asserts that undertaking something for which there is no mandate, which cannot achieve its policy aims, costs millions of dollars and threatens freedom of expression is not made acceptable by undertaking it in addition to acceptable measures. Put simply, EFA cannot be considered to be misleading the Australian public by pointing out that bad ideas in the company of good ones are still bad ideas.

3.4 Various government responses attempt to refute or dismiss EFA statements that computer games, the safe use of illicit drugs and other matters of crime, violence, cruelty or revolting and abhorrent phenomena come under the scope of refused classification. Examples include that the matter of computer games is deferred pending the outcome of a consultation process being conducted by the Minister for Home Affairs, and that no complaint has been made about a website that discusses the safe use of illicit drugs. - E.g. tabled document items 5, 7, 13 and 20.

EFA cannot be considered to be misleading the Australian public by highlighting areas in which the government concedes the refused classification category is at odds with the standards of Australians, even if the government is considering measures to attempt to rectify any of the many problems with the classification system. EFA further considers this evidence against the government's responses which insist on drawing allusions to refused classification material being synonymous with illegality and child abuse.

3.5 Various government responses attempt to refute or dismiss EFA statements that bureaucrats compile ACMA blacklists (either current or future) and that the process in which they do is opaque. Various other responses distinguish the original ACMA blacklist of prohibited content which was the intended instrument of the original policy, with a purpose-built refused classification list now, and accuses EFA of conflating the issues. - E.g. tabled document items 5, 6, 15, 28, 33 and 35.

With regards to the compilation of an RC blacklist, EFA asserts that it cannot be considered misleading or incompetent if we highlight any failure of Internet regulation simply because that failure is currently being considered for review by the government. With regards to the previous prohibited content list and conflation of it, EFA cannot be held accountable for confusion in the electorate and media which continues to linger after the government changes its policy dramatically. The government has done little to dispel this confusion by repeatedly failing to clearly articulate its policy proposal.

3.6 The government responds that it does not intend to expand censorship beyond RC material. - Tabled document item 19.

EFA has never suggested that the government intends to extend censorship beyond its current plan of RC material, nor did EFA assert that the previous plan of prohibited content was necessarily intended to be expanded beyond that. EFA has no plans to suggest that any further reinventions of the policy are to be expanded beyond whatever their scope may be. EFA asserts simply that any government now or in the future may expand the scope of censorship systems once they are built - as has been the case in the example of Thailand where censorship was originally implemented to censor child abuse material but now censors a much wider scope of content.

In any event, Australian restriction on free speech and expression is not contingent on an expansion of censorship beyond refused classification material. While restricted from public sale or exhibition, Refused Classification material is generally not illegal to acquire or own except in Western Australia and parts of the Northern Territory. Refused classification material has included computer games not suitable for young children (despite the government's assertions that this is under review), a computer game which includes fictional depictions of graffiti, movies such as Ken Park which are available around the world (and indeed available for purchase online by Australians), and has been thought by the ACMA to include material such as footage of Iranian protestor Neda Aghar-Soltan and abortion material until the incidental clarification from the classification board. This is all despite Senator Conroy's repeated assertions that refused classification "includes" (note: includes does not mean "is restricted to") child sexual abuse imagery, bestiality, sexual violence, detailed instruction in crime etc. Eligibility for inclusion in the category of refused classification is no difficult challenge, requirements are only an arbitrary level of offence, and someone similarly offended.

EFA cannot be considered to be misleading the Australian public simply by highlighting how broad the refused classification category is, how refused classification material is not generally illegal to possess unless it is illegal for reasons other than being refused classification, and how potential will always exist for censorship schemes to be expanded.

Each of Senator Conroy's responses to EFA's public statements are factually flawed, do not consider the entire matter or do not address the EFA statement they purport to

respond to in the tabled document. EFA has endeavoured in every respect, and are confident that we have done so successfully, to maintain a factual and accurate opposition to what we have considered to be bad public policy in line with both our organisation's objectives and the concerns of our members.

We tender the above in good faith and request that our response be incorporated in the parliamentary record.

Yours faithfully

Geordie Guy
Board Member, Electronic Frontiers Australia Inc.
on behalf of the Board Members of Electronic Frontiers Australia Inc.