

21.09.2018



Mr Andrew Verdon  
Acting Director Online Content and Gambling  
Department of Communications and the Arts  
Online Gambling Section / Online Content & Copyright Branch  
2 Phillip Law Street, Canberra ACT 2601

[Online.Gambling@communications.gov.au](mailto:Online.Gambling@communications.gov.au)  
[Andrew.Verdon@communications.gov.au](mailto:Andrew.Verdon@communications.gov.au)

Dear Andrew,

**RE: Possible Scheme for Blocking Illegal Offshore Wagering Websites**

Thank you for the opportunity to provide feedback on the proposed Scheme for Blocking Illegal Offshore Wagering Websites (Scheme).

Communications Alliance believes that the Scheme proposed by the Department of Communications and the Arts (DoCA) has the potential to be an efficient and practicable means to disrupt and curb illegal offshore wagering activities. We are pleased to note that, to a large extent, the Scheme aligns with Industry's suggested approach. Consequently, we are generally supportive of the outlined Scheme.

Given our in-principle agreement, we will only outline a few matters of concern or areas for further consideration:

1. The paper outlining the proposed scheme (Paper) appears to envisage voluntary participation by Internet Service Providers (ISPs) to capture at least 75% of Australian internet users. The Scheme also proposes that Communications Alliance replace the existing registered *Interactive Gambling Industry Code (Code)* with a new Code that only applies to the larger ISPs to capture 75% of Australian internet users. It should be noted that a registered Code, although developed by Industry under a co-regulatory regime, is enforceable by the Australian Communications and Media Authority (ACMA), thereby effectively making it binding for the entities to which it applies.

The proposal did not include information as to how the participating ISPs would be determined. Is it envisaged to derive the required statistics, for example, from the ACMA annual Communications Report? In this context is also not clear if the Scheme intends to cover mobile internet users.

We note that the Paper appears to contemplate whether Communications Alliance should be given a role in the process of requesting the blocking of websites. We believe that requests to block websites must be given directly to the participating ISPs by the ACMA, i.e. these requests ought not to be 'channeled through' Communications Alliance. Doing so would, in our view, introduce an unnecessary additional layer of complexity and delay to the process.

2. The Paper raises the issue of existing customers of illegal offshore wagering websites not being able to obtain their funds if access to the website is blocked and the potential for legal disputes that this may create. The Paper considers the option of pop-up warning pages to alert those customers to the impending blocking of the website.

We note that such pop-up pages are not technically feasible for all ISPs. While ISPs are able to block websites and re-direct users to a landing page which may include content on how customers could go about retrieving their funds, ISPs are not necessarily able to create a pop-up that contains a warning and to subsequently direct the user to the illegal website.

Irrespective of whether ISPs could actually provide such warning notices, we believe they would be of limited use and/or not necessary. Customers of such websites ordinarily would have contact details for the provider that they have received when creating their user account. If the provider of such illegal wagering services is willing to pay out a positive balance of funds, customers would be able to use those details to contact the provider and request the refunding of the balance after the website has been blocked. If an illegal wagering services provider has not given its customers the right to request a refund of an account balance or where the provider simply refuses to do so – a not too unlikely scenario – a pop-up warning would be of little or no use to customers. In this case, customers could only use the Court system (where possible at all in an offshore context) to make their claim.

3. The Paper also seeks information on the costs that ISPs would incur to facilitate the blocking of websites when directed by the ACMA. We believe that the reimbursement structure and processes established for Federal Court orders to block websites in the context of online copyright infringements (s115 of the Copyright Act 1968) would be the appropriate benchmark for the process and costs for the blocking of websites under the proposed Scheme.

The injunctions delivered to date under the s115 process have delivered Court determined outcomes, which were largely based on agreed/negotiated capabilities and costs between copyright holders and ISPs. These have established precedent costs for the blocking of so-called pirate sites of about \$50 per block. They have also established some precedent technological approaches to blocking websites which afford ISPs some choice in the technique that suits their network and capability. We contend that the Scheme ought to leverage this broadly available precedent information rather than attempting to develop a new approach to what is essentially the same issue.

In addition to the direct costs for the blocking of individual websites, ISPs ought to be reimbursed for any additional costs that they are likely to incur for the implementation of the Scheme. We do not anticipate these costs to be very large.

We assume that Communications Alliance would be reimbursed for costs of procuring the services of an independent arbitrator to determine a median cost per blocked site, should such services be required to establish a standard reimbursement amount.

4. Without reiterating all observations submitted<sup>1</sup> by Communications Alliance to the Senate Inquiry into the use of subsection 313(3) of the Act by Government agencies to disrupt the operation of illegal online services and the Senate Inquiry into the harm being done to Australian children through access to pornography on the internet, we again point out that website blocking through ISPs does not constitute a wholly effective means to prevent access to undesired or illegal internet content.

Importantly, while website blocking may be seen as the only practical tool available to prevent access to targeted websites, it must be recognised that it can be easily avoided by average users through readily available tools that allow consumers to access a

---

<sup>1</sup> [http://www.aph.gov.au/Parliamentary\\_Business/Committees/House/Infrastructure\\_and\\_Communications/Inquiry\\_into\\_the\\_use\\_of\\_section\\_313\\_of\\_the\\_Telecommunications\\_Act\\_to\\_disrupt\\_the\\_operation\\_of\\_illegal\\_online\\_services/Submissions](http://www.aph.gov.au/Parliamentary_Business/Committees/House/Infrastructure_and_Communications/Inquiry_into_the_use_of_section_313_of_the_Telecommunications_Act_to_disrupt_the_operation_of_illegal_online_services/Submissions) and [http://www.commsalliance.com.au/\\_data/assets/pdf\\_file/0006/52269/160310\\_Comms-Alliance\\_Submission\\_Senate-Inquiry-Children-Online-Access-to-Pornography\\_Final.pdf](http://www.commsalliance.com.au/_data/assets/pdf_file/0006/52269/160310_Comms-Alliance_Submission_Senate-Inquiry-Children-Online-Access-to-Pornography_Final.pdf)

blocked website through the use of VPNs, the Tor network or Tor browser, anonymous proxies, HTTPS access, SSH tunnels, remote desktop clients and purpose-built programs.

5. It should be noted that poorly targeted blocking requests run the risk of extending beyond their intended target and thereby impacting other legitimate sites or content, potentially hampering legitimate internet activities and causing disadvantage to consumers.

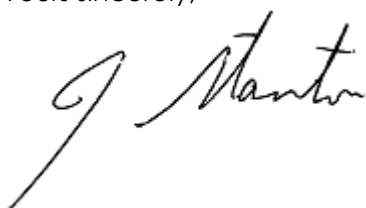
It is, therefore, imperative that a request to block a website specifies the Domain Name, IP Address and URL of the respective website, as proposed in the Paper.

In addition, ISPs complying with a direction to block a website must not be held liable for damages for and in relation to the blocking, i.e. the provisions contained in s.315 and 316 of the Act must be mirrored by the Scheme.

6. The Paper indicates that the block page would contain information on a complaints mechanism for website owners who believe that their site has been blocked without due cause. We highlight our expectation that ISPs will not be involved in such a complaints mechanism and will be permitted to direct complaints to the body (would that be the ACMA?) handling the complaint. Such complaints ought also not be handled by the Telecommunications Industry Ombudsman (TIO).
7. We also suggest that the block page not only educate users about the blocking of the website and other related matters, but also contain information for internet users that may assist them with potential gambling issues or a life crisis, e.g. a link to Lifeline or Gambling Help.
8. The Scheme proposes to keep blocks in place for two years before a determination is made as to whether the block can be lifted. We assume that this assessment, and a direction to lift a block where required, would be done by the ACMA.

We look forward to engaging further with you on this matter. Please contact Christiane Gillespie-Jones ([c.gillespiejones@commsalliance.com.au](mailto:c.gillespiejones@commsalliance.com.au)) or myself if you would like to discuss.

Yours sincerely,



John Stanton  
**Chief Executive Officer**  
**Communications Alliance**