
SENATE QUESTION

QUESTION NO.833

Senator Ludlam asked the Minister for Broadband, Communications and the Digital Economy, upon notice, on 20 November 2008:

- (1) What is the current number of Uniform Resource Locators (URLs) on the Australian Communications and Media Authority's (ACMA's) list of overseas-hosted prohibited or potentially-prohibited content.
- (2) How many unique domain names are within the URLs which are currently on the ACMA blacklist.
- (3) (a) How many active URLs are currently on the ACMA blacklist; and (b) of these, how many have been, or in the ACMA's view would be:
 - (i) classified MA 15+,
 - (ii) classified RI 8+,
 - (iii) classified X18+,
 - (iv) refused classification, and
 - (v) refused classification because they contain child pornography, and in this case, how many were referred to: (A) Commonwealth, state or territory police, and (B) an overseas agency.
- (4) (a) How many active URLs have been placed on the ACMA blacklist as potentially-prohibited content but which upon classification were found not to be prohibited content; and (b) what is the average period of time that such content has been incorrectly blacklisted.
- (5) (a) Is it currently unlawful for an Australian adult to access Internet content that is hosted overseas where that content according to ACMA is:
 - (i) classified MA 15+,
 - (ii) classified RI 8+,
 - (iii) classified X18+, and
 - (iv) refused classification, other than content defined as 'child pornography material' and 'child abuse material' in section 473.1 of Division 473 of Part 10.6 'Telecommunications Services' of the Criminal Code Act 1995; and (b) if so, on what basis.
- (6) Which categories of legal material, that is, material which Australian adults can legally access on the Internet, will be subject to mandatory Internet service provider (ISP)-level filtering that is not optional for end-users.
- (7) In regard to the proposed expansion or augmentation of the ACMA blacklist by obtaining alleged child pornography blacklists from overseas agencies:
 - (a) does the criteria for inclusion on these overseas blacklists align with the Australian classification scheme;
 - (b) what mechanisms will exist to ensure the accuracy of these overseas blacklists;
 - (c) is the Minister aware of serious inaccuracies and over-blocking in the blacklist of alleged child pornography that is voluntarily used by some ISPs in Finland;
 - (d) is the Minister aware that a website which criticised and exposed serious inaccuracies in the Finish blacklist, in an act of apparent retaliation by the Government or police agencies, was itself placed on the blacklist; and
 - (e) how can the Australian public be assured that controversial yet legal content will not be blocked by its inclusion on overseas blacklists.

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- (8) What safeguards will be put in place, or what assurances can the Minister give, that the scope of the mandatory blacklist will not, once the filtering regime is implemented, be expanded to include politically controversial material such as websites which allegedly promote anorexia.
- (9) How can Australians be confident that the Government's proposed filtering regime will not wrongly block access to material dealing with political, activist, creative and governmental matters.
- (10) What is the mechanism by which the complaints-based ACMA blacklisting will be expanded to examine a broader range of Internet content.
- (11) What resources and expertise are to be provided to ACMA to enable it to properly identify illegal or prohibited material under an expanded scheme.
- (12) What assurances can the Minister give Australian businesses that access to their websites will not be wrongly blocked by the Government's proposed filtering regime.

Senator Conroy – The answer to the honourable senator's question is as follows:

- (1) At 30 November 2008, the list contained 1370 URLs.
- (2) The 1370 URLs on the blacklist relate to 1125 separate domains.
- (3) a) There are currently 1370 active URLs on the list.
b) As at 30 November 2008, of the URLs on the blacklist:
 - (i) 0 relate to Internet content which is or would be classified MA15+;
 - (ii) 65 relate to Internet content which is or would be classified R18+;
 - (iii) 441 relate to Internet content which is or would be classified X18+;
 - (iv) 864 relate to Internet content which is or would be refused classified (RC);

Of these 674 relate to Internet content which is or would be refused classification in accordance with paragraph 1(b) of the Films Table of the National Classification Code because it depicts in a way likely to cause offence to a reasonable adult a person who is (or appears to be) a child under 18.

- (4) None. If ACMA asks the Classification Board to classify an item of content that is hosted outside Australia, ACMA does not take any further action in relation to the content until it is advised of the Classification Board's decision.
- (5) The *Broadcasting Services Act 1992* defines prohibited content.

The Broadcasting Services Act does not regulate possession, distribution or sale of content – these matters are generally regulated under state and territory laws, and laws such as the *Criminal Code Act 1995*.

Accessing child pornography material using a 'carriage service' (eg internet or mobile phone) is a criminal offence under the Commonwealth Code Act 1995.

Possession of RC material is an offence in Western Australia and the prescribed areas in the Northern Territory.

In all states and territories it is an offence to possess RC material if the person does so with the intention to sell it.

- (6) The details of the Government's ISP filtering policy will be finalised following the conclusion of the Pilot.
- (7) (a) At 30 November 2008, ACMA had made arrangements to access URL lists maintained by the United Kingdom (UK) Internet Watch Foundation (IWF) and the United States (US) National Centre for Missing and Exploited Children (NCMEC). Both lists contain only URLs relating to material that would be regarded as child sexual abuse material under applicable UK and US legislation. Material of this nature is likely to be refused classification in accordance with paragraph 1 (b) of the Films Table of Australia's National Classification Code, because it depicts in a way likely to cause offence to a reasonable adult, a child under 18, and therefore is potential prohibited content under the BSA.
- (b) To help ensure that lists acquired from overseas bodies align with the BSA definition of prohibited content and potential prohibited content, ACMA proposes to:
- carefully scrutinise the criteria applicable to the lists to ensure that they align with the relevant National Classification Code categories;
 - carefully scrutinise the policies and procedures of the body maintaining the list, for adding URLs to its list, and removing URLs from the list when they no longer provide access to problematic material;
 - undertake appropriate assessment of each list;
 - discuss with the relevant body any apparent trend toward including URLs relating to content that is not prohibited content or potential prohibited content under the BSA.
- c) Yes
- d) I am aware of allegations about this but have seen no evidence to confirm this.
- e) ACMA is responsible for the compilation of URLs referred to as the ACMA blacklist, under the provisions of the *Broadcasting Services Act 1992*. This legislation sets out categories of material which are classed as 'prohibited'. The Government has no plans to expand the scope of prohibited material. Inclusion of sites on overseas blacklists is a matter for the relevant governments of the countries concerned. URL's added to the ACMA blacklist from international lists will be done so under the process outlined above.
- (8) The definition of prohibited content cannot be expanded without changes to legislation passed by Parliament. The Government has no plans to extend the definition of prohibited material.
- (9) What is placed on the ACMA blacklist is defined in legislation. Adherence to these processes is a high priority for ACMA. See also answer to Question 8.
- (10) Amending the definitions of prohibited content and potential prohibited would require amendment of the BSA or classification legislation by Parliament.
- (11) ACMA employs former members of the Classification Board as well as undertaking regular, formal training provided by the Classification Board. The budget for ACMA's Content Assessment Section, which administers ACMA's complaint handling role for online content, includes provision for staff training and development in the areas of content classification and online technologies, and for fees paid to the Classification Board for classification of online content when required. ACMA is also improving the visibility and usability of its

online reporting mechanism, to help ensure that members of the public who have concerns about online content are easily able to make a complaint to ACMA about it.

- (12) The technical feasibility of filtering technologies including over-blocking of legitimate sites will be tested by the Government in the upcoming live pilot trial. An evidence-based approach will be taken to the implementation of Government policy.