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18 December 2008  
The Hon. Kate Ellis, MP  
Minister for Youth and Sport  
161a Main North Road  
Nailsworth SA 5083

Dear Ms. Ellis,

It has been a month since my last letter to you on the subject of the ALP's proposed Internet censorship scheme, and I thought it might be useful to bring you up to date on some recent developments to ensure that the replies you are formulating for my previous letters are based on the most up to date information possible.

The length of the time that has passed without your response suggests to me that perhaps my suppositions about the ease of answering my questions were incorrect. As I said in my first letter to you, I have based my expectations of the timeliness of your response on my assumptions about the level of forethought which must have already gone into the policy prior to its announcement. It is conceivable that those assumptions were incorrect and that no qualified research whatsoever was performed before the policy's publication. If that is the case, then I apologise unreservedly for my presumptuousness, and will remain cheerfully patient while the ALP formulates its policy before I will expect any of my questions about it to be answered.

During the week of December 5th 2008, The Minister for Broadband, Communications and the Digital Economy commenced mass-emailing a letter (hereafter referred to as "The Conroy Letter") to individuals who had contacted him, either directly or through their local members, with concerns about the ALP's censorship scheme.

Senator Conroy also produced a Press Release<sup>1</sup> on December 11th 2008 (hereafter referred to as "The Press Release") to praise the Australian Federal Police (AFP) for their successful efforts to neutralize a child pornography ring partly through the arrest of 22 Australian men.

Like most of the Minister's previous pronouncements on the subject, The Conroy Letter and The Press Release raise more questions than they answer. As luck would have it, several recent events which have occurred in this space pertain directly to issues raised in these documents, so I think it's topical and appropriate to draw lines between the Minister's own words and the Government's proposed policy failures.

I will draw those lines, with cites to relevant authorities, below.

#### **FUNDING FOR INTERNET CENSORSHIP**

The Conroy Letter repeated various assertions about funding for the Government's "Cyber Safety commitment" on the first page, where it cited the \$125.8m four year commitment from the ALP. Among other things, the Minister drew attention to the planned "Expansion of the Australian Federal Police Child Protection Operations Team."

The Press Release indicated that that expansion is taking the form of "\$49 million to increased law enforcement, including funding for 91 additional AFP members dedicated to online child protection by 2011."

I read that statement with some dismay, after noting that the previous Government had actually dedicated \$51.8m to increased law enforcement, including funding for 90 additional AFP members dedicated to online child protection by 2010<sup>2</sup>. Mr. Rudd's razor gang went through the Liberals' budget in early 2008 and cut

<sup>1</sup> [http://www.minister.dbcde.gov.au/media/media\\_releases/2008/095](http://www.minister.dbcde.gov.au/media/media_releases/2008/095)

<sup>2</sup> [http://www.libertus.net/censor/ispfiltering-au-govplan.html#s\\_38](http://www.libertus.net/censor/ispfiltering-au-govplan.html#s_38)

\$2.8m from the AFP's Online Child Sexual Exploitation Team (OCSET) and delayed their increased staff allocation by 12 months, then portrayed the result as some kind of improvement to OCSET's situation.

The reason for my dismay is that OCSET has already complained about the fact that their shoestring staffing levels leave them so constrained that they are unable to take on new cases, and instead must refer them to State police forces<sup>3</sup>. So we have the farcical situation where the Minister is praising the output of OCSET while simultaneously cutting their budget and delaying their staff expansions, leaving the Federal Government's demonstrably successful team of child abuse specialists largely unable to conduct child abuse investigations.

When talking about the recent arrests with 2GB's Philip Clark, AFP Commissioner Mr. Neil Gaughan segued into online censorship<sup>4</sup>. The crimes were committed using Peer to Peer (P2P) networks, which are outside the scope of Mr. Conroy's censorship efforts and immune to filtering. When the interviewer asked whether online content filters were effective. The Commissioner's response was, "They don't work at all."

This kind of thing is par for the course for Mr. Conroy: He consistently fails to solicit the advice of experts, and when he receives it anyway he ignores it. Whether the expert advice is being delivered by AFP Commissioners, child protection advocacy groups, or ISPs, it's treated with exactly the same disdain.

As of December 17th 2008, prominent organizations and individuals with considerable expertise in the field who have been dismissive about Mr. Conroy's censorship plans include:

- \* Australian Federal Police Commissioner Neil Gaughan
- \* The System Administrators' Guild of Australia
- \* Holly Doel-Mackaway from *Save the Children*<sup>5</sup>, the world's largest child protection advocate organization
- \* James McDougall, Director, *National Children's and Youth Law Centre* (5. *Ibid*)
- \* Michael Malone, CEO, iiNet
- \* The Internet Industry Association

In my observation, it is difficult to find any credible organization with worthwhile expertise pertaining to this issue who hasn't been disrespected by the Minister's determined ignorance.

#### **FURTHER MISLEADING CLAIMS ABOUT CENSORSHIP TECHNOLOGY**

The Conroy Letter repeated certain claims about the technical capabilities of censorship hardware/software systems.

The Minister referred to the recent ACMA laboratory trials mentioned in my previous letters, and misleadingly stated that the trial "indicated that ISP filtering products have developed in their performance and effectiveness since they were last assessed in 2005," by neglecting to mention that the ACMA trial *also* concluded that none of those so-called developments allowed any of the tested systems to perform well and operate effectively *at the same time*, and that achieved performance tends to be inversely proportional to efficacy.

It strikes me that if any of these systems were worthy of wide scale deployment, the Minister would not need to resort to "tricky" and misleading verbal omissions to promote the sales pitch needed to justify their deployment because their quality would be obvious and beyond debate. The ACMA trial report is clear and detailed, and plainly *doesn't* support the Minister's ongoing distortions of the technical capabilities of these systems, which is why he is left grasping at technicalities whenever he opens his mouth about them.

#### **THE WIKIPEDIA INCIDENT**

The Conroy Letter and The Press Release both drew attention to the fact that ACMA has reached cooperative agreement with the UK's non-Governmental Internet Watch Foundation (IWF) to share blacklists of child abuse material.

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<sup>3</sup> <http://www.news.com.au/heraldsun/story/0,21985,21923386-662,00.html>

<sup>4</sup> [http://livenews.com.au/Articles/2008/12/11/Police\\_manchildcare\\_worker\\_arrested\\_over\\_child\\_pornography\\_ring](http://livenews.com.au/Articles/2008/12/11/Police_manchildcare_worker_arrested_over_child_pornography_ring)  
Transcript and audio, December 11 2008. Interview audio available through the LiveNews Media Player on that webpage.

<sup>5</sup> <http://www.smh.com.au/news/home/technology/childrens-welfare-groups-slam-net-filters/2008/11/28/1227491813497.html>

This raises a number of serious concerns, both due to definitional differences between Australia's and the UK's respective legislative frameworks, and due to fundamental flaws in the IWF scheme's architecture which have recently been highlighted by IWF's nation-wide breakage of Wikipedia in the UK<sup>6</sup>.

On December 7th 2008, the IWF extrajudicially decided that the Wikipedia-hosted cover art of the 30 year old music album "Virgin Killer" by German hard rock band *Scorpions* was illegal child pornography under UK law, and added it to their blacklist. Obvious and entirely foreseeable technical deficiencies in the IWF scheme culminated to overload the censorship systems in the handful of ISPs which use them, causing almost all Wikipedia traffic in the UK to slow to a crawl, and Wikipedia updates originating from censoring ISPs to fail completely.

Responding to mass public outrage, IWF reversed their decision on December 8th 2008, placing them in the embarrassing situation of going on the public record with claims that certain material is child pornography, and knowingly failing to blacklist it.

One notable side effect of the incident was massive publicity for the imagery in question, which was viewed by tens of millions of people all over the world in the 24 hours that followed. The cover art probably would have rested in relative obscurity forever if IWF hadn't raised its profile, so one could argue that the UK's Internet censors have been directly responsible for publicizing child abuse material. You may recall that that was one of the specific dangers that I warned about in my October 20th letter to you<sup>7</sup> when I discussed the likely effects of the inevitable publication of the ACMA blacklist, which would either lead to the Australian Federal Government enabling child abusers by making lists of illegal material available to Internet users all over the world, or to public ridicule of the Australian Government when it was realized that the blacklisted content was nowhere near as outrageous as the wowsers at ACMA would have us believe.

Another side effect has been that the English ISPs which don't censor, who are in the overwhelming majority in the UK marketplace, have started to advertise the fact in their promotional materials<sup>8</sup> because they have recognized that providing Internet connectivity which is clean of interference from moralistic, technologically-retarded busybodies is actually a competitive advantage in a world where the IWF is messing up everyone else's Internet connectivity.

The entire IWF scheme is under considerable public debate arising from the incident, and is experiencing record low levels of public support.

The Conroy Letter's page 3 section entitled "ACMA Blacklist" draws attention to the fact that ACMA is now cooperating with IWF. I find that revelation astonishing, given that IWF's efforts have been so profoundly discredited, and I can only explain it by observing that Mr. Conroy published his letter *before* IWF broke the Internet. Perhaps the Minister would like a "do-over"?

The IWF scheme's one redeeming feature is that it is *optional*, which enabled Internet users in the UK connected to non-censoring ISPs to escape IWF's disastrous ham-fistedness unscathed. But Senator Conroy wants his scheme, including IWF lists of so-called illegal material, to be compulsory in Australia. How embarrassing would it have been for the Labor Government if ACMA had incorporated IWF's advice about *Scorpions'* pornographic album art into the Australian blacklist and compulsorily wrecked Wikipedia for all Australians? And after inevitably backtracking on its decision, for how long could ACMA and the Government put up with allegations that they were knowingly allowing child pornography to remain un-banned for Australians despite the existence of a massive white-elephant national ISP censorship scheme?

You'll note that I pointed to incidents exactly like this in my first letter to you on October 20th 2008 (*7 Ibid.*), where I cited Finland's censorship of anti-censorship activists and blacklisting of the World Wide Web Consortium, Pakistan's accidental destruction of YouTube for 75% of the entire world's Internet users due to a blacklist error early in 2008, and other high-profile public failures of systems in other countries listed in footnotes 16 and 17. These ridiculous, embarrassing and occasionally hilarious mistakes will continue to happen in perpetuity, and it is only the optional nature of censorship in other democratic countries which enables their citizens to continue to make effective use of the Internet.

To summarize: Less than 2 months ago I warned of entirely predictable political embarrassment arising from supporting mandatory online censorship, and I've already been shown by recent events to be correct. The ALP would do well to consider and internalize that lesson.

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<sup>6</sup> <http://www.eff.org/deeplinks/2008/12/internet-censors-must-be-accountable-things-they-b> "Internet Censors must be accountable for things they break", EFF, December 9th 2008

<sup>7</sup> <http://users.on.net/~newton/ellis-2008-10-20.pdf>

<sup>8</sup> For example: <http://www.aaisp.net.uk/kb-broadband-realinternet.html>

**“LIVE TRIALS” BECOME “A CLOSED NETWORK TEST” AND “NOT INVOLVE ACTUAL CUSTOMERS”**

The Conroy Letter describes concerns raised by ISPs that “filtering a blacklist beyond 10,000 URLs may raise network performance issues, depending on the configuration of the filter.”

Besides observing that the IWF “live trial” in the UK has already amply demonstrated that a list of less than 1,000 URLs is sufficient to drive Wikipedia traffic to a crawl, I take serious issue with the fact that the Government’s planned response to those concerns is to “seek to test network performance against a test list of 10,000 URLs,” in “... a closed network test ... [which] will not involve actual customers.”

In my spare time I serve as a gliding instructor in a sports aviation organization. One of the most basic tenets which I try to drum into the minds of my trainees is that whenever they make an aircraft do something which its designer has not certified, they are, whether they like it or not, turning themselves into test pilots.

The parallels here are striking: The Government wishes to perform “live trials” of a 1300 URL blacklist on ISP production networks, but isn’t going any further than (yet another) lab test for the larger list. What conclusions can anyone draw about real-world conditions from a test like that? Will Australia deploy a compulsory system which works acceptably with 1300 banned URLs in the real-world but fails catastrophically when the list is expanded to 1301 URLs? Will we be in a situation like the UK, where running 25% of the nation’s load through blacklist filtering for 900 URLs works acceptably until you add *one more high-traffic website* to the list? None of these systems behave linearly, so how will anyone know? Is it acceptable to place the reliability of Australia’s critical telecommunications infrastructure under that level of doubt?

Of course, none of those questions even begin to address the flawed nature of the so-called “live trial” in the first place. Unlike the ALP’s proposed real-world deployment, trial customers will be able to opt-in. I respectfully submit that the only “live trials” which would be worth more than the paper their reports are printed on would be experiments consisting of 100% of each ISP’s production load carried out with all the scientific rigor of a formal double-blind test, something Mr. Conroy is obviously reluctant to endorse.

The BBC’s *Yes, Minister* featured an episode in which Sir Humphrey Appleby admonishes Bernard Woolley for his suggestions about the terms of reference for a Government inquiry by pointing out that inquiries should under no circumstances be allowed to pose questions for which the answers are not already known. It is clear that Senator Conroy has already determined the outcome of the upcoming live trials, and one hopes for the good of the nation that he’s chosen to have them fail.

**CONCLUSION**

Nothing included herein should be construed to diminish the requests that I communicated to you in my letters dated October 20th 2008 and November 17th 2008. Specifically, I still require detailed responses to the criticisms I’ve addressed to you, I still require you to represent my interests as a constituent and one of this policy’s 21 million stakeholders during party room deliberations on this matter, I still require you to convey to Mr. Conroy my demand for a written apology for his unprofessional conduct towards me during the week of October 24th 2008, and I still request and require that you privately approach the Prime Minister, Mr. Rudd, with my call for Mr. Conroy’s resignation.

As The Press Release inadvertently reinforced, the only demonstrably effective way of preventing Australians from having access to child abuse materials online is to use the AFP and the courts to remove them at the source. Every dollar spent on any other endeavour is a dollar which the police can’t use to find and arrest actual pedophiles<sup>9</sup>. I call on the Government to abandon its censorship plans, and to recognize the OCSET team’s remarkably successful results on its scandalously constrained resources by assigning to them the \$44.5m budgeted for “clean feed” censorship, in order to assist them with their future attempts to eradicate the scourge of online child abuse.

Sincerely yours,

Mark Newton

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<sup>9</sup> <http://www.crikey.com.au/Politics/20081217-The-dishonesty-of-internet-censorship-proponents-.html>