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20 December 2009  
The Hon. Kate Ellis, MP  
Minister for Youth and Sport  
161a Main North Road  
Nailsworth, SA, 5083

**RE: The ALP's Internet censorship policy**

Dear Ms. Ellis,

I've been writing these letters to you for over a year, and I'm yet to receive a single reply.

Perhaps that's because the issue I've been writing about has been largely hypothetical, in that the ALP hadn't formally announced any particular policy on Internet censorship other than to say that it was conducting a trial.

Well those times are over, after Senator Conroy announced<sup>1</sup> the Government's intentions with respect to Internet censorship on Tuesday 15 December 2009. Under the Government's plan, material judged to be "Refused Classification" will be banned, blocked by ISPs using censorship systems in their core networks. Additional blacklists will be imported from other jurisdictions to supplement the Australian list.

**"WON'T SOMEBODY THINK OF THE CHILDREN?"**

In announcing the Rudd censorship policy, Senator Conroy appealed to child protection arguments: "It is important that all Australians, particularly young children, are protected from this material."

It's an odd argument to make, given that his policy only obliquely addresses X18+ hard-core porn by way of a grant-program for interested ISPs, and that it doesn't mention R18+ at all. I think you'd agree that Australian parents would be right to be cynical of a so-called child protection measure which blocks the kind of material which children manifestly never see, and does absolutely nothing about the kind of content which gives parents cause to express the most concern.

**"WON'T SOMEBODY THINK OF THE ADULTS?"**

The policy also misses the point that children aren't the only users of the Internet in Australia, and in a free society somebody ought to be thinking of the adults too. Despite Senator Conroy's spooky insistence on obsessing about child pornography, the Refused Classification category is incredibly broad<sup>2</sup>, encompassing political material, educational material, computer games and cinematic release films, all of which are legal for Australian adults to read and view in their own homes, but will now be banned online.

I can buy a copy of Phillip Nitzchke's "*The Peaceful Pill*" from an online bookstore<sup>3</sup> and expect it to be reliably delivered to my home because our postal service isn't "filtered"; But on Conroy's Internet I won't be able to read the same text in eBook form.

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<sup>1</sup> <http://www.itnews.com.au/News/162941.conroy-reveals-plans-to-censor-the-internet.aspx> "Conroy reveals plans to censor the Internet", *iTNews*, Ry Crozier, Brett Winterford, Ben Grubb, 15 December 2009

<sup>2</sup> [http://www.ecu.edu.au/pr/downloads/Untangling\\_The\\_Net.pdf](http://www.ecu.edu.au/pr/downloads/Untangling_The_Net.pdf) "Untangling the Net: The Scope of Content Caught by Mandatory Internet Filtering", Prof. C. Lumby (UNSW), Prof. L. Green (ECU), Prof. J. Hartley (QUT), 2009.

<sup>3</sup> [http://www.amazon.com/Peaceful-Pill-Handbook-Revised-International/dp/0978878825/ref=sr\\_1\\_1?ie=UTF8&s=books&qid=1260883024&sr=8-1](http://www.amazon.com/Peaceful-Pill-Handbook-Revised-International/dp/0978878825/ref=sr_1_1?ie=UTF8&s=books&qid=1260883024&sr=8-1) Amazon.com "The Peaceful Pill Handbook: Revised International Edition."

Senator Conroy knows this: He's received multiple Questions on Notice about it from Senator Scott Ludlam<sup>4</sup>, and has admitted that "*The Peaceful Pill*," anti-abortion campaign literature, and computer games which don't fit the R18+ classification will be knowingly, intentionally included in his censorship system.

The Minister has repeatedly said that it is not the Government's intention to capture political speech, but regardless of its intention the effect remains. Statements of intention carry little weight when notification of bad side effects is given and the policy is subsequently written with one's eyes open to them, with no mitigating responses. Thus it's perfectly clear that regardless of what the Minister says, one of the intentions is to silence dissent.

#### **EVIDENCE-BASED POLICY FORMULATION**

For the year that it has taken to conduct his six-week trial, the Minister has claimed that evidence gained from the trial will inform the policy.

The Minister also relied on evidence supplied by Mr. Tom Woods in 2007 as a justification for moving from user-based filtering (under the Coalition's policy) to ISP-based censorship due to Mr. Woods' ease of bypassing the Coalition's NetAlert filters.

So it's curious that the evidence<sup>5</sup> delivered by Enex Testlab in the trial results released on 15 December weren't similarly persuasive. Enex found that all of the solutions they tested could be trivially bypassed when blocking defined blacklist (with success rates for circumvention blocking ranging from 16.2% down to a lousy 8.1%). The success rates were higher when additional censorship methods were employed, but even then *none* of the products successfully prevented circumvention and *all* of them experienced reduced reliability.

Specially notable is that *WebShield*, the ISP in Australia with the most experience at running censorship systems, was included in the testing and was circumvented. Even the experts can't prevent bypass, leaving the efficacy of these systems *worse* than the PC-based filtering systems employed by the previous Government. At least a PC system can intercept your Google search to block knowledge of bypass methods. ISP systems have no such defensive capability.

Other results of the trial include further confirmation that increases in accuracy lead to decreases in performance (You can have it fast or good - Pick one) and a moderate *increase* in underblocking errors as measured against the 2007 lab trial previously carried out by Enex Testlab for ACMA.

#### **IMPACT ON THE NBN**

The most embarrassing outcome for the Government is clearly the fact that, by DBCDE's own admission<sup>6</sup>, high-speed broadband testing was not carried out.

Thus, while Senator Conroy claims that "The report into the pilot trial of ISP-level filtering demonstrates that blocking RC-rated material can be done with 100 percent accuracy and negligible impact on internet speed," he needs to caveat it with: "... as long as we're only taking about the 8 megabit per second broadband services that were available in 2005, rather than the 24 megabit per second broadband services available in 2009 or the 100 megabit per second NBN broadband services that will be available in 2010."

Yet more caveats need to be added to accommodate the lack of sample size data in the Enex report. We know from press accounts<sup>7</sup> that one of the trial ISPs only had 15 customers opt-in, and WebShield was probably the largest tester with only "a few thousand" customers. With those kinds of headcounts, none of the systems tested would have been under any significant load, and any performance impact figures are consequently meaningless.

The difference in scale between this trial and a world in which we will have an NBN running at 100 megabits per second servicing 8 million households is difficult to overstate, and there are no international NBN equivalents providing guidance. After spending a year saying speed is important and "we'll be guided by the

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<sup>4</sup> <http://scott-ludlam.greensmps.org.au/content/question/further-details-about-blacklisted-items-and-urls> Greens Senator Scott Ludlam, WA

<sup>5</sup> [http://www.dbcde.gov.au/online\\_safety\\_and\\_security/cybersafety\\_plan/internet\\_service\\_provider\\_isp\\_filtering/isp\\_filtering\\_live\\_pilot](http://www.dbcde.gov.au/online_safety_and_security/cybersafety_plan/internet_service_provider_isp_filtering/isp_filtering_live_pilot) Report into the conduct of the trial. Recommendation is to ignore the Minister's press release and examine the raw data in the Enex report.

<sup>6</sup> <http://www.itnews.com.au/News/162975/filter-pilot-did-not-test-high-speed-internet.aspx> "Filter pilot did not test high-speed Internet", *ITNews*, Ben Grubb, 16 December 2009

<sup>7</sup> [http://www.arnnet.com.au/article/312354/isps\\_give\\_clean\\_feed\\_filter\\_technical\\_green-light](http://www.arnnet.com.au/article/312354/isps_give_clean_feed_filter_technical_green-light) "ISPs give clean feed filter a technical green-light - Highway1, iprimus, Nelson Bay Online, Netforce," *ARNnet*, David Ramli, 24 July 2009.

trial,” Minister Conroy has clearly now decided that the data from the trial isn’t important after all and that we can forge ahead with censorship with absolutely no idea what it’ll do to NBN Internet performance.

#### **BLACKLIST SECURITY**

I have canvassed the issue of blacklist security with you in my previous letters. I note that there’s no suggestion anywhere in the Government’s policy that they plan to address it at all.

So on one hand we have the Government asserting that they’re going to develop and maintain lists of the worst-of-the-worst content drawn from Australian and overseas sources; And on the other hand we know that lists have been leaked from Finland, Norway, Denmark, Italy, China, Singapore, *and Australia*, and apparently the Government simply doesn’t care.

There are many vectors for blacklist leakage. It could come from errors made by officials in Senator Conroy’s department; errors at ISPs; ordinary citizens using Richard Clayton’s “Oracle” method to reverse-engineer it; attackers breaking-in to ISP censorship systems; Or, as happened in Australia in March 2009, it could come from exploitable defects in the systems deployed to perform the filtering. There are so many ways in which a blacklist can be publicized that *it’s no surprise at all that they’re routinely publicized*, and when that happens in Australia again the inevitable effect of this Government’s policy will be to have the ALP acting as an agent of enablement for the publication of blacklists of Refused Classification content.

I’ve been warning you about this since my first letter of 20 October 2008, so the Government is clearly going into this with their eyes open to the eventuality and not caring about it at all. Because I honestly believe that the Government doesn’t want illegal material published, the only conclusion I can draw from that attitude is that the Government knows that the blacklist won’t have illegal material on it -- It’ll be censoring legal content for adults, just like I and others have been saying for years.

#### **OUTSOURCING AUSTRALIA’S REGULATORY FUNCTIONS OVERSEAS**

The Minister’s policy announcement included a claim that Australia will incorporate lists from other jurisdictions into our own. That introduces a concern about who, exactly, is in charge of our regulatory processes.

I find it unlikely that Australia will respond to (for example) an offer of a 7000 URL blacklist from New Zealand by individually submitting each link to the Classification Board to determine whether it matches our Refused Classification category -- the expense and workload would be immense and impractical. It’s more likely that a bureaucrat will “bless” the New Zealand list as being “good enough” and incorporate it wholesale into Australia’s system, leaving New Zealand effectively in charge of which URLs are blocked for Australians.

As a citizen of Australia, I want Australian law to be determined by Australian citizens informing the Australian Government, and I’m enormously concerned that Senator Conroy intends to allow foreign Governments to have such power over my Internet-using experience. Australia is an independent sovereign state, and we ought not delegate our regulatory functions to foreign Governments.

#### **POLICY RECOMMENDATION**

I’ve watched this Government disappoint me again and again on so many issues: Failing to deal adequately with David Hicks; Continuing the Howard Government’s refugee scaremongering; Monumental failure of will with respect to the environment; Vacuous moralizing from the church steps about Bill Henson and The Chaser; Promising to “roll back” WorkChoices then taking two years to make minor amendments and change its name; Downplaying water resource management while the Murray dies before our eyes; Amplifying the Howard Government’s appallingly unjust Northern Territory Intervention; Failing in so many different ways to acknowledge the 21st century through reform of copyright, rules for online parliamentary petitions, and support for technologically-enabled inclusion of citizens in regulatory formulation.

This issue is the final straw. If you are to have any expectation at all of any support from me in any future election, you will ensure that the legislation Senator Conroy introduces to the Parliament next year makes it clear that his amendments concern an *optional* filtering system, with no hint of mandatory censorship.

I have no problem with facilities being available to parents who want them if they believe that it’ll help them to “protect” their children. But I’m not a child, nor am I a vassal of the State, and I’m perfectly capable of making decisions for the children in my family without the Australian Government’s help.

Sincerely yours,

Mark Newton