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Submission to the Australian Government draft guidelines for the use of section 313(3) of the Telecommunications Act 1997

The Telecommunications Industry Dialogue welcomes the chance to submit views on the Australian Government's draft guidelines for the use of section 313(3) of the Telecommunications Act 1997 by government agencies for the lawful disruption of access to online services, e.g. the blocking of websites.

The [Telecommunications Industry Dialogue](#) is a group of telecommunications operators and vendors who jointly address freedom of expression and privacy in the telecommunications sector in the context of the UN Guiding Principles on Business and Human Rights. The companies that are currently participating in the Industry Dialogue are AT&T, Millicom, Nokia, Orange, Telefónica, Telenor Group, Telia Company, and Vodafone Group. These companies have a global footprint, providing telecommunications services and equipment to consumers, businesses, and governments in nearly 100 countries worldwide. In March of 2013, the Industry Dialogue adopted a set of [Guiding Principles](#), which explore the interaction and boundaries between a government's duty to protect human rights and the corporate responsibility of telecommunications companies to respect human rights. It also entered into a collaboration with the multi-stakeholder Global Network Initiative aimed at finding a shared and practical approach to promoting freedom of expression and privacy around the world.

The right to freedom of expression and the blocking of Web sites

The UN Human Rights Committee and the Special Rapporteur for freedom of opinion and expression have established that the restriction of online content interferes with the right to freedom of expression and should satisfy the tests of legality, necessity, and proportionality established in Article 19 of the International Covenant on Civil and Political Rights. According to the Special Rapporteur, "[a]ny determination on what content should be blocked must be undertaken by a competent judicial authority or a body which is independent of any political, commercial, or other unwarranted influences."

As a member of the Freedom Online Coalition, Australia has made a commitment in the Tallinn Agenda "to promote transparency and independent, effective domestic oversight related to electronic surveillance, use of content take-down notices, limitations or restrictions on online content or user access and other similar measures." Civil society organizations and experts, including the Global Network Initiative and the Freedom Online Coalition's Working Group 3, have similarly recommended that states—in clear and accessible language—disclose the laws, policies, and authorities that are used to restrict online content and to report statistics regarding online content that is restricted.



The Australian government's draft guidelines

The Industry Dialogue welcomes the Australian government's draft guidelines, which if adopted, would constitute important and substantial progress toward protecting the right to freedom of expression online and fulfilling Australia's commitments to transparency under the Tallinn Agenda. In order to ensure that the good practices that they reflect are binding on all government agencies, we recommend that the government consider codifying these guidelines into laws or regulations in the future.

We commend the guidelines' requirements that a government agency head must authorize the agency's use of section 313(3) to block Web sites and that senior government officials should approve individual blocking requests. It would also be ideal for the Government to make public a list of which agencies that are empowered to request the disruption of access to online services by means of section 313(3).

The Industry Dialogue considers it good practice for each agency to publish its policies and procedures governing requests to disrupt access to online services. The Industry Dialogue encourages agency authorities to ensure that these documents are carefully crafted to be consistent with the guidelines and other applicable law. It may also be useful to consult in advance with ISPs about such policies and procedures. This will help to ensure that companies can respond quickly and within the bounds of applicable laws when an agency actually issues a request under section 313(3). The automatic expiration of blocking requests after a certain time period is also a welcome guideline.

The third guideline would limit section 313(3) blocking to cases involving serious criminal or civil offenses or threats to national security and would provide agencies with a list of factors to consider prior to making requests. The Industry Dialogue welcomes this as a positive step toward ensuring that restrictions of online content are a necessary and proportionate means of achieving a legitimate aim. Greater specificity regarding the types of activities that may be subject to a section 313(3) request is also welcome.

The Industry Dialogue particularly considers the fourth guideline, regarding public information about the use of section 313(3), to reflect good practice. Companies participating in the Industry Dialogue support the use of landing pages to inform Internet users when content has been restricted pursuant to a government request. And the guidelines' list of specific information to be included in such landing pages will provide meaningful transparency for those encountering blocked websites and those seeking review of blocking decisions. Privacy needs to be protected in the set-up of landing pages. The Industry Dialogue also welcomes greater disclosure regarding requests to disrupt access to online services, both at the time when individual requests occur and through the annual reporting of statistical information on the aggregate number of requests. As mentioned earlier, civil society groups and experts have recommended that members of the Freedom Online Coalition pursue transparency measures such as these.



The fifth guideline requires that agencies establish complaint and review processes that allow affected parties to contest a decision to disrupt access. The Industry Dialogue applauds this as consistent with the recommendations of the UN Human Rights Committee and other human rights experts. The Parliamentary report issuing the guidelines correctly notes the importance of having robust administrative and judicial mechanisms available to parties seeking to appeal adverse agency decisions.

The final guideline recommends that agencies consult technical experts and Internet service providers prior to requesting the disruption of access to online services. The Industry Dialogue notes that this will facilitate the restriction of content in a targeted manner that is more likely to be consistent with the applicable principles of necessity and proportionality.

The Industry Dialogue encourages the Australian Government to share these guidelines within the Freedom Online Coalition and to consider feedback from a variety of stakeholders as it moves forward with this process.

Sincerely yours,
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