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

Dear Ms. Ellis,

I am writing to you to express my concerns about moves by Senator Stephen Conroy to implement the "clean feed" proposal described on page 5 of *Labor's Plan for Cyber Safety*¹ by Senator Conroy prior to the 2007 election.

My objections to this policy are detailed below. In your reply to this letter, I would appreciate a direct, detailed response to each of these issues. I am making the assumption that collating such responses will be a simple matter, because a proposal as important as this one obviously wouldn't have proceeded as far as it has if these basic concerns had not been considered and alleviated. If that assumption is unfounded, then that fact should justify revisiting (or, alternatively, abandoning) the "clean feed" proposal.

While I approve of the general thrust of the Cyber Safety proposal, I have serious objections to the "clean feed" section, which will erect an online Government censorship regime in Australia for the first time.

I also have significant objections about the professional conduct of Senator Conroy as he has pursued this issue. The Senator has attacked critics by comparing them to child abusers²; refused to provide details of his policy then maligned opponents for their "speculative" remarks³; lied to the Australian voting public about the availability of an "opt-out" in December 2007⁴; and failed to consult with the 21 million Australian stakeholders who will be most affected by this plan, in contravention of the Prime Minister's oft-repeated aim to implement a "Government for all Australians"⁵. Rather than addressing the serious policy objections which I outline below, Senator Conroy has preferred to respond with aggressive, offensive, extremist bluster.

THE GOVERNMENT HAS NOT DEMONSTRATED A NEED FOR AN ONLINE CENSORSHIP SYSTEM

While I accept that the presence of illegal material on the Internet is a cause for some concern, I'm appraised of two important points which the Government appears to have missed.

Firstly: Australians have been using uncensored Internet access for at least 30 years, and there's no evidence of a burgeoning problem concerning access to illegal material. I have been using the Internet almost every day since 1989 and have *never* seen any content that I'd expect to require Government intervention. Without demonstrating a need for this system, how can the Government credibly claim that it should be mandated?

¹ http://www.alp.org.au/download/labors_plan_for_cyber_safety.pdf

² <http://www.abc.net.au/news/stories/2007/12/31/2129471.htm> Senator Conroy: "If people equate freedom of speech with watching child pornography, then the Rudd-Labor Government is going to disagree."

³ <http://techwiredu.com/2008/10/interview-with-media-contact-for-senator-the-hon-stephen-conroy-regarding-australian-internet-filter/>

⁴ <http://www.computerworld.com.au/index.php/id:1399635276>

⁵ http://www.pm.gov.au/media/interview/2008/interview_0258.cfm "... Government for all Australians..."
http://www.pm.gov.au/media/Interview/2008/interview_0063.cfm "... Government for all Australians..."
http://www.pm.gov.au/media/speech/2008/speech_0268.cfm "... Government for all Australians..."

Secondly: There is little evidence that Australian parents require Government assistance. Indeed, those who claim that parents require such assistance have a remarkable track record of being wrong.

In 1989 / 1990, the Senate Select Committee into Online Services carried out an enquiry into the nature of content available online, and made a rash of recommendations in favor of some kind of censorship scheme based on the expectation that unfettered access would harm the fabric of Australian society.

The passing of time has shown that 1990 Senate's concerns were completely wrong: Almost 20 years have passed since that enquiry, and Australians have enjoyed uncensored Internet access for the entire period. Society has not fallen apart, there is no emergency, children are not being raised in moral vacuums and turning into rapists and axe-murderers, parents are diligently and capably excelling in their efforts to raise their children into fine, upstanding citizens. Today's parents are comfortable with ubiquitous access to unfiltered Internet, having grown up using Google to assist with homework assignments, publishing blogs and websites, using email to stay in touch with friends and family, and treating the Internet *in its current unfiltered form* as a valuable resource for the education and social engagement of their children.

This fact is reinforced by the public's unresponsiveness to the previous Government's offer of free filtering software for family PCs⁶. When only 140,000 users downloaded the free software over 12 months, and less than 29,000 of them were still using it three weeks later, Senator Conroy concluded that *the \$84m filtering software distribution plan failed because it wasn't mandatory*, rather than the more rational conclusion that the failure of the initiative could be traced to lack of public desire.

The image of technologically-disconnected parents floundering helplessly in a sea of pornography as they fail to adequately raise their children is a reflection of the appalling lack of Internet-savviness of our politicians, not society at large. Politicians assume that parents are ignorant about the Internet because *politicians* are ignorant. Yet parents came to grips with it years ago; the last remaining social group in our country who expresses difficulty with the Internet appears to be baby-boomer Federal politicians, whose child-rearing days are mostly well behind them.

It is thoroughly *insulting* to Australian parents to undermine their efforts by asserting that the way to prevent societal decay is for the Government to step in and make decisions about the appropriateness of online content. That is a parent's role, not Senator Stephen Conroy's role.

THE GOVERNMENT HAS NOT DEMONSTRATED THAT MANDATORY ONLINE CENSORSHIP IS TECHNOLOGICALLY FEASIBLE

Senator Richard Alston, in his tenure as Minister for Communications and the Arts, passed amendments to the Broadcasting Services Act in 1999⁷. As accompaniment to that legislation, the Minister directed the ACMA (then ABA) to establish NetAlert⁸, and for NetAlert to carry out periodic assessments of the "state of the art" of filtering technology.

Since that time, NetAlert and the Department have commissioned separate studies by the CSIRO, Ovum⁹, and most recently RMIT¹⁰ and Enex Testlab¹¹. All of the studies have uniformly demonstrated that online censorship technology:

- * slows down Internet access;
- * inaccurately blocks content which should not be blocked;
- * inaccurately fails to block content which should be blocked;

⁶ <http://www.smh.com.au/news/web/web-porn-software-filter-a-dud/2008/02/16/1203190635858.html> "Web porn software filter a dud"

⁷ http://www.austlii.edu.au/au/legis/cth/num_act/bsasa1999449/

⁸ <http://www.netalert.gov.au>

⁹ http://www.dbcde.gov.au/__data/assets/file/0016/10915/Ovum_Report_-_Internet_content_filtering.rtf

¹⁰ http://www.netalert.gov.au/advice/publications/reports/a_study_on_server_based_internet_filters/executive_summary/background.html

¹¹ http://www.acma.gov.au/webwrr/_assets/main/lib310554/isp-level_internet_content_filtering_trial-report.pdf

* is ineffective at inspecting or blocking “Peer to Peer” traffic that comprises over 60%¹² of Australia’s Internet traffic; and

* fails to accurately distinguish between legal and illegal content even when specifically configured with lists of illegal content under laboratory conditions.

The most recent trials, conducted in Tasmania by Enex Testlab earlier this year, found that the most accurate product tested incorrectly blocked 3%¹³ of innocent material, and incurred a “slowdown” performance penalty in excess of 70%, and failed to reliably block the ACMA’s prohibited content list. It stuns disbelief that the Minister for Broadband would be interested in pursuing these systems whilst *at the very same time* advocating for a \$20b National Broadband Network (NBN) intended to *increase* Internet speeds.

There is no evidence on the public record to demonstrate that mandatory online censorship is technologically feasible. Every time experts have been asked, they have uniformly concluded that it is not possible. Furthermore, advances in technology cause Internet speeds to increase faster than censorship systems’ speeds, meaning that as time passes the performance penalty caused by these systems becomes worse.

It is very poor public policy to proceed with mandatory implementation of provably failed technology.

THE GOVERNMENT HAS NOT DEMONSTRATED THAT ONLINE CENSORSHIP IS EFFECTIVE

Any Australian can obtain encrypted Virtual Private Network (VPN) access from the United States for less than \$5 per month¹⁴. This is the same technology that human rights activists use in China, Saudi Arabia and Iran to hide their activities from the Government, and provides an effective, guaranteed bypass of any effort by any National Government to filter Internet content.

There is no requirement for complicated software to use these services, VPN clients are installed by default on all common Operating System platforms. Australians who wish to hide themselves from Government Internet censorship efforts are only a few clicks away from total anonymity.

THE GOVERNMENT HAS FAILED TO CONSIDER UNINTENDED CONSEQUENCES ARISING FROM THE POLICY

In order to implement a censorship scheme, the ACMA will need to make its blacklists available to ISPs.

There are approximately 400 ISPs in Australia. Even if each ISP only has a handful of staff in a position to access routers and scrutinize network configurations, that still leaves several thousand ISP technical staff with full knowledge of the contents of the blacklist.

A moment of consideration of that state of affairs yields the unavoidable conclusion that the blacklist will be “leaked”. Many sites on the Internet specialize in providing repositories of “sensitive” Government data for the purpose of providing public access to documents against Governments’ wishes¹⁵, and a Government blacklist is exactly the kind of content those sites exist to publish.

When the Government makes a mistake, it will be public^{16 17}. It is simply not believable that putting the same people who called for the destruction of the Bill Hanson photographic exhibit in charge of a blacklist of pornographic imagery can end well. It also strains credibility to assert that there is value in putting the

¹² <http://www.ipoque.com/resources/internet-studies/internet-study-2007> P2P traffic 57.19% and under rapid growth in Australia in 2007

¹³ http://www.itnews.com.au/News/81637_sageau-slams-cost-of-content-filtering.aspx 3% error rate corresponds to over 3000 “bad blocks” per second on medium-sized ISP backbones.

¹⁴ <https://vpnout.com> - Encrypted VPN @ US\$5 per month; <http://www.secureix.com/personal.shtml> - Encrypted VPN available for free, limited to 256kbps, upgradeable to unlimited speeds for US\$5 per month

¹⁵ For example, <http://www.wikileaks.org>, “We help you safely get the truth out. We are of assistance to peoples of all countries who wish to reveal unethical behavior in their governments and institutions. We aim for maximum political impact...”

¹⁶ For example: <http://technewsreview.com.au/article.php?article=4025> “Finland censors anti-censorship site”, and <http://boingboing.net/2008/09/27/finnish-isp-thinks-w.html> “The Finnish ISP Mikkelin Puhelin is blocking access to the W3C (World Wide Web Consortium) site, describing it as child porn.” The Finnish Government is every bit as serious about the issue as the Australian Government appears to be, but repeatedly causes these comedies of errors. The Australian Government can expect similarly embarrassing exposure when it inevitably suffers the same failures.

¹⁷ <http://libertus.net/censor/ispfiltering-gl.html> Irene Graham’s comparison of Senator Conroy’s proposal with systems he claims are in use in other countries, including high-profile public failures of those systems.

people who decided that Mohammad Haneef should be pursued on terrorism charges, or that David Hicks should rot in Guantanamo, in charge of a list of illegal terrorist material. Governments of both sides have a long and distinguished track record of embarrassing failure in these areas, and the public is wise to be skeptical of moves to place further faith in the demonstrably flawed judgement of our public officials and political representatives.

Leaks have other hazards: It will only be a matter of time before someone, somewhere in the world, testifies in open court that they knew where to find child pornography due to the assistance and enablement of a leaked copy of Senator Conroy's Internet blacklist. The Government will no doubt launch a flurry of PR spin to demonize the leaker and portray itself as an innocent victim of circumstance when it happens, but one fact which will not be in dispute when it happens is that *the Government was warned and carried on regardless*. How much child exploitation is the Government willing to accept as "collateral damage" associated with this policy? More than zero? How much more?

Encouraging people who wish to bypass censorship to use encrypted VPNs carries a further unintended consequence, namely that the Australian Federal Police are unable to effectively execute Interception Warrants on encrypted traffic. Implementing censorship will drive criminals towards encryption by blocking non-encrypted methods of accessing the content they desire. I invite you to ponder the likely political effect of the revelation that Australian law enforcement was unable to gather evidence to convict a child abuser or a terrorist because the ALP's censorship system had inspired the offender to encrypt their Internet traffic.

SENATOR CONROY HAS INVALIDATED THE GOVERNMENT'S CLAIM FOR A MANDATE BY LYING TO THE AUSTRALIAN PUBLIC ABOUT THE SCOPE OF THE POLICY

In December 2007, Senator Conroy was widely reported in the press as stating that "... anyone wanting uncensored access to the internet will have to opt out of the service." (2. *Ibid*)

In October 2008, Darren Pauli from IDG/Computerworld obtained confirmation from the Minister's media spokesman that no opt-out will be available, "... the filters will be mandatory for all Australians." (4. *Ibid*)

As far as politicians' lies go, this one is breathtaking in its audacity. The Minister took the false impression that Australians will be able to (in his own words) "opt out of the service" to the last election, and allowed it to persist for almost an entire year even as the policy progressed to "live trials" with no opt-out provision. Then when the truth was exposed he launched personal attacks to denigrate critics as "extremist" "speculators" (3. *Ibid*)

SUMMARY AND CONCLUSION

Nearly a year has passed since Senator Conroy announced his plan, and none of the concerns described above have been addressed. The 21 million people comprising this policy's largest stakeholder group have not been consulted. We have not even been provided with the details we'd need to assess whether Senator Conroy's efforts to implement the policy are consistent with the Australian values, societal fabric, and child-rearing aims that the policy is purportedly designed to protect.

It disturbs me that Senator Conroy's response to these criticisms has been to label those who disagree with him as "speculators" and "extremists" (3. *Ibid*) and to compare them to child abusers (2. *Ibid*). My criticisms are not "extreme", and I am not a child abuser. *I am a voter, and I expect Senator Conroy to show some respect* by answering my concerns without resorting to hysterical personal attacks. Senator Conroy's job is to convince the Australian public that his idea is worthy, but his habit of resorting to bluster, offensiveness and secrecy has severely undermined that role. Without Senator Conroy's detailed responses to these issues, the responsibility for any undesired "uninformed speculation" lies directly upon his shoulders.

I call upon you to:

- (a) respond to the policy concerns that I have outlined above; and
- (b) represent my interests in the Party Room to persuade Senator Conroy and the Prime Minister Mr. Kevin Rudd to change track by abandoning the "clean feed" proposal.

The general aims of the ALP's cyber-safety initiative are worth defending. In particular, budget allocations for education programs and investigative law enforcement are commendable. But the "clean feed" proposal is impossible to defend on technical, moral, financial and public policy grounds, and should be reviewed for suitability for inclusion in the Government's policy agenda before being allowed to proceed any further.

Sincerely yours,

Mark Newton