



**Australian  
Broadcasting  
Authority**

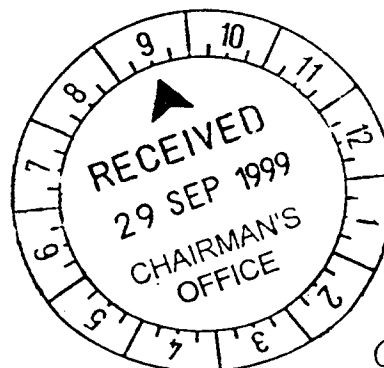
ABA File Ref:

97/0198

Level 15 Darling Park  
201 Sussex St  
Sydney  
PO Box Q500  
Queen Victoria Building  
NSW 1230  
Phone (02) 9334 7700  
Fax (02) 9334 7799  
E-mail info@aba.gov.au  
DX 13012 Market St Sydney

24 September, 1999

Mr Gary Banks  
Chairman of the Productivity Commission  
Gambling Inquiry  
Productivity Commission  
PO Box 80  
BELCONNEN ACT 2616



cc: *Gambling  
inquiry*

Dear Mr Banks

## **REGULATION OF ILLEGAL INTERNET GAMBLING SITES**

I understand that the Productivity Commission has released a draft report, *Australia's Gambling Industries, July 1999*, which includes a proposal to regulate illegal Internet gambling sites using the online services legislation. Following are some comments on this proposal which I hope will assist the Commission in its consideration of the issues involved.

As you are aware, the *Broadcasting Services Amendment (Online Services) Act 1999*, which provides for the regulation of online services by the ABA, was proclaimed in July 1999. It may be useful to describe how the scheme set out in this legislation will operate, and then briefly outline some of the issues that are likely to arise if it were to be adapted to accommodate the regulation of illegal gambling sites.

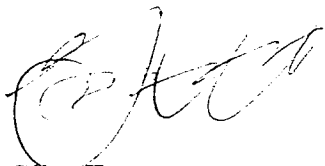
The legislation is designed to regulate the publication of illegal and offensive material on the Internet. The intention of the legislation is that, in the main, only content about which the ABA receives a complaint will be investigated. Content hosted in Australia will be referred to the Classification Board (through the Office of Film and Literature Classification) for classification. If material is classified 'Refused Classification' (RC) or 'X', (or 'R' and no suitable system is in place to restrict access to children), then it is considered prohibited content and the ABA must issue a notice requiring the Internet content host (ICH) to take down the material. Content hosted outside Australia is prohibited content or potential prohibited content if the Classification Board classifies it RC or X, or there is a substantial likelihood that the content would be classified RC or X. For content hosted outside Australia, the ABA must alert all Internet Service Providers (ISPs) to the material. The ISPs will be required to take action to ensure that users of their services are prevented from accessing the content.

I understand that the Commission, in its draft report, suggests that the online services legislation could provide the scope to block unregulated (and therefore illegal) offshore gambling sites. This proposal raises a number of issues, particularly in relation to the extent to which the scheme to regulate online content, as described in the online services legislation, would address the requirements of a scheme for regulating online gambling as a consumer protection measure. For example, it is likely that the classification scheme used by the Classification Board would require changes to accommodate the regulation of illegal gambling sites. It is not clear, for example, whether the Classification Board would apply the 'RC' criterion to illegal gambling sites. The 'RC' criterion, which relates to content that would 'promote, incite or instruct in matters of crime or violence', is usually invoked for depictions or representations of illegal content, rather than the eradication of actual criminal behaviour in the community.

The online services legislation was not designed as a broad consumer protection measure. It does not provide for other features which may be desirable in regulating online gambling such as surveillance of the Internet to identify illegal gambling sites. The legislation does not require monitoring of the Internet to identify illegal content. In the main, the ABA will only investigate content after it has received a complaint. There are also likely to be a number of issues that will need to be addressed in implementing the regime proposed in the draft report. Criteria would need to be developed for assessing the legality of offshore gambling sites. Presumably offshore sites that met appropriate consumer protection standards (such as those developed by State and Territory authorities) would not be blocked. The role of the ABA and State and Territory authorities in complaint handling would also need to be clarified, as well as the responsibilities of the respective authorities in relation to Australian and offshore gambling sites. At this time, the ABA does not have the required expertise to address consumer issues such as problem gambling and supplier integrity.

I have briefly raised a number of issues in relation to the Commission's proposed use of the online services legislation as part of a regime to regulate Internet gambling. The scheme to regulate online content as set out in the online services legislation appears to have a number of limitations in terms of readily accommodating the regulation of Internet gambling sites and providing for the types of features that are likely to be desirable in such a scheme. If the Commission would like to discuss the issues outlined in this letter or any other issues in relation to the online services legislation, please do not hesitate to contact Ms Andree Wright, Director, Policy and Content Regulation on (02) 9334 7939.

Yours sincerely



Giles Tanner  
General Manager