



ASIC
Australian Securities &
Investments Commission

Lawful disruption of access to online services policy and procedures

September 2018

About this document

This document sets out ASIC's policy and procedures for requests made by ASIC staff for the lawful disruption of access to online services under s313(3) of the *Telecommunications Act 1997* (Telecommunications Act).

Policy ownership

ASIC's Financial Services Enforcement team is responsible for the development and implementation of this policy.

Policy application

This policy applies to all ASIC workers, including contractors and temporary staff.

Policy approval and review

This policy has been reviewed and approved by the following parties on the following dates:

| Version | Reviewer | Comments | Approved | Date |
|---------|--------------------------------|-----------|----------|------------------|
| 1.0 | Financial Services Enforcement | Version 1 | Yes | 4 September 2018 |

Policy location

This policy is published on myASIC and on ASIC's website.

Contents

| | | |
|----------|--|-----------|
| A | What this policy is about | 4 |
| B | ASIC’s role and responsibilities | 5 |
| C | The power to disrupt online services | 6 |
| | Who can request a disruption to online services? | 6 |
| D | Guiding principles in making a request to disrupt online services | 7 |
| | Considering relevant factors | 7 |
| | Consultation | 7 |
| | Post-request activities..... | 8 |
| E | Transparency and informing the public | 9 |
| | How to request a review or make a complaint..... | 9 |
| F | Related information | 10 |

A What this policy is about

- 1 ASIC aims to ensure that disruption requests made by ASIC under s313(3) of the *Telecommunications Act 1997* (Telecommunications Act) comply with the Australian Government guidelines.
- 2 Section 313(3) of the Telecommunications Act is used by enforcement agencies to block websites containing illicit or contravening material.
- 3 In 2015, the then House of Representatives Standing Committee on Infrastructure and Communications handed down its report on the use of the section: see [*Balancing freedom and protection: Inquiry into the use of subsection 313\(3\) of the Telecommunications Act 1997 by government agencies to disrupt the operation of illegal online services*](#). The report recommended that the Australian Government adopt whole-of-government guidelines for the use of s313(3) by government agencies to disrupt access to online services and that agencies using the section to disrupt access to online services have the requisite level of technical expertise, or have access to such expertise, to carry out such activity.
- 4 The recommendations were adopted by the Australian Government and in June 2017 [*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*](#) (guidelines) were released.
- 5 The guidelines contain good practice measures for agencies to follow when making disruption requests under s313(3) and apply to all Australian Government agencies. State and territory agencies are encouraged to follow the guidelines if they rely on s313(3) to disrupt access to online services. The measures promote the transparent, accountable and responsible use of s313(3).
- 6 This policy sets out ASIC's approach to making disruption requests under s313(3) of the Telecommunications Act:
 - (a) Section B sets out a high-level description of ASIC's responsibilities;
 - (b) Section C contains a description of the s313(3) power;
 - (c) Section D sets out the factors ASIC takes into account in making a disruption request;
 - (d) Section E sets out our reporting requirements, how we will inform the public and how members of the public can request a review in respect of the use of the power; and
 - (e) Section F lists related material.

B ASIC's role and responsibilities

- 7 ASIC regulates Australian companies, financial markets, and financial services and consumer credit organisations and professionals who deal in and advise on investments, superannuation, insurance, deposit taking and credit.
- 8 The *Australian Securities and Investments Commission Act 2001* (ASIC Act) requires ASIC to:
 - (a) maintain, facilitate and improve the performance of the financial system and entities in it;
 - (b) promote confident and informed participation by investors and financial consumers in the financial system;
 - (c) administer the law effectively and with minimal procedural requirements;
 - (d) enforce and give effect to the law;
 - (e) receive, process and store, efficiently and quickly, information that is given to ASIC; and
 - (f) make information about companies and other bodies available to the public as soon as practicable.
- 9 As the financial services regulator, we play a leading role in combating investment fraud targeting Australian investors.

C The power to disrupt online services

- 10 Section 313(3) of the Telecommunications Act requires that carriage service providers, in connection with their operation of telecommunications networks and facilities or the supply of carriage services, give officers and authorities of the Commonwealth, states and territories any help reasonably necessary to:
- (a) enforce the criminal law and laws imposing pecuniary penalties;
 - (b) assist in the enforcement of the criminal laws in force in a foreign country;
 - (c) protect the public revenue; and
 - (d) safeguard national security.
- 11 Among other things, it enables government agencies to request internet service providers (ISPs) to provide such assistance as is reasonably necessary to disrupt the operation of online services by blocking access to websites.
- 12 The guidelines state that agencies should only use s313(3) to disrupt access in cases involving ‘serious criminal or civil offences, or threats to national security’. The guidelines specify that an appropriate threshold for this test is offences that carry a maximum prison term of at least two years, or a financial penalty of at least 120 Commonwealth penalty units. ASIC officers will take this into consideration when considering a potential use of s313(3).

Who can request a disruption to online services?

- 13 The ASIC Chair has directed that an ASIC Senior Executive Leader or Senior Executive must approve individual requests under s313(3) to disrupt access to online services.

D Guiding principles in making a request to disrupt online services

- 14 When considering whether to make a request to disrupt online services, ASIC will take into account several relevant factors and follow certain processes to:
- (a) determine whether a disruption is warranted and necessary;
 - (b) obtain the necessary approval; and
 - (c) if a disruption request is made and implemented, monitor, evaluate and report on the outcome of the disruption.
- 15 When making a disruption request, ASIC will take steps to ensure that the request is as targeted as possible, effective and executed appropriately.

Considering relevant factors

- 16 Before making a disruption request, ASIC will consider a range of factors to determine whether the request is warranted and necessary, including:
- (a) whether ASIC is conducting an investigation into a serious criminal offence or a civil contravention that meets the thresholds mentioned in paragraph 12;
 - (b) the availability of other enforcement tools, such as injunctions;
 - (c) the range of services on the site;
 - (d) the harm being caused by the online services;
 - (e) the likely effectiveness of the proposed disruption;
 - (f) the view of the ISP;
 - (g) technical feasibility and costs involved in the proposed disruption;
 - (h) potential consequences and/or damage to government;
 - (i) the nature and seriousness of the offence or contravention; and
 - (j) whether there is a public or national interest in disrupting access.

Consultation

- 17 ASIC will consult with the relevant carriers or ISPs at an early stage about the proposed disruption, unless there is a material risk that doing so will compromise the investigation. ASIC will consult to obtain their views on the proposed disruption, the best means of complying with requests for assistance and the management of associated costs.

Post-request activities

- 18 Each disruption request will be monitored and evaluated by ASIC. The disruptions will be checked regularly to ensure the disruption remains appropriate and does not have unintended consequences.
- 19 Any contact from members of the public about the disruption will be noted and acted on if necessary. Complaints about the disruption will be handled in accordance with [ASIC's complaint management policy](#).

E Transparency and informing the public

- 20 ASIC will notify the domain owner of the relevant website each time it makes a disruption request under s313(3).
- 21 The guidelines state that agencies should publish each disruption request and include why the request has been made. The guidelines, however, also state that agencies are not required to publish requests if the report may jeopardise ongoing or planned investigations, interfere with operational activities, or give rise to other law enforcement or national security concerns.
- 22 Wherever practical and reasonable in the particular circumstances, ASIC will inform the public each time it makes a disruption request by:
- (a) publishing a notice on the disrupted website advising that access to a particular site has been stopped (a 'stop page'). The stop page will advise that ASIC has requested the disruption and the reason; and
 - (b) issuing a media release advising that the power has been used and why.
- 23 Both the stop page and the media release will include details of how adversely affected parties may complain to ASIC if they feel aggrieved by the disruption.
- 24 In accordance with the guidelines, ASIC will report annually to the Australian Communications and Media Authority (ACMA) on the number of disruption requests we have made during the year: see p. 6 of the guidelines. ACMA is responsible for reporting annually to Parliament on all requests made by government agencies during the year. Further, we will provide information about the number of requests for assistance we made each year in ASIC's annual report.

How to request a review or make a complaint

- 25 Adversely affected parties to the disruption or members of the public who are aggrieved by the disruption will be able to lodge a complaint with ASIC: see [ASIC's complaint management policy](#). The stop page and media release will provide contact details for affected parties to complain to ASIC.

F Related information

Legislation

Australian Securities and Investments Commission Act 2001

Telecommunications Act 1997

ASIC policies and guides

ASIC, [*Complaint management policy*](#)

[Information Sheet 151](#) *ASIC's approach to enforcement*

[Information Sheet 172](#) *Cooperating with ASIC*

Other

[ACMA website](#)

[Department of Communications and the Arts website](#)

Department of Communication and the Arts, [*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*](#), June 2017

House of Representatives Standing Committee on Infrastructure and Communications, [*Balancing freedom and protection: Inquiry into the use of subsection 313\(3\) of the Telecommunications Act 1997 by government agencies to disrupt the operation of illegal online services*](#), June 2015