

From: [REDACTED]
To: [REDACTED]
Subject: RE: ESafety Commissioner views on Kick.com [SEC=UNOFFICIAL] [SEC=OFFICIAL]
Date: Tuesday, 10 October 2023 2:37:00 PM
Attachments: [image001.png](#)
[image002.png](#)
[image003.png](#)
[image004.png](#)
[image005.jpg](#)

Thanks [REDACTED]

As discussed, I agree they are wanting a comment on children being induced into gambling which is not our remit. I've sent the truncated response we used previously if they want to go back with anything (and copied you both).

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The ACMA acknowledges First Nations peoples as the Traditional Owners and Custodians of Australia. We respect and celebrate First Nations peoples as the original storytellers and content creators of the lands on which we work and honour the enduring strength and commitment of Aboriginal and Torres Strait Islander peoples to the land, waters and their communities. We pay our respects to Elders past, present, and emerging.

[REDACTED]

From: [REDACTED]
Sent: Tuesday, 10 October 2023 12:38 PM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: ESafety Commissioner views on Kick.com [SEC=UNOFFICIAL] [SEC=OFFICIAL]

Hi [REDACTED],

Here is a draft response to the journalist:

It is unlikely that content hosted on a global platform such as Kick can be found to contravene the IGA's advertising prohibitions, as the ACMA will need to be satisfied that the majority of persons

who access the content are physically present in Australia (see section 61EA(3)(ii) of the IGA). The majority of visitors to the Kick platform as a whole are not from Australia.

It is also prohibited under the IGA to be an ancillary to a contravention, for example by 'being in any way, directly or indirectly, knowingly concerned in, or party to, a contravention' of those provisions by another person. (Subsection 64B(1) of the IGA adopts the civil penalty provisions of the Regulatory Powers (Standard Provisions) Act 2014 (Cth) (the RPA) including section 92 ancillary contraventions). An ancillary is taken to have contravened the relevant civil penalty provision.

Individual video streamers on Kick that promote prohibited services may be found to be an ancillary to a contravention of the IGA for knowingly facilitating a contravention of subsection 15(2A) of the IGA by the providers of casino-style services which have been found by the ACMA to be prohibited interactive gambling services that have an Australian customer link.

However, it is unlikely that the Kick platform itself could be considered an ancillary it would likely lack the requisite knowledge of the contravention.

Please note that a large percentage of gambling streams on Kick depict individuals playing at Stake.com – however this service would not be a prohibited interactive gambling service as Australian residents are not permitted to create an account and gamble with the site. Therefore, hyperlinks from Kick to Stake.com are unlikely to be captured under the IGA.

I'm not sure if we need to directly address the question about whether the Kick platform induces children to gamble. Some videos on Kick have a mature content warning but it doesn't require any account details and can be clicked past.

Here is further context about Kick for e-Safety if it is warranted:

Kick is a relatively new video streaming platform that includes videos of individuals playing online casinos. Kick has appealed to video streamers as it offers a 95-5 split of subscriber revenue in favour of streamer. The main live video streaming platform in the market, Twitch, only offers a 50-50 split.

Some streamers have also moved to Kick as a result of increased restrictions on Twitch, including restrictions on videos depicting gambling. In August 2021, Twitch banned streamers from 'sharing links and/or referral codes to sites that offer slots, roulette, or dice games'. Additionally, showing video of the following online casinos is also banned on Twitch: stake.com, rollbit.com, duelbits.com, roobet.com, blaze.com, gamdom.com

However, Kick does not have a similar prohibition and this allows online casino streamers who use Kick to provide hyperlinks directly to online casinos. Kick's Terms of Service do not refer to gambling and the Kick Community Guideline 11 merely encourages users not to violate local gambling laws.

It is unlikely that content hosted on a global platform such as Kick can be found to contravene the IGA's advertising prohibitions, as the ACMA will need to be satisfied that the majority of persons who access the content are physically present in Australia (see section 61EA(3)(ii) of the IGA). The

majority of visitors to the Kick platform as a whole are not from Australia.

It is also prohibited under the IGA to be an ancillary to a contravention, for example by 'being in any way, directly or indirectly, knowingly concerned in, or party to, a contravention' of those provisions by another person. (Subsection 64B(1) of the IGA adopts the civil penalty provisions of the Regulatory Powers (Standard Provisions) Act 2014 (Cth) (the RPA) including section 92 ancillary contraventions). An ancillary is taken to have contravened the relevant civil penalty provision.

Individual video streamers on Kick that promote prohibited services may be found to be an ancillary to a contravention of the IGA for knowingly facilitating a contravention of subsection 15(2A) of the IGA by the providers of casino-style services which have been found by the ACMA to be prohibited interactive gambling services that have an Australian customer link.

However, it is unlikely that the Kick platform itself could be considered an ancillary it would likely lack the requisite knowledge of the contravention. Also note that a large percentage of gambling streams on Kick depict individuals playing at Stake.com – however this service would not be a prohibited interactive gambling service as Australian residents have been geo-blocked. Therefore hyperlinks to Stake.com would not be captured under the IGA.

In terms of whether the Kick platform induces children to gamble, some channels have a mature content warning but it doesn't require any account details and can be clicked past.

Kick was created by the owners of Stake.com, an online cryptocurrency casino based in Melbourne (however, as noted, Australians are geo-blocked from playing at Stake.com). Stake.com is the main sponsor of the Alpha Romeo Formula 1 team but for the Australian Grand Prix (and certain other Grands Prix) they replaced the 'Stake.com' logos with 'Kick'.

[REDACTED]

From: [REDACTED]
Sent: Tuesday, 10 October 2023 11:21 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: FW: ESafety Commissioner views on Kick.com [SEC=UNOFFICIAL] [SEC=OFFICIAL]

[REDACTED]

Please see below – can you please put a few words together for a response to [REDACTED]

Thanks

[REDACTED]

From: [REDACTED]
Sent: Tuesday, 10 October 2023 11:19 AM
To: [REDACTED]
Cc: [REDACTED]

Subject: FW: ESafety Commissioner views on Kick.com [SEC=UNOFFICIAL] [SEC=OFFICIAL]

Hi [REDACTED]

eSafety have received the below request and is looking to refer the journo to us. Does any of this fall under our remit? I don't think so but given the email alleges they have an online gambling site involved I thought I'd better check before I tell them it's not for us.

[REDACTED]

From: [REDACTED]
Sent: Tuesday, 10 October 2023 11:16 AM
To: [REDACTED]
Subject: FW: ESafety Commissioner views on Kick.com [SEC=UNOFFICIAL]

From: [REDACTED]
Sent: Tuesday, 10 October 2023 11:06 AM
To: [REDACTED]
Cc: Media OeSC [REDACTED]
Subject: Re: ESafety Commissioner views on Kick.com [SEC=UNOFFICIAL]

Hi [REDACTED],

Thanks for picking this up. The platform is pretty new but we are pretty keen to get the eSafety Commissioner's comments on the platform.

There is a specific category you can navigate to from the homepage called "gambling" (<https://kick.com/categories/gambling>) and the founders of Kick.com also own an online gambling business called Stake.com.

So, the question is: Popular live streamers on Kick are gambling money live on stream. Does this platform induce children to gamble? What are eSafety Commissioners guidelines for platforms to prevent children from being exposed to gambling content?

My deadline is COB today. Is Julie around today for a chat? Or early tomorrow morning?

Thanks,
[REDACTED]

On Tue, 10 Oct 2023 at 08:46, [REDACTED] wrote:

Hi, [REDACTED]

I have taken this one off [REDACTED], as he has a few balls in the air.

Last time I checked, we had not received any reports re: this site.

But let me double check that is still the case.

Kind regards,

[REDACTED]

From: [REDACTED]
Sent: Monday, 9 October 2023 6:33 PM
To: [REDACTED]
Subject: ESafety Commissioner views on Kick.com

You don't often get email from [REDACTED] [Learn why this is important](#)

Hi [REDACTED]

I hope you are well.

Have you come across the live streaming platform Kick.com?

We are interested in the company because one of its founders is an Australian [REDACTED] and [this stunt in Brisbane](#) made the US news recently.

I was wondering if Kick has popped up on the eSafety Commissioner's radar, and if she's had a look into its content and how it compares to the likes of Twitch and Youtube?

Could you please give me a call on Tuesday to discuss?

Thanks,

[REDACTED]

[REDACTED]

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