

PAY TV PIRACY

Financial Review Special Investigation

It's ACMA's beat: Conroy

Police

Sophie Morris and David Ramli

The federal government says it is up to the independent Australian Communications and Media Authority to consider whether to pursue revelations that a secretive unit within News Corp promoted high-tech piracy.

Prime Minister Julia Gillard said the government had not referred the reports to the Australian Federal Police and urged anyone with information about criminal activities to do so.

"If there is anyone who has in their possession material they think raises concerns about a criminal offence then they should refer it to the police," she said.

Communications Minister Stephen Conroy said his department did not have a role in investigating the revelations, published in *The Australian Financial Review*, that a News Corp subsidiary promoted piracy that damaged Austar, Optus and Foxtel as News was trying to take control of the pay TV industry.

"The appropriate authority, if an authority is to look at this, is the ACMA," he told Sky News yesterday. "They are an independent statutory body."

He called on the *Financial Review* to take the matter to the police if there was any material contained in the 14,000 emails linked to News Corp subsidiary NDS that indicated criminal activity.

"If the AFR have got any information they believe is about criminal conduct in Australia, they should refer it to the AFP," Senator Conroy said.

"I'm not suggesting there is any criminal conduct that would lead to the Federal Police at this stage."

Financial Review editor-in-chief Michael Stutchbury said the paper's articles had not suggested any criminal activity had taken place and it had published the emails online.

"We have not been approached by the Australian Federal Police. If we

get approached by the AFP we would consider whatever approach they might make," he said.

The AFP said it was "not currently investigating allegations of corporate hacking into pay TV".

But an AFP spokeswoman confirmed that, as revealed yesterday by the *Financial Review*, it was working with UK police investigating the News Corp phone hacking scandal, which led to the closure of the *News of the World* tabloid in the UK.

"The AFP can confirm that it first received a referral in relation to News Corp on July 12, 2011. This is a long and protracted UK investigation," the spokeswoman said.

"The AFP is assisting the UK police with their inquiries, and is unable to provide any further comment on their investigation."

News Corp has categorically denied any involvement in promoting piracy and points to court actions by competitors making similar claims, from which it emerged victorious.

On Wednesday, a spokesman for Senator Conroy described the pay TV piracy claims as "serious".

The *Financial Review's* investigation comes as the competition regulator examines the proposed takeover of pay TV operator Austar by Foxtel, which is 25 per cent owned by News Ltd, a \$1.9 billion deal that would cement its dominance of pay TV in Australia.

Senator Conroy said the takeover was being considered by the Australian Competition and Consumer Commission, which would decide whether the latest news would affect the approval process. He said the government would not intervene.

"The ACCC are going through a proper process. They will consider all of the evidence and all of the information... and we won't be interfering in their processes," he said.

He also said it was up to ACMA, which administers broadcast laws, to decide "whether or not there's a need following these allegations for there to be any action".

ACMA declined to comment yesterday.



Softly, softly ... Stephen Conroy, NBN Co CEO Mike Quigley and Julia Gillard yesterday.

Photo: TAMARA VONINSKI

Conspicuous in its aloofness

Comment

Laura Tingle

Political editor

In her early days in federal politics, Julia Gillard was fond of the odd referral to the Australian Federal Police.

To the horror of some of her colleagues, Gillard wrote to the AFP in 2003 asking it to investigate (somewhat flimsily based) allegations that Filipino fugitive Dante Tan paid \$220,000 to an associate of then immigration minister Philip Ruddock to have his Australian business visa restored.

The letter to the AFP was part of the "cash for visas" controversy that helped make Gillard's reputation in Canberra. The AFP subsequently cleared Ruddock.

Yesterday, the Prime Minister was saying it was up to the media, not her, to submit any evidence of criminal activity by a News Corp subsidiary to the Australian Federal Police.

"If there is anyone who has in their possession material they think raises concerns about a criminal

offence then they should refer it to the police," she said.

The strange thing about this — and comments by Communications Minister Stephen Conroy — is why they have gone down the path of suggesting the police should investigate anything.

Nowhere in its revelations — that a secretive business owned by News Corp promoted a wave of high-tech piracy in Australia — has *The Australian Financial Review* suggested there was any criminality involved. In fact, the paper has repeatedly pointed out that such piracy was legal at the time it was committed.

If there are questions for the government arising out of the AFR reports they go to News Corp's suitability to hold an interest in a subscription television licence and to the competitiveness of the pay television market.

The claim is that the piracy operations damaged Austar, Optus and Foxtel as News was trying to take control of the pay TV industry.

According to Senator Conroy, it is up to the broadcasting regulator, the Australian Communications and

Media Authority, and the Australian Competition and Consumer Authority to investigate any issues arising from the revelations.

Well, yes, it is, but have you noticed a slight difference in approach to the one the government took last year in the midst of the *News of the World* phone hacking scandal?

That was enough to prompt an inquiry into the regulation of the media, the Finkelstein inquiry.

Now, allegations that a major media player may have skewed the competitiveness of the pay television industry are something the government will rely on regulators to investigate. In fact, it was hard to see anyone from the government through the large dust cloud on the horizon when this story broke on Wednesday.

One also sensed a certain sluggishness among government lawyers, who seemed to be of the view that it was all probably OK since some of the emails had featured in unsuccessful court cases in the past.

Sluggishness, or a lack of political will to further provoke a media giant from a government in deep political trouble? Take your pick.

Piracy funds linked to British police

From page 1

for £2000 be made out "with Ray's authority" from the 880110 account, payable to the Surrey Police.

This correspondence forms part of an archive of 14,400 emails, some of which have been published on the afr.com website.

The email showed Mr Withall had been "working" with Surrey Police for "six months".

Another email described the "informants fund" as being used "for payments to some informants not covered under our normal payments system".

Private companies in the United Kingdom often pay police for helping to maintain order at public events such as football matches.

Today the *Financial Review* also reveals how emails show the links between the top executives of News Corp and executives of NDS, its subsidiary which supplied pay TV security services.

In his first comments since the

Financial Review revealed on Wednesday a global trail of dirty tricks surrounding pay TV piracy, Rupert Murdoch yesterday defended his organisation.

"Seems every competitor and enemy piling on with lies and labels," Mr Murdoch tweeted, without making a direct reference to the pay TV allegations.

"So bad, easy to hit back hard, which preparing."

Yesterday Mr Peled defended NDS and launched an attack on the BBC *Panorama* program, which had linked NDS to pay TV piracy in the UK. Mr Peled claimed that the program had "manipulated emails, while in addition completely mischaracterising the substance and context of others".

That BBC report had "seriously misconstrued legitimate activities we undertake in the course of running an encryption business," he said.

The Gillard government said yesterday it was up to the independent

Australian Communications and Media Authority to consider whether to pursue the piracy revelations.

Prime Minister Julia Gillard said the government had not referred the reports to the Australian Federal Police and urged anyone with information about criminal activities to do so.

The media regulator in the UK is holding an inquiry into whether News International is a "fit and proper person" to control pay TV licence holder BSkyB, of which James Murdoch is chairman.

News Corp has strongly denied the allegations raised this week.

Kim Williams, the chief executive of News Corp's local arm News Ltd, said he was "extremely disturbed by the misleading articles".

But the *Financial Review* has not backed away from the story.

Editor-in-chief Michael Stutchbury said the paper "fully stands by Neil Chenoweth's extraordinary report of pay TV piracy involving

News Corporation subsidiary NDS."

"Legal correspondence confirms the authenticity of the emails," Mr Stutchbury said.

Lawyers for NDS have demanded the *Financial Review* remove thousands of emails from its website.

The piracy cost ... up to \$50 million a year and helped cripple the finances of Austar.

The emails show how NDS promoted pay TV piracy in Australia that damaged Austar, Optus and Foxtel as News was trying to take control of the pay TV industry.

The piracy cost the Australian pay TV companies up to \$50 million a year and helped cripple the finances

of Austar, which Foxtel is now in the process of acquiring.

Communications Minister senator Stephen Conroy said yesterday the allegations were "serious".

But he said the takeover was being considered by independent regulators, who would decide if the latest news would affect the approval.

"You would need to ask the [Australian Communications and Media Authority] whether or not there's a need following these allegations for there to be any action," he said.

"But they're an independent statutory authority... and they do administer broadcast laws."

The *Financial Review* has also revealed that when Mr Murdoch set out to buy US satellite broadcaster DirecTV in early 2000, NDS had just developed a "silver bullet" that could drastically cut the runaway piracy at the broadcaster.

But executives at NDS decided not to use the fix.