

GLOBAL INFORMATION SOCIETY WATCH 2011

INTERNET RIGHTS AND DEMOCRATISATION

Focus on freedom of expression and association online



AUSTRALIA

BLOCKING CONTENT, BLOCKING RIGHTS



EngageMedia Collective Inc.

Andrew Garton

www.engagemedia.org

Introduction

The Australian government's response to WikiLeaks' publication of leaked United States (US) State Department diplomatic cables in November 2010 sought to criminalise both the organisation and its founder and editor-in-chief, Australian citizen Julian Assange.

In spite of significant public and media industry support for WikiLeaks, both Australia's Prime Minister Julia Gillard and Attorney-General Robert McClelland placed their support squarely behind the US¹ and its persecution of Assange, WikiLeaks and its staff.²

Parallels emerged with the Howard government's³ dispassionate response to David Hicks and Mamdouh Habib,⁴ two Australians held without charge and in violation of their basic democratic rights in the US military prison in Guantanamo Bay.

The call from Australia's political leadership to seek legal grounds for Assange's arrest and to criminalise the work of WikiLeaks, when no legal grounds existed for either,⁵ also reignited debate about the Labor Party's single-minded efforts to introduce a controversial mandatory internet content filter.

The writer and commentator called Stilgherrian asks, "Why aren't our politicians considering us citizens and our rights?" It is these rights, the democratic rights of all Australians who are finding their

voice and the will to question and act through the internet, that are at odds with the so-called clean feed internet filter. The clean feed drew so much public condemnation, and with a minority government comprised of independents and Greens with no stomach for an internet service provider (ISP)-level content filtering system, that it was shelved until at least 2013 – though the impetus for its creation is far from idle.⁶

Policy and political background

The ease by which Australia complies with international conventions, from cyber crime to intelligence gathering, draft or otherwise, describes an increasing gulf between Australian politicians and the citizens they are meant to represent. Through the 1990s Australia continued to display the tolerance, empathy and cultural diversity that grew from the 1970s with the abolition of the White Australia Policy (1973),⁷ its intake of Vietnamese and Cambodian refugees (1976) and, a decade later, the creation of the Office of Multicultural Affairs and the Australian Council of Multicultural Affairs (1986), both of which were to create a National Agenda for a Multicultural Australia. Another decade on and the political climate in Australia was about to change.

In 1996, only four months after the Howard government took office, they came good with an election pledge and closed down the Office of Multicultural Affairs. Multiculturalism was to be "zeroed", instructed the new treasurer, Peter Costello. The remaining Department of Immigration and Citizenship would have the majority of its funds withdrawn.

The breakdown of an increasingly educated, knowledge-focused and pluralist society was on its way. With massive cuts to higher education and a gradual decimation of humanities, language and religious studies to follow, it would be another four years before the curtain would seek to be drawn on Australians' right to privacy and free speech online.

1 Nicholson, B. (2010) WikiLeaks acts 'illegal': Gillard government, *The Australian*, 10 December. www.theaustralian.com.au/in-depth/wikileaks/wikileaks-acts-illegal-gillard-government/story-fn775xjq-1225968584365

2 AAP (2011) Australia 'helps US target WikiLeaks staff', *The Australian*, 13 February. www.theaustralian.com.au/news/breaking-news/australia-helps-us-target-wikileaks-staff/story-fn3dxity-1226005158805

3 John Howard was the 25th prime minister of Australia, representing the Australian Liberal-National coalition, which led the federal parliament from 11 March 1996 to 3 December 2007.

4 Lander, K. (2004) Government sceptical over Hicks torture claims, *Lateline*, 20 May. www.abc.net.au/lateline/content/2004/s1112658.htm

5 Hayward, A. (2010) Law not broken but WikiLeaks illegal: PM, *Nine News*, 17 December. news.ninemsn.com.au/article.aspx?id=8185173

6 Moses, A. (2010) Conroy's net filter still alive and kicking, *Sydney Morning Herald*, 10 September. www.smh.com.au/technology/technology-news/conroys-net-filter-still-alive-and-kicking-20100910-15405.html

7 Fact Sheet 8 – Abolition of the 'White Australia' Policy. www.immi.gov.au/media/fact-sheets/o8abolition.htm

On 11 September 2001, John Howard, visiting the US, invoked the ANZUS Treaty and strengthened military ties with the US, unquestioningly entering both Iraq and Afghanistan. This stirred the flame of hate for minorities, particularly asylum seekers in Australia. The freedom to seek refuge and asylum from abuse on Australia's shores would be severely tested.

It was in this climate of fear, suspicion and increasing contempt for informed public discussion and transparency that the subsequent Australian Labor Party which came to power proposed the much maligned mandatory clean feed filter, and the measures that would follow as it simmered on the policy back burner.

Blocking content versus blocking rights

Much like the rest of the developed world, Australians, who once hailed theirs as “the lucky country”, live in an environment governed by economic concerns, fluctuations in currency markets, increasing interest rates and threatening statistics. Traditional media are struggling to define themselves through headlines that continue to opine economic peril. Many leading politicians are turning their back on our experts. Given a minority government, held together by three independents and the Greens, the only wedge of common sense and courage in a political environment that is by and large conservative, is driven by short-term goals and ambitions.

The definition of insanity is doing the same thing over and over again and expecting different results. Albert Einstein

When the clean feed was introduced it met with unparalleled backlash from the public, civil society and ISPs. The clean feed's architect, Senator Stephen Conroy, Minister for Broadband, Communications and the Digital Economy, continued to back it time and time again. Tests proved the technology would slow internet usage, but Conroy persisted. Industry leaders suggested it would hamper internet usage and stifle innovation. Conroy ignored their concerns and pressed harder. Campaign after campaign ridiculed the proposal and sought to test the minister's expertise, which appeared limited.

Conroy continued to condemn those who were against the policy as supporters of the kind of information he was wanting to protect Australians from. It was not until a leaked blacklist of sites appeared on WikiLeaks that the proposal started to come undone. It took an election to see the policy put on the proverbial back burner. But what is driving the clean feed? We are not quite done with it yet.

It is not the government's role to be a net nanny. It is the role of every single household. Rob Oakeshott, independent member of the House of Representatives, Australia

Since 1 July, leading Australian ISPs, including Telstra, Optus and Primus, have voluntarily undertaken, with the support of their industry association, the Internet Industry Association (IIA), to implement the blocking of sites on an Interpol list of child abuse websites.⁸ At the same time, the Australian Communications and Media Authority (ACMA) is compiling a list of its own, and it is seeking to have sites on its blacklist reviewed by the Classification Board. ACMA's list is said to include “material that meets the criteria for Refused Classification under the National Classification Code for containing offensive depictions or descriptions of children.” It is under this basis that the Classification Board will formally classify sites for the filtering scheme.

Nevertheless, while the ACMA administers a co-regulatory scheme for online content,⁹ at the time of writing the Classification Board has not yet set out guidelines for the classification of online content as it has done, for example, for films and more recently computer games.¹⁰ It is also not yet clear which of Australia's ISPs will agree to implement it.

The IIA is less than enthusiastic about the ACMA blacklist. The government sees the implementation of the Interpol blacklist as an “interim step”, fueling speculation by the IIA that the government's mandatory filter could be taken up by ISPs through a “backdoor” mechanism. However, the IIA's scheme, according to Electronic Frontiers Australia (EFA), provides “no clear governance and oversight from the people affected by it.”

The EFA is concerned that being an international list that no Australian agency can contribute to without international cooperation, the Interpol list will not satisfy the government. David Cake, EFA's chair, suggests that this position will not only “make legislation perhaps easier to sell, but it opens the way for further (perhaps non-legislative) additions to the filter – and the decision to add this filtering scheme, as a voluntary industry scheme, is one with virtually no consumer or civil society input.”

⁸ Moses, A. (2011) Internet censorship machine quietly revs up, *Sydney Morning Herald*, 20 July. www.smh.com.au/technology/technology-news/internet-censorship-machine-quietly-revs-up-20110720-1h00y.html#ixzz1V4sQXzkP

⁹ Australian Communications and Media Authority, Online regulation. www.acma.gov.au/WEB/STANDARD/pc=PC_90169#coreg

¹⁰ Classification Board, Guidelines for the Classification of Films and Computer Games. www.comlaw.gov.au/comlaw/management.nsf/lookupindexpagesbyid/IP200508205?OpenDocument

But it is not all about protecting Australians from content governments do not wish them to see. There is an increasing desire to know what people are saying to each other, both online and through the myriad of communications devices in use.

In Australia the quality of debate has largely been deplorable: soporific on one side and hysterical on the other, ugly, dumb and bullying, marked by a “Gotcha!” approach in sections of the media, with relentless emphasis on fear, the short term, vested interests and a mindless populism. Barry Jones, Honorary (Professorial Fellow), Melbourne Graduate School of Education at University of Melbourne

As the appetite for a more informed conversation in the national media increases, one may not be wrong in thinking that Australians are turning to the internet to stay informed. Here independent media and public debate are flourishing. This has, in turn, inspired a new form of media within national institutions such as the Australian Broadcasting Corporation’s popular *Q and A*¹¹ and the Special Broadcasting Service’s *Go Back to Where You Came From*.¹² We may well be seeing an increase in the number of informed, politically literate and active citizens in Australia. If this is the case, why then seek to criminalise the tools we use to both inform and protect ourselves?

The story is the same the world over. Activists have been using computer networks since their appearance in the mid- to late-1980s. With every technological advance, activists migrated from one platform to another exploiting their use to give voice to the unheard, to document the perils of the unseen, from the forests of Borneo to the streets of Egypt. When once their communications were secure, or relatively unknown, new technologies have made activists vulnerable, but they have also made them inventive. So long as an open internet can be maintained, that inventiveness will serve the cause of free speech and open democracies – but it can also harbour and protect the practices of really bad people.

Governments will always try to monitor citizens’ “secure” communications – and corporations will always help them. Dan Gillmore, director, Knight Center for Digital Media Entrepreneurship, Arizona State University

Governments across the planet seek to profoundly change the way activists and the general public at large communicate with each other. Western

governments will, on the one hand, speak out against the restrictions imposed on internet access during the uprisings in Egypt, but will call for similar impositions when the hard issues need to be addressed and citizens demand that they are. Australia is no exception.

A proposal on data retention, inspired by the European Union’s Data Retention Directive,¹³ is being driven by the Australian Federal Police and could see all web browsing history of Australian internet users logged for law enforcement to access.¹⁴ A representative from the Attorney General’s Department stated that the Department is “considering the merits of comparative data retention proposals to enable security and law enforcement agencies to maintain access to telecommunications information to assist with investigations.”¹⁵

The Environment and Communications References Committee of the Australian Senate produced a report in April 2011 analysing whether Australia should implement such a plan. A report¹⁶ considering the adequacy of protections for the privacy of Australians online made five key suggestions that government should consider prior to proceeding with data retention legislation,¹⁷ asking the Australian government to:

- Produce an extensive report analysing the costs, benefits and major risks of data retention legislation
- Demonstrate that retaining data is necessary for law enforcement purposes
- Quantify and justify the costs to ISPs of implementing a data retention law
- Assure citizens that data retained will be stored securely and subject to appropriate accountability mechanisms
- Consult with a wide range of stakeholders, including NGOs which the government has yet to consult.

11 www.abc.net.au/tv/qanda

12 www.sbs.com.au/shows/goback

13 eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=L:2006:105:0054:0063:EN:PDF

14 Jacobs, C. (2010) AFP pushing for invasive data retention, *Electronic Frontiers Australia*, 7 September. www.efa.org.au/2010/09/07/afp-pushing-for-invasive-data-retention

15 Parenell, S. (2011) Canberra rethinks retention regime on ISP subscriber records, *The Australian*, 26 July. www.theaustralian.com.au/news/investigations/canberra-rethinks-retention-regime-on-isp-subscriber-records/story-fn8roe18-1226101609674

16 Senate Environment and Communications References Committee (2011) *The adequacy of protections for the privacy of Australians online*. www.aph.gov.au/senate/committee/ec_ctte/online_privacy/report/index.htm

17 Electronic Frontiers Foundation (n.d.) Mandatory Data Retention. www.eff.org/issues/mandatory-data-retention

So far the recommendations remain as such: recommendations with no clear indication as to whether they will be taken up in any form.

Conclusions

What is the problem these measures are designed to address? Filters can be circumvented. Data can be encrypted. Voices that wish to be heard will find a way to reach communities that wish to listen and really bad people will pay to conceal their activities.

The internet has given Australians a means to not only express their democratic rights, but also to exercise innovation in the use of those rights for public debate. This report has described a vigorous, determined, all-embracing attack on those rights through political posturing targeting a fearful population and conservative values. It is wrong to not stand up against child abuse, for instance; but when this is used as an argument to stymie all manner of online content, one can only wonder why the same approach is not taken to shut down the operations of those who would pollute the Artesian Water Basin through the controversial practice of coal seam mining.

There are millions of websites that host questionable content. It would seem far easier to put an end to the practices that harm the health of all people both now and into the future than to attempt to narrow the means by which we can inform ourselves of such folly. Perhaps therein lies the answer.

*Call it draconian or whatever they like, but any society needs supervision and regulation. DD, online comment to *The Age* article, "Censoring mobiles and the net: How the West is clamping down"¹⁸*

Perhaps Australians prefer to be protected, to be supervised and regulated. Perhaps Australians do not wish to be reminded that they are, no matter where they came from, part of the rest of the world.

There is need for "protection", but by whom and for what end or gain? Responsible parenting, for instance, is simply that. But the nanny state appears to want to parent all Australians, at the expense, it seems, of the liberties expressed online. Self-regulation is an option that the IIA is exploring. It has worked in the past, in other information communication sectors, the motion picture industry for instance.

In 1966 the Motion Picture Association of America, in response to what were already considered antiquated censorship restrictions of their industry, came up with a rating system of their own. A form of industry self-regulation created avenues for an independent scene that saw no reason to rate itself whatsoever. The independent filmmakers of the past decade have sought to make films on their own terms and employ alternative forms of distribution. There is a world that seeks not to stifle, but to open debate on all issues; not to criminalise taboos or critique, but to encourage a more open and honest society where the majority take responsibility for their actions, where their elected leaders protect, but do not parent, and seek to educate and nurture their constituencies. Censorship limits life, but life knows no limits. Australians would do well to not think only of themselves as living in the "lucky country", but as responsible, creative and nurturing citizens on a lucky planet!

Action steps

- Support initiatives that promote an open internet. Become a member of EFA.
- Join GetUp.org.au and advocate for the maintenance of civil liberties when they are challenged.
- Engage in public debate on the issues raised in this report. Publish your own views or support the views of those whom you respect and raise the calibre of discussion from passive acceptance to being informed and active in shaping the future of your community, your nation and its contribution to the planet at large.
- Find the means to use social media sites for local, community initiatives. Just as Australians gathered on social media sites during unprecedented natural disasters in early 2011, from Cyclone Yasi to flooding across the state of Queensland, local use of these tools will strengthen their everyday use and further prevent intrusion into their use by governments and civil authorities. ■

¹⁸ Moses, A. (2011) Censoring mobiles and the net: how the West is clamping down, *The Age*, 15 August. www.theage.com.au/technology/technology-news/censoring-mobiles-and-the-net--how-the-west-is-clamping-down-20110815-1itsx.html#ixzz1V5UJBiiv

In the year of the Arab uprisings **GLOBAL INFORMATION SOCIETY WATCH 2011** investigates how governments and internet and mobile phone companies are trying to restrict freedom online – and how citizens are responding to this using the very same technologies.

Everyone is familiar with the stories of Egypt and Tunisia. **GISWATCH** authors tell these and other lesser-known stories from more than 60 countries. Stories about:

PRISON CONDITIONS IN ARGENTINA Prisoners are using the internet to protest living conditions and demand respect for their rights.

TORTURE IN INDONESIA The torture of two West Papuan farmers was recorded on a mobile phone and leaked to the internet. The video spread to well-known human rights sites sparking public outrage and a formal investigation by the authorities.

THE TSUNAMI IN JAPAN Citizens used social media to share actionable information during the devastating tsunami, and in the aftermath online discussions contradicted misleading reports coming from state authorities.

GISWATCH also includes thematic reports and an introduction from Frank La Rue, UN special rapporteur.

GISWATCH 2011 is the fifth in a series of yearly reports that critically cover the state of the information society from the perspectives of civil society organisations across the world.

GISWATCH is a joint initiative of the Association for Progressive Communications (APC) and the Humanist Institute for Cooperation with Developing Countries (Hivos).

GLOBAL INFORMATION SOCIETY WATCH

2011 Report

www.GISWatch.org

