



Digital Rights Watch

Submission to the Department of
Foreign Affairs and Trade consultation:

International Cyber Engagement
Strategy

3 April 2017

Who is Digital Rights Watch?

Digital Rights Watch (DRW) is an Australian non-profit charity that supports, fosters, promotes and highlights the work of Australians standing up for their digital rights.

<http://digitalrightswatch.org.au>

For more information about this submission please contact Elizabeth O'Shea, Board Member of Digital Rights Watch - lizzie@digitalrightswatch.org.au

Background

Digital Rights Watch is grateful for the opportunity to provide input to the Department of Foreign Affairs and Trade for the development of Australia's first International Cyber Engagement Strategy.

DRW has four pillars: privacy, democracy, fairness, and freedom. DRW believes that an ideal international cyberspace environment for Australia promotes these values. We also believe it is critical that Australia address its own policy weaknesses in these areas domestically so it can act as a global leader to support a free, open and secure Internet. There is much work to do in this respect. We have provided input for the International Cyber Engagement Strategy as we think it applies to each of our pillars.

Privacy

DRW believes that the International Cyber Engagement Strategy should contain a robust commitment to privacy. We suggest that Australia should move to become a global leader in privacy, and particularly in developing a new international treaty to regulate surveillance in cyberspace.¹

Before Australia can become a global leader in privacy, it must address the domestic erosion of privacy rights in Australia. This is not an area in which we are doing well. DRW are particularly concerned about digital surveillance, but are also alarmed by advances towards a fully formed biometric database of citizens.

Specifically, the data retention regime directly undermines a free, open and secure Internet. The legislative regime is flawed in many ways, which DRW and its members have made clear on numerous occasions. One recent submission by DRW covers some of our concerns, which can be found [here](#). Among other problems, DRW has raised concerns about the inadequacy of

¹ See Draft Report of the UN Special Rapporteur on the right to privacy, 24 February 2017 <http://www.ohchr.org/EN/Issues/Privacy/SR/Pages/SRPrivacyIndex.aspx>.

disclosure practices and transparency on functioning of the scheme and there is scope for greater judicial oversight over the executive powers contained within it.

DRW believes it is essential to foster respect for privacy among citizens and industry and this should be part of Australia's planning for its cyberspace engagement policy. The Australian government ought to lead by example, including by acting to address concerns about data retention. Many of Australia's key allies in this space either have or are moving toward better protections of privacy. At the very least, many of Australia's allies have an informed and accountable public discussion about these issues. Moreover, Australia's international legal obligations are such that citizens and states expect this kind of leadership. The human right to privacy is enshrined in the [International Covenant on Civil and Political Rights](#), of which Australia is a signatory. Digital privacy is an integral part of the human right to privacy and to the extent it can, Australia should be building on normative developments around this right.

Democracy

DRW believes that the International Cyber Engagement Strategy should demonstrate respect for Australia's democratic tradition. Australia could do much better at creating an informed and empowering public discussion for citizens concerned about their digital rights. It could also show greater respect for the importance of public accountability and transparency in government when it comes to matters that affect digital rights.

The best protection of a free, open and secure Internet is an informed and engaged body politic. The government should be making better use of the expertise of civil society and academia to ensure policies and laws about digital technology are up to date and informed by best practice. This could come through increased funding for reporting and accountability work in this space. It must also involve properly funded regulatory and oversight bodies that can intervene independently and effectively into legislative and executive processes, such as the Office of the Australian Information Commissioner. Such a culture will make Australia more competitive as a destination for industry and improve our position as an influencer in the region.

For similar reasons, DRW supports stronger parliamentary and democratic oversight of domestic and international surveillance agencies. This includes bringing these agencies under legislative regimes such as the Freedom of Information legislation and introduce reporting requirements under Telecommunications Interception and Access. These kinds of initiatives and norms should be supported so that Australia can promote responsible state behaviour by setting an example for other states to follow.

In order to make Australia a place that is welcoming to innovation, and culturally open to the digital economy, we need increased transparency and democratic rule-making in international trade agreements that affect intellectual property and digital rights. Engagement policy on cyberspace should prioritise open and accountable legislative processes.

Fairness

DRW is committed to modernising Australia's copyright laws to make them fairer, and we think a modern and fair system of copyright will need to be an integral part of the International Cyber Engagement Strategy.

For Australia to become a leader in this field, and a pole of attraction for industry, it is critical that our copyright laws be updated to suite the digital age. Unfair and outdated copyright laws are a key risk to a free, open and secure Internet globally. DRW believes that Australia should introduce fair use protections to safeguard user rights and promote innovation in Australia; expand safe harbours to promote freedom of speech and innovation; and introduce expanded, stable exceptions to digital rights management and anti-circumvention laws. Australia lags behind globally in this area and it hampers our ability to attract investment and be a leader in cyberspace internationally.

DRW has authored a recent submission on these issues which can be found [here](#).

Freedom

DRW believes that the International Cyber Engagement Strategy should be structured to protect freedom. An ideal international cyberspace environment for Australia will be one that has a culture of protecting freedom of speech that applies to both businesses and governments. To that end, we believe that Australia should be advocating for certain, and fair legal rules that govern the liability of internet intermediaries consistent with the [Manila Principles on Intermediary Liability](#). Such principles would be consistent with a policy of encouraging investment in Australia and the promotion of responsible state behaviour in cyberspace.

Australia could also do better at encouraging national and international online intermediaries and social networking platforms to protect freedom of speech by providing adequate and effective tools to limit and address abuse on their networks. This would be an exercise in norm development which would be consistent with international law.