

“Counter-terrorism” and Australia’s “National Data Retention” Program: Repeal of Privacy and Personal Freedoms, Media Censorship

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Q: When is a lie not a lie? A: When it's an excuse. – Charlie Brooker, Dawn of the Dumb (2007), 66.

March 19 should be scratched down in the diary of police state antics, if only because it was one when Australia’s non-service providing politicians decided, fairly broadly, that data retention would be a fine thing indeed. Telecommunication companies will be required by law to keep encrypted information on email, phone calls and text messages to enable access by concerned authorities for up to two years.

In the words of Prime Minister Tony Abbott, speaking during Question Time, “The Australian Federal Police advised me that 90 per cent of counter-terrorism investigations involve the use of metadata, as do some 90 per cent of child abuse investigations.” A touch problematic for the PM, given that he doesn’t actually know the meaning of the term.

Given the fact that much of such data is already accessible to law enforcement authorities – the protections in Australia continue to prove patchy in terms of making the authorities work for their keep – it is hard to see what the fuss was all about to begin with. As it stands, anywhere upwards of 80 organisations can request permission to access records of internet users or those of a mobile phone user without warrant (*The Age*, Mar 19). But the assumption, as with any politics of fear, is that nerves give way, and reasoning goes into an ill-fated sleep.

The bill has been sold as an act of wise benevolence and protection. Agencies dealing with crime will be privileged in their efforts to access data, weeding out those with lesser priorities. Critics such as Liberal Democrat senator David Leyonhjelm make the very sensible point that the government’s snooping mania suggests that it sees potential criminals everywhere, the citizen as contingent law breaker. When the bill comes before the senate, he promises to make, along with his minor party colleagues, amendments. “I’ll try to make it less bad, but even if my amendments succeed... it will still be a bad law.”[1]

When one sees criminals everywhere, the authorities will be encouraged to prosecute. “The Australian Federal police have even said,” argue Bernard Keane and Leanne O’Donnell in *Crikey* (Feb 6), “it will be used to investigate people who download movies.”[2] So much for the anti-terrorist sting, which looks distinctly absent in the legislation.

The government pundits have little idea how much such a retention scheme will cost. The other social and community costs, however, will be significant. The incentive to push costs

down will see telecommunication companies seek cloud computing services, possibly more vulnerable to capture and hacking. The hacking fraternity, be it those hired by governments, or other companies, will be salivating with anticipation at the unnecessary creation of these treasured reserves. Retained records for a period up to two years offers a range of rich opportunities, and will keep the legal fraternity busy about virtually everything other than matters touching on crime.

The true party of collusion here is the Australian Labor Party. While it has, in distant history, shown an interest in civil liberties, it has imbibed an assortment of concoctions on national security that have addled its senses. Its strategists feel that, if Labor is to keep in the electoral game, it needs to bed the forces of reaction with its police state wet dreams.

To hide the impression that it effectively surrendered to the governing Coalition, the ALP's parliamentary members managed to get the addition of a "public interest advocate" which will supposedly argue, in certain instances, against warrants accessing the metadata of journalists. The test there is whether the public interest trumps the need to keep the disclosure of a journalist's sources. The ALP argues that there should be a "presumption against issuing a warrant" in such cases.

The Communications Minister, the resoundingly devious Malcolm Turnbull, has stuffed the office of the public interest with praise and judicious hope. "All of us understand the work that journalists do is just as important in our democracy as the work that we do as legislators."

Much of this is linguistic horse play, the necessary grunts made while the real show is happening elsewhere. While the police will have to go through the warrants system regarding data connected with a journalist's source, there is no need to seek permission in the event they suspect a person of being a source.[3]

The Australian journalist is also a less protected creature than counterparts across the Pacific pond. Free speech safeguards on the US imperial periphery are poor - there is no Bill of Rights to speak of in Australia, leaving citizens a mere legal invention on the part of the High Court. Down under, the common law remains king.

What stands out in the data retention law is that a journalist can face jail for up to two years for reporting on the new "journalist warrant system," be it the "existence or non-existence" of it. The secrecy fascination, and the incentive against publication, is thereby retained. Even one of Rupert Murdoch's employees, Campbell Reid of News Corp Australia, expressed a concern that "these warrants can't be conducted in an open way".[4]

Recent national security laws have been suitably demented enough to suggest that reportage on the subject of secret intelligence operations will lead to punitive retribution by the state authorities. Turnbull is certainly right in one sense: the government regards scribblers and investigative journalists as sufficiently dangerous to warrant scrutiny.

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Notes:

[1] <https://www.businessspectator.com.au/news/2015/3/23/technology/leyonhjelm-flags-->

[data-retention-amendments](#)

[2] <http://www.crikey.com.au/2015/02/06/data-retention-will-hurt-you-not-criminals-heres-how/>

[3] <http://www.brisbanetimes.com.au/federal-politics/political-news/abbott-government-and--labor-reach-deal-on-metadata-retention-laws-20150319-1m2ozj.html>

[4] <http://www.theaustralian.com.au/business/media/journalist-jail-threat-in-metadata-law/-story-e6frg996-1227270296737>

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