



**Australian
Privacy
Foundation**

<http://www.privacy.org.au>

Secretary@privacy.org.au

<http://www.privacy.org.au/About/Contacts.html>

18 August 2009

Mr Mark Scott
Managing Director
Australian Broadcasting Corporation
G.P.O. Box 9994
Sydney NSW 2001

Dear Mr Scott

Privacy Aspects of the ABC Code

The Australian Privacy Foundation is the country's primary advocacy body specialising in the public interest in privacy. It does not claim privacy as an absolute value, but rather seeks appropriate balances. Further information is at <http://www.privacy.org.au> and attached.

During the 'Australia's Right To Know' event in March this year, the APF drew to the delegates' attention the very limited guidance that is provided to journalists in such documents as the Australian Press Council's Privacy Standards and the various Codes of Broadcasting Practice. The ABC Code of Practice, even supplemented by 11.9-11.10 of the ABC's Editorial Policies, also falls far short of encapsulating the decades of experience that has been gathered. Much more is needed.

The APF has published a policy statement, proposing that journalists' professional judgements about when privacy intrusions are and are not justified should be made within a Framework, and subject to Guidelines. And it includes what the APF thinks is appropriate in each case, as a foundation for a mature debate. The document is attached, and is published on the Web at <http://www.privacy.org.au/Papers/Media-0903.html>.

We note from public statements by yourself, and by Mr Paul Chadwick, that the ABC has a great deal of sympathy with the proposition that clearer and fuller guidance is needed.

We suggest that there would be considerable value in a meeting with you to discuss an adjunct document to the ABC Code to establish such a Framework and Guidelines. On the APF's side, we would suggest Professor Graham Greenleaf of UNSW and AustLII; Nigel Waters – former Deputy Privacy Commissioner, and FOI and Privacy consultant; and myself.

Yours sincerely

Roger Clarke
APF Chair, on behalf of the Board
chair@privacy.org.au, (02) 6288 6916

The ABC and Privacy

ABC Code of Practice – Update of 2008

http://www.abc.net.au/corp/pubs/documents/200806_codeofpractice-revised_2008.pdf

2.8 Privacy. The rights to privacy of individuals should be respected in all ABC content. However, in order to provide information which relates to a person's performance of public duties or about other matters of public interest, intrusions upon privacy may, in some circumstances, be justified.

Scott M. (2009) Address to the Australia's Right To Know Conference, 24 March 2009, at <http://www.australiasrighttoknow.com.au/image/RTK%20Speech%20MARK%20SCOTT%20ABC.pdf>

"All this has given added impetus to the ABC's commitment to review its own codes and practices. ... To do otherwise, would be to desert our own staff ... We demand transparency from our political masters. We must deliver it ourselves. ...

"... we must be aware that for many in the public, media excess is an issue generating more commentary than media freedom. Many would argue that the media has never been more intrusive, has never had more power. ... To make a compelling case for media freedom, we need to be robust in demonstrating the responsible use of media power and genuine leadership.

"To this end, the ABC is busily involved in a review of its self-regulation mechanisms ... What the government, the board and the public ask back from us is the independent maintenance of standards of editorial integrity. The self-regulation process is an acknowledgment that, in an ever-changing world, we must develop and adhere to journalism of integrity.

"A free media stays free when it is understood by the society it serves to be exercising power legitimately. If it is not accountable, it lacks legitimacy. I believe that a commitment to robust self-regulation needs to go hand-in-hand with a push for media freedom. It will make our arguments with authorities more credible, more effective.

"Self-regulation in media comprises these elements:

- a set of standards which are made public;
- training for staff in what those standards require;
- fair handling of allegations that the standards have been breached;
- just and proportionate consequences for breaches;
- being as transparent as possible;
- recording what the cases teach about the practical operation of the standards; and
- feeding all this experience back into continuous improvement."

Chadwick P. (2008) 'Adapting to digital technologies: Ethics and privacy'
Proc. Future of Journalism Summit, Sydney, 2 May 2008, at

<http://www.abc.net.au/corp/pubs/documents/futureofjournalism-ethicsprivacy.pdf>

"The literature suggests that there is a test media decision-makers can ask themselves every time circumstances arise that seem to put privacy in the balance against another value. The test can be summarised as –

Does the public interest in disclosing
irretrievably,
at this time,
this information,
outweigh
a person's
reasonable expectation of privacy?

"Every key word of that test helps us to focus more precisely on what we are deciding, and on how we will explain our decision, whatever we may decide in the case at hand."

Australian Privacy Foundation

Background Information

The Australian Privacy Foundation (APF) is the primary national association dedicated to protecting the privacy rights of Australians. The Foundation aims to focus public attention on emerging issues that pose a threat to the freedom and privacy of Australians. The Foundation has led the fight to defend the right of individuals to control their personal information and to be free of excessive intrusions.

The APF's primary activity is analysis of the privacy impact of systems and proposals for new systems. It makes frequent submissions to parliamentary committees and government agencies. It publishes information on privacy laws and privacy issues. It provides continual background briefings to the media on privacy-related matters.

Where possible, the APF cooperates with and supports privacy oversight agencies, but it is entirely independent of the agencies that administer privacy legislation, and regrettably often finds it necessary to be critical of their performance.

When necessary, the APF conducts campaigns for or against specific proposals. It works with civil liberties councils, consumer organisations, professional associations and other community groups as appropriate to the circumstances. The Privacy Foundation is also an active participant in Privacy International, the world-wide privacy protection network.

The APF's Board comprises professionals who bring to their work deep experience in privacy, information technology and the law.

The following pages provide access to information about the APF:

- papers and submissions <http://www.privacy.org.au/Papers/>
- resources <http://www.privacy.org.au/Resources/>
- media <http://www.privacy.org.au/Media/>
- Board-members <http://www.privacy.org.au/About/Contacts.html>

The following pages outline several campaigns:

- the Australia Card (1985-87)
<http://www.privacy.org.au/About/Formation.html>
- the Medicare Smart Card (2004-06)
http://www.privacy.org.au/Campaigns/ID_cards/MedicareSmartcard.html
- the Human Services Card (2005-06)
http://www.privacy.org.au/Campaigns/ID_cards/HSCard.html
- the Australia Card Mark II (2005-06)
http://www.privacy.org.au/Campaigns/ID_cards/NatIDScheme.html
- the 'Access Card' (2006-07)
http://www.privacy.org.au/Campaigns/ID_cards/HSAC.html