



**Australian
Privacy
Foundation**

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28 May 2010

To:
Mr. Chris Chapman,
Chair
Australian Communications and Media Authority (ACMA)
PO Box Q500, Queen Victoria Building NSW 1230
(By post and email)

AND

Ms Karen Curtis
Privacy Commissioner
Office of the Privacy Commissioner
GPO Box 5218 Sydney NSW 2001
(By post and email)

Re: Google Wi-Fi – Complaint re unauthorised interception

Dear Mr Chapman and Ms Curtis,

This letter is an urgent request to the Australian Communications and Media Authority (ACMA) and the Office of the Privacy Commissioner (OPC) to take action regarding the interception of private communications during the Google Streetview capture of Wi-Fi meta-data and personal information in Australia.

In May 2010, Google revealed that it had been collecting information from Australian wireless networks. This information included meta-data (for example, the name and MAC address of some networks) and personal data (for example email content and web browsing history from some networks). The collection was undertaken by Google Street View vehicles, as they drove past millions of homes and businesses.

The Australian Privacy Foundation urges you to take urgent steps to ensure that the data at the heart of this matter is not destroyed, and that it is returned to Australia immediately for inspection by regulatory authorities (including at least the ACMA and the Office of the Privacy Commissioner), if it has been transferred overseas.

The Australian Privacy Foundation has written to Google Australia asking them not to destroy the data, and placing them on notice that we are considering potential legal action regarding the data. However, we have not had a response and we believe you may need to act immediately.

At this stage we have not decided whether or not to pursue any legal action, but we believe there are strong grounds for consumers to pursue their legal rights under the *Privacy Act 1988* and the *Telecommunications (Interception and Access) Act 1979*.

The potential grounds for action are summarised very briefly in this letter:

Privacy Act 1988

Google Australia is required to comply with the National Privacy Principles. The Australian Privacy Foundation is considering a complaint that Google has breached NPP 1 Collection, NPP 9 Trans Border Data Flows and/or NPP 10 Sensitive Information. Section 36 and Section 38 of the Privacy Act allow for individual and representative complaints.

Telecommunications (Interception and Access) Act 1979

Section 7 of the Act prohibits unauthorised interception of a communication passing over a telecommunications system. Several exceptions apply, none of which are relevant to Google. The Act includes both criminal and civil penalty regimes. The Australian Privacy Foundation is considering a (civil) complaint that Google has breached sub-section (3) of Section 107A. The relevant provisions only require that an interception of a communication has occurred. They do not require any additional disclosure of the communication. Sub-sections 7-10 provide a series of remedies, including a declaration of unlawful conduct, injunctions and damages.

In both these potential causes of action access to the data captured by Google is essential. The admission by Google that the data exists may not be sufficient. The Australian Privacy Foundation is very concerned about media reports suggesting that the data has been transferred from Australia to a third country.

We would be grateful if you could provide a response, outlining the steps your organisation is taking to investigate this incident, and to ensure that the data is not destroyed and that it is returned to Australia for inspection by regulatory authorities.

For the purposes of communication on this matter you can contact Chris Connolly on behalf of the Board of the APF. His contact details are:

Chris Connolly
Member of the Board
Australian Privacy Foundation
Mobile: 0414 938942
Email: chrisc@galexia.com.au

As this is an urgent matter we will be communicating by email. We have sent a hard copy of this letter, but you should not delay any action pending its arrival.

We look forward to your prompt action and response.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Roger Clarke', with some scribbles and a horizontal line extending to the right.

Roger Clarke
Chair
Australian Privacy Foundation
APF Web site: <http://www.privacy.org.au>