



**Australian  
Privacy  
Foundation**

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

17 September 2012

Prof. Ian Young AO  
Vice-Chancellor, Australian National University

Dear Professor Young

**Re: Microsoft Office 365**

The Australian Privacy Foundation (APF) is the country's leading privacy advocacy organisation. A brief backgrounder is attached.

We note the article in itNews of 6 August 2012, which reported that ANU is to deploy Microsoft Office 365: <http://www.itnews.com.au/News/310922,anu-rolls-out-office-365-to-staff.aspx>.

Cloud services embody considerable additional risks not only to privacy, but also to confidentiality and intellectual property. The APF expressed concern to Universities Australia, 2-1/2 years ago, about a number of aspects of Universities' operations with potentially serious impacts on the privacy of staff and students. A copy is attached. Unfortunately, UA provided no meaningful response.

The ANU is well-known to have a strong focus on the Asia-Pacific. Inevitably, many ANU staff and students are in positions of some sensitivity in relation to the regimes in their countries of origin. In addition, many other staff-members are likely to be concerned, and for good reason. Their communications would pass not only outside the university's control, but also out of the country, and into one or more countries that have both inadequate privacy laws and other relevant laws inconsistent with Australia's. Yet worse, their communications would be in the hands of an American corporation that is subject to US laws which assert extra-territorial powers and purport to make all such data, nomatter where that data is held, accessible by US government agencies.

The APF requests your advice regarding the Privacy Impact Assessment conducted prior to this project being commenced; a copy of the resulting PIA Report; an explanation of what contingent liabilities the ANU has allowed for and what mitigating measures it has designed to address the measure's privacy impacts; and a copy of the communications provided to ANU staff and students to ensure that they are fully informed of the steps that they need to take to protect their privacy.

Thank you for your consideration.

Yours sincerely

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## The Privacy Policies and Practices of Australian Universities

Privacy is a fundamental human right established through international law. In addition, privacy is a crucial component of academic freedom. The APF is concerned about a number of current practices in Australian universities. The following provides an outline of key aspects of those concerns.

### 1. IT Usage Policies

IT Usage policies generally permit universities to gain access to the content of emails sent or received by staff members. However, some policies purport to provide universities with this right, at will and for any reason. One that we have seen even states that staff members should hold no expectation of privacy at all when using university IT resources.

This approach is in distinct contrast to the position with other communications media, and other means of observing staff behaviour. The law constrains the actions of employers in relation to surveillance and interception in almost all of their forms, including sound, still-image, video and telephonic communications and behaviour. Parliaments and the courts have established balances between the interests of employers and employees. It is inappropriate, and counterproductive, for employers to take advantage of the interlude prior to formal regulation of Internet usage to establish draconian provisions in relation to email, VOIP and other Internet-based communications, and staff behaviour in Internet contexts such as the Web and P2P networks.

A recent, practical example demonstrates the negative implications of privacy-hostile IT Usage policies. The Department of Innovation, Industry, Science and Research (DIISR) has commenced a Sustainable Research Excellence Survey which requires academic staff members to provide detailed personal information. Staff members taking part in the survey are assured that their data will be “collected and maintained in accordance with the provisions of the *Privacy Act 1988 (Cth)*”. However, when reading that Act in conjunction with the universities' IT Usage policies, the data might be claimed to be available for additional purposes beyond the primary purpose. The broad nature of circumstances under which staff emails can be accessed may cause a legitimate reluctance on the part of university staff to participate in what could otherwise be a useful study.

The APF's concerns are of course not limited to academic staff. A university is a complex community, and many participants have privacy interests that need to be protected. Examples include staff who provide employment issues, union discussions, counselling services, communications relating to mental health, and information that could compromise people's safety.

Finally, university students also have legitimate expectations of freedoms – certainly not unlimited freedoms, but equally certainly the scope to experiment and to challenge conventions, including the conventions to which their teachers and their administrators subscribe.

### 2. The Outsourcing of Services

A trend is evident among Australian universities towards cloud computing solutions. These embody very considerable security and privacy risks. It appears that universities are adopting these approaches without first performing a sufficient privacy analysis in the form of a Privacy Impact Assessment (PIA). The conduct of a PIA ensures that all affected parties are informed in advance of the university's intentions, that all issues are identified, and that all parties appreciate one another's perspectives on the matter.

University staff, and postgraduate and undergraduate students are understandably very concerned about these developments. So too are people who correspond with academics and students, because their emails and the attachments that they exchange with academics and students may reach people other than the intended recipients, and may be stored on devices distant from them, outside their direct control, and quite possibly in another country.

We are very concerned that personal information of staff and students is at risk of floating out of control. Further, in light of the restrictions placed on such transfers under Australian privacy law, we question the lawfulness of this approach.

## 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 is open to membership by individuals and organisations who support the APF's Objects. Funding that is provided by members and donors is used to run the Foundation and to support its activities including research, campaigns and awards events.

The APF does not claim any right to formally represent the public as a whole, nor to formally represent any particular population segment, and it accordingly makes no public declarations about its membership-base. The APF's contributions to policy are based on the expertise of the members of its Board, SubCommittees and Reference Groups, and its impact reflects the quality of the evidence, analysis and arguments that its contributions contain.

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

The Board is supported by Patrons The Hon Michael Kirby and Elizabeth Evatt, and an Advisory Panel of eminent citizens, including former judges, former Ministers of the Crown, and a former Prime Minister.

The following pages provide access to information about the APF:

- Policies <http://www.privacy.org.au/Papers/>
- Resources <http://www.privacy.org.au/Resources/>
- Media <http://www.privacy.org.au/Media/>
- Current Board Members <http://www.privacy.org.au/About/Contacts.html>
- Patron and Advisory Panel <http://www.privacy.org.au/About/AdvisoryPanel.html>

The following pages provide outlines of several campaigns the APF has conducted:

- The Australia Card (1985-87) <http://www.privacy.org.au/About/Formation.html>
- Credit Reporting (1988-90) <http://www.privacy.org.au/Campaigns/CreditRpting/>
- The Access Card (2006-07) [http://www.privacy.org.au/Campaigns/ID\\_cards/HSAC.html](http://www.privacy.org.au/Campaigns/ID_cards/HSAC.html)
- The Media (2007-) <http://www.privacy.org.au/Campaigns/Media/>