



**Australian
Privacy
Foundation**

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

15 July 2011

Mr Iarla Flynn, Public Policy & Government Affairs for Google Australia and New Zealand

Ms Jane Horvath, Global Privacy Counsel, Google

Dr Alma Whitten, Director of Privacy for Product and Engineering, Google

Dear Iarla, Jane, Alma

Re: Google+

I refer to our letter to you dated 30 June and Ishtar's reply of 6 July.

We note that you provided no response concerning privacy design documentation for Google+.

Further, we understand that:

- (a) you intend holding a first meeting with advocacy organisations only after a further four months have elapsed, and hence long after the current phase of Google+ development
- (b) you may or may not include Google+ as a meaningful component of the agenda

November will mark the 4th anniversary of APF commencing in earnest its endeavours to achieve engagement with your company.

The attachment to this letter assesses the company's behaviour against the APF's expectations of effective consultation processes.

The shortfall is so substantial that we have no option but to communicate to the media, and to regulators, that Google continues to constructively avoid engagement with civil society, despite longstanding and ongoing attempts by the APF.

Please add the apfboard@privacy.org.au alias to the mailing list for the group.

Yours sincerely

Roger Clarke
Chair, for the Board of the Australian Privacy Foundation
(02) 6288 1472 Chair@privacy.org.au

The APF uses a set of indicators, published at the above URL, as a basis for assessing the quality of an organisation's engagement with civil society in relation to privacy concerns.

The indented comments evaluate Google's behaviour in the period 2007-11 against this standard.

Positive Indicators of Effective Consultations

Initiation

- *Initiation by the sponsoring organisation*

Google made contact once, in 2007-08. Otherwise, APF has had to initiate contact.
- *Evidence of executive commitment to identify and address privacy concerns*

Meetings have been long-delayed, with the reasons given including Google HQ not approving funds for the relevant person to travel to Australia, and the combination of time-zone challenges and family requirements.

The US executives do not reply to submissions made to them.

The key US executive was shielded from APF by Google Australia during her visit in early 2011, and has been further shielded through non-provision of her email-address.

Communications come primarily from the most junior member of the team.
- *Active effort by the sponsoring organisation to identify, and gain the involvement of, the relevant privacy advocacy organisations*

Only after sustained submissions from APF over more than 3 years has Google Australia indicated an intention to make contact with other relevant organisations.

Even then, the company indicated that a lead-time of 4 months was necessary to organise a meeting.

Conduct

- *Provision to privacy advocacy organisations of sufficiently comprehensive and clear information about the proposal, in advance of meetings*

At best, Google sends the URLs for blog-postings, which are promotional in nature.

Requests for substantive information have been ignored.
- *Provision of verbal briefings to supplement the previously-distributed information*

The verbal briefing in advance of the release of StreetView in mid-2008 contained meaningful information, and APF was able to identify to Google in advance a range of problems with the initiative. They duly arose when the product was launched.

The verbal briefings provided in the two meetings that have occurred since then have not been of sufficient depth to enable any meaningful analysis to be undertaken.
- *A practical approach to any confidentiality and security issues*

No confidential information has been provided.

The company has outright refused to conduct any more pre-briefings since the StreetView meeting in 2008, despite APF respecting those confidences at that time.
- *Facilitation of interactions among stakeholders in order to identify concerns, clarify issues, define problems, and come up with ways to avoid or at least mitigate negative privacy impacts*

The APF has no knowledge of what contact Google Australia has had with what other consumer advocacy organisations. That might change in November 2011.

- *Documentation of the outcomes of consultations*
 In 2008, APF amended its Policy Statement on StreetView to reflect the discussions (while taking care to avoid breaching the confidentiality of detailed information).
 Otherwise, there have been no outcomes of sufficient consequence to be worth documenting.
- *Progressive development of an 'issues register' to record problems and their potential and agreed solutions*
 After almost 4 years, Google has still not reached the point of accepting that problems need to be identified, catalogued and addressed.
- *Progressive development of a 'privacy design features paper', showing which features are intended to avoid or mitigate which privacy issues*
 In October 2010, when it appointed Alma Whitten as Director of Privacy, it appeared that Google US had given undertakings to establish privacy designs for its products.
 Google Australia has prevented APF from contacting Alma.
 It has ignored APF's specific request for the privacy design for Google+.
 The conduct of Privacy Impact Assessments is strongly recommended by regulators for all initiatives that have significant privacy impact. The APF has no evidence that Google has performed PIAs on any of its products, even Google+.

Results

- *Outcomes that demonstrate accommodation of the perspectives of the consultees, e.g. assimilation of impact avoidance and impact mitigation measures into subsequent rounds of documentation, and into design and implementation activities*
 At no stage has Google shown any evidence of taking any submissions from APF into account in the design of their products.
- *Specific commitments to avoidance and mitigation measures as part of the design*
 Apart from media reports, APF has been provided with no information about undertakings given to the US regulator, nor to Australian regulators, including the Australian Privacy Commissioner. APF is excluded from such discussions.
- *Control mechanisms to ensure carry-through on the commitments*
 APF is aware of no evidence of any such controls existing.

Negative Indicators

- *Communication-avoidance behaviours, such as non-response to communications, slow responses or vague responses that fail to address the questions asked*

Senior staff avoid ongoing contact, and only three meetings have been achieved in almost 4 years, all but the first only because of persistence by APF.

APF includes specific requests and proposals in its communications, many of which are ignored in the responses that Google provides.

Google has expressly refused to provide any information to APF in advance of the launch-date of products and features.

Despite specific requests, Google has failed to provide any substantive documentation, and merely points to promotional entries on blogs, and to videos.
- *Engagement-avoidance behaviours, such as the absence of key staff from meetings, and the use of consultants not only as facilitators and advisors but also as a shield between the organisation and the consultees*

No such behaviours have been evident.
- *Unwillingness to provide travel expenses and per diems to ensure that the appropriate people can participate in events*

No request has yet been made to Google to assist with expenses or per diems.
- *Stage-managed meetings that are dominated by briefings and 'talking at' participants and that limit the air-time for participants to enquire, discuss and suggest*

Meetings have not been stage-managed, and discussion has been open.

The problem has been the lack of depth that has been achieved since the StreetView meeting.
- *Defensive behaviours, such as unrealistic or excessive approaches to confidentiality or security issues, ill-justified denial of information, or the ruling of relevant aspects of the matter to be off the agenda*

With the exception of the StreetView event, Google has refused to provide any confidential information or even any detailed information.
- *Commitment-avoidance behaviours, such as statements to the effect that the organisation reserves the right to cancel the process or ignore the outcomes, or that staff present at meetings do not have the authority to bind the organisation*

No such behaviours have been evident.
- *Inadequate follow-up to meetings*

No momentum has yet been gained, and hence no such behaviours have been evident.
- *Absence of effort to sustain corporate memory through the process, e.g. through staff-turnover without strong handover/takeover procedures*

No such behaviours have been evident.
- *Inadequate follow-through on commitments made*

Few commitments have been made, so no such behaviours have been evident.