



**Australian
Privacy
Foundation**

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

Secretary@privacy.org.au

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

25 July 2013

Mr I. Flynn
Google Australia

cc: Matt Dawes, Google Australia

Dear Iarla

Re: Invitation to a 'Roundtable': Security & Google Glass Demo

We refer to Matt Dawes' invitation to be exposed to Glass, to wear Glass, and to be provided with Google's insights into Glass.

Such PR events are pleasant and informative.

However, it appears that they are being used as a substitute for engagement by Google Aust with civil society.

We reiterate the points made in our previous correspondence to you (attached), to the effect that engagement involves:

- (1) advance notice of releases that may give rise to privacy concerns
- (2) prior consultation about intended services and features

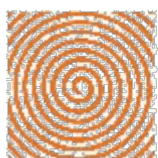
The concept of 'privacy by design' involves early interactions that can give rise to early feedback, whereas the approach you are adopting is guaranteed not to deliver any useful input from civil society. It's small wonder then that your company's current approach has been described as 'see what you can get away with, and then seek forgiveness for the excesses'.

We request your advice as to when Google Aust will adopt a robust and professional approach to engagement with advocacy organisations.

Thank you for your consideration.

Yours sincerely

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



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Consequences of Google's Ongoing Failure to Engage with Civil Society

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The email below, sent to Google on 27 August 2010, is yet another endeavour to convey to Google Australia and the Googleplex that not only do they have a responsibility to engage with privacy advocacy organisations, but it's also to the corporation's advantage to do so.

On 27 August 2010, a journalist at 'The Australian', who has a strong record in writing privacy-relevant articles, sought a comment from the APF in relation to yet another feature of Google's services that had been released without prior notice, and that appeared to have negative privacy impacts. The journalist sought clarification from Google Australia but the succession of somewhat different answers were anything but clear.

During the day, The Australian published [an article on the feature](#). The article quoted the APF Chair. Within the day, Google Australia's Public Policy & Government Affairs exec, Iarla Flynn, wrote to the APF Chair, saying that the story contained a number of mis-understandings about how the service works.

The APF's reply to Iarla was as follows:

To:

ifylenn@google.com (Iarla Flynn, Public Policy & Government Affairs, Sydney)

janehorvath@google.com (Jane Horvath, Senior Privacy Counsel, Googleplex)

Subject: Re: Phone calls from Gmail fyi

Dear Iarla, Jane

Thanks for your email this afternoon, Iarla.

When we met in February, we gained from you the clear impression that you were going to take steps to engage with APF and perhaps other advocacy organisations.

Since February, a series of major issues has arisen involving Facebook. [Here](#) is my personal take on those issues, not APF's.

These are not Google's direct concern, of course; but they raised the temperature, and they sensitised the media's antennae, and it would have been reasonable to expect that Google would have inferred an increased need to get out ahead of problems.

Since February, several major issues have also arisen involving Google.

But there is still no engagement mechanism in place.

To make this abundantly clear - it's good to have one another's email-addresses and phone-numbers, but that by itself is not engagement.

Yet again, a feature has been unleashed, for which it appears:

- no consent has been sought from users
- no notice has been given to users
- no consultation has been undertaken with advocacy groups
- no documentation has been published

To once again speak plainly, a blog-entry is not documentation. It's chat, not design details. And it gives no formal undertakings in relation to terms of service and privacy. And in any case, the blog entry and the links it points to appear not to address the points at issue.

So it's no surprise at all that confusion is arising in media reports.

In addition, when APF Board members field questions from the media, we don't have the time to dash around trying to find someone in Google to answer some questions.

Once more, we advise that, if and when Google moves to a professional approach to engagement with advocacy organisations, we will work hard to ensure that our responses to the media reflect the information that we have been provided with, in advance, by your company.

I've negotiated with the journalist concerned to vary the quotation from me that appears in the article, in order to reflect the migrating public understanding of the nature of the latest changes.

Regards ... Roger (as Chair, APF)

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Date: Thu, 2 Sep 2010 21:42:03 +1000
To: Jane Horvath <janehorvath@google.com>, Iarla Flynn <iflynn@google.com>
From: Roger Clarke <Roger.Clarke@xamax.com.au>
Subject: Re: Meeting with Google?
Cc: Ishtar Vij <ishtarv@google.com>, apfboard@privacy.org.au

Dear Jane, Iarla, Ishtar

At 10:48 +1000 31/8/10, Ishtar Vij wrote:

> ... Jane will be available on Monday 13 September, any time from 10.30am.
>She will be in Tokyo so we propose a meeting at the Google offices in
>Pyrmont Sydney, where we can use our VC facilities to talk with Jane. ...

Thanks for your email.

My notes from our meeting in February confirm that the next meeting was intended to "do greater depth on Google's approach (i.e. Google gets to 'speak in reply'), and perhaps a case study of one of Google's products".

But 6 months have passed since then, and we've lost a lot of time.

Yes, it would be good to have briefings on the topics you suggest.

But it would be even better if we could include an extra agenda-item that's concrete and forward-looking.

The primary concern is that we establish a mechanism for engagement.

Engagement has two facets:

(1) advance notice of releases that may give rise to privacy concerns (whether justified or not).

This mechanism would provide us with some information to work from when the media contacts us for comment. There are two possibilities:

- (a) if we believe there are problems, we'll say so; but the media reports are likely to deal with real issues, not imaginary ones
- (b) if we judge that the media's concerns are groundless, we'll hose the story down. We often do this when we sense that the story is a beat-up. There's no benefit whatsoever, to any of the parties, in mirages getting legs

Is Ishtar's note on 31 Aug about the new Gmail Priority Inbox feature a once-off? Or have you established a business process whereby we'll receive notices like that in future?

(2) consultation about intended services and features, sufficiently in advance of their release that discussions between the company and the privacy advocacy organisation(s) can influence the design.

Some examples of the benefits of this kind of forward engagement:

- we warned about several aspects of StreetView, but the discussions were too late, the product launched, and the media pounced on several of the things we'd drawn to the company's attention as being problems
- if the StreetView briefing had fully disclosed, including the Wifi sampling feature, Dan Svantesson and I would have been very likely to immediately latch on to the key issues of data capture and the likely breach of the TIAA
- the Google Buzz pickle at the beginning of the year could have been avoided if the design had reflected input from the privacy advocacy community

I have prior commitments in Canberra on Mon 13 Sep, and I can't make the necessary 8 hours available to get to Sydney for a video-conference.

Chris Connolly, Graham Greenleaf and Julie Cameron have confirmed.
Re Graham and Julie, see <http://www.privacy.org.au/About/Contacts.html>

We confirm that they will be at your front desk just before 10:30am, Mon 13 Sep.

Regards ... Roger (as Chair, APF)

Roger Clarke <http://www.rogerclarke.com/>

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Visiting Professor in Computer Science Australian National University



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26 January 2011

Mr I. Flynn
Public Policy & Government Affairs, Google Australia

Ms J. Horvath
Global Privacy Counsel, Google Inc.

Dear Jane, Iarla

A belated Happy New Year.

We wrote to you back on 2 September 2010, identifying the two aspects of engagement between Google and APF that we consider to be important.

As per the attached copy of that email, those two aspects are:

- (1) **advance notice of releases that may give rise to privacy concerns.** This is a second-best approach to engagement, but it would enable APF (and indeed any other advocacy organisation) to provide reasonably informed comment to the media following the release
- (2) **prior consultation about intended services and features.** If this is done sufficiently in advance of the release, discussions between the company and the privacy advocacy organisation(s) can usefully inform the design

Thank you for your occasional emails of copies of blog-postings after a new product or feature has been released; but that is not engagement.

It was not possible for any of the relevant Board members to be in your offices on 13 September – which is the only timeslot that you have proposed for a meeting during the last 12 months.

We've heard nothing further on the matter since then, apart from a brief note from Ishtar on 18 October.

Would you please advise whether and when you will commence meaningful engagement between our two organisations.

Thanks.

Yours sincerely

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

Date: Thu, 2 Sep 2010 21:42:02 +1000
To: Jane Horvath, Iarla Flynn
From: Roger Clarke
Subject: Re: Meeting with Google?
Cc: Ishtar Vij, APF Board

Dear Jane, Iarla, Ishtar

...

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...

Regards ... Roger (as Chair, APF)



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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.



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2 December 2011

Mr I. Flynn
Ms I. Vij
Public Policy & Government Affairs, Google Australia

Dr A. Whitten
Director of Privacy, Product and Engineering, Google Inc.

Dear Alma, Iarla, Ishtar

Re: Meeting on 29 November 2011

Thanks for organising this meeting. It was a useful event.

I confirm a couple of key points that we made during the meeting:

1. A process for international engagement is vital

Interactions with EFF, CDT, and regulators whose names cannot be spoken do not constitute engagement with civil society. The key players in the privacy space internationally are PI and EPIC

2. We need to consolidate a process for engagement in Australia

Key features we propose are:

- Persistence of the group
- 2-3 such meetings per annum
- Cumulativeness of content
- Documentation, at least URLs in advance and slide-sets with or soon after
- Discussion in advance of release of new products and features, under embargo by all means, to deliver value rather than post-release criticism

We look forward to your responses to these points.

Thanks for your consideration.

Regards

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