

Template for Comments to WGIG on Draft Working Papers Identifying Issues for Internet Governance

Second Australian Comments on the Draft WGIG Issues Paper on Consumer, User Protection and Privacy (11 March 2005)

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Do you have any comments on the process of determining the issues and their presentation by the WGIG?

Already addressed in previous comments by Australia.

	<p>For each paper you wish to comment on (Please repeat as many times as required) Name of the paper:</p> <p>Second Australian Comments on the Draft Issues Paper on Consumer, User Protection and Privacy (10 March 2005)</p>
	<p>Comments:</p>
	<p>Does the paper cover the topic with sufficient depth and accuracy?</p>
	<p>Further to our earlier, more general comments on this paper, Australia would like to add the following:</p> <p>Australia feels that the issues have not been sufficiently explored, and that some of the points represented are inaccurate. One particular area of concern is the idea that security and privacy are two opposing endeavours (issue 3, SWOT Analysis). Australia feels that they are rather two aspects of the same concern – the pursuit of a safe and secure Internet environment. As such, security practices can, and should, enhance privacy.</p> <p>A second concern we would like to raise is the assertion that there is no major international forum for discussing privacy issues. We believe that the Asia Pacific Economic Cooperation (APEC) is making significant progress in this area in its creation of privacy principles that are sympathetic to the different cultural views of the concept of privacy. In addition, Data Commissioners from around the world hold annual conferences on privacy issues which are open to anyone. The conference in 2003 was held in Australia (see http://www.privacyconference2003.org/home.asp).</p> <p>We consider the discussion in section 7 on page 3, under the ‘privacy’ subheading is seriously flawed. It starts with the statement that there is currently no universal agreement on privacy issues. This is consistent with the earlier statement by WGIG that privacy is culture-bound. The section nevertheless continues on the basis that the EU has set the ‘benchmark’ for other countries to meet, therefore positing that the EU’s approach is superior to any other nation’s. The EU is not an international organisation, but a regional group. Moreover, its approach to privacy issues is a reflection of the history and culture of the European region</p> <p>Australia has not “attempted to meet the EU benchmark”, amongst other things, because Australia does not believe it is an appropriate benchmark and it has not been adopted as such by Australia. Accordingly, it is inappropriate to judge Australia against this benchmark and to have deemed it to have “failed”.</p> <p>Australia has a strong history in privacy research and management. Australia has developed its own standards for the benefit of the Australian people, while also referring to valuable input from international organisations that deal with privacy issues. Australia has had a clear privacy regime supported by national law since 1988, which was formulated with the consideration of the 1980 OECD Guidelines on the Protection of Privacy and Transborder Flows. In addition, Australia’s Justice Michael Kirby chaired the committee that developed these guidelines.</p>

Australia's privacy model is the culmination of extensive experience in and research of privacy protection. In 2000, Australia enacted private sector privacy laws based upon broad consultation with the Australian public. These privacy laws contained provisions for transborder data flow. Australia approached the European Commission in relation to these laws to obtain an 'adequacy rating'. On 26 January 2001, the Article 29 Working Party of Data Protection Commissioners (established under the relevant EU Directive) issued an opinion on 26 January 2001 that did not support an adequacy rating. With some exceptions, the Australian Government has rejected the comments made by the Working Party, and negotiations which are expected to be concluded this year are continuing between Australia and the European Commission.

This is perhaps what the Working Paper was referring to when it stated that "the Australian effort has been declared not to meet the benchmark". This statement does not include the background and current status of the situation, and does not therefore represent a true picture. Furthermore, (as mentioned above), it fails to recognise that in an inclusive, multilateral environment, the EU approach to privacy should not and cannot be considered an international benchmark. As such, it is an inappropriate situation for the performance of countries to be measured against principles they have had no part in developing and no opportunity to discuss.