



Our privacy is about to be serially infringed

OPINION

By Michael Bradley

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Nobody put up a rationally argued case for why Australia needs a mass government surveillance program, but that's what we'll be getting when the data retention bill is given its final rubber stamp in the Senate, writes Michael Bradley.

In between bites of raw onion, the Prime Minister yesterday reassured all Australians with these words:

In the days when I was a journalist there were no metadata protections for journalists ... I was perfectly comfortable.

Sure, that was in 1986, before metadata even existed in its modern sense. But it is fitting as pretty much the final word on the debacle that is the data retention legislation now being imposed on an unsuspecting nation by agreement between both major parties.

The debate is over now, the Bill is going through with only the Greens and a few independents to raise objections. So it is timely to review where it leaves us (all of us).



PHOTO: This is one of those moments upon which we will look back and wonder, how on earth...
(Nic MacBean, file photo: ABC News)

The big picture

The Telecommunications (Interception and Access) Act will, in its new amended form, require all telecommunication carriers and internet service providers to store the metadata of all communications passing to and from their customers (that's all telephone calls, texts, emails and other digital communications) for two years. These will be available to criminal enforcement agencies.

What is metadata?

Finally, we have a definition, the Government having backed down and agreed to include the "data set" in the Act itself. This includes your name, address and other identifying information, your contract details, billing and payment information. In relation to each communication, it includes the date, start and finish times, and the identities of the other parties to the communication. And it includes the location data, such as the mobile cell towers or Wi-Fi hotspots you were accessing at the time.

The Act says that service providers are "not required" to keep content data - that is, the actual content of your email or text, or the subject line, or your internet browsing history. Well, that's nice, although it would have been nicer still if they'd prohibited the providers from keeping it. As it is, if they do choose to keep it, well, it's there isn't it. More about that later.

But be clear on this: the metadata will give anyone who wants it more information about you than your loved ones will ever know. Who you called, texted or emailed; when; for how long; and where you were when you did it. Every single time. Think about that.

What the cops can do

The good news is that the list of government agencies which can access your metadata has been reduced from 80 to 20. Mainly, it's the cops, ASIO and the various anti-corruption agencies, plus ASIC and the ACCC. Once they get their hands on it, the two year cut-off goes away; they'll be hanging on to every bit of data they acquire, forever.

Will you know when your metadata is being trawled?

No.

What's this stink about journalists?

A last minute deal was stitched together to address the media's complaints that the police will grab their data so they can identify their sources, particularly whistleblowers and other people the government of the day or the cops themselves don't like. Anonymous sources being the life blood of the journalism profession, after all.

The police will now need to get a special type of warrant from a judge before they can access a journalist's data, if they want it for the purpose of identifying a source. Except for ASIO, which only needs the AG's permission; unless it's really urgent, in which case they can just go ahead and do it anyway. The journalist isn't informed and has no means of challenging the warrant.

Really, that's just wallpaper, but two interesting elements jump out. What's a journalist? It's a "person who is working in a professional capacity as a journalist". Oh good, journalists are journalists.

And this: there's a new criminal offence, with a two-year jail term, for anyone who discloses the existence or non-existence of a journalist warrant, or anything about it. Hang on, I could be jailed for two years for saying that a warrant has not been taken out on a journalist's metadata? 100% pure Orwell. This is what you get when legislation is being drafted at 3am under the direction of people who have absolutely no idea what they're talking about.

What about us non-journalists?

Tough. No protections. But surely they've included special protections for communications between doctors and patients, and lawyers and clients? No. Never even discussed.*

I forget, why are we doing this?

If you say "death cult" enough times in enough inappropriate contexts, everyone eventually forgets that you never actually properly explained why the draconian, police-state law you keep demanding is the only thing standing between us and Islamageddon. In that sense, the Government has prosecuted its cause with great success.

The fact does remain, however, that nobody has put up a rationally argued case for what is in reality a mass government surveillance program. I won't trawl back through the various justifications that have been put up by the Government; it's tiresome and pointless.

You'd think that, before we decided as a society to allow our privacy to be serially infringed in this most intimate and comprehensive way, we'd want to be absolutely sure it was necessary. We didn't get that chance, and our Government and Opposition have let us down in the worst way in their joint unseemly haste to look strong. This is one of those moments upon which we will look back and wonder, how on earth...

***Editor's note (20/03/15): The original version of this article incorrectly stated that metadata could be obtained for civil litigation cases. This was possible under the draft legislation but amendments to the final bill prevent it from happening.**

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Topics: telecommunications, internet-culture, internet-technology, defence-and-national-security, federal-government

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Chubblo:

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If this goes through the senate which it probably will, I'll be voting either Greens or Independents in the federal election for the remainder of the hopefully short time I still live in this woefully governed country. Let's not forget also the spineless opposition who somehow forgot they're meant to "oppose" such draconian measures.

Alert moderator
