

EFA 2015 Annual Report

I am very pleased to present the Annual Report for 2015. This has been a very challenging year for EFA, and for digital civil rights in Australia. We saw the data retention legislation, that significantly threatens the privacy of all Australians, pass through parliament and move into implementation. And that isn't the only bad legislation that slipped through. We've also struggled to make progress on several other issues, with a government with a narrow legislative agenda.

We've continued to make changes to the way EFA works, with the twin goals of a more active and involved membership, and a stronger and more sustainable organisation both financially and organisationally. The two biggest changes this year were the creation of a fundraising standing committee, and starting to form local chapters to spread our message and pursue local campaigns. We surveyed members, and that gave us many insights not just into what you would like our priorities to be, but also who our members are, and suggested some areas where we could productively change the organisation that we are still considering. We've also begun planning other, very significant, changes to the legal structure of the organisation.

Campaigns and lobbying

It has been another busy year for EFA, as the government continued its enthusiasm for surveillance and censorship, and its reluctance for privacy and other reform.

We have continued to lobby via public campaigns and regular comment to government processes, and we have also stepped up our direct parliamentary lobbying. Our Executive Officer Jon acquired his own parliamentary pass, and it saw a lot of use in lobbying against data retention legislation in particular.

We also continued to work to enhance the effectiveness of our lobbying by strategic coordination with other organisations that we share policy goals with. In particular, we coordinated closely with Internet Australia (formerly known as the Australian branch of the Internet Society, or ISOC-AU), an organisation that, while not as strongly focussed on civil rights issues as EFA, shares our strong commitment to the core values of the Internet, and has a lot of credibility for its knowledge of Internet technical and policy concerns. We feel this has been an effective strategy. We've also worked with Australian Digital Alliance on copyright issues, Australian Privacy Foundation on privacy issues, and several other organisations.

A particularly good result this year achieved via parliamentary lobbying was the formation of a Parliamentary Friends of the Internet group, an initiative led by Internet Australia but supported by EFA, ADA, and others. This is a cross party group of MPs, supported by various groups with a strong interest in Internet policy, that will discuss Internet related policy issues. We hope that this will lead to Internet policy discussion in federal politics becoming more informed and more engaged with the Internet community.

Citizens Not Suspects campaign & data retention legislation

The biggest policy issue facing EFA this year was the data retention legislation that was passed in March 2015. This was EFA's highest priority issue this year, and we strongly lobbied against the legislation. With the government only able to pass the legislation with ALP support, and with a very

complicated piece of legislation that could greatly vary in its impact dependent on details, we chose a strategy that involved a lot of direct lobbying of MPs, in coordination with our colleagues at Internet Australia. We urged rejection of this legislation, we also urged MPs who were in favour that it was a complex and far reaching bit of legislation that should not be rushed through, and we advised on amendments that would reduce its impact. We feel that we changed the attitude of many MPs, and we were able to influence MPs to make many amendments to the legislation that removed some of its worst aspects. But ultimately, there was support for this flawed and dangerous legislation from high levels of both major parties (though strong opposition from some back benchers as well as some cross bench MPs), and it passed.

We have not given up the fight against it. The implementation has been handled extremely poorly, with many commentators deriding the incompetent handling by the Attorney Generals department, which (from the Attorney General on down) appears to have a very poor understanding of the legislation it has created. There are many details yet to be decided that significantly change the threats to privacy it creates. There are also reviews written into the legislation. We will continue to lobby against this legislation, both arguing for its repeal, and arguing to reduce the specific information collected to remove the most privacy invasive aspects. This will continue to be a high priority for EFA in 2016 and beyond.

Parliamentary lobbying was of course not the only campaign, we also campaigned against this legislation publicly. We largely tied this lobbying effort to our long running Citizens Not Suspects campaign, which is specifically targeted against mass surveillance programs and privacy invasive government policy. This campaign is primarily a social media campaign, mostly via Facebook and Twitter. We feel this campaign has met with a good response, with several thousand followers, but it needs to do better. We plan to continue with this campaign next year. Not only will we use this campaign to raise awareness of mass surveillance and privacy invasive legislation, we will use it to coordinate political campaigns, and to educate the public regarding privacy enhancing technology, such as Tor, VPNs, and encrypted messaging technology.

Some of our public campaigning was in conjunction with GetUp, and coordinating with them increased our outreach significantly.

Copyright reform

We believe the conditions are right for significant copyright reform in Australia. The Australian Law Reform Commission recommended significant reforms in its 2014 report on Copyright and the Digital Economy, and engaging with the digital economy has been a priority for senior ministers in both the Abbott and Gillard governments. EFA contributed to the ALRC process, has campaigned on the issue for several years, actively collaborates with other copyright reform lobbyists and lobbying organisations (such as the Australian Digital Alliance), and strongly supports suggested reforms, such as moving to a far more flexible US style 'fair use' system of copyright exemptions, rather than the current 'fair dealing' system.

Unfortunately, this desire for reform has not been shared by Attorney General George Brandis, who has not made responding to the ALRC report a priority, and very little has been done. Instead, he has focussed on proposals from lobbyists from copyright holders, such as movie and music industries, to concentrate on restricting internet use.

The ISP Copyright Code, essentially negotiated between rights holders and ISPs (facilitated by the government) without any significant input from users or copyright policy bodies, was an extremely problematic initiative. We continue to feel that the primary means to reduce Australians enthusiasm for illegal downloading of copyrighted content should be an industry that is capable of providing them with content in a timely and equitable manner, and methods to reduce downloading via punitive measures will be ineffective and have significant negative consequences (as has been shown by significant research). EFA was able to make submissions on the implementation of the Copyright Code and the focus on public awareness and positive reform will carry into 2016 and the years to come.

EFA was also able to contribute submissions in relation to the Copyright Amendment Bill (Online Infringement) bill which passed in July. This bill allows copyright owners to apply to the Attorney General to have an international web site blocked from access in Australia. We consider this bill a fairly terrible piece of legislation. It was pushed through with limited debate, and very quickly (the bill was first introduced very late in March), with support from both major parties, allegedly due to an urgent need. However, we understand no applications have been received by the Attorney General, and so the perceived urgency would seem to be nothing but an excuse to push it through with very limited consultation and debate. This bill is terrible - government mandated censorship to serve commercial purposes. We feel this fully justified our strong opposition to any form of internet filtering or censorship - even filtering technology that is put into place to filter truly abhorrent material will, once it is in place, for inappropriate purposes such as commercial market protection.

We are encouraged by Malcolm Turnbull's decision to move responsibility for copyright from the Attorney Generals department to Communications, but we have still not seen any positive action on copyright from this government. We will continue our lobbying efforts into 2016 in the hopes the Turnbull government will finally embrace positive copyright reform.

Cryptography

2015 was a relatively quiet year for cryptography policy in Australia, though there were worrying signs of government policy targeting strong encryption in several governments with strong ties to Australia (notably the US and UK), a battle we thought had been won in the 1990s with an understanding of the vital importance of strong encryption to the digital economy, so it is important to continue to monitor cryptography related policy.

A notable cryptography policy issue was the Defence Trade Controls Act, a piece of legislation that was designed to put strong export controls (and criminal offences) to restrict the sharing of defence related technology such as weapons systems. Unfortunately (and it appears as an oversight) this bill covered cryptography, and would have had the effect of criminalising Australian participation in the international cryptographic research community. EFA endorsed a petition signed by 221 cryptography researchers and members of the International Association for Cryptographic Research that supported amending this bill to exempt cryptographic research in the public interest.

Trans-Pacific Partnership Agreement

EFA continued to lobby against this secretive, un-democratic, and flawed agreement. Despite widespread opposition, negotiations were concluded this year. We must now focus on opposition to ratification of this agreement.

EFA was one of several organisations (including ADA, EFF, Public Knowledge, and Creative Commons International and over ten others) that signed an open letter on September 15 urging that intellectual property negotiations in the TPPA needed to be strongly protective of the rights of users of copyrighted works.

As we were writing this report, several months after the conclusion of negotiations, public access to the text of the agreement was finally possible, due to the government of New Zealand, and we can confirm that the areas of the bill that we were concerned about (such as in earlier leaked texts via WikiLeaks) are as bad as we feared. While there are many aspects of the agreement that are of very broad concern (such as the Investor State Dispute Resolution system), of particular relevance to EFA are provisions on intellectual property, Internet governance, and ISP liability.

The TPPA will force many signatory countries to extend their copyright terms to life+70 year from the standard life+50 years. This will not change Australian law (which has already signed on to life+70 as part of the 2005 free trade agreement with the USA), but will spread and entrench life+70. EFA believes the additional 20 years has very little value to the vast majority of copyright holders, and worsens problems such as orphan works, depriving the public of access to our shared cultural assets.

Provisions about digital rights management and digital content locks will disrupt and dismantle a legal regime in Australia that has carefully kept the distinctions between using DRM technology for copyright protection, and using DRM for other purposes (such as maintaining region coding for restraint of trade into market segments, or to lock competitors out of established markets).

There are provisions on domain names that, abandoning the decentralised and 'bottom up' principles of Internet policy, demand that country code domains implement dispute resolution policies similar to the ICANN UDRP - even though many of the signatory nations (including Australia) already have their own, arguably superior, systems.

It would force signatory nations to have intermediary liability regimes that are no better than the US Communications Decency Act, even though several signatory nations have existing regimes that are superior, and do not threaten fair use - Chile, for example, has a much more balanced judicial notice and takedown scheme.

Of particular concern is the expansion of intellectual property provisions to include strong penalties for revealing trade secrets, which we believe could be used to target whistle blowers and journalists, as well as hacktivism.

This is only a brief summary of the many issues with this agreement. In short, there are a wide range of problematic agreements in this agreement, which was developed in a manner that was opaque, secretive, and un-democratic, and should be properly debated by parliament, and we believe in many parts rejected.

EFA participated in rallies against the TPPA, spoke against it, and continued to support the Our Fair Deal Coalition (an international coalition in opposition to the TPPA agreement). EFA representative Angela Daly spoke at a TPP Roundtable which was held at a fringe event of the ACTU National Congress.

EFA will continue to be involved in the public debate about the TPPA, and the real necessity to seriously reconsider its ratification, throughout 2016.

ALP Revenge Porn bill

EFA made a submission to the ALPs exposure draft for a bill creating criminal offences for 'revenge porn', the phenomenon in which intimate media is shared without the consent of the subject, which frequently occurs as an act of revenge after a romantic relationship ends. We were generally positive about the bill, as we felt the protection for privacy was appropriately balanced against the risk of it being used for censorship, and there were several clauses to protect journalists and others who might reasonably possess such material for reasons in the public interest.

ICANN

EFA continued to be involved in lobbying at ICANN (the International Corporation for Assigned Names and Numbers), the organisation that has a central role in organising many domain name issues. EFA Chair David Cake served his second term as Vice-Chair of the Council of the Generic Names Supporting Organisation, the body that coordinates domain name policy for all global domain names (but not country code domains such as .au). David attended meetings in Singapore, Buenos Aires, and Dublin, plus an inter-sessional meeting in Washington D.C. His term as a GNSO Councillor for the Non-Commercial Stakeholder Group expires at the end of 2016.

ICANN is in the middle of a complex process of becoming less directly responsible to the United States government, replacing the oversight role it used to perform with accountability to the global Internet community. EFA has supported calls for increased accountability and transparency from ICANN as part of this process, and for ICANN to incorporate support for human rights into its decision making more.

A very significant issue this year was the Proxy and Privacy Service Provider Accreditation Issues Working Group (PPSAI for short), which focussed on the proxy and privacy services that are vital for anyone who wants to register a domain name without making their contact details available to anyone on the internet. Several lobbyists for the copyright industry (such the RIAA and the MPAA) pushed for rules preventing anyone using their domain names for any commercial purpose at all to from using these services. But they are vital to prevent abuse and harassment for many internet users. There was a very strong public outcry on this issue, with tens of thousands of responses, and it now appears that the final report will recommend continuing to make these vital services for protecting internet privacy widely available.

A very wide range of policy decisions with potential to make changes to Internet privacy and free expression are likely to begin within the next few months, and EFA will continue to be involved. Major issues include the development of a system to replace the venerable WHOIS registrant database system (which will touch on almost all DNS privacy issues in some way), and reviews of intellectual property rights protection mechanisms (EFA believes that intellectual property rights, which of course are strongly represented within the ICANN community by lobbyists and lawyers, are often overemphasised in current ICANN policy at the expense of privacy and free expression concerns).

Other International Issues

EFA was represented at the Internet Governance Forum in 2014, and will be represented there in 2015. The IGF is a United Nations event that act as a single place for global discussion of all issues related to Internet policy and governance. EFA believes it is vital that civil society organisations provide a loud voice for human rights and the rights of the general public at such fora. EFA actively participated in international civil society coalitions such as the Internet Governance Caucus and the Best Bits civil society network.

EFA was a founding member of the Coalition Against Device Registration and Data Retention (CADRE), an international network of civil society groups opposed to privacy invasive legislation.

We signed on to several open letters called by groups such as Access Now, including a letter about internet filtering for refugees on Nauru.

A number of international civil society organisations, including EFA, participated in a meeting to create a set of principles to protect intermediary liability. Intermediary liability is the legal liability of organisations such as ISPs, domain name registries, search engines, hosting services, social networks and communications services and infrastructure providers of all kinds. It is vital that this legal liability is carefully limited to facilitate a free and open communications. If legal liability is not limited, it would force services to either pre-emptively monitor and censor the content of communication in order to stay in business, and would be a recipe for an expensive, limited, weak and controlled Internet. We believe the Manila Principles on Intermediary Liability provide a strong policy foundation for any work laws governing intermediary liability. EFA has endorsed the principles, they can be found at <http://manilaprinciples.org>

Organisational Governance

A large part of the Boards role (especially as we have transitioned over the last couple of years to many functions formerly performed by the board being performed by standing committees) is corporate governance, and setting strategic directions. We've put significant work this year into considering how we can finish transitioning EFA into an organisation with a stronger and more diverse and sustainable funding base, a much broader level of volunteer involvement, and allowing the board to focus on better corporate governance. We think we've made significant progress this year, and made plans for how we can continue this work next over the next year to make a fundamentally stronger and more effective organisation.

Planned organisational changes

The board resolved to investigate changing the legal structure of EFA from currently being an Incorporated Association (in South Australia, its current articles of association are available on our web site at <https://www.efa.org.au/about/rules-of-incorporation/>) to a nationally registered public company limited by guarantee. This legal structure is more common in larger and more established non-profit organisations, and offers several advantages. The board considers this, and possibly other changes that the board is investigating, will be important steps along the path to creating a stronger and more sustainable organisation, in particular we have discussed seeking registration with the Australian Charities and Non-Profits Commission, and if possible seeking tax deductibility (Deductible Gift Recipient status) for donations. These changes will open up funding options such as

donations from non-profit foundations and access to corporate employee giving campaigns that we hope will significantly help to grow the organisation.

We understand that this is a very significant change, and the Board are not rushing in to this, and have been considering the issues carefully for some time, and looking carefully at the options similar organisations have taken. We are currently seeking legal advice (and have access to very helpful pro bono advice from a leading law firm that has dealt with similar organisations in the past), and we will broadly consult with the membership before we present the new constitution to the membership, which we plan to do in the first half of 2016. We want this process to be as open and transparent as possible, and all members to feel that they are able to be as involved in the process as they wish. We will be discussing this with the membership over the next few months.

We understand that the move to a different legal structure will require stronger corporate governance standards, such as higher levels of financial reporting. The Board feels that strengthening its governance mechanisms will have many other benefits in accountability to its membership and improved transparency, and welcomes the opportunity to build stronger governance standards.

Finances

This was not a great year for EFA financially, and we ended the year below our starting point.

We have tended to leave ongoing fundraising to our Executive Officer, who has many other duties, and in particular this year was heavily involved in our lobbying efforts against the data retention legislation, and also had to take leave for personal reasons during time planned for a fundraising campaign. We've also become aware that relying on staff who have significant responsibilities for both lobbying and fundraising can lead to a common pattern of neglecting fundraising when there are major lobbying campaigns.

In response, in an effort to reduce our reliance on staff, and to create more effective and better planned campaigns, the board has created a fundraising standing committee. This committee has some experienced professional fundraisers on it who have generously volunteered their time (for which we are very grateful). If any of our members would like to be involved in planning campaigns, we are actively seeking more members for this committee.

We are also dealing with a debt to the tax office, which is being regularly paid down but put additional financial constraints on us this year.

We had a good response to a campaign specifically to hire a communications intern, and anticipate that continuing this campaign and selecting a candidate will be a priority for the new board.

Local Branches

A major board initiative this year is the creation of local branches. Currently, we are in the middle of organising local branches in most capital cities. The board has already approved rules governing the running of local branches, and has had an excellent response to emails asking for interested members.

We think that local branches will improve the organisations in many ways. It will provide an easy way for many members to become actively involved and to meet other members. It will enable EFA to be actively represented at many more events and to more actively promote our causes to the public. It will also help us create more local events, including fundraising events, outreach to other community events, and training in privacy enhancing technology. And it will provide us with a way to focus on state based campaigns and issues. And we are hopeful that many local events will be interesting and fun.

The Board thinks that local branches will be a great step forward for EFA.

Membership

EFA is made of our members. We financially rely largely on support from our members and supporters, and rely on our volunteers for much of our most effective work. We've been concentrating hard on both growing our active membership, and trying to make it easier to volunteer. Membership has increased over the last year, and we anticipate this will continue in 2016

Conclusion

A difficult government, a difficult year, but some positive steps forward for the organisation. We've seen some terrible legislation, detrimental to privacy and a free and open Internet, passed this year, and it has been a difficult one for us organisationally as well.

But we feel that EFA is moving forwards as an organisation, and has made some significant improvements that will lead us towards being much stronger in many ways.

We value the support we have had from our members this year, and look forward to more in the next year and the future.

David Cake

Chair

November 2015