

**The following is a transcript of the podcast interview with David Vaile, Executive Director of the Cyberspace Law & Policy Centre UNSW about the report called *Communications Privacy Complaints: In search of the right path*.**

(E) Hi my name is Elise Davidson, I am the Media & Communication Officer with ACCAN and this morning I am speaking with the Executive Director of the Cyberspace Law and Policy Centre at UNSW, David Vaile. Thank you for joining us David.

(D) Hi Elise.

(E) First of all, can you tell us a bit more about the Cyberspace Law and Policy Centre and the work that you do there?

(D) Our motto is a centre for the public interest in Network Transactions, so we basically do research and policy and advocacy around the Internet, communications and other related information areas like privacy.

(E) And David, you are one of the first projects under the ACCAN grant scheme in which you were awarded a grant to conduct some research on behalf of ACCAN about privacy complaints.

(D) Can you tell us a bit more about the research that you undertook?

(D) We are very pleased to have the resources to do this, [it's] something that Chris Connolly, the other researcher, and I were thinking for quite a while. We had a hunch and a variety of anecdotal reports about the consumer experience when they have a privacy problem. Going to the various available complaint handlers was quite inconsistent and unsatisfactory; a bit of a lucky dip.

There is a bit of confusion about what privacy covers. The Privacy Act which is one of the main laws in the area focuses on information that identifies or can reasonably identify an individual. So it is not only a name and address but also things like your IP address as an Internet user, or for instance a Medicare number if it can be tied back to you, and there is the sort of things that can go wrong from being the victim of spam, somebody gets your email address and harasses you with unwanted messages, your personal address information. For instance the location of your phone connection is something that you want to keep secret, perhaps because you have been harassed by a former partner or you have other reasons not to want publicise where you live.

(E) So if it is a privacy complaint specific to Telecommunications, there are three bodies that you can take your complaint to. Can you tell us about what your research found about the way that those different bodies, namely the Telecommunications Industry Ombudsman, the Australian Communications Media Authority (ACMA) and also, of course, the Office of the Privacy Commissioner? Can you tell us more about the different outcomes consumers have when taking a complaint to one of those bodies?

(D) Well one of the first issues was how they would even find out they there are even there, was it smoothly coordinated system whereby there were formal understandings between those different organizations, about the scope of their own jurisdiction? The next major issue was delay, or how long it took for your complaint to be handled; this is not just a minor technicality. If it takes you 6 months to 12 months to even get the core of your problem dealt with that is a real disincentive for

using that method. The worst case we found was (in the Privacy Commissioner's Office) where they had an average of around 180 days, which is about 6 months, between starting a complaint and resolution.

In the TIO it was much shorter, an average of about 10 days and for ACMA it was in some senses very good about 5 days, although one of the other issues we found was that wasn't really comparing apples with apples, the Privacy Commissioner's Office had a different model, focus much more towards conciliation.

(E) How many communication complaints in relation to privacy are there each year in Australia?

(D) According to the figures that our study looked at there is around about 21,000 privacy complaints a year for the whole communication sector. They are not evenly spread. The ACMA receives about 16,000 of those, that is, the large majority; about 5,000 get through to the Telecommunications Industry Ombudsman and the Privacy Commissioner only receives about 110.

(E) That is a surprising small number of privacy complaints given that is their main operandus, wouldn't you think?

(D) Well, yes, as well as the quite long delay with the Privacy Commissioner's office, we were also quite concerned that there was a very small proportion of the overall privacy complains getting through to them.

Some of this is about jurisdiction and so the ACMA for instance deals with spam, and the Do Not Call Register, so they have a statutory authority to deal with that and a few general privacy complaints. And the Telecommunications Industry Ombudsman deals with general complaints more frequently, in that sense there are more typical or there are more similar to the Privacy Commissioner's office, who would expect a TIO and Privacy Commissioner's office to be in the same sort of ball park. So some of the recommendations that we've made have been aimed at in a sense trying to increase the attractiveness of the privacy commissioner's office for consumers.

(E) The privacy commissioner's from the research I understand, they do have a quite a high public profile. Did the research uncover any reasons why perhaps people weren't taking their communications privacy complaints to the privacy commissioner? Is it they felt that the ACMA or the TIO were more specific to Telecommunications?

(D) There is a little bit of that. The problem now is that the Privacy Commissioner's office, as well as being well known, I think amongst the privacy advocacy community, or the intermediaries, helpers and lawyers, community workers, they may have, if they have some experience, been turned off a bit by where they came to realise a couple of problems from a consumer's perspective. One is the delay, you know, 6 to 12 month delay, is not going to be your first port of call and that may turn people off. The other problem was that in the past there have been very few actual decisions coming out of the Privacy Commissioner's office, so in fact there have been no formal determinations for the last 5 years, including nothing on telecommunications privacy.

(E) Why is that David that the office is not publically making known their findings and in some way holding these companies to account?

(D) Well, just on that, the other mechanism we were looking was naming the companies and so that's another alternative to a formal determination, again, the Privacy Commissioner's office had not named any companies in that period. I think, as with everything that we've found here, the picture is complex and there is a focus that in commissioner's office with conciliation which means that they are trying to get to an agreed outcome between the consumer and the company. In many cases that works and leads the consumer to be in a situation where they are reasonably happy with the outcome that doesn't appear as a determination that's been made because that's something agreed by the two. So, I think it is important to acknowledge that's probably one of their strengths as compared to some of the other organisations dealing with many complaints that they do go out of their way to bring the two parties together.

(E) We're delighted with the report that the Cyberspace Law and Policy Centre of UNSW has produced. It's called 'Communications Privacy Complaints: In Search of the Right Path'. Can you tell us who were the authors of the report?

(D) The main people that worked on the report were Chris Connolly, who's a long standing research associate of the centre and myself as the Director. We also had assistance from a number of the interns who work in our social justice internship program here and we did get a lot of cooperation from the various complaint handlers. I do want to thank them for their help.

(E) Thank you very much for your time. It's been a fascinating chat and thanks for the report. We'll make sure that it's read widely.

(D) Thanks Elise.