

Private Media
Level 6/22 William Street
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Committee Secretary
Parliamentary Joint Committee on Intelligence and Security
PO Box 6021
Parliament House
CANBERRA ACT 2600

Dear Secretary

**Telecommunications (Interception and Access) Amendment (Data Retention) Bill
2014**

Please find enclosed a submission to the committee's inquiry into the
Telecommunications (Interception and Access) Amendment (Data Retention) Bill
2014.

Yours sincerely



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Chief Executive Officer
Private Media

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Introduction

Private Media is Australia's leading independent digital publisher, delivering premium audiences across seven highly targeted publications: *Crikey*, *SmartCompany*, *Women's Agenda*, *Daily Review*, *The Mandarin*, *Property Observer* and *StartUp Smart*.

Private Media began its journey into the un-navigated world of online publishing in 2006 when we acquired the feisty, iconoclastic *Crikey* website. Today Private Media is a fiercely independent, passionately entrepreneurial digital media company which is motivated by a clear strategy: attract audiences through compelling journalism, and monetise those audiences in effective and creative ways. We now employ many dozens of passionate staff and have around 20 supportive and smart shareholders.

In the view of Private Media, the Telecommunications (Interception and Access) Amendment (Data Retention) Bill 2014 (henceforth, the Bill) represents a serious threat to a free press and free speech in Australia.

An effective civil society relies a "watchdog" media that is able to hold the powerful – whether governments, politicians or private interests – accountable and keep the public informed as to their activities where they relate to the public interest. Whistleblowers and confidential sources are fundamental to this media role. Without individuals who are prepared to reveal wrongdoing and provide transparency, the media is unable to perform this role and powerful interests can operate with less accountability. For such individuals, anonymity and confidentiality are crucial. Few whistleblowers have the freedom to reveal themselves: they are as a matter of course exposed to intimidation, harassment and dismissal by their employers once their identities are revealed – even in workplaces such as the Public Service, where there is a notional commitment to protecting the rights of whistleblowers. Vindictive governments can also prosecute them. The Australian Customs whistleblower Alan Kessing, for example, was prosecuted, convicted and given a suspended prison sentence for revealing critical information about major border security lapses that were demonstrably in the public interest. It is thus critical that the media is able to offer confidential sources protection – and this is already recognised in federal legislation such as the *Evidence Amendment (Journalists Privilege) Act 2010*.

However, a data retention scheme of the kind proposed in the Bill will make it significantly easier for powerful interests -- whether governments, well-resourced individuals or corporations – to pursue, harass, prosecute and intimidate whistleblowers who contact media outlets, because information relating to who has contacted journalists via any form of electronic communication will be stored for two years. It will be much more difficult for media outlets to guarantee confidentiality to whistleblowers, even if they themselves are fully committed to such confidentiality, because they will have no control over who can access relevant metadata. Government agencies, under the pretext of investigating leaks, will access journalists' and editors' metadata to try to learn who has telephoned them, while online data obtained from other sources can potentially be matched against an individual's IP address, which will also be retained.

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By requiring IPS and telecommunications companies to hold metadata for a period of two years, the Bill will also establish a trove of information for companies and well-resourced individuals to obtain information via litigation processes in the hunt for internal whistleblowers, critics and legal adversaries. Private Media notes that government ministers have specifically acknowledged that data retained under the Bill will be subject to subpoena under private litigation.

These concerns are not theoretical. As Private Media's *Crikey* has reported, the Australian Federal Police has already acknowledged in Senate Estimates that in hunting for whistleblowers, it has obtained the metadata of journalists.¹ In the UK, police accessing of journalists' metadata is, according to the National Union of Journalists, "systemic and institutionalised".² The UK government, which last year introduced its own version of data retention, has acknowledged that police misuse of powers to access metadata had been "entirely inappropriate" and will change the UK's data access laws to require police to obtain a warrant if they want to obtain a journalists' metadata, with a presumption that access would not be granted if the journalist was acting in the public interest.

In Private Media's view, such a requirement should be established in Australia as well, as a matter of urgency, regardless of whether the Bill is passed by Parliament. Moreover, in Private Media's view, access to all metadata retained under the scheme established by the Bill should be placed beyond the reach of private litigants and limited strictly to security agencies.

Only with these two key changes will the direct threat to whistleblowers and the media of data retention be somewhat ameliorated.

Thank you for the opportunity to contribute to the committee's consideration of this important matter.

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<http://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;db=COMMITTEES;id=committees%2Festimate%2Fb65d6111-3180-4362-b98c-96bf25cbcb65%2F0004;query=Id%3A%22committees%2Festimate%2Fb65d6111-3180-4362-b98c-96bf25cbcb65%2F0000%22> accessed 5 Jan 2015

² http://www.theguardian.com/media/2014/nov/04/police-ripa-powers-spy-journalists-sources?CMP=tw_t_gu, accessed 8 January 2015