



Internet Service Provider's Association (ISPA) 20th Anniversary Conference

Speaking Notes – Panel - Future of Investigatory Powers

An industry perspective on the IP Bill...from an outsider...

Thank you for inviting me to take part on this panel today. I'm particularly pleased to be here, not least because we were honoured to be runners up of ISPA's "internet hero award" last year – it makes a change for us to not be in the villain category! - and this really is testament to the work IOCCO has undertaken to improve accountability and transparency in public authorities use of intrusive surveillance powers.

I am not from industry or Government. I work for the Interception of Communications Commissioner's Office (IOCCO). IOCCO is an independent regulator. We are responsible for overseeing the intelligence agencies, police, law enforcement and other public authorities' use of interception and communications data powers. Last year we carried out over 100 inspections of public authorities and made over 400 recommendations to ensure compliance or to improve systems and procedures. We also conduct a number of other inquiries and investigations – for example our recent inquiry in relation to the acquisition by police forces of communications data to determine journalistic sources – the findings of which were accepted by the Prime Minister and led to Parliament changing the law in a matter of weeks to ensure adequate protection for journalistic sources.

Overall the inspections carried out by my office show that the staff within the public authorities have a desire to comply with the legislation and to achieve high standards in the work that they carry out. There is a strong culture of compliance and of self reporting when things go wrong – that goes for Communication Service Providers (CSPs) too who are also obliged to report any errors to us. For example when a CSPs discloses communications data in relation to the wrong telephone number due to a transposition error or over the incorrect date period.

Briefly on oversight - We recently published our "wish list" for oversight provisions in the IP Bill. We support fully a single unified independent oversight body, but believe the IP Bill clauses require strengthening in order to deliver the "world-leading" oversight which the Government has committed to introduce. Please take a look at our website for that – www.iocco-uk.info

Today I thought I'd offer the views of an outsider on what I imagine are the strengths of the IP Bill from an industry perspective and also some thoughts on what provisions industry might be concerned about with a view to provoking some discussion from the audience.

Potential strengths of the IP Bill from an industry perspective:

- Simplifies the legislative framework by moving all obligations on CSPs into one piece of legislation – RIPA, DRIPA, s94 TCA.
- Abolishes other powers to acquire communications data – e.g. SSFA.

- Relaxation on interception secrecy provisions to enable greater transparency – e.g. “authorised disclosures” in s43(5)(g) – will enable CSPs to publish more information in their transparency reports if they so wish – word of caution here for CSPs to ensure consistent counting conventions are used so as to not mislead the public. We have worked hard to improve the communications data statistical requirements and are pleased that the March 2015 Code of Practice contains significant enhancements in this respect. We recently published a breakdown of communications data applications by crime type and this showed that of the 400,000 or so data requests submitted in 2014 for the prevention or detection of crime; 23% related to burglary or robbery investigations, 22% drugs and 19% sexual offences. These figures inform the public better about the use of these powers.
- Provision for a CSP to refer a data retention notice back to the Secretary of State – (limited) input from the Investigatory Powers Commissioner and Technical Advisory Board. This rectifies one of the problems with DRIPA that we highlighted, i.e. that no independent body had responsibility for overseeing the Secretary of State's decision to issue a DRIPA notice.
- Provides a power to develop compliance systems – including provision to “maintain or improve” – see our July 2015 report in which we raised concerns about a number of serious communications data errors caused by technical system failures. The majority of these were caused by faults on CSP disclosure systems (rather than by errors within public authorities). It is crucial to iron these faults out and put measures in place to prevent recurrence because of the very serious consequences that can result from such errors.

Potential concerns about the IP Bill from an industry perspective:

- Requirement to retain Internet Connection Records (ICRs) – technically feasible? Reasonable practicable? Is the operational case compelling? Who will verify that the public authority has used the data for the purpose described?
- Definition of content and communications data – do the “content” and “entity and events data” definitions work in practice? Are they sufficiently future proofed?
- Filtering arrangements – technically feasible? Who will monitor and verify the “magic” of the filter if no one has access to the data as a whole?

The IP Bill is an opportunity – an opportunity to ensure that the UK has a legal framework governing surveillance powers with sufficient clarity, foreseeability and adequate human rights protections. Let's all work together to make that happen.

Thank you.

Joanna Cavan, 18th November 2015