

## ***Personal Information***

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I thank the Australian Human Rights Commission for the opportunity to submit a short response to the Human Rights & Technology Issues Paper, and I provide some feedback on questions 1, 2, and 3 raised by the AHRC here. I was a technologist by training and profession for over thirty years, and now teach at La Trobe Business School in Business Ethics, Social and Ethical Topics for IT, and in Corporate Governance. I am also the Vice-Chair of the ACS Ethics Committee and a member of the ACS Profession Advisory Board.

This submission is NOT presented on behalf of any organization.

## ***Human rights and technology***

### ***1. What types of technology raise particular human rights concerns? Which human rights are particularly implicated?***

Those technologies that are aimed at enhancing rights (often the right to privacy, but also rights to free speech, and through that the right to practice ones faith etc.) are paradoxically those that may end up eroding or eliminating rights. Examples are to be found in access to cryptographic modules for communications applications, social media and search engines.

There seems to be a common trajectory for the take-up of many of technologies in this category. Firstly a piece of technology comes along that promises to improve quality of life by enhancing privacy (for example). It is first adopted by those individuals with a keen interest in privacy as an end in itself, and then by those individuals and groups needing some shelter from oppressive regimes because of their personal, political or religious beliefs or sexual orientation or identification (so, as a means to some end).

At a roughly similar time to the latter group, but at an accelerated rate, the rights-enhancing technology begins to be adopted by organized crime and groups plotting violent action against states or cultures (so the technology is again a means, albeit to less good ends). Individuals seeking to exploit the technology for other illegal activities often follow.

The State often becomes involved at this stage, either by seeking to limit the use of certain technologies (e.g. banning the use of Google search engine in China), seeking to limit their efficacy (e.g. the Access and Assistance Bill in Australia), or using them to monitor or constrain the activities of citizens (e.g. meta-data retention, eaves dropping on nominally encrypted communications, and combining data held by various State and non-State entities), or by refusing to provide services unless access to private data is 'shared' with the State (e.g. MyHealth records for chronically ill patients).

In this way, technologies that are designed to be rights-affirming or rights-enhancing become rights-eroding as the effects of State actor interference in the rights of citizens are seen as collateral damage of State actions (that may be consequences of legitimate concerns) to maintain law and enhance public safety. Technology is not necessarily neutral, and should not be thought of as such. It is often morally opaque, and can be repurposed for other uses than those first intended. This means that almost any technology may at some stage in the future raise human rights concerns, whatever its primary function, and whatever motivations the original developers may have had.

The second major category of concern is those technologies that purport to make life more convenient for the user. Allowing shopping sites to track your buying habits and suggest items of interest, third-party apps that allow (or

require) login with a Facebook or Google account so that you don't need to set up a separate account, and supporting targeted advertising according to the individual's interest are technologies of interest in this category. The trade-off between rights (to privacy, to maintain confidentiality, to maintain anonymity while surfing the web) and convenience is in general not well understood by the public, a situation often taken advantage of by platform providers and online marketers.

The third category of technology that gives rise to human rights concerns is that of algorithmic bias. This seems to be much discussed, but not well understood by the public due to technological and moral opacity, and by technologists due to the proprietary nature of algorithm construction. The anecdotal evidence of algorithms that bias programmatic behaviour in certain ways (typically against the interests of the more marginalized) is considerable, and common sense dictates that the training set of data provided to machine learning programmes could easily skew outputs. More subtle is the possible effect from the design of the algorithm itself, which will of necessity include the epistemological, ontological as well as normative assumptions of the development team. These effects are often overlooked or dismissed out of hand due to the prevailing positivist world view of technologists.

More general concerns about the possible effect of Artificial Intelligence on human rights have been fairly widely discussed, although the current fashion for conflating the terms AI and Machine Learning have perhaps diminished the utility of the more accessible conversations around this issue.

**The answer to the first part of this question would therefore seem to be that while particular categories of technology are perhaps currently more implicated in the eroding or enhancing of human rights, due to the difficulty in predicting the future use made of any particular technology, by a variety of actors, all technology should as far as is possible design-in human rights.**

The question of which human rights are particularly implicated is addressed to some extent by the answers above. Privacy and freedom of speech are rights under pressure in a highly visible way from new technologies and disruptive business models. The erosion of these rights by contact with various technologies can however lead to the erosion, or even loss, of other rights. Monitoring by State or non-state actors (particularly monitoring by majority groups, of minority groups) by means of face-recognition, physical surveillance by drones, and electronic surveillance and reporting of activities and movements can curtail (or be perceived to be a curtailment of) religious worship, political or union affiliation, sexual orientation, and activities not permitted for a particular gender, caste, ethnicity, etc. All of these erosions of rights are occurring now in various parts of the world. Loss of confidentiality or of anonymity by transgressions against the right to privacy may achieve similar outcomes, both internationally and in Australia.

**The answer to the second part of the question is that most, if not all, rights may be affected by interactions between technology, groups, individuals and the state.**

***2. Noting that particular groups within the Australian community can experience new technology differently, what are the key issues regarding new technologies for these groups of people (such as children and young people; older people; women and girls; LGBTI people; people of culturally and linguistically diverse backgrounds; Aboriginal and Torres Strait Islander peoples)?***

All technology developed by government should seek to be as inclusive as possible; obviously there are no such strictures able to be placed on commercial technology unless it is intended to provide a service or access to information on behalf of, or mandated by, government. While thought is often given to superficial equality of access to various disability groups through multiple user interfaces, deeper issues of inequality of use and utility for Indigenous Australians living in remote communities with poor connectivity, or for the cognitively impaired for example, or are often not addressed. These already marginalized groups will be further disadvantaged as all access to government services becomes mediated by technology. The MyHealthRecord is an example where the decision to

opt out might be inconvenient for carers and decision making proxies for the cognitively impaired, but removal of the ability to make such a decision because of the opacity and complexity of the technological environment diminishes agency further for these individuals. The overriding ethos of technology developed to provide access and services to citizens, and in particular, those directed at marginalized groups should be “not about us without us”.

### ***Reinventing regulation and oversight for new technologies***

#### ***3. How should Australian law protect human rights in the development, use and application of new technologies?***

***In particular:***

##### ***a) What gaps, if any, are there in this area of Australian law?***

Australia's lack of a Commonwealth Bill of Rights is a major gap. Without a reference point for rights for all laws, including those that deal with technology (e.g. Access and Assistance Bill) and its artefacts (e.g. MyHealthRecord), the likelihood of such a law failing to maintain let alone promote human rights is increased. Adjudication as to any such law meeting the requirements of proportional burden, access, transparency etc. could then itself be a transparent process, conducted in a court of law. A Bill of Rights would not of itself remedy issues of commercial technology impacting human rights, but would provide some guidance were laws to address this be formulated.

##### ***c) What principles should guide regulation in this area?***

All government regulation in this area should attempt to leave the worst off (the most marginalised or most vulnerable) in a better position than before, both absolutely and relatively. All new programmes or technology platforms that require citizens or consumers to share their data with state- or non-state actors for access or use should be mandated to be opt-in. These two principles are necessary (albeit not sufficient) to ensure that any deleterious impact of technology on rights is minimized to the extent that it is possible to do so.