Message in a bottle

Stored communications interception as practised in Australia

Rob Nicholls
Consultant
29 October 2007

Michelle Rowland
Lawyer
Issues

- Interception theory
- The legislative framework
- Stored communications
- Application of the legislation
Handover interfaces – HI1

- Carrier or carriage service provider
- HI1 contract, regulation, legislation
- Law enforcement agency

Relationship

Ongoing

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Handover interfaces – HI2

Carrier or carriage service provider

Law enforcement agency

HI1
contract, regulation, legislation

HI2
telecommunications data CAD, IRI

Relationship
Ongoing
Request

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Handover interfaces – HI1

Carrier or carriage service provider

HI1
contract, regulation, legislation

HI2
telecommunications data CAD, IRI

HI3
content of message

Law enforcement agency

Relationship

Ongoing Request Warrant

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Handover interfaces

Carrier or carriage service provider

HI1
contract, regulation, legislation

HI2
telecommunications data CAD, IRI

HI3
content of message

Law enforcement agency

Relationship

Ongoing

Request

Warrant
Interception legislation

*Telecommunications Act 1997 (Cth):*
• states that a carrier or carriage service provider (C/CSP) must “give help” to law enforcement agencies as is “reasonably necessary” to:
  – enforce criminal laws and laws imposing pecuniary penalties
  – protect public revenue
  – safeguard national security
• Intercepting live communications and accessing stored communications is separate from “reasonable assistance” and is performed in accordance with a relevant warrant
• Primary prohibition on *all* interception: section 7(1) of Telecommunications (Interception and Access) Act 1979
**Stored communication**

• Has 4 specific elements prescribed in s.5 of the Act:
  – the communication must have passed over a telecommunications system;
  – the communication must not be passing over that or any other telecommunication system;
  – the communication must be held on equipment operated by the telecommunication carrier at its premises; and
  – the communication must be accessible to the intended recipient of the communication.

• Likely that the parliamentary draftsperson was given an explanation of the operation of email
SMS – is there a stored communication?

Mobile originated | Mobile terminated

Short Message Service Centre
IM – is there a stored communication?

Instant message operator maintains database of IP addresses

Users communicate on peer to peer basis
In practice

• Operators receiving stored communications warrants for SMS

• Operators receiving stored communications warrants for instant messages

• State bodies seeking assistance in contravention of Commonwealth statute

• Requests for information or action without a warrant
Conclusions – 1

- Telecommunications operators in Australia are being increasingly compelled to compromise their strict obligations under the law with a desire to be viewed as co-operative
- Too many “commercial calls” and “one-off relationship decisions” are made
- Regulation should be applied seriously and with the strictest and most robust legal standards
Conclusions – 2

• There is an individual expectation that calls will not be intercepted and that communications will not be accessed because there is a strict prohibition on such interference
• This strict prohibition has been compromised under the banner of commercial expediency and an over-zealous support of the spirit (but not the letter) of the law
• The results of this enthusiasm are a reflection of the inadequacy of parliamentary drafting and the appropriate course is to redraft the legislation
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