

Wikimedia UK
Development House
56-64 Leonard Street
London
EC2A 4LT

Telephone: 020 7065 0990
www.wikimedia.org.uk



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Wikimedia UK Submission on the Draft Communication Data Bill

1. About us

Wikimedia UK is the Wikimedia Chapter¹ covering the United Kingdom. Wikimedia UK is a registered charity with the aim of supporting the development, collection and distribution of “open” educational, cultural and historical, content. Content is “open” when it is available to the general public for no charge, with legal permissions, to view, copy, share, adapt, improve and otherwise reuse (i.e. with ‘open’ copyright licences).

Wikimedia UK brings together the Wikimedia Community in the UK, to build links with UK-based cultural institutions, universities, charities and other organisations.

Wikimedia UK works closely with the Wikimedia Foundation², which is the body that operates Wikipedia. Wikimedia UK is incorporated in England and Wales as a company limited by guarantee³ and has no control over Wikipedia or any other Wikimedia Foundation projects⁴.

2. Pre-legislative scrutiny

We welcome the fact that the Draft Communications Data Bill (‘the Bill’) is subject to formal pre-legislative scrutiny by a Joint Committee of both Houses and are grateful for this opportunity to provide a submission of our key concerns regarding the Bill.

3. Wide scope and lack of clarity in the Bill

Prior to a close reading of the Bill we were unclear of its applicability to us as an organisation and to the members of the Wikimedia UK community. Closer reading of the Bill and the oral evidence given to the Joint Committee during July 2012⁵ has failed to provide us with much greater clarity or certainty. Our key submission would be that this lack of clarity,

¹http://meta.wikimedia.org/wiki/Wikimedia_chapter

²<http://wikimediafoundation.org/wiki/Home>

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⁴<http://www.wikimedia.org/>

⁵<http://www.parliament.uk/business/committees/committees-a-z/joint-select/draft-communications-bill/publications/>

certainty, and definition of scope, in the provisions of the Bill are a cause for concern.

We anticipate other organisations, (such as Justice, the Open Rights Group and Liberty)⁵ that have already provided oral evidence to the Joint Committee, may cover in greater detail the implications of the Bill for civil liberties. We will therefore confine our submission to how we fear the Bill may affect our operations as a charity, our Community and members in the UK.

3. Services of overseas providers

Para 19 of the Bill's explanatory notes states:

'Part 1 builds on existing legislation by requiring telecommunications operators to obtain and retain communications data they would not ordinarily retain for their business purposes for a period of up to 12 months. This might include data relating to (i) the operator's own services which are not within the scope of existing legislation, and from which data is not otherwise retained for business purposes; (ii) the services of overseas providers used by people in this country which transit systems but which the system provider currently has no business to retain.'

Charles Farr, Director General, Office for Security and Counter-Terrorism, Home Office at response to Q48⁶: confirmed that:

'obligations do apply to overseas providers and in the event, which I regard as unlikely, that co-operation was not possible, an enforcement route would be open to Ministers, if they chose to exercise it, through civil action. This would apply as much to overseas providers as to domestic providers.'

The obligations, under the Bill, which may be imposed on the 'service of overseas providers used by people in this country' is relevant to our consideration of the Bill as detailed below at para 5.

4. Wikimedia UK and Wikimedia Foundation

We do not have ownership or control over servers that operate the Wikimedia Foundation's projects which projects include Wikipedia. Our public wiki - uk.wikimedia.org - is hosted and owned by the Wikimedia Foundation in the US. All Wikimedia UK staff, some volunteers, and all trustees have administrator rights on uk.wikimedia.org wiki. However, we have no access to data on users from that wiki.

We have access to the contribution history of users on the site, as well as the public communication of users on that site - as does everyone else. The Wikimedia Foundation 'stores/collects' that data.

After studying the Bill we remain unclear as to whether our charity, Wikimedia UK, would be classed as a 'telecommunications operator'.

However we feel it is reasonable to fear that we as an organisation or as individual members of staff, Trustees, or volunteers, who have higher level administration rights in relation

⁶10th July oral evidence to Joint Committee <http://www.parliament.uk/documents/joint-committees/communications-data/ucJCDCD100712Ev1.pdf>

to usage data, may fall into the classifications as a Telecommunications Operator.

Such concerns and fears may stifle our operations as a charity, as members and staff who have administration access to usage data, may become fearful, of being subject to obligations under the Bill. In the extreme case the Wikimedia Foundation may become cautious about granting such administrator access to members of the UK community and thereby curtailing the level of participation and activity in the UK. This would affect the charity's ability to achieve its full potential. The charity is a young organisation, with the aim of facilitating the development and dissemination of educational and cultural content. The charity has seen a fast rate of growth in the last year, and has created five full time jobs. Continued growth is forecast. We would not welcome this sort of additional obligations on the charity or its community which could be imposed by the Bill.

5. The wide scope of the Bill

Francis Davey⁷, Barrister, writing about the Bill emphasised the worrying scope of the Bill which reinforces some of our concerns:

'the government may do pretty much anything that is at least rationally connected to ensuring that communications data is available. If there was any doubt about this, the rest of clause 1 spells out just how wide the power is, for instance:

- requirements ("you must") or restrictions ("you must not") may be imposed on anyone;
- the Secretary of State may be given a power to impose requirements and restrictions on anyone by notice
- those requirements may include forcing the use of particular software, equipment or algorithms ...'

'It seems to me that clause 1 is just too wide. It allows far too many things. There are essentially no restraints to stop a determined government doing what it wants.'

Whilst communications data, relating to our community, staff and members, may be more readily acquired by public authorities from ISPs, we remain concerned by the extent of the powers granted to the Secretary of State under the Bill as 'function creep' and 'mission creep' is not entirely unforeseeable should the Bill become law.

By way of example, of mission or function creep, we refer to a point the Chairman of the Joint Committee raised as part of evidence taken on 10th July 2012 (at Q 61) in relation to the existing legislation, Regulatory of Investigatory Powers Act 2000 (RIPA):

'when the Bill [RIPA] was completed there were about 32 public authorities added. Twelve months later, we ended with 500 added and now we have 650.'

Although the above e.g. illustrates the expansion, under RIPA, of the number of public authorities that could request data, we are concerned that under the Bill, more organisations may become subject to notice from the Secretary of State under s1, than may be currently envisaged or intended.

6. Conclusion

⁷http://www.francisdavey.co.uk/2012_06_01_archive.html

We submit that in its current state the Bill is not fit for purpose for a number of reasons including the ones we have highlighted above. We would draw the attention of the Committee to the fact that the UK would be conspicuous by exception in the democratic world if this Bill was to be enacted. Evidence given to the Committee⁸ suggests that this extent of collection of data has only been implemented nationally in China, Iran and Kazakhstan and such national scale centralised level of data collection has not been done in a democratic country.

Contact details

For **Wikimedia UK** enquiries please call Stevie Benton, Communications Organiser, on 020 7065 0993 or 07803 505 173. You can also visit www.wikimedia.org.uk, email info@wikimedia.org.uk or call 020 7065 0990. **Development House, 56-64 Leonard Street, London EC2A 4LT**

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⁸Dr Hosein in response to Q124 <http://www.parliament.uk/documents/joint-committees/communications-data/ucJCDCD110712Ev2.pdf>