

sydney
PEN

PEN magazine

Doctors continue protests over Border Force censorship



- Wife of jailed Saudi blogger: 'Please do not forget Raif'
- New data retention regime ends digital privacy
- *Rainbow Warrior's* truth seeking remembered
- Indigenous literacy: quick fixes not the answer
- New memorial honours war correspondents

Congress dismay at draconian Australian laws



Zoë Rodriguez

Terrific news for anybody interested in a free press came in late September with the announcement that Peter Grete’s Al Jazeera colleagues Canadian Mohamed Fahmy and Egyptian national Baher Mohamed had been pardoned by Egyptian president Abdel Fatah al-Sisi. We’ve heard there are favourable signs about Peter Grete’s imminent pardon, and will agitate for this until it is formalised.

Australia has its own issues on freedom of expression. At the PEN International Congress in Quebec City in mid October, the first resolution put condemned the Australian laws silencing the press and others from reporting on activities undertaken in the name of Australia countering terrorism, especially on Manus Island and Nauru. This resolution passed unanimously. Many expressed dismay that Australia had enacted such draconian laws to shut down criticism of government policy. The resolution requires the Australian government to:

- provide the Australian public with information on procedures and events at asylum seeker detention camps in Papua New Guinea and in Nauru; and
- facilitate the visits of journalists, politicians and human rights observers to the asylum-seeker detention camps, and ensure they are able to exercise their right to report grievances and human rights violations.

Australia featured also in a separate resolution on surveillance laws enacted by the Five Eyes alliance (USA, Canada, UK, New Zealand and Australia) in the name of countering terrorism. The impact of this legislation is chilling. With Canada’s change of government, this alliance is on a more tenuous footing, and PEN will be watching developments.

Along with resolutions about other countries with constraints on writers’ freedom of expression – in the Asia-Pacific, Bangladesh, India, Myanmar, China, Vietnam, Cambodia – a much-discussed draft resolution highlighted the perceived anti-competitive nature of Amazon’s book business. Concerns were expressed about the stifling of minority languages and cultures by its monopoly practices and about its censorship of works for distribution into markets such as China to comply with state censorship regulations. A less formal note was drafted and

adopted by Congress; Amazon’s role in the book economy will continue to be watched by PEN.

The resolutions are formal messages to governments that imprison authors and legislate to silence free expression. They are used by local PEN Centres with their governments, and by the PEN International Board visiting countries where concerns are identified. The impact is hard to identify, but continued advocacy by PEN International and PEN Mexico, caused the adoption of laws to protect journalists who were being assassinated for their reporting.

At the Congress, PEN elected the first female President in its 95-year history. Jennifer Clement is an impressive poet, journalist and novelist who made it clear she will continue John Ralston Saul’s vein of activism. (see page 3)

The Congress elected a new Writers In Prison Committee Chair. Salil Tripathi has a long history of working for writers’ human rights and was a popular choice for this central role in PEN.

Representing PEN Sydney, I was pleased that Copyright principles I drafted around two years ago, adopted provisionally at the 2014 Bishkek Congress, were passed unanimously and are now formal policy. PEN used these principles in 2015, advocating on behalf of authors in the European Parliament in the face of groups who argued that copyright was a hindrance to access to works – not acknowledging the vital role copyright plays for authors to continue creating. Our preamble refers to Article 27 of the Universal Declaration of Human Rights – which include copyright.

I was heartened to be elected with the lead number of votes to the five-member Search Committee that oversees PEN’s elections. Previous Search Committee chairs were PEN Sydney President Chip Rolley, to 2003, and my mother, Judith Rodriguez, from PEN Melbourne, until four years ago. This is an important Committee that sees that candidates from different regions nominate for roles on the Committees and Board – ensuring that the diversity of writers belonging to PEN from across the world are represented in policy-making.

Silencing of voices comes in many guises in Australia – not just laws that prevent writing about Manus and Nauru. An alarming development, prefaced by our past PEN Sydney President Professor Michael Fraser, is the closure of bodies that provide critique of various government policies – they no longer receive funding necessary for them to continue to carry out their work. This is a space PEN will watch closely.

PEN International appoints first woman President



Jennifer Clement

After six years Canadian writer John Ralston Saul has stepped down as President of PEN International, making way for Jennifer Clement, the first woman to be elected to the position.

Award for her novel *Prayers for the Stolen*, which involved more than ten years of research on the abduction of young girls in Mexico. The book garnered critical praise as ‘New Journalism made newer still’, and her style likened to the ‘New Journalism’ of writers like Truman Capote, Jean Stein and George Plimpton.

Clement is currently working on a novel about gun violence and the gun trade, both legal and illegal.

Writer Margaret Atwood and Leonard Cohen were among prominent figures attending the Quebec Congress events who paid tribute to John Ralston Saul as he stepped down from the Presidency.

Atwood, Vice President of PEN, pointed to his tireless work for writers and journalists around the world - and for their freedom.

“John has been passionately devoted to the freedom to write and publish without fear of persecution and death. That is the freedom that PEN defends.” Margaret Atwood

“John has always been passionately devoted to the freedom to write and publish without fear of persecution and death,” Atwood said. “That is the freedom that PEN defends. And the fight for this freedom has become more and more important as the 21st Century has augmented the traditional forms of intolerance and repressions with new forms of those things.”

Leonard Cohen expressed “love and gratitude” to Ralston Saul “for personal courage in hostile territory; for patience and skillful perseverance in the face of the world’s relentless indifference.”

Author Giaconda Belli, President of PEN Nicaragua, commented that “John’s love and work for justice and humanity has been like a hurricane which has navigated PEN through dangerous waters to free speech. To him we owe the re-birth of PEN in Latin America. We love and him and will never forget what he has done for us.”

From PEN Myanmar, President Dr Ma Thida, said, “John’s message to us all has always been clear. As writers we must be the voice for those who have been silenced and cannot speak for themselves.”

PEN International has elected renowned Mexican-American writer, Jennifer Clement, as the new President of the organization at its International Congress in Quebec.

The first woman writer to be elected to the prestigious post, Clement takes over from Canadian writer John Ralston Saul who has served as PEN President for six years.

“Everyone is saying congratulations,” Clement commented after her election. “But this is not a prize, it’s not an award. It’s an act of trust. I hope that I am worthy of your trust.”

Fluent in both Spanish and English, Clement grew up in Mexico City, studying English Literature and Anthropology at New York University and French Literature in Paris.

As President of PEN Mexico from 2009 to 2012, her work was focused on the disappearance and killing of journalists. But her writing and activism represent a lifelong commitment to honouring those silenced by gender, class and race.

Clement’s first non-fiction book *Widow Basquiat*, about the companion of artist Jean-Michel Basquiat, was followed by two novels, *A True Story Based on Lies*, and *The Poison That Fascinates*, her work typically occupying the borderland between fact and fiction.

In 2014 she was awarded the Sara Curry Humanitarian

PEN Sydney

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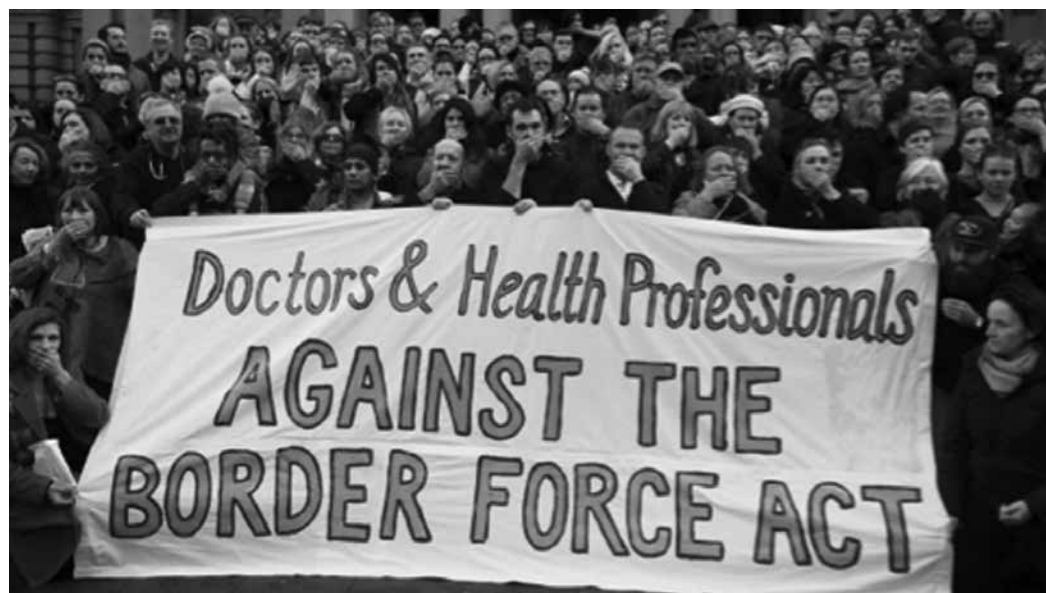
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Concerned medicos continue protests against gagging despite threat of prison

Doctors and other health workers hit the streets in July to protest against the new secrecy and disclosure provisions of the Federal Government's Border Force Act. Many have since spoken out, risking a possible prison sentence of up to two years for publicly disclosing their concerns about conditions within immigration detention centres. Debra Jopson reports.



Doctors and health professionals rally in Sydney Photographs courtesy Fiona Morris/Fairfax

“All the children I see in this clinic have nightmares. Some last for years,” says paediatrician Dr David Isaacs, whose work with refugees had already convinced him that Australia’s immigration detention system traumatises and dehumanises the most vulnerable of people.

He and paediatric nurse Alanna Maycock spent five days on Nauru working with refugees and asylum seekers. What they saw there left them with nightmares which took months to abate.

“It’s ghastly. You could not believe it. There is something about witnessing people’s distress...” Isaacs says there has been nothing as confronting or dramatic in his 40-year career as treating those whose health is being destroyed through Australia’s draconian immigration policy.

Isaacs’ and Maycock’s own trauma following their posting to provide health care to detainees on Nauru has, paradoxically, given them the gumption to speak out against asylum seekers’ and refugees’ living conditions there, despite risking a possible prison sentence of up to two years.

The prospect of jail for the two colleagues became a possibility on July 1, when the Australian Border Force Act

began operation. It contains secrecy provisions designed to gag any former or current federal Government staff and contractors tempted to blow the whistle on immigration detention centre inmates’ treatment.

This new blow to free speech follows horrific allegations of torture and rape of refugees on Nauru and Manus Island which have embarrassed the Federal Government. Isaacs sees it as another layer of censorship. Media members, activists and even politicians already faced huge obstacles in examining life in immigration processing centres, and insiders have been a valuable source of information.

Faced with the new Act, instead of clamming up, Isaacs and Maycock were among 41 health-workers, teachers and other support personnel with experience at the centres who signed an open letter challenging the Federal Government to prosecute them for speaking out.

“If we witness child abuse in Australia we are legally obliged to report it to child protection authorities. If we witness child abuse in detention centres, we can go to prison for attempting to advocate for them effectively,” they wrote.

Maycock had cancelled a series of public talks about the treatment of women and children in immigration detention

as the shadow of the Border Force Act loomed because as a mother of children aged five and six risking incarceration seemed too perilous a price. However, she found the nerve to continue through signing that letter.

“It gave me a sense of security. I thought, they couldn’t prosecute every single person on that letter,” she says.

Health workers held street protests around the nation, many taping up their mouths and displaying signs declaring “Don’t Gag Me” and “We Will Not Be Silenced.” Media coverage was high, Government reaction low. A Senate committee which reported on refugee conditions in Nauru was wishy-washy about the Act, saying that the impact of its secrecy provisions was unclear.

In that atmosphere, Isaacs and Maycock believe that the gag has worked. Maycock at times still feels “vulnerable and isolated” and worries that authorities may be collecting information to charge her at any time under the Act.

Isaacs knows of a doctor who was unwilling to go public for fear of sanctions under the Act, despite being concerned for an obstetric patient facing shocking conditions on Nauru.

“That’s exactly what it does. It silences opposition,” Isaacs says, adding that government protestations that no medicos would be prosecuted under the Act have rung hollow. “The answer to that is, if you would never prosecute a doctor, why haven’t you excluded doctors? The law is still sitting there.”

An internal email circulated at the agency Save the Children reminded staff that they could face jail if they “reveal to the media or any other person or organisation anything that happens in detention centres like Nauru and Manus Island,” according to ABC TV’s Media Watch.

Isaacs points out the Federal Government’s inconsistency in having successfully protested vehemently to the Egyptian Government over the jailing of Australian journalist Peter Greste for speaking the truth, while threatening refugee advocates back home.

“Aren’t we doing the same with the Border Force Act? So we have this enormous sense of outrage about Peter Greste and what the Egyptian Government does and we try and emulate them,” he says.

Isaacs was disappointed that the Coalition coup which saw Malcolm Turnbull replace Tony Abbott as Prime Minister did not lead to a rapid repeal of the Act’s secrecy provisions, even though their ability to quash dissent has come to world attention.

In late September, the United Nations Special Rapporteur on the human rights of migrants, Francois Crepeau, indefinitely

postponed his planned fortnight-long fact-finding trip to Australia because the federal Government would not pledge that immigration staff and service providers could speak freely without punishment.

The Act’s secrecy provisions would “have an impact on my visit as it serves to discourage people from fully disclosing information relevant to my mandate,” Crepeau said. “This threat of reprisals with persons who would want to cooperate with me on the occasion of this official visit is unacceptable... The Act prevents me from fully and freely carrying out my duties during the visit, as required by the UN guidelines for independent experts carrying out their country visits.”

Daniel Webb, the Human Rights Law Centre’s director of legal advocacy provided a bitter reminder of how embarrassing this is for Australia. “We now join Gambia and Bahrain as States to have recent UN visits aborted due to a lack of government cooperation,” he said.

However, concerned Australians have a weapon not as freely available, perhaps, to citizens of Gambia and Bahrain: the open letter. They have taken to this polite form of protest with passion in recent months, as media images of asylum seekers surging into Europe have provided a daily reminder that refugee advocates’ compassionate voices need protection.

More than 60 prominent women, including writers Linda Jaivin, Van Badham, Tara Moss and Wendy Harmer published an open letter to PM Turnbull and Opposition Leader Bill Shorten protesting against the legal threat to health workers and calling for the immediate removal of all asylum seekers and refugees from Nauru and Manus Island. Within a fortnight, 20,000 people had signed their petition on change.org.

Seventy-four university scholars from around Australia wrote an open letter to Turnbull criticising the Government over Crepeau’s indefinitely postponed visit. “Although the Australian government could allow a detention centre worker to speak to the Special Rapporteur without risk of prosecution, it has not chosen to do so in this case. This calls into question the Australian government’s claim that it is willing to cooperate with UN procedures in good faith,” they wrote.

Nearly 450 staff, including 375 academics, from Turnbull’s alma mater, Sydney University, wrote to him

expressing disgust at the revelations about torture of refugees. They described the Act’s gag clauses as abhorrent. “We are deeply distressed at the erosion of our society’s democratic ethos and of its core freedoms that such legislation represents,” they wrote.



GPs at Sydney protest.

“If we witness child abuse in Australia we are legally obliged to report it to child protection authorities. If we witness child abuse in detention centres, we can go to prison for attempting to advocate for them effectively.”

» Continued from Page 5



MAPW joins groups at Sydney protest. Photograph courtesy Fiona Morris/Fairfax

Separately, Bendigo mental health nurse Christine Cummins, formerly a torture and trauma counsellor on Christmas Island, gathered 5000 signatures on a parliamentary petition opposing the Act's hampering of professionals' duty "to advocate for vulnerable and voiceless people."

Various Government and detention centre spokespeople insist that the right to speak out has not been suppressed. Graeme Hunt, head of Transfield Services, which has the \$1.2 billion contract to run Nauru and Manus Island detention centres, claims that the Act's impact on whistleblowers has been "grossly overstated."

When the Act first came into force, Australian Border Force Commissioner Roman Quaadvlieg told Sky News: "We are not about litigating or prosecuting against those who would wish to disclose issues and ... whistleblower protection laws are quite robust in this country."

Immigration Minister Peter Dutton said in a media release, The Act will protect sensitive operational information from unauthorised disclosure; it will not restrict anyone's ability to raise genuine concerns about conditions in detention should they wish to do so through appropriate channels." He claimed that Australia had "world leading whistleblower protections in the form of the Public Interest Disclosure (PID) Act."

However, Khanh Hoang, associate lecturer at the Australian National University College of Law, argues that the Government could use a loophole in the PID Act which prohibits whistleblowers from revealing "sensitive law enforcement information."

"The Government may argue that much of what goes on in

detention centres or at sea amounts to sensitive law enforcement information, just as it has argued that on-water activities under Operation Sovereign Borders are 'operational matters' that cannot be discussed," he wrote in *The Conversation*.

In the same journal, Peter Roberts, of Charles Sturt University, who has studied whistleblowing, and legal academic Tomas Fitzgerald, of University of Notre Dame, found that the PID Act does apply, but only once a protected internal disclosure has been made. Even if the official response

is slow or unsatisfactory, there's not much legal room to go public, they found.

Brave souls have continued to risk their freedom. Two months after the Act became

law, Danielle Serrano, a former Save the Children caseworker, who had spent six months on Nauru, spoke out for the first time on ABCTV's 7.30 program, as another shocking refugee rape was revealed. The Immigration Department knew the island was unsafe for women, because it had warned female staff of the dangers of moving about there alone, she said.

Dr Jean-Paul Sanggaran, who signed the open letter with Isaacs and Maycock, is now campaigning for the federal parliament to ratify the Optional Protocol to the Convention Against Torture (OPCAT) which Australia signed in 2009. This is an international mechanism that would allow proper monitoring of detention centres, he says.

It could short-circuit a lot of whistleblower angst because Australia would be obliged under its treaty obligations to be much more open about its treatment of detainees, he argues.

"The first step in dealing with any of this is transparency. If you can't see it, you can hide it," he says.

"The first step in dealing with any of this is transparency. If you can't see it, you can hide it."

War correspondents honoured at Australian War Memorial

A monument dedicated to war correspondents has been opened at the Australian War Memorial in Canberra. The memorial features a black granite occulus, or eye, representing the lens of a camera and the eye of the journalist focused on the events of war.

The ABC's **Siobhan Heanue** reports.



Peter Greste and Shirley Shackleton lay wreaths at the memorial. Photo: Siobhan Heanue

Journalist Peter Greste, freed from an Egyptian jail earlier this year, accompanied Shirley Shackleton, the wife of Balibo Five journalist Greg Shackleton, as she laid a wreath at the opening of the new memorial honouring Australia's war correspondents.

The unveiling of the new monument by Prime Minister Malcolm Turnbull comes as Australia's journalists observe the 40th anniversary of the deaths of the five reporters killed in 1975 as they covered the Indonesian invasion of Balibo in East Timor.

The idea of a formal memorial to

journalists killed in conflict zones was sparked a decade ago. To date, about 26 Australian correspondents have lost their lives reporting in conflict zones.

Unveiling the memorial, Mr Turnbull said it stood for "courage in the face of death and courage in the face of physical threat. But it is also a memorial to the men and women who do what is so essential in our democracy – hold up the truth to power," he said.

"We are talking today about a tradition of courage, a tradition that is absolutely fundamental to our democracy."

Journalist Peter Greste, who was jailed

» Continued from Page 7



Four Corners reporter Chris Masters on assignment as war correspondent.

by Egyptian authorities in 2014 and released earlier this year, reflected on the increasingly dangerous space foreign correspondents find themselves in.

“The war on terror has hollowed out the neutral ground that journalists used to occupy,” he said.

“For a long time there was an understanding that journalists had a right to be on the battlefield even if they weren’t always welcome,” he said. “Now journalists are a part of the battlefield, we’ve got a war over an idea. We become targets in a way that we’ve never been before.”

The first record of an Australian newspaper reporter covering a colonial war comes from the Sudan campaign in 1885.

Poet and journalist AB (Banjo) Paterson covered the Boer War.

Journalist Charles Bean was Australia’s



Photographer Neil Davis killed in Bangkok in 1984.

first official war correspondent. He accompanied soldiers on the battlefields of World War I and was the driving force behind the establishment of the Australian War Memorial.

The Great War was a trial by fire for the correspondents as well as for the soldiers – reporters shared trenches with the diggers and sent their copy out by pigeon or steamer.

The way campaigns like Gallipoli were reported by the press helped nurture the Anzac legend.

While Bean became famous for recounting World War I campaigns including Gallipoli, his competitor Keith Murdoch (who just missed out on securing the appointment of official war reporter to Bean) is renowned for resisting the censorship imposed on reporters by the military authorities.

Murdoch followed Bean to theatres in the Middle East, where he eventually circumvented military censors and sanctioned communications channels by delivering a letter criticising the campaign in the Dardenelles to Australian politicians.

The so-called Murdoch Letter represented a strident rejection of censorship, at a time



Charles Bean observes the Australian advance in 1917. Photo: courtesy of Australian War Memorial.

when official war reporters were dressed in uniform, fed and rested alongside the soldiers.

Accredited correspondents were expected to be part of the propaganda machine, prohibited from writing about failed campaigns.

War correspondents were “civilianised” in 1945.

The War Correspondents Memorial is a black granite sculpture in the shape of an oculus, representing the lens of a camera or the eye of a journalist.

It has no names inscribed on it, but is instead dedicated to all correspondents who have worked in conflict zones.

It sits in the sculpture garden outside the Australian War Memorial building – alongside the military memorial – to reflect the position of journalists in a theatre of war.

World War II – especially the war in the Pacific – brought conflict close to Australia’s doorstep and correspondents suddenly found themselves interpreting a very real threat as it progressed towards Australian shores.

A brand of “foxhole journalism” that favoured accounts close to the action developed in World War II, which saw a

greater number of journalists killed than in World War I.

Television transformed war reporting in Vietnam, just as cable TV and satellite technology transformed conflict coverage during the First Gulf War.

Australian war correspondent Michael Ware, who covered the war in Iraq, said there had always been a feisty relationship between the military and the media.

“There is a dynamic tension between the message the military may want to get out and the truths that the journalists are trying to get out,” Mr Ware said.

“But one of the greatest stories that we can tell as journalists is the story of our troops, and we can only do that when we have real unfettered access to men and women in uniform.

“That’s something that hasn’t been provided as much as we’ve seen in wars gone by.

“I’d like to think that maybe it’s time for that to change.”

(Siobhan Heanue’s report is courtesy of ABC News)

Tightening the net: Governments expand online controls

Internet freedom around the world has declined for the fourth consecutive year, with a growing number of countries introducing online censorship and monitoring practices that are simultaneously more aggressive and more sophisticated in their targeting of individual users.

Report by **Sanja Kelly, Madeline Earp, Laura Reed, Adrian Shahbaz, and Mai Truong** for Freedom House.

In a departure from the past, when most governments preferred a behind-the-scenes approach to Internet control, countries are rapidly adopting new laws that legitimise existing repression and effectively criminalise online dissent.

As a result, more people are being arrested for their Internet activity than ever before, online media outlets are increasingly pressured to censor themselves or face legal penalties, and private companies are facing new demands to comply with government requests for data or deletions.

Some states are using the revelations of widespread surveillance by the U.S. National Security Agency (NSA) as an excuse to augment their own monitoring capabilities, frequently with little or no oversight, and often aimed at the political opposition and human rights activists.

The growing restrictions at the national level are also changing the nature of the global Internet, transforming it from a worldwide network into a fragmented mosaic, with both the rules and the accessible content varying from one country to another.

Blocking and filtering – once the most widespread methods of censorship – are still very common, but many countries now prefer to simply imprison users who post undesirable content, thereby deterring others and encouraging self-censorship. This approach can present the appearance of a technically uncensored Internet while effectively limiting certain types of speech. Meanwhile, physical violence against Internet users appears to have decreased in scope.

In 2013, Freedom House documented 26 countries where government critics and human rights defenders were subjected to beatings and other types of physical violence in connection with their online activity; that number fell to 22 in 2014.

Key Reasons for Decline in Internet Freedom, 2013–14:

- Proliferation of repressive laws
- Increased surveillance
- New regulatory controls over online media
- More arrests of social-media users
- Intensified demands on private sector
- New threats facing women and LGBTI population
- More sophisticated and widespread cyber attacks

Tracking the Global Decline

To illuminate the nature of the principal threats in this rapidly changing environment, Freedom House conducted a comprehensive study of Internet freedom in 65 countries around the world. This report is the fifth in its series and focuses on developments that occurred between May 2013 and May 2014. The previous edition, covering 60 countries, was published in October 2013.

Freedom on the Net 2014 assesses a greater variety of political systems than its predecessors, while tracing improvements and declines in the countries examined in previous editions. Over 70 researchers, nearly all based in the countries they analysed, contributed to the project by examining laws and practices relevant to the internet, testing the accessibility of select websites, and interviewing a wide range of sources.

Of the 65 countries assessed, 36 have experienced a negative trajectory since May 2013. The most significant declines were in Russia, Turkey, and Ukraine. The Russian Government took multiple steps to increase control over the online sphere, particularly in advance of the Sochi Olympic

Games and during the ongoing crisis in Ukraine. In Turkey, the blocking of social media, limits on circumvention tools, cyber attacks against opposition news sites, and assaults on online journalists were among the most prominent threats during the year.

Ukraine's standing declined primarily due to violence targeting social media users and online journalists during the Euromaidan protests, an increase in cyber attacks, and new evidence revealing the extent to which the administration of ousted president Viktor Yanukovich had been conducting online surveillance of activists, journalists, and opposition leaders.

Iran, Syria, and China were the world's worst abusers of Internet freedom overall. Users in China were intimidated and arrested during crackdowns on online "rumors" as President Xi Jinping consolidated control over social media.

In September 2014, the same month that students in Hong Kong used the world's third-fastest Internet connection to mobilise (pro-democracy) demonstrations, mainland courts sentenced prominent Uighur academic and webmaster Ilham Tohti to life imprisonment, the harshest punishment for online dissent in years.

Syria was the most dangerous country in the world for citizen journalists, with dozens killed in the past year, while pro-government hackers reportedly infected 10,000 computers with malware disguised as warnings against potential cyber attacks.

And despite early enthusiasm over the election of reformist president Hassan Rouhani, Iran maintained its position as the worst country for Internet freedom in 2014. Authorities continued to hand down harsh punishments, sentencing people to lengthy prison terms for promoting Sufism online, among other digital activities.

Very few countries registered any gains in Internet freedom, and the improvements that were recorded largely reflected less vigorous application of existing internet controls compared with the previous year, rather than genuinely new and positive steps taken by the government. The year's biggest improvement occurred in India, where authorities relaxed restrictions on access and content that had been imposed in 2013 to help quell rioting in north-eastern states.

Another country that registered a notable improvement is Brazil, where after years of debate and revision, lawmakers approved a bill known as the Marco Civil da Internet that contains important provisions governing net neutrality and ensuring strong privacy protections.

Freedom House also documented an improvement in Belarus, mainly because the political environment was less volatile and the government eased enforcement of some restrictions, even as citizens increasingly used the internet to voice their views.

New Legal Measures Curb Internet Freedom

In December 2013, as anti-government protesters flooded the streets in Ukraine, Russian president Vladimir Putin signed a bill authorising the prosecutor-general to block any websites hosting "extremist" content or calls to protest, without judicial oversight. The law took effect on February 1, 2014, and was used immediately to crack down on

digital media that carried criticism of the Kremlin's policy toward Ukraine.

Within six weeks, three major independent news sites were blocked. A strikingly similar law was enacted in Kazakhstan in April, signifying both the spreading influence of repressive models for Internet control – a so-called snowball effect – and a growing trend in which governments use the legal system to codify and legitimise their restrictions.

While the legal measures adopted in a range of countries were intended to enable the development of information and communication technologies (ICTs) or protect individual rights, they also typically included problematic provisions with explicit restrictions or ambiguous language that could be abusively applied to legitimate online activities. These new rules come at a time when technological innovations are evolving to circumvent older methods of control, such as blocking and filtering.

In late 2013, for example, the research and advocacy group Greatfire.org began hosting content that is banned by the Chinese government on "unblockable" domains owned by Amazon and other major companies, which officials cannot risk censoring because of their large commercial footprint within China.



With tighter government controls, online media outlets and private organisations are facing pressure to censor themselves or face legal penalties. Photograph by Khai Nguyen used under Creative Commons Licence.

Separately, during the September-October 2014 protests in Hong Kong, concerns that the authorities might shut down telecommunications service led to widespread use of the mobile phone application FireChat, which enabled protesters to communicate through a network of Bluetooth connections.

Unable to keep up with such developments on a purely technical level, authorities are increasingly turning to their legal systems to control online activity. They are moving beyond the online application of existing, generalised tools, such as criminal defamation laws, and

» *Continued from page 11*

crafting new measures that pertain specifically to ICTs.

Problematic new laws are emerging in democratic and authoritarian countries alike. Democratic states have struggled to draft legislation that adequately balances legitimate priorities like counterterrorism with the protection of citizens' rights online. Nevertheless, countries with effective democratic institutions allow for public consultation and correction when laws infringe on fundamental freedoms.

By contrast, the avenues for review of abusive laws are limited in non-democratic states, compromised by closed political systems and weak rule of law. In the most extreme cases, authoritarian regimes simply issue executive decrees or regulations that bypass any legislative or judicial oversight.

Most of the restrictive new legal measures documented by Freedom on the Net 2014 fall into the following categories.

Bans on online dissent: While some countries opt to create laws with vague language that can be used to stifle dissent when needed, others are much more open about their goal of cracking down on any criticism. In many cases, the penalties for online expression are worse than those for similar actions offline.

In July 2013, for example, the Gambian Government passed amendments to the Information and Communication Act that specifically criminalised the use of the Internet to criticise, impersonate, or spread false news about public officials. Anyone found guilty could face up to 15 years in prison, fines of roughly \$100,000, or both – significantly harsher punishments than what the criminal code prescribes for the equivalent offenses offline.

Restrictions targeting expression on social media were particularly draconian in Vietnam. Decree 72, enacted in September 2013, extended prohibitions against political or social commentary from blogs to all social-networking sites. Decree 174, issued that November, introduced fines for spreading anti-state propaganda on social media.

Criminalisation of online defamation: Measures to criminalise defamation online emerged as a prominent trend. In May 2013, the government of Azerbaijan adopted legal measures that expanded criminal defamation to online content, further constraining criticism of government officials in the run-up to the presidential election in October. Criminal defamation laws are especially problematic given the ease with which casual remarks on social-media platforms can be targeted by officials for reprisal. In January 2014, a Zimbabwean user was arrested for calling President Robert Mugabe “an idiot” on his Facebook page.

Broad national security laws: Several countries used the pretext of national security to enact legal measures that allowed the potential restriction of legitimate speech online. In Ethiopia, a new cyber security law states that “social-media outlets, blogs, and other internet-related media have great capabilities to

instigate war, to damage the country's image, and create havoc in the economic atmosphere of the country”. The law empowers the government to investigate computers, networks, internet sites, radio and television stations, and social-media platforms “for any possible damage to the country's social, economic, political, and psychological well-being.”

In the Middle East, Jordan broadened its definition of illegal terrorist activities to include acts that could damage the country's relations with foreign countries, including the online publication of critical commentary on foreign leaders.

Expanded powers for state regulators: Other legal measures provided government entities with unchecked discretionary authority over online media and speech. In Kenya, a new information and communications law signed in December 2013 gave the government-appointed regulator vaguely defined new powers, including the authority to impose punitive fines on both journalists and media houses for alleged ethical violations.

Similarly in Ecuador, the Organic Law on Communications enacted in June 2013 extended the communication regulator's control over content to “all media with an online presence”. It was immediately applied to target numerous print and online news outlets.

Content blocking without a court order: Measures that empowered government agencies to block content without judicial oversight and with little or no transparency were especially notable in five countries – Turkey, Thailand, Russia, Kazakhstan, and Italy. In the less democratic countries, these laws have coincided with political turmoil and an urgent government desire to suppress dissent.

In Turkey, after audio recordings implicating high level officials in a corruption scandal were leaked on YouTube and SoundCloud, new legal measures empowered the state regulator to block websites without a court order in cases that violate privacy or are considered “discriminatory or insulting”. The regulator later blocked YouTube to suppress an unverified recording of a national security meeting. Twitter was also blocked after refusing to suspend user accounts. President Recep Tayyip Erdoğan, who was prime minister at the time, has vowed to “wipe out Twitter” and called social media the “worst menace to society”.

In Thailand, judicial oversight is legally required when web content is blocked, but court orders from the past year undermined that requirement, allowing information officials to block web pages that are “similar” to those specified in the order without seeking separate permission. The situation worsened following the May 2014 coup, as military leaders issued censorship directives under martial law, blocking more than 200 pages in the week after they seized power.

Excessive intermediary liability: Some new laws imposed criminal liability on intermediaries – such as ISPs and content-hosting platforms – for objectionable content posted by

others through their services. In Uganda, the controversial Anti-Pornography Act adopted in February 2014 imposed criminal penalties on service and content providers whose systems are used to upload or download broadly defined “pornographic” material. Although the law was annulled in August on a technicality, it was representative of a broader international trend in which companies or individuals face prosecution merely for providing a platform or network to be used by others.

Of the 65 countries studied in Freedom on the Net 2014, 19 passed new legislation that increased surveillance or restricted user anonymity.

Intrusive surveillance: Following the revelations about NSA surveillance practices, some governments have been working to pass legislation that will improve surveillance policies by balancing the needs of intelligence agencies with the protection of users' rights. However, other states have enacted laws that further restrict individuals' ability to communicate anonymously, a trend that is particularly concerning in countries where surveillance is regularly used to monitor and punish dissent.

Of the 65 countries studied in Freedom on the Net 2014, 19 passed new legislation that increased surveillance or restricted user anonymity, including authoritarian countries where there is no judicial independence or credible legal recourse for users whose rights have been violated.

In April 2014, for example, Turkey passed amendments to the law on the National Intelligence Organisation that further insulated the agency's activities from judicial or media scrutiny. The changes empower the intelligence service to obtain information and electronic data from public bodies, private companies, and individuals without a court order.

The governments of Uzbekistan and Nigeria both passed laws that require cybercafés to keep a log of their customers, and in the case of Uzbekistan, owners must also keep records of customers' browsing histories for up to three months. In Russia, the so-called “bloggers law”, passed in May 2014, increased government oversight of social media users by requiring anyone whose sites or pages draw over 3,000 daily viewers to register with the telecommunications regulator.

More democratic countries also drafted, and in some cases passed, potentially harmful surveillance legislation. Despite a significant outcry in France over revelations that the national



PEN International's Assembly of Delegates, meeting at the organisation's 81st international Congress in Qwuebec City, Canada in October, called for the immediate and unconditional release of imprisoned Eritrean writer and editor **Amanuel Asrat**. He was acknowledged with an Empty Chair in the city's main square as a reminder of the grave dangers writers and journalist face in carrying out their work. Mr Asrat was arrested in 2001 amid a crackdown on state and private media and remains in a maximum security prison.

Zoë Rodriguez

intelligence agency had been cooperating with the NSA and its British counterpart, in December 2013 the French legislature added an article to an omnibus bill on the military budget that extended the authorities' legal powers to access or record telephone conversations, e-mail, internet activity, personal location data, and other electronic communications. The legislation provides for no judicial oversight and allows electronic surveillance for a broad range of purposes, including “national security,” the protection of France's “scientific and economical potential”, and prevention of “terrorism” or “criminality”.

Efforts to reform surveillance legislation in the United States gained momentum in the aftermath of the NSA revelations, though at the end of the period covered by this report, legislative changes were still pending. Notably, some of the bills drafted in Congress would have essentially codified existing surveillance practices.

However, by mid-2014 one of the more positive bills, the USA Freedom Act, had garnered significant support from lawmakers, civil society, and the intelligence community.

Arrests and Reprisals Increase for Social Media Users

In tandem with the growing number of legal measures designed to restrict online speech, more people were detained or prosecuted for their digital activities in the past year than ever before. Since May 2013, arrests for online communications were documented in 38 of the 65 countries studied in Freedom on the Net 2014, with social media users identified as one of the main targets of government repression.

Nowhere was this more prevalent than in the Middle East and North Africa. Of the 11 countries examined in the region, 10 featured detentions or interrogations of Internet users during the coverage period. Dozens of social media users were arrested in Bahrain, Saudi Arabia, and the United Arab Emirates, with many sentenced to jail terms of up to 10 years. Despite their high levels of access, the countries of the Persian Gulf remain some of the most restrictive for online freedom of expression.

Social networking sites – the new battleground for governments seeking to quell protests and organized dissent – spurred an unprecedented volume of legal and extralegal detentions. Chinese police detained hundreds of Weibo microblog users, and indicted some of the most prominent, after

» *Continued from page 13*

top legal authorities established 5,000 views or 500 reposts as a new threshold for prosecuting false, defamatory, or “harmful” comments online.

China has imprisoned more Internet users than any other nation even without this new justification. The change, however, gave authorities an additional tool to punish dissidents, while also serving as a warning to celebrity bloggers with millions of followers, including members of the business elite. Venture capitalist Charles Xue appeared handcuffed on state television in September 2013 to apologise for sharing unverified information online.

Officials in 11 countries took steps to proactively monitor social media for signs of dissent and to crack down on users for political or social commentary. In Ethiopia, where one blogger is serving an 18-year sentence and six more face trial, the government’s Information Network Security Agency began scanning social media for “damage” to the country’s “well-being” under a November 2013 decree.

Also that month, Bahrain’s state media announced the

Authorities in Jordan, Singapore, and Russia introduced, updated, or enforced rules mandating that news sites and popular blogs obtain licenses or register with the government, a trend that may inhibit independent reporting given the fear of government retribution.

establishment of a Cyber Safety Directorate to monitor websites and social media for content that threatens the unity and cohesion of Bahraini society or that incites violence and hatred.

Government attention and reprisals often focused on social media posts about political leaders. In Bangladesh, supporters of Prime Minister Sheikh Hasina accused their opponents of defaming her on Facebook.

In South Korea, where defamation comes with a longer sentence when committed on the Internet, at least three people faced trial for online comments about President Park Geun-hye. In some countries, these developments have coincided with the growth of online platforms and their user base.

More people were detained or prosecuted for their digital activities in the past year than ever before.

Internet users were tried not only for what they posted online, but also for content found on their electronic devices. In Thailand, a man was sentenced to seven years in prison after police confiscated his computer and discovered pictures that were deemed insulting to the king. He was convicted of “attempting” to commit *lèse-majesté* – a charge with no legal basis – as investigators argued that he intended to upload the material to the Internet eventually.

Online Journalists and Bloggers Face Greater Pressure

The past year featured increased government pressure on independent news websites, which had previously

been among the few unfettered sources of information in many countries. Bloggers and online journalists covering antigovernment demonstrations faced arbitrary detention and, at times, physical violence at the hands of police or pro-government thugs.

Dozens of citizen journalists were killed in Syria, and an independent reporter was fatally shot while covering an antigovernment demonstration in Egypt. Citizen journalists covering mass protests in Turkey and Ukraine were also physically assaulted. Online journalists were arrested in 7 out of 12 sub-Saharan African countries examined in Freedom on the Net 2014.

Authorities in Jordan, Singapore, and Russia introduced, updated, or enforced rules mandating that news sites and popular blogs obtain licenses or register with the government, a trend that may inhibit independent reporting given the fear of government retribution. In addition to licensing requirements, authoritarian governments used a variety of laws to arrest and intimidate government critics who publish stories online.

In Morocco, Ali Anouzla, the Arabic editor of the news site *Lakome*, was arrested for inciting terrorism after he published an article that contained a hyperlink to a Spanish news site, which in turn had embedded an extremist propaganda video. *Lakome* was subsequently blocked in one of Morocco’s first cases of politically motivated blocking in years.

Online journalists and others who publish independent reporting online were arrested in at least 25 countries during the coverage period. In Ethiopia, six writers from the Zone9 news blog were arrested in April 2014 and face charges related to accepting foreign funding and inciting violence through social media.

In Iran, 16 employees of the gadget review site Narenji were arrested over alleged links to foreign governments and “anti-Iranian media”, with some apparently charged due to their participation in training programs run by the Persian service of the British Broadcasting Corporation (BBC), which the Iranian government linked to the British intelligence agency MI6. Eleven of the defendants were later found guilty, and the website’s founder received the heaviest sentence – 11 years in prison.

At times, authorities used trumped-up charges with no link to actual reporting to punish independent journalists. In Uzbekistan, Sergey Naumov, an independent journalist who has contributed reporting for the Ferghana News website, was arrested in September 2013 on charges of hooliganism and given a 12-day jail sentence after he allegedly collided with a woman on the street, who then accused him of harassing her. The charges came days after Naumov began recording video about forced labor practices during the country’s annual cotton harvest.

In Azerbaijan, several news site editors were also arrested on apparently fabricated charges of drug possession or hooliganism. In Belarus, a blogger who exposed police corruption was forced to undergo a psychiatric evaluation and faced harassment by police. And in Vietnam, lawyer and blogger Lê Quôc Quân was sentenced to 30 months in prison for tax evasion, a charge that is frequently used by the

government to silence dissidents. He had been arrested in 2012, shortly after publishing an article on the website of the BBC’s Vietnamese service.

Civil society activists who use ICTs to document abuse or rally supporters, or simply as a part of their daily lives, also faced threats. Two senior members of Odhikar, a nongovernmental organization (NGO) in Bangladesh, were arrested and charged under the ICT Act for “fabricating” reports of a government crackdown on protesters to “enrage” the public.

Alaa Abd el-Fattah, a prominent Egyptian blogger and activist, was sentenced to 15 years in prison in June 2014 for organising a protest against military trials for civilians. He was not allowed to attend his own sentencing. Although he was released on bail pending a re-trial, he was later rearrested. Abd el-Fattah has faced legal harassment from every Egyptian regime since that of former president Hosni Mubarak.

Emerging Threats

In addition to the clear infringements on Internet freedom caused by the proliferation of restrictive laws and the rise in arrests and attacks on users and online journalists, Freedom House has identified three emerging threats that are placing the rights of internet users at increasing risk:

- Data localisation, by which private companies are required to maintain data storage centers within a given country to allow for greater government control
- A harsh environment for women and members of the LGBTI (lesbian, gay, bisexual, transgender, and intersex) community, who are both underrepresented online and disproportionately harassed for their online activities
- Lack of cyber security for human rights activists and political opposition members, who have increasingly been targeted with technical attacks and spying by repressive governments

Data Localisation

As governments search for ways to maintain or expand their jurisdiction over the online sphere, Internet companies are finding themselves under increasing pressure, whether through court decisions that increase intermediary liability or through government decisions, to block access to their platforms.

Within this broader trend, proposed data localisation requirements – obliging companies to store communications data on servers located within the country in question — have multiplied over the past year, in some cases gaining traction due to the NSA revelations. While these policies could create prohibitive barriers for companies seeking to operate in certain countries, they also pose significant threats to Internet users’ rights and ability to access information, for instance by potentially limiting users’ choice of Internet platforms and subjecting them to more surveillance by their own governments.

Over the past year, the Russian Government has

significantly stepped up efforts to exert control over the Internet, partly by attempting to regulate the flow of data itself. A law signed in July 2014 requires Internet companies to store Russian citizens’ data on servers in Russia. An amendment in September moved up the compliance date from September 1, 2016, to January 1, 2015, which could present a significant challenge for companies like Facebook and Twitter that do not currently have servers within the country.

Many human rights advocates are concerned that the new law will make it even easier for Russian intelligence agencies to access the communications data of Russian users, particularly activists and opposition figures who may then face arrests and prosecution for their online activities.

In July 2013, the Vietnamese Government issued Decree 72, which, among other things, requires international Internet companies to establish at least one server in the country, subject to local law and oversight. Despite the fact that numerous international organisations criticised the original draft of the decree as a significant threat to free speech and privacy, the revised drafts maintained the data localisation requirement, though it remains unclear how or whether it will be enforced.

Many governments are understandably concerned about how their citizens’ information makes its way in and out of other countries’ jurisdictions, as the data may be subject to surveillance abroad. But given the decentralised structure of the Internet, data localisation requirements alone will not prevent crucial information from flowing across borders.

Indeed, authoritarian regimes seem to be using these policies for other goals, ranging from enhanced domestic surveillance to reduced competition for domestic internet companies. While data localisation may succeed in boosting the economic success of local data centres, they could also have costly effects for other domestic businesses that rely on foreign internet companies.

Harassment of Women and LGBTI Users

Internet freedom is particularly tenuous for women and LGBTI people. Globally, women continue to face immense cultural and socio-economic barriers to ICT access, resulting in a significant gender gap in ICT use. While increasing access to digital media has helped women to fight for political, social, and economic equality, closing the digital gender gap is not enough to guarantee women’s participation in the online sphere.

Increasingly, women around the world are subject to harassment, threats, and violent attacks for their online activities, which can lead to self-censorship among female Internet users and significantly inhibit their freedom of expression.

In some countries where fundamental rights for women are routinely flouted, they are increasingly targeted for merely accessing ICTs. In Pakistan, a woman was stoned to death by local men in June 2013 after a tribal court convicted her of possessing a mobile phone. Also that month, a group of men fatally shot a woman and her two daughters in the country’s north after a video of the women laughing, which male family members

» Continued from page 15

considered shameful, circulated on local mobile networks.

In Azerbaijan, investigative journalist Khadija Ismayilova has repeatedly been subjected to blackmail and gender-based smear campaigns in an attempt to silence her and discredit her work.

In India, women's rights activist Kavita Krishnan was harassed online by a person using the handle "@RAPIST." Digital activists were also penalised for documenting violence against women; Mukhlif al-Shammari was jailed for five years in June 2013, in part for posting a YouTube video on the mistreatment of girls in Saudi Arabia.

Members of the LGBTI community have faced targeted threats and harassment via ICTs, impeding their ability to freely use certain tools. In Egypt, there were reports that the authorities used the dating application Grindr to entrap and prosecute gay men.

Following the adoption of Uganda's Anti-Homosexuality Act in February 2014, numerous members of the LGBTI community reported receiving e-mail spyware known as "Zeus malware" that sought to access their contact details and confidential information from compromised computers. Similarly in Russia, where the parliament passed a law against LGBTI "propaganda" in June 2013, vigilante groups used online tools to bait gay men, luring them to in-person encounters where they were physically assaulted and threatened with public exposure.

Lack of Cyber Security

As users have become more privacy conscious, malware attacks against government critics and human rights organisations have evolved to take on a more personalised character. Technical attacks against such targets were noted in 32 of the 65 countries examined this year.

So-called spear phishing has emerged as one of the most effective techniques for hijacking online accounts and collecting sensitive information. Victims receive customised email messages that typically direct them to an official-looking page, run by the hackers, where they are prompted to enter their email or social media credentials. These sorts of attacks were employed by the Syrian Electronic Army against international news organisations such as the *New York Times*, *Global Post*, CNN, and *Forbes* over the past year.

Once in control of an opposition website or social media account, hackers can post hyperlinks to online petitions or exciting news stories to lure users into clicking. These links often have hidden tracking capabilities that can ascertain a user's location. According to a report by BahrainWatch, malicious links have been used to identify and arrest several anonymous Twitter users who were outspoken against the government in that country.

The increased use of "social engineering" – essentially tricking users into revealing information – and account hijacking has reinforced the idea that one's own digital security often depends on the actions and judgment of those in one's broader social or professional network.

In many cases, assailants perform substantial research about a target's interests, professional connections, and personal relationships in order to create an individually tailored attack. For instance, bogus Facebook, Google,

LinkedIn, and Twitter profiles have been set up by Iranian intelligence agents to "friend" foreign targets.

One LinkedIn profile under the name of John Bolton, the former U.S. ambassador to the United Nations, was created to ensnare pro-Israel researchers and exiled members of Iran's persecuted Baha'i community. Attackers sometimes spend several months building trust before sending a link to a relevant news story that contains malicious code.

Spear phishing victims are often prompted to download a particular file that then installs a malware program. Hackers using this technique have targeted members of the Ethiopian exile community, such as opposition figure Tadesse Kersmo and staff at the Virginia-based news outlet ESAT. Researchers at the University of Toronto's CitizenLab have traced the attacks to individuals working for or in close coordination with the Ethiopian government.

The Ethiopian example reflects a growing trend in which



Zoë Rodríguez

PEN International's Assembly of Delegates, meeting at the organisation's 81st international Congress in Quebec City, Canada in October, called for justice for murdered Honduran journalist **Juan Carlos Argeñal Medina**. He was acknowledged with an Empty Chair in the city's main square as a reminder of the grave dangers writers and journalist face in carrying out their work. Mr Medina was the owner of television station Vida Televisión and a correspondent for Globo TV, known for its criticism of the Honduran government. He was shot and killed in 2013 by unidentified gunmen.

pro-government hackers are expanding their operations beyond national borders. In one case, attackers hijacked the site of a Vietnamese blogger living in California and used it to publish her personal photos and e-mails. Researchers noted that the malware employed was detectable by only 1 in 47 antivirus programs at the time, reflecting an unusually high level of sophistication that suggested state involvement.

The Global Struggle for Internet Freedom

Despite overall declines in global Internet freedom, an ongoing trend of pushback from civil society was amplified this year by reactions to the NSA surveillance revelations. Awareness of the threats to fundamental rights expanded beyond civil society, as ordinary users around the world became more engaged in securing their privacy and freedom of expression online. In select cases, long-running Internet freedom campaigns finally garnered the necessary momentum to succeed.

The most widely praised step forward for Internet freedom over the past year was the passage of Brazil's Marco Civil da Internet, thanks in large part to pressure from activists and the public. The bill, which had stalled in Congress after numerous debates and revisions, gained fresh traction following the disclosure that the NSA and other intelligence agencies had engaged in mass collection and storage of the communications data of users around the world.

The widespread alarm inspired potentially negative revisions to the bill, such as data localisation requirements, but these were ultimately removed. In a more positive response to the NSA scandal, a Brazilian legislator included even stronger privacy provisions for user data. The final bill also contains key provisions restricting traffic discrimination in order to guarantee net neutrality, and ensuring strong protections for freedom of expression online.

While there are still some problems with the final text, including the mandatory retention of access data for six months, the Marco Civil was widely regarded as a positive example for other countries.

Popular uproar over government surveillance had a positive effect elsewhere in Latin America, where problematic proposals were halted. In Ecuador, lobbying efforts by the Internet Libre collective resulted in the defeat of Article 474 of the penal code, which would have forced ISPs to record all user activity for six months.

In Argentina, community members prevented a government initiative to proactively monitor social networking sites for potentially disruptive events, which opponents deemed "pre-emptive surveillance".

In Europe, outrage over the NSA revelations brought the topic of user privacy to the centre of discussions in the European Parliament and EU member states. In December 2013, the European Court of Justice ruled that current requirements placed on ISPs to indiscriminately store data on their customers were in contravention of Articles 7, 8, and 52(1) of the Charter of Fundamental Rights of the European Union.

Civil society critics had long argued that the requirements

of the European Data Retention Directive constituted mass surveillance and far exceeded what was necessary for law enforcement purposes. However, the decision to strike down the directive has prompted a range of reactions among the member states, with some drafting their own retention laws to ensure that ISPs continue to store user data.

These legislative and judicial successes notably occurred in democratic states, where the rule of law prevails and governments are generally held accountable to citizens and civil society. In Brazil, for example, the draft of the Marco Civil was the result of a collaborative process that included input from civil society and ordinary citizens, and it had support from members of Congress and the president.

In more authoritarian settings, and in democracies where needed reforms are still pending, individuals and companies have taken matters of privacy and freedom of expression into their own hands by using anonymising and encryption tools. Products that emphasise user privacy have logged a notable increase in users since June 2013. On the anniversary of the NSA revelations, civil society campaigns placed an emphasis on educating users about available privacy tools.

And Internet companies that initially came under fire for cooperating with intelligence agencies or not adequately protecting user data have since taken steps to improve their encryption standards.

Internet freedom is important not just for its own sake, but because it facilitates expression and activism on other issues. Civil society organisations have continued to use ICTs to advocate for positive change in their communities, such as the recognition of women's rights in the Middle East.

In Lebanon, online campaigns by the NGOs Nasawiya and Kafa contributed to the passage of a law on domestic violence. Since a 2013 UN report found that over 99 percent of Egyptian women had experienced sexual harassment, websites such as Harassmap have spread awareness about the issue while providing tools for victims to report incidents and obtain psychological or legal support. In Saudi Arabia, a campaign to allow women to drive cars gained momentum after a dozen women posted videos of themselves driving in a coordinated day of action in October 2013.

In these and a growing number of other countries, the Internet is a crucial medium not just for personal communication or news and information, but for political participation and civic engagement. The struggle for Internet freedom is consequently inseparable from the struggle for freedom of every kind.

Freedom House is an independent watchdog organisation dedicated to the expansion of freedom around the world. Today, as more than two billion people live under oppressive rule, Freedom House speaks out against the main threats to democracy and empowers citizens to exercise their fundamental rights. It analyses the challenges to freedom; advocates for greater political and civil liberties; and supports frontline activists to defend human rights and promote democratic change.

Raif Badawi

'1000 Lashes: Because I Say What I Think'

In 2012, Saudi blogger Raif Badawi was arrested for “insulting Islam through electronic channels”. In his blog posts, Badawi had called for the separation of church and state, advocated for the equality of all religions, and condemned religious extremism; as a consequence, he was sentenced to 10 years in prison and 1,000 lashes. His controversial blog posts, introduced by this essay, have been published by Greystone Books. Proceeds from *1000 Lashes: Because I Say What I Think* will go to Badawi’s family and their efforts to procure his release.

I was engrossed in my attempts to re-examine liberalism in Saudi Arabia, which was contributing to the prevalence of “enlightenment” in my community. I wanted to break the walls of ignorance, to shatter the sacredness of religious clerics. I wanted to advocate for change and respect for freedom of speech, to call for women and minorities’ rights, and the rights of the indigent in Saudi Arabia.

That was before I was jailed in 2012.

Imagine living your daily life, enacting all of its details, in a small 215 square-foot room, accompanied by more than thirty people accused of a variety of criminal activities. In prison, I socialized with people confined for criminal offenses: killers, thieves, drug lords, and pedophiles. My interactions with them altered many of my faulty understandings in regard to the world of criminals.

Before my imprisonment, like any other person, I would go to bed after I checked all the windows and doors in my home, for fear of criminals. Now, I lived among them; I slept, ate, showered, changed my clothes, celebrated and cried, got angry, laughed out loud, and screamed my lungs out . . . all while surrounded by their leering eyes.

After colossal effort and countless attempts to acclimate myself to them, I focused on changing my way of seeing them. I pulled the curtain from the other side and started to explore the depths of their world. It took me a while, but I came to the conclusion that criminals laugh, too. Yes, they fall in love, feel pain, and are capable of deep, soft human emotions. It is agonizing for me to compare those genuine feelings I witnessed with the negative perceptions of people I considered close to me in the past.

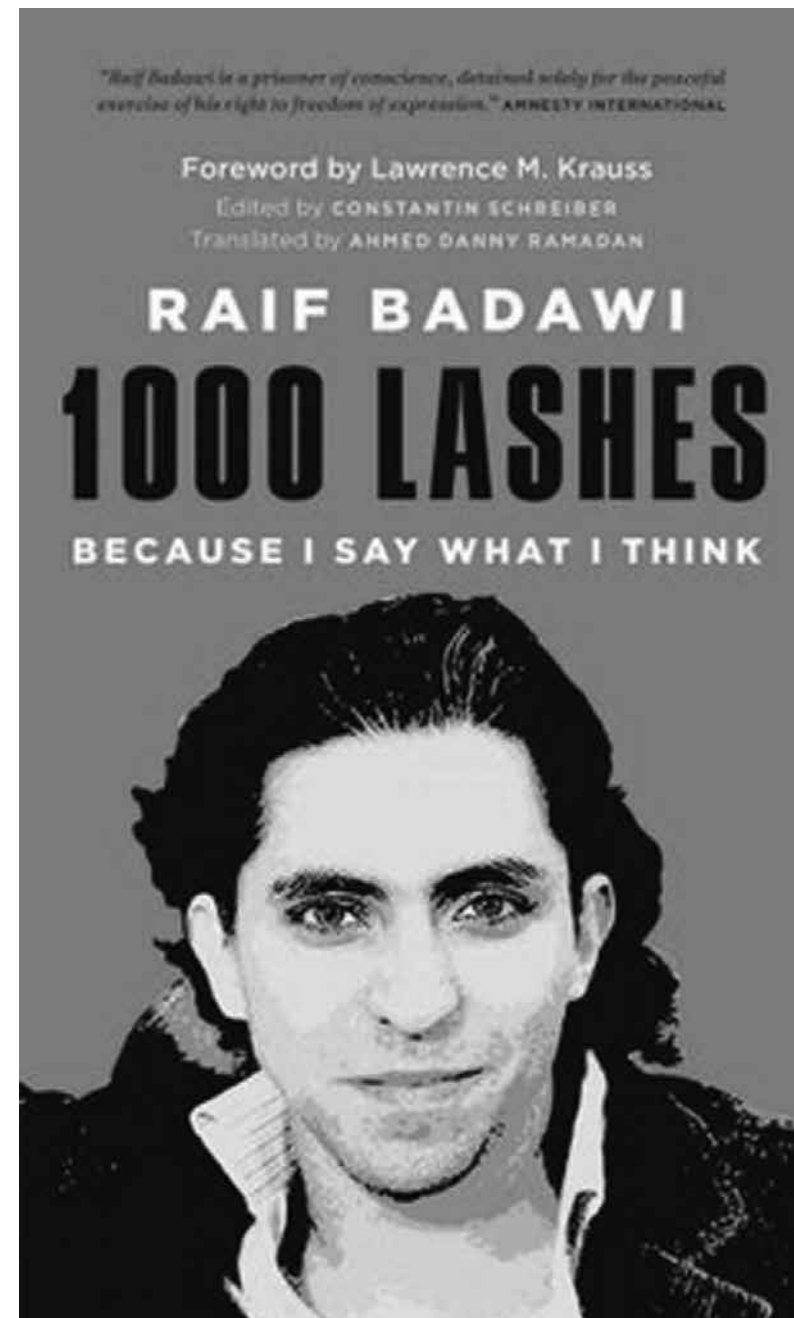
In the prison lavatory, I took a look around me, only to find some filthy tissues and excrement everywhere. It was a staggering situation: the walls were soiled; the doors were rusty and rotten. Here I was, trying to adapt to this new chaos. My eyes scanned the walls around me, reading the hundreds of sentences written on the sticky walls. My eyes caught an unexpected sentence: “Secularism is the Solution!”

I rubbed my eyes with both palms. For a second, I didn’t believe what I was seeing. I wanted to be sure I was indeed reading what my eyes were locked upon. I escaped my reality for a second. I felt like I was standing in the middle of a dirty old nightclub in a poor

neighborhood. By the wee hours of the night, a beautiful, mesmerizing woman walks in; she fills the nightclub with a stunning joy and life energy.

I hardly knew what made me think of that. Why was I pulled into this fantasy? It seems the change of toilet seat played a major role in the way I made sense of the new, strange life I was living.

I smiled. I wondered who the person might be who wrote such a sentence, in a prison filled to the walls with thousands of prisoners, all jailed because of criminal activities. My astonishment was equal only to my happiness



at reading such a short, beautiful, and different sentence.

The sentence stood alone among dozens of obscenities that were written in so many different Arabic dialects.

This discovery could only mean one thing. There was at least one other person here who understood me, who understood the reasons I was jailed and the goals I was hoping to accomplish. In the following days, I started to see a whole different reality that turned this world of criminals into my own personal paradise. I built that heaven according to my own standards; I detailed it according to a new set of beliefs that departed from all my previous life experiences before my imprisonment.

Yes. Lavatory cell number five really touched me!

When my dear wife, Ensaf, told me a large publishing house in Germany was interested in collecting my articles in a book translated into German, I hesitated. I will be completely honest with you: when I wrote my first article, I couldn’t imagine it would be gathered in a book in Arabic, let alone translated into a different language.

Some think I have something to say; others think I am an ordinary man with nothing to share, a man who doesn’t deserve his writings to be collected in books or translated for the world to share. However, when I look within, I only see that thin man who miraculously withstood fifty lashes, while a group of people celebrated his pain, repeatedly chanting Allahu Akbar.

Yes. I was accused of apostasy (the conscious abandonment of Islam) and sentenced to death. The sentence was then reduced to ten years of imprisonment as well as one thousand lashes. I was also required to pay a million Saudi riyals in financial punishment.

I spent three years writing these articles for you: I was tortured; my wife and our three children had to emigrate from our country because of the many pressures placed upon them. My family and I endured all those harsh struggles simply because I spoke my mind. We went through these hardships for the sake of every letter written in this book.

Excerpt from the book 1000 Lashes, by Raif Badawi, published in 2015 by Greystone Book. Reprinted with permission from the publisher. Translated by Ahmed Danny Ramadan

Jailed Saudi blogger wins Freedom of Speech Award as new Badawi Foundation launched

Germany's international broadcaster Deutsche Welle added a new award to its prestigious honours for online activism in 2015, the Best of the Blogs (Bobs) awards, naming Saudi blogger Raif Badawi as winner of its inaugural Freedom of Speech Award.

Ensaf Haider, wife of jailed Saudi writer Raif Badawi, made a public plea that her husband should not be forgotten as she accepted his Freedom of Speech Award at the Bobs ceremony in Bonn highlighting the best of international online activism for 2015.

Haider spoke via video link from Canada where she fled with her children when the Canadian Government offered Badawi's family asylum in 2013.

The 31-year-old Saudi Arabian blogger was sentenced to 10 years in prison, 1,000 lashes and a heavy fine for

promoting liberal ideas and criticising Islam online in May 2014.

His case, his conviction and his public flogging in the Saudi city of Jeddah has caused international outrage and sparked a global campaign for his release.

Accepting the award, Haider, who has continued to campaign for her husband, issued a strong message to the international community, politicians and human rights groups.

"Please do not forget Raif," she said. "His fate and that of his children is in your hands."

Ensaf Haider travelled to DW headquarters in September to accept the award in person on behalf of her husband and announce the creation of the Raif Badawi Foundation for Freedom (RBFF).

The purpose of the new foundation is to promote free speech, the human right her husband is being punished for exercising, but she said, "We are not against any government – not the Saudi government or any other."

The foundation aims to stay out of international politics and refrain from direct criticism even as it mounts workshops on journalism, blogging, human rights, liberalism, and "the exchange and enhancement of free societies in the Arab world".

Badaw received the first 50 of 1,000 lashes in January. He was due to receive 50 more each week, but the Saudi government suspended the sentence on medical grounds, since the wounds had not healed.

"The last information I have is that the sentence was confirmed and his case was transferred to another court on appeal," Haider said.

Badawi's health remains poor, according to his wife, who is allowed to speak to him on the phone once or twice a week. "He does not like to talk about his condition, but he's still in a very difficult health and psychological situation," she said. "He has been separated from his children for many years."

Four other international online activists were named as 2015 winners of the prestigious Bobs Awards (Best of the Blogs) for online activism, which were founded in 2004.

Repression of freedom of speech was further highlighted by



Ensaf Haider launches Badawi Foundation.



Deutsche Welle announces online activism awards.

Rafida Bonya Ahmed from Bangladesh, who won the award in the Social Change category, her case echoing that of Badawi and Ensaf Haider in some respects.

Ahmed's husband Avijit Roy, a prominent advocate of freedom of speech in Bangladesh and the founder of the Mukto Muno blog, was assassinated in February. Ahmed herself was severely injured in the attack that claimed her husband's life.

Despite her husband's death and her injuries, Ahmed has refused to be silenced by the religious fundamentalists behind her husband's murder. She continues his work on Mukto Muno, a key Internet outlet that reports with a journalistic and critical approach on secular and scientific issues.

"My husband would be very happy to have received this award," said Ahmed. Asked how she is coping with her husband's death, her own injuries and the dangers she is facing for continuing his work, she answered: "I am not worried about myself. I am worried about the bloggers in Bangladesh." In the last six months, three secular bloggers were killed by religious fundamentalists in that country.

Another Bobs Award winner in the category, Arts and Media, went to a team of independent media makers for creatively highlighting the plight of refugees caught in the middle of the Syrian civil war. 'Zaytoun, The Little Refugee' provides details of life in Syria that are often overshadowed by reporting on the war.

The final Bobs Award honoured the work of Rancho



Rafida Bonya Ahmed: continuing activism despite injuries in Islamist attack that killed her husband.

Electronico, a Mexican volunteer collective dedicated to increasing the awareness and understanding of digital technology and the protection of privacy. One of its achievements is having created a hacker-space in Mexico City along with social media to engage with women and marginalised populations on steps they can take to overcome the digital divide in that country.

Edward Snowden wins prestigious Bjørnson Prize for freedom of expression

In the week that Edward Snowden's disclosures prompted the first rollback of US surveillance powers since the passage of the Foreign Intelligence Surveillance Act in 1978, the NSA whistleblower was announced as the winner of Norway's annual Bjørnson Prize.

The Bjørnstjerne Bjørnson Academy – Norway's Academy of Literature and Freedom of Expression – said Snowden, 32, had won the Prize, named after a Norwegian Nobel literature laureate, "for his work protecting privacy and for shining a critical light on US surveillance of its citizens and others."

The Academy wrote to Norway's Prime Minister Erna Solberg to request that Edward Snowden be given free passage in order to receive the award in person. However, he accepted the award by videolink on September 5.

The former intelligence contractor said he had "no regrets" about leaking information on mass surveillance programs. He said he did not expect to be free at this time, that he expected to be in prison.

"I didn't expect to get awards; I expected my reputation to be ruined, because a number of incredibly powerful officials around the world were personally embarrassed because of these revelations," he said.

During his acceptance speech, Snowden criticised Russia – the country that granted him asylum two years ago after the United States sought his arrest for leaking documents about the vast scale of US surveillance programs – for its crackdown on human rights and online freedom.

He said Moscow's restrictions on the web were a mistake in policy. "It's wrong in Russia, and it would be wrong anywhere," he said. He said he had voiced his criticism of Russia's crackdown on internet freedom in the past and that he will continue to do so in the future. He said the drive in Russia to control more and more of the internet, to control more and more of what people are seeing, deciding what is the appropriate or inappropriate way for people to express themselves is "fundamentally wrong".

Snowden also criticised many "developed countries" for ignoring the public's concern about intelligence monitoring by imposing more restrictive laws, which he said turn out to be useless. He cited the deadly attack in January by jihadists on a French satirical magazine over its cartoons of the Prophet Mohammed.

"In the *Charlie Hebdo* attacks for example, the intelligence services say: 'Oh yes, we knew who these people were'. But it didn't stop the attack."



Former intelligence contractor, whistleblower Edward Snowden is now a global representative for freedom of information and human rights. This mural, by SLM Art in Manchester, photographed by Paul Capewell and used under Creative Commons Licence.

While he said he would prefer to be living in the United States, Snowden described his life in Russia as "normal". And despite his criticism of that country's internet restrictions and laws encroaching on freedom of speech, Snowden said he felt he was allowed to express himself in Russia.

"I do. And I think it's primarily in the context of the fact that most activities happen online. I mean, when people ask me where I live, the most honest answer is on the internet."

Quick fixes not the answer for Indigenous literacy

Politicians and media often talk about Indigenous education in terms of 'Closing the Gap' between Indigenous and non-Indigenous outcomes. These discussions tend to share two problematic features: engaging in deficit discourses – where the Indigenous learners and not the system or the curriculum are the problem – and seeking simple solutions to complex issues, writes **Stewart Riddle**.



Wilcannia: Indigenous children learning to read in English. Photograph courtesy Prudence Upton/Indigenous Literacy Foundation

There is no argument that the statistics present a fairly bleak picture. Nearly 70 per cent of remote Indigenous students in Year 9 are not meeting national minimum standards for reading on the National Assessment Program – Literacy and Numeracy (NAPLAN). While nationally, 97 per cent of Year 7 students are at or above the reading benchmark, that figure reduces to 77 per cent for Indigenous students and, even more concerning, only 35 per cent for students living in remote communities. Less than half of Indigenous children living in very remote locations in South Australia, Northern Territory and Western Australia are meeting the minimum standard of Year 3 reading.

This stark difference in literacy levels between Indigenous and non-Indigenous students is also reflected in results from the OECD's Programme for International Student Assessment (PISA), which equates to roughly two and a half years of schooling. Leaving aside serious concerns about the use of NAPLAN as an appropriate measure of learning, particularly for Indigenous students, and the use of large-scale national and international standardised tests to make overly-simplified judgements about Indigenous learners, there is absolutely no doubt that we need to address this enormous disparity.

However, as long as politicians and education policy-makers continue to develop strategies for "fixing" Indigenous literacy by making simple policy solutions at a distance without also addressing the complex array of factors that feed into the disadvantage in educational opportunities, there will continue to be little progress. Two recent examples include the Federal Government's Remote School Attendance Strategy and current rollout of Direct Instruction in Aboriginal schools in Queensland, Northern Territory and Western Australia.

These policy levers are an unfortunate reminder of the persistence of deficit discourses, where Indigenous learners are constructed through narratives of lack. The problem is not with the system or the curriculum, but rather with the learners themselves. They need to be forced to attend school and then prescribed a strict program of scripted lessons and testing

materials. Under such conditions, it is no longer permissible to ask what knowledge and learning might be possible or who gets to choose what knowledge is selected and assessed. Instead, learning becomes pathologised and rather than teaching and learning, we see hypodermic-style programmatic interventions.

We should be cautious of any intervention that limits teaching and learning to prescribed programs and scripted curriculum materials. Programs like Direct Instruction effectively take teachers out of the equation and turn them into technicians.

We should also be careful of treating literacy as a cure-all for Indigenous disadvantage. In 1979, Harvey Graff described "the literacy myth", where literacy education is seen as a panacea to societal troubles. While literacy learning is an important part of the education of young Indigenous learners, in itself it is no answer to deep-seated social and economic disadvantage. As such, any program or package that claims to be a one-size-fits-all approach to "fixing" Indigenous literacy should be treated with caution.

For many remote Indigenous students, English may be their second, third or even fourth language. The question should be asked, how relevant is performance in a narrowly-conceived test of English literacy to a young Aboriginal student living in the Kimberley region, where there is no connection to their first language, lived experiences and local community's social and cultural knowledge?

Rather than applying simple policy solutions to complex social situations, we should stop and ask what it is that we are actually trying to achieve. At the very heart of improving Indigenous education is a question of access and equity. Perhaps we should start by addressing the persistent lack of funding and resourcing, improving teacher retention and a long-term commitment by governments, school systems and communities working in collaborative and sustainable partnerships.

In a 2013 report, the Australian Council for Educational Research (ACER) found that "the educational and cultural contexts in which students learn to be literate must be considered in planning for effective teaching and learning." This is important

» Continued from page 23



Author and Indigenous Literacy Day Ambassador David Malouf (centre) with special guests at the 2015 Indigenous Literacy Day celebrations at Sydney Opera House on September 2. Photograph courtesy Prudence Upton/Indigenous Literacy Foundation

when considering the significant impacts of socioeconomic and geographical disadvantage faced by many Indigenous children.

A major review into school funding conducted in 2011 – commonly referred to as the Gonski review – found that socioeconomic status, Indigeneity, English language proficiency, disability and school remoteness were the key dimensions of disadvantage. There is a compounding effect of educational disadvantage when combining geolocation (urban, rural, remote and very remote), Indigeneity and other factors such as language, access to internet, parental income and education levels. The Gonski review recommended a national needs-based funding model that would specifically address the issues of equity and access to quality educational experiences for all students. The review explicitly stated that funding for schools needs to ensure that:

- Differences in educational outcomes are not the result of differences in wealth, income, power or possessions;
- All students have access to a high standard of education regardless of their background or circumstances.

Improving education outcomes for Indigenous students is intrinsically linked to multiple aspects of socio-economic disadvantage, including access to health, housing and employment. Getting a decent education leads to so much more than being able to access the workforce. Education contributes to the building of social and cultural capital, necessary ingredients for a fulfilling and productive life. However, while literacy is important, it should not be seen as a cure-all for Indigenous disadvantage. The key lies in addressing the broader issues of equity and access in Indigenous education.

There needs to be stronger commitment from governments

and school systems of all persuasions to better engage with communities, focus on strengths-based teaching and learning programs, and provide clear early childhood, primary and secondary education pathways. A balance is needed, where communities are empowered through organic and self-driven programs and initiatives. Research has shown that real success comes when schools, governments and communities work together in a sustained and coordinated manner with collective vision, strong leadership, resources and support.

Increasing parental engagement in literacy education is also critical. Home reading programs and other strategies such as outreach, family resource libraries, parent education on reading and writing all contribute to increased learning outcomes for children.

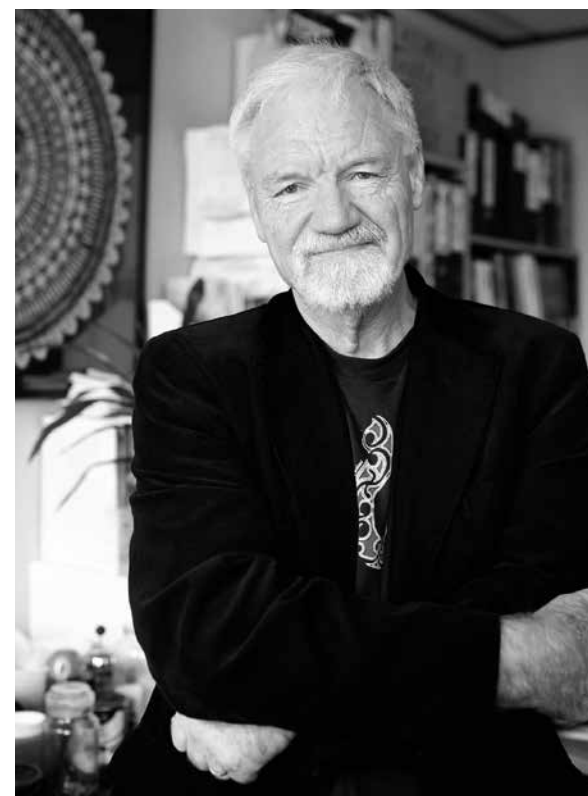
Connecting to non-government organisations such as the Indigenous Literacy Foundation, which runs a range of community literacy projects and supplies thousands of books to kids in remote communities, is also important. With only a third of people living in remote communities having access to a library, the Foundation's work in providing books to families and schools is important. The Foundation also provides support with translating into first languages and publishing community stories.

There is a need to bridge the divide between education policy-making and Indigenous literacy learning, through doing policy 'with' rather than 'to' communities, engaging in partnerships of learning that encompass multiple levels of government, schools, learners and their families and broader communities.

Dr Stewart Riddle is Senior Lecturer in the School of Teacher Education and Early Childhood at the University of Southern Queensland.

Rainbow Warrior's truth-seeking remembered as secrecy lingers

France detonated 193 nuclear tests in the South Pacific, at Moruroa and Fangataufa atolls, before halting the tests in 1996 in the face of Pacific-wide protests. On 10 July 1985, French secret agents bombed the Greenpeace flagship *Rainbow Warrior* in Auckland Harbour, killing photographer Fernando Pereira, in a futile bid to stop a protest flotilla going to Moruroa. Journalist **David Robie** was on board the *Rainbow Warrior* for more than 10 weeks of her last voyage, coming ashore in Auckland just two days before the bombing, told his story in the book *Eyes of Fire*. Here he reflects on the 20-year legal struggle to prevent the French spies from gagging reportage of their guilty plea from public television and the lingering secrecy about the health legacy of nuclear tests in the Pacific.



David Robie at Auckland University of Technology

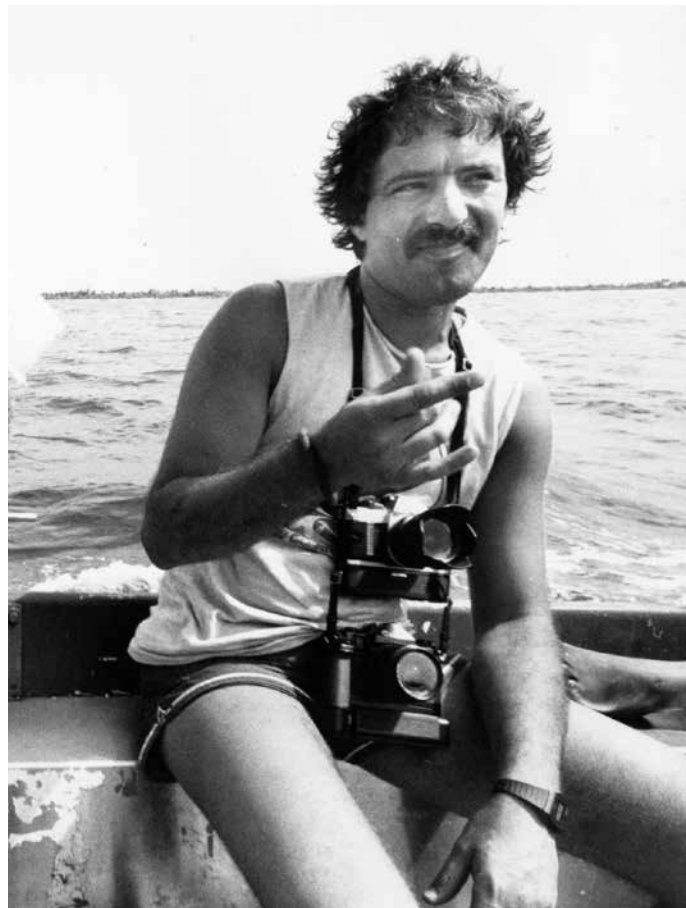
THIS SEEMS to be a remarkable year of memories and reflection for freedom of speech and bearing witness struggles in the Pacific region. The townsfolk and children of the remote Timor-Leste border town of Balibó have recently marked the 40th anniversary of the murder of five young Australian-based television newsmen dubbed forever as the Balibó Five.

On 16 October 1975, the five journalists – Greg Shackleton, Gary Cunningham (New Zealand), Tony Stewart, Malcolm Rennie and Brian Peters (both British) from channels Seven and Nine – were reporting on Indonesian special forces incursions into independent Timorese territory. They were brutally killed with impunity.

Weeks later, a sixth journalist from Australia, Roger East, who ventured to Timor-Leste to investigate the murders and set up an independent Timorese news agency, was himself executed by the invading Indonesian forces on 8 December 1975. Their fate has been told in the compelling 2009 Robert Connolly film *Balibó*. But the impunity lingers on, not only for the journalist atrocities but for more than 150,000 Timorese victims of the 24 years of Indonesian occupation.

In July, President Joko Widodo of Indonesia appeared to have turned a new leaf on media relations over the two Melanesian provinces that collectively make up the West Papua region by declaring an “open door” visa policy for foreign journalists. This is far from the reality. Māori Television recently sent a television crew there – the first

» Continued from Page 25



Murdered photographer Fernando Pereira at Rongelap Island

New Zealand TV journalists to visit West Papua in more than 50 years – to bear witness. But their stories, such as a report on a New Zealand aid-assisted thriving kumara (sweet potato) industry in the Baliem Valley, were hardly a testimony to media freedom.

Bearing witness

For me, as a journalist and media educator who has worked in the Pacific region for almost four decades, the issue of media freedom and bearing witness that has outweighed all others is the bombing of the global environmental Greenpeace flagship *Rainbow Warrior* by French secret agents on 10 July 1985 and the death onboard of Portuguese-born Dutch photojournalist Fernando Pereira.

The 30th anniversary of the sabotage, which was New Zealand's first and only example of state terrorism, came and went in a rather muted fashion (compared with events marking 20 years, for example).

Skipper Peter Willcox, the American who captained the *Rainbow Warrior* when she was bombed in Auckland Harbour, came to New Zealand a week before the 30th anniversary but left almost immediately – on a new Greenpeace assignment in charge of the ship's namesake *Rainbow Warrior III*, an impressive “super green” vessel, bound to tackle the tuna fishing outrages in the Pacific.

A colony of the original crew of the bombed ship live on Waiheke Island in Auckland today while others live in different parts of the world such as Amsterdam and Dublin.

But for all of us, including me as an independent journalist on board the ship for the final humanitarian voyage to Rongelap in the Marshall Islands to evacuate people irradiated by US nuclear testing, the bombing and the justice and truth-seeking in the memory of Fernando have been critical influences in our lives.

Tailed by agents

In January 1987, a year after my book *Eyes of Fire* was first published – and four months before the first Fiji military coup, I was arrested at gunpoint by French troops near the New Caledonian village of Canala. The arrest followed a week of being tailed by secret agents in Noumea. When I was handed over by the military to local gendarmes for interrogation, accusations of my being a “spy” and questions over my book on the *Rainbow Warrior* bombing were made in the same breath.

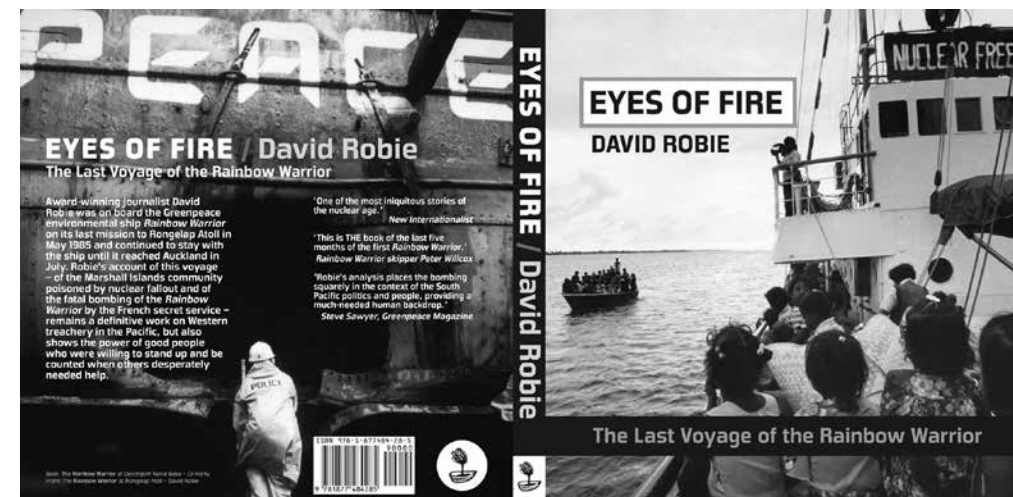
But after about four hours of questioning I was released. The drama over my reporting of the militarisation of East Coast villages in a clumsy attempt by French authorities to harass and suppress supporters of Kanak independence was a reflection of the paranoia at the time.

Then it seemed highly unlikely that in less than two decades nuclear testing would be finally abandoned in the South Pacific, and Tahiti's leading nuclear-free and pro-independence politician, Oscar Manutahi Temaru, would emerge as French Polynesia's new president four times and usher in a refreshing “new order” with a commitment to pan-Pacific relations. Although Tahitian independence is nominally off the agenda for the moment, far-reaching changes in the region are inevitable.

In a welcome for the *Rainbow Warrior III* on her post-cyclone humanitarian mission in Port Vila recently, President Baldwin Lonsdale referred to the *Rainbow Warrior* bombing. He recalled how the Vanuatu government representative, the late Charles Rara, sent by founding Prime Minister Walter Lini on board the *Rainbow Warrior* to New Zealand, had been ashore on the night of the bombing. Rara was at the home of President Lonsdale at St John's Theological College in Auckland, where he was studying.

“When Charles got back to the ship that night, he found the *Rainbow Warrior* had been bombed, it had been destroyed,” President Lonsdale says. “I think the main intention of the French [military] who carried out the bombing was because the Greenpeace movement was trying to bring about peace and justice among island nations.”

Rara shared a cabin with Pereira, who drowned when trying to recover his cameras when a second bomb destroyed the propeller shaft. (Ironically, when the *Rainbow Warrior* was bombed, my passport sank with the ship because I had forgotten to collect it from the safe in the ship's bridge. I recovered it later from Devonport Naval Base dry dock and it is now a prized memento.)



Living reef created

After being awarded \$8 million in compensation from France by the International Arbitration Tribunal, Greenpeace finally towed the *Rainbow Warrior* to Matauri Bay and scuttled her off Motutapere, in the Cavalli Islands, on 12 December 1987 to create a “living reef”. An earlier compensation deal for New Zealand mediated in 1986 by United Nations Secretary-General Javier Perez de Cuellar awarded the Government \$13 million (US\$7 million) – the money was used for an anti-nuclear projects fund and the Pacific Development and Conservation Trust.

The agreement was supposed to include an apology by France and deportation of jailed secret agents Alain Mafart and Dominique Prieur after they had served less than a year of their 10-year sentences for manslaughter and wilful damage of the bombed ship (downgraded from charges of murder, arson and conspiracy). They were transferred from New Zealand to Hao Atoll in French Polynesia to serve three years in exile at a “Club Med” style nuclear and military base.

But the bombing scandal didn't end there. The same day as the scuttling of the *Rainbow Warrior* in 1987, the French government told New Zealand that Major Mafart had a “serious stomach complaint”. The French authorities repatriated him back to France in defiance of the terms of the United Nations agreement and protests from the David Lange government.

It was later claimed by the Tahitian newspaper *Les Nouvelles* that Mafart was smuggled out of Tahiti on a false passport hours before New Zealand was even told of the “illness”. Mafart reportedly assumed the identity of a carpenter, Serge Quillan. Captain Prieur was also repatriated back to France in May 1988 because she was pregnant. France ignored the protests by New Zealand and the secret agent pair were honoured, decorated and promoted in their homeland.

Supreme irony

It is a supreme irony that such an act of state terrorism should be rewarded in this age of a so-called “war on terrorism”.

In 2005, the lawyer for the two French secret agents, Gerard Currie, tried to block footage of their guilty pleas in court – shown on closed circuit to journalists at the time but not previously seen publicly – from being broadcast by the Television New Zealand current affairs programme *Sunday*. Losing the High Court ruling in May 2005, the two former agents appealed against the footage being broadcast. They failed and the footage was finally broadcast by Television New Zealand on 7 August 2006 – almost two decades later.

They had lost any spurious claim to privacy over the act of terrorism by publishing their own memoirs – *Agent Secrète* (Prieur, 1995) and *Carnets Secrets* (Mafart, 1999). Mafart recalled in his book how the international media were dumbfounded that the expected huge High Court trial had “evaporated before their eyes”, describing his courtroom experience:

“I had an impression of being a mutineer from the *Bounty* ... but in this case the gallows would not be erected in the village square. Three courteous phrases were exchanged between [the judge] and our lawyers, the charges were read to us and the court asked us whether we pleaded guilty or not guilty. Our replies were clear: ‘Guilty!’ With that one word the trial was at an end.”

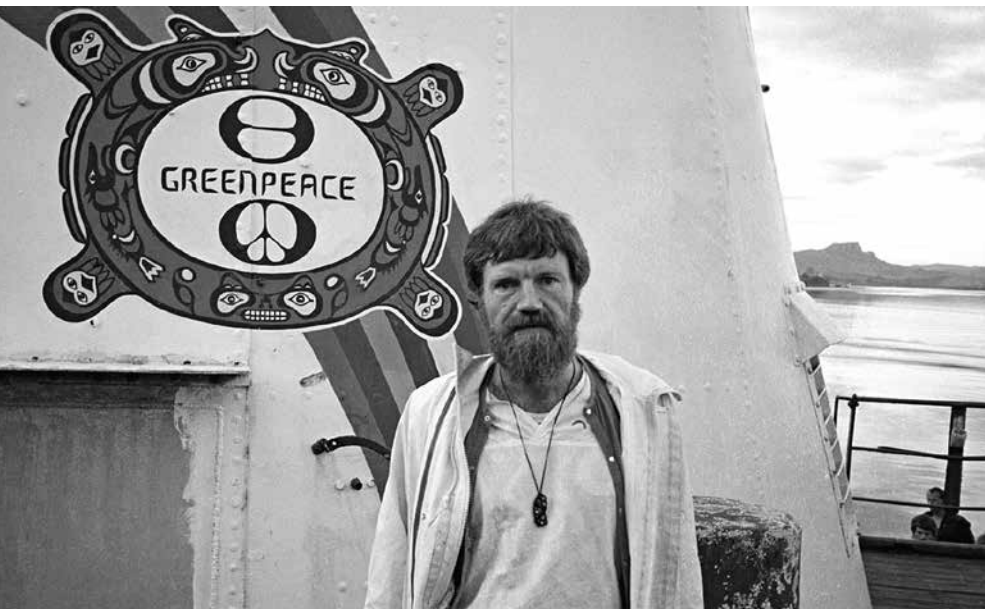
Ironically, Mafart much later became a wildlife photographer, under the moniker Alain Mafart-Renodier, and filed his pictures through the Paris-based agency Bios with a New York office. Greenpeace US engaged an advertising agency to produce the 2015 environmental calendar illustrated with wildlife images. As Greenpeace chronicler and photojournalist Pierre Gleizes describes it: “Incredibly bad luck, out of millions, the agency bought one of Alain Mafart's pictures to illustrate a Greenpeace calendar. Fortunately, someone saw that before it got distributed. So Mafart got his fee but 40,000 calendars were destroyed.”

The bomber recently outed himself and apologised to Greenpeace, the Pereira family and the people of New Zealand, describing the operation as a “big, big failure”. Retired colonel Jean-Luc Kister, went public with simultaneous interviews with TVNZ's Sunday programme reporter John Hudson and French investigative journalist Edwy Plenel, publisher of *Mediapart*, admitting his role:

“Thirty years after the event, now that emotions have subsided and also with the distance I now have from my professional life, I thought it was the right time for me to express both my deepest regret and my apologies ...

“For us it was just like using boxing gloves in order to crush a mosquito. It was a disproportionate operation, but we had to obey the order, we were soldiers. Many times I think about these things because, for me, I have an innocent death on my hands.”

» Continued from Page 27



David Robie onboard the *Rainbow Warrior* in 1985.

French nuclear swansong

France finally agreed to sign the Comprehensive Test Ban Treaty after a final swansong package of eight planned nuclear tests in 1996 to provide data for simulation computer software. But such was the strength of international hostility and protests and riots in the Tahitian capital of Pape'ete that Paris ended the programme prematurely after just six tests, and just a year after rioting destroyed the heart of the city. France officially ratified the treaty on 10 September 1996.

When Tahitians elected Oscar Temaru as their territorial president in 2004, he had already established the first nuclear-free municipality in the Pacific Islands as mayor of the Pape'ete airport suburb of Faa'a. Having ousted the conservative incumbent for the previous two decades, Gaston Flosse – the man who gave the French agents Mafart and Prieur a hero's welcome to Tahiti – Temaru lost office just four months later. He was reinstated to power in early 2005 after a by election confirmed his overwhelming support. But since then Temaru has won and lost office twice more, most recently in 2013, and Flosse is fighting ongoing corruption charges. Since the Temaru coalition first came to power, demands have increased for a full commission of inquiry to investigate new evidence of radiation exposure in the atmospheric nuclear tests in the Gambiers between 1966 and 1974.

Contempt for Polynesia

Altogether France detonated 193 of a total of 210 nuclear tests in the South Pacific, 46 of them dumping more than nine megatons of explosive energy in the atmosphere – 42 over Moruroa and four over Fangataufa atolls. The Green Party leader in Tahiti, Jacky Bryant, accused the French Defence Ministry of having “contempt” for the people of Polynesia. Replying to ministry denials in May 2005 claiming stringent safety and health precautions, he said: “It's necessary to stop saying that the Tahitians don't

understand anything about these kinds of questions – they must stop this kind of behaviour from another epoch.” Bryant compared the French ministry's reaction with the secretive and arrogant approach of China and Russia.

However, Britain and the United States had reluctantly “recognised the consequences of nuclear tests on the populations” in Australia, Christmas Island, the Marshall Islands and Rongelap. In 2009, the French National Assembly finally passed nuclear care and compensation legislation, known as the Morin law after Defence Minister Hervé Morin who initiated it. It has been consistently criticised as far too restrictive and of little real benefit to Polynesians.

In 2013, declassified French defence documents exposed that the nuclear tests were “far more toxic” than had been previously acknowledged. *Le Parisien* reported that the papers “lifted the lid on one of the biggest secrets of the French army”. It said that the documents indicated that on 17 July 1974, a test had exposed the main island of Tahiti, and the nearby tourist resort isle of Bora Bora, to plutonium fallout 500 times the maximum level.

US radiation fallout

This had been echoed almost two decades earlier than the French declassified documents when *The Washington Post* reported that US analysts had admitted that radiation fallout from their nuclear tests of the 1950s was “limited”. In fact, federal documents, according to *The Post* in the February 1994 article, had revealed that “the post-explosion cloud of radioactive materials spread hundreds of [kilometres] beyond the limited area earlier described in the vast range Pacific islands”. Thousands of Marshall Islanders and “some US troops” had probably been exposed to radiation, the documents suggested. Remarked Jonathan Weisgall, author of *Operation Crossroads*, a book about the Marshall Islands nuclear tests: “One of the biggest crimes here is that the US government seemed to clearly know the extent of the fallout coming, but made no attempt to protect people from it.”

The *Rainbow Warrior* bombing with the death of photographer Fernando Pereira was a callous tragedy. But the greater tragedy remains the horrendous legacy of the Pacific nuclear testing on the people of Rongelap, the Marshall Islands and French Polynesia, and the lingering secrecy that surrounds it.

Dr David Robie is director of the Pacific Media Centre at Auckland University of Technology in New Zealand. A revised new edition of his book Eyes of Fire (Little Island Press, Auckland) about the last voyage of the bombed Rainbow Warrior was launched in July. A Little Island Press micro site also has many stories, pictures and video reports about the Rainbow Warrior as a public resource.

Feeling the chill

Richard Ackland, who delivered the first 2015 Free Voices lecture at the Sydney Writers' Festival, is an award-winning Australian journalist, publisher and lawyer. After graduating with degrees in economics and law, he was admitted as a solicitor of the Supreme Court of NSW before going on to pursue a career in journalism. He has worked for Fairfax and the ABC and founded his law publishing company, Law Press of Australia, publishing two important Australian legal journals, *Justinian* and the *Gazette of Law and Journalism*. He is currently the Legal Editor at Large at *Guardian Australia*.



Richard Ackland: scrutinising the impact national security laws have on journalists and writers. Photograph: Stuart Spence

In the 1980s there existed in Sydney something called the Free Speech Committee. It mainly comprised hairy lefties who believed free speech should be absolute – even broader than the First Amendment.

Soon strange old men with sweep-over hair dos began to appear at meetings of the FSC. They had leaflets about the virtues of “Boy Love” which the sweep-overs wanted to distribute outside schools. The police had moved them on, saying this was inappropriate material. In short, their freedom of speech had been abridged.

Slowly it dawned to the FSC that freedom of speech had its limitations and that to protect the vulnerable, minorities or even society as a whole, restraints were necessary.

More recently free speech has been adopted, not very successfully, by the right wing of politics. They have failed to articulate a clear message about the topic and on the rare occasions when that happens it is soon contradicted.

This Free Voices lecture looks at how national security laws impact on journalists and writers and other freedom loving people. Hence the topic – “feeling the chill”.

I love the word “chill” in this context. The first time I heard it was its application in American First Amendment jurisprudence – specifically a case in the 1950s where the Supreme Court overturned a law requiring people who received “communist political propaganda” though the mail to sign for it and authorise receipt.

» *Continued from Page 29*

It was held that that law had a “chilling effect” on freedom of speech.

Chilling effects take many and varied forms

Every two years the US-based Media Law Resource Centre has held a conference at Stationers Hall in London. This is the very place where copyright was invented and is the home of the Worshipful Company of Stationers and Newspaper Makers, one of the livery companies of London.

It was founded in 1403 during the reign of Henry IV and the company held the monopoly over the entire publishing industry of the kingdom. Books that weren’t favoured by the Lord Chamberlain, or some other royal functionary, were burnt in the courtyard under a tree.

Censorship, control of the written word by the state, has a long and venerable history and our most recent national security laws are a blip on a long highway that stretches back even before the invention of the printing press.

* * *

Some will know the dimensions of the recent Commonwealth legislation, specifically the enhancement to ASIO’s powers in last year’s National Security Act and the creation of something called Special Intelligence Operations that may not be reported on pain of imprisonment AND the amendments to the telecommunications interception and access regime providing for the mass collection of large amount of phone and internet data.

Each of those laws is a fundamental departure from the usual constraints attached to national security.

In short order, here’s why

The attorney general can designate some activity of ASIO’s to be a “special intelligence operation”. No one is allowed to know what is a special intelligence operation. It may be the fact that ASIO’s HQ has been bugged by the Chinese, or surveillance of a Kings Cross brothel, or a Muslim cleric or that ASIO has bungled something and put the entire nation at risk.

The designation of any operation of ASIO, whether it be special or not, is entirely at the secretly exercised discretion of the attorney general. It cannot be reported, not even if it is in the public interest to do so.

The penalty is five years porridge or 10 years if lives might be endangered by the reporting.

The prosecutor, however, is required to apply a public interest test in deciding whether to proceed against a journalist, writer or publisher.

Various factors are weighed. Has the journalist

sought to confirm whether the story concerns a special security operation, is the story about significant wrongdoing by a commonwealth officer, and so on?

The answer to those inquiries will in every case be “no comment”. The prosecutor’s guidelines give no firm assurances one way or the other. All the DPP says is that the matters that will be taken into account in deciding whether a prosecution is in the public interest will be decided on a case-by-case basis.

A joint submission to the national security legislation monitor from all the major media organisations says this is not good enough.

The uncertainty surrounding the application of the law would “expose journalists to an unacceptable level of risk and consequently have a chilling effect on the reportage of all intelligence and national security material”.

That sounds noble and free speechy, but maybe we should also ask how often does the media get its hands on a blockbuster secret national security story that it should publish?

How frequently does that occur in a media crowded with news on crime, corruption, politics, sport, opinions, finance, floods, fires, plane crashes, the lotto results, and celebrity morsels?

Would anyone miss those stories rather than news about Princess Kate’s new baby or Kim

Kardashian’s bottom? There are plenty of pressing issues that can fill the space.

This is not to say that there isn’t a strong case that reporting on the conduct of national security agencies has a strong public interest component. The AFP, ASIO, Austrack and a host of other organisations have been devouring a growing proportion of government spending and have enormous clout, with little public accountability.

It doesn’t mean every surveillance operation of homegrown terrorists has to be reported or should be reported. The difficulty is that in any attempt to hold agencies to account for their behaviour we don’t know if that impinges wholly or in part of a “special intelligence operation”.

The thing is that national security is frequently a fig leaf to hide all sorts of information that should be in the public domain – without threatening anyone’s security.

The government has asked the national security legislation monitor, Roger Gyles, to review this part of the legislation to find out how chilling it really is.

The attorney general has insisted that it’s not at all chilling. Some may remember his dizzying performance on Q&A in November where he said:

“If it is a journalist covering what a whistleblower has disclosed, then the journalist wouldn’t fall within the reach

of the section because the relevant conduct is the conduct constituting the disclosure, so if the event is already disclosed by someone else and a journalist merely reports that which has already been disclosed, as it was by [Edward] Snowden, then the provision would not be attracted.”

Brandis has as strong a grasp of the meaning of his own legislation as he does of the meaning of metadata.

The provision in the Act could not be clearer

“A person commits an offence if the person discloses information and the information relates to a special intelligence operation.”

It doesn’t say it’s not an offence for a journalist if a whistleblower discloses it first.

Brandis also told the National Press Club in October:

“The idea that [special intelligence operations] could simply be rubber stamps to cover up or gloss over anything that ASIO might choose to do is nonsense.”

In reality it works like this. You don’t know what constitutes a special intelligence operation, if you ask you won’t be told, you have to guess whether information is criminalised, if it is and you report it the prosecutor has to weigh-up whether a prosecution is in the public interest, but if a case is commenced, then the journalist has no public interest defence even if the story is in the public interest.

The dread section 35P is modelled on the controlled operations schemes in the Commonwealth Crimes Act, which makes it an offence to disclose information about controlled operations.

Controlled operations are about collecting information on criminal activity. Special Security Operations presumably are about gathering intelligence about terrorism, which are also criminal offences.

So the question arises, do we actually need section 35P of the ASIO Act? Probably not. The penalties are different, less if a non-endangering disclosure is made in a controlled operations case and the duration is less. SIOs last for 12 months, COs for three months.

Special intelligence operations are really a case of gilding the security lily.

The lesson is not to accept at face value what government says when they seek to play down the reach and effect of a chilling new measure.

* * *

When it comes to data retention there is even greater cause for scepticism.

The government’s case is that securing the retention of private telecommunications data is nothing out of the ordinary, because security agencies and others already access this information.

All that the government is doing is mandating that the telcos retain the data for two years. What could be fairer than that?

If we start from the premise that whistleblowers in the government and corporate sectors are important to journalism, then the collection of information about journalists’ communications definitely has a chilling effect on the ability to report.

And this is quite apart from the privacy of every other citizen.

Certainly, if whistleblowers are not the primary source of information a journalist nonetheless would be checking and verifying information with others. They too would be caught in the surveillance net.

The fear of being caught passing confidential public interest information would be enough to stymie much more of our news than we may expect.

More than 80 federal and state enforcement agencies accessed historic telecommunications data in 2012-2013, with over 330,000 formal requests for data, which resulted in a total of well-over 500,000 disclosures by service providers.

And it does not include an undisclosed number of intelligence agencies, whose access details are classified.

New bodies are quietly being added to the list of organisations with self-authorising authority to access the data that currently includes outfits from local councils, pasture protection boards, the RSPCA, and police of all stripes. The latest to join the list is the Department of Immigration and Border Protection, which has also been collecting data from the NSW Department of Transport’s Opal card users,

as to where and when they might be travelling.

Scope creep, as it’s known, will continue pervasively. Any monitoring or regulatory obligations by the Privacy Commissioner or the Ombudsman will be utterly swamped.

All of this happened with virtually no discussion about why two years was appropriate for a retention period, why the access is not limited to investigation of serious crimes, why there are no access warrants issued by judges, and why little thought has been applied to the protection from cyber attack of this mass storage of personal information.

There are ways journalists might handle this. Encrypted communications, typewriters, meetings in garages rather than over the phone. Yet, the digital fingerprint is pervasive and eventually somewhere there’s likely to be a trace.

Journalists and media organisations were the only ones to jump up and down about the data retention legislation and, knowing which side its bread is buttered, the government amended the Bill to create something called “journalist information warrants”.

It was designed to lock in Labor support and hasten the passage of the legislation. Prime Minister Abbott said that warrants will “gum up” the vital work of the security agencies and the police. He then set about creating a form of judicial warrant that won’t gum up anything.

Apart from journalists, every other access for data is free of the necessity to apply for a warrant and to have an

» Continued from Page 31



Zoe Rodriguez

PEN International's Assembly of Delegates, meeting at the organisation's 81st international Congress in Quebec City, Canada in October, called for the immediate and unconditional release of imprisoned Saudi Arabian writer **Raif Badawi**. The writer was acknowledged with an Empty Chair located in the city's main square as a reminder of the grave dangers writers and journalist face in carrying out their work. Raif Badawi was arrested in 2012 after organising a conference to mark a "day of liberalism" and sentenced to 10 years in prison and 1000 lashes.

independent mind applied to the importance of the request.

An agency wanting access to a journalist's communications has to apply to an "issuing authority", who is a judicial officer appointed by the minister. They could be judges, or lawyers, members of tribunals, close friends of the minister.

They can also be terminated at the minister's pleasure, so their independence is questionable.

The prime minister also chooses "public interest advocates" who make submissions about the journalist information warrants to the issuing authority.

The authority has to weigh the public interest in protecting the identity of the source, against the public interest in the state knowing the identity of the journalist's source.

Given that this is a nice nest of political insiders and mates doing the government's bidding in the hunt for leakers, three guesses which public interest will win the day.

The journalist, of course, knows nothing about what is going on. If they did know they face two years in prison if they disclose any information about a warrant. And here a journalist is defined as a mainstream media creature, not a blogger or occasional specialist writer or commentator.

Talk about a chilling effect. This is an Arctic gale.

Journalist information warrants are not really warrants in the sense that an independent judicial officer examines a request for private information.

In truth, if agencies of the state want to find out who is

leaking their secrets they do not need to sniff around the backend of a journalist's emails or phone records.

If something politically embarrassing was leaked, it is a relatively simple matter to know from which department the information came. It's then a process of narrowing down the public servants who worked in the area and poking through their communications to discover the identity of the source.

Another line of attack is to go through the retained data of the lawyers who advise media organisations.

No warrants required at all.

In Britain we had a good example of what can happen in the Plebgate case.

The Tory Party whip, Mr Andrew Mitchell, called police in Downing Street "plebs" when they asked him to take his

bicycle through the pedestrian gate, not the main gate into the street.

The Sun broke the story, which caused an enormous kerfuffle with Mr Mitchell eventually resigning as whip.

In September 2014, it was revealed the police had obtained the political editor of The Sun's mobile phone records without his knowledge. This was in breach of the usual safeguards for protection of journalists' sources, but in the process they were able to discover the identity of the whistle-blower.

What is staggering here is that the nation didn't rise up in mass protest at the mass collection and retention of personal information.

The former national security legislation monitor, barrister Bret Walker, has said there should have been more community "push back" and that there's not nearly enough rational talk about privacy.

There is no threshold to the information deemed necessary. It is not limited to instances of serious crime, but extends to shoplifting or putting firecrackers in someone's letterbox. Nor is it just a data retention scheme – because the service providers are expected to create new data, specifically information about everyone's location.

The justification advanced by the government is that new law was needed to patch holes in the business models of the telecommunications companies who were not retaining customer data for sufficiently long periods.

Telstra, Optus and Vodafone all have lengthy retention

obligations in order to handle customer complaints and their own market analysis.

* * *

This is all being done in Australia while other parts of the world are dismantling data retention regimes. Bulgaria, Cyprus, the Czech Republic, Romania, Slovakia and Germany have had their mass data retention schemes found to be unconstitutional. The Netherlands' scheme was recently closed down as an invasion of privacy.

In the European Union, eleven countries have mandated a judicial oversight regime for access to retained data.

In the USA, congress failed to pass legislation that would have put an end to mass surveillance of citizens, but a federal appeals court has ruled the surveillance unconstitutional and in any event this part of the Patriot Act is due to lapse without extension on May 31.

A recent examination of the legislation claims that the NSA's mass data collection has not resulted in the thwarting of any significant act of terrorism.

The response to Edward Snowden's revelations in England was for the security services to demand *The Guardian* hand over all the material. But as the newspaper could also publish the same material out of the US, which provided constitutional protections, there was the pointless and ridiculous exercise of smashing up computer hard drives in the basement of the newspaper.

In April last year, the Court of Justice of the European Union declared the union's data retention directive to be invalid, on two main grounds: serious interference with private life and that the directive was disproportionate to the aim of combating serious criminal activity.

All of which makes Australia seem a rather chilling backwater.

* * *

It is not as though the chilling effect and the state's restraint of the media is a new development. It has had a long history, and to some extent the most recent measures are rather pale when you consider what official censors did in previous times of war.

In World War 1 Australia's censorship was outsourced to Britain.

The censor's office was administered by the Australian Army, with a deputy chief censor in Melbourne who answered to the chief censor in London. We had a *War Precautions Act*, which was modelled on Britain's *Defence of Realm Act*.

In fact, Australian censors were more zealous, because

on occasion material that arrived second-hand from Britain, and had already passed British censors, was disallowed here.

A regulation gave the censor rights to search newspaper premises on the basis of suspicion of publication of injurious matter, and, if necessary, to destroy it.

By 1915 the Act was amended so that newspapers could not mention or illustrate that an item had been censored, and to allow the censor to require journals bound by an order to submit all material relating to the war.

Much of the media seemed happy to oblige because the major newspaper editors advised on censorship through something called the Press Censorship Advisory Board.

Political issues were also censored and managed, particularly under Billy Hughes, who specifically instructed the censors to prevent hostile references to himself, or material that would "prejudice the proposals of government".

Hughes used censorship to stifle dissent over the conscription referendum.

On September 14, 1916, the day after Hughes' referendum bill was put before parliament the *Sydney Morning Herald* published an editorial in support of conscription, but critical of the over-zealous censorship of conscription related reports. The editorial led to a major crisis between the paper and the government.

Most of these war time powers lapsed after 1918, but the government expanded the *Customs Act* to ban communist and Sinn Fein publications deemed seditious. By 1929 over 240 works, including Marx's *Communist Manifesto*, had been banned.

University of Canberra academics Peter Putnis and Kerry McCallum have done a lot of great work pulling together the history of wartime restrictions of the press.

In World War 11 it was little different. Censorship was administered by the Department of Information, established in 1939 and managed under the National Security Regulations.

As in WWI, censorship was managed by the Deputy Chief Censor, reporting to the Chief Censor in London. Like its English counterpart the department was also a propaganda agency, with reporters in the field. This dual role of censorship and propaganda often seemed quite dysfunctional.

In 1942 the Curtin government interned those responsible for the semi-fascist publication, *The Publicist*.

In April 1944 the *Daily Telegraph* published stories on coal strikes and thereafter was required to submit all stories to the censor before publication. It did this but published blank spaces where stories had been redacted.

» *Continued from Page 33*

This was in defiance of a ban on identifying material that had been censored.

On the front line General Douglas MacArthur was particularly active in press management.

That was something followed through in later wars with embedding journalists in the battle zone.

In the Falklands war, journalists travelled on Navy ships, however they had to agree to submit their material for censorship, and the removal of sensitive military material.

Also, embedded journalists relied on use of the Navy's radios, or transport planes, to send copy back to England. Because of those arrangements the information journalists were filing was effectively controlled by the authorities.

During the Afghanistan war some journalists were embedded but if they weren't they were often accompanied on trips by public liaison officers from the Defence Department.

We now have a war on terror that politicians tell us will go on indefinitely. That means reporting restrictions will be lasting longer than World Wars 1 and 11 combined. Maybe even longer than the Hundred Years' War between England and France.

* * *

If journalists in Australia think the chill is too cold, maybe they should think about conditions in Bangladesh or Pakistan or even Russia where journalists are routinely killed in the line of their work.

In India and Turkey strong nationalist movements mean the work of dissenting journalists is made very difficult.

In India books quite frequently are withdrawn from sale because of law suits brought by upset groups.

Last year Penguin Books India withdrew a work called "The Hindus: An Alternative History" by Wendy Doniger.

In the settlement Penguin was required to affirm that "it respects all religions worldwide".

Since December last year 211 journalists have been imprisoned worldwide. There was an average rate of journalists' deaths of 1.2 per week over the previous 12 months.

This has created a climate of fear and a lot of self-censorship. PEN America recently surveyed 800 writers worldwide for its Global Chilling Report.

Among the key findings are that concern about surveillance is now almost as high among writers living in democracies (75 percent) as those living in non-democracies (80 percent).

The levels of self-censorship reported by writers living in democratic countries also approached the levels reported in authoritarian or semi-democratic countries.

Here, it could also be argued that the media has chilled itself by ever more desperate attempts to dumb itself down.

Even in the quality media we see attempts to make the news softer, more digestible, more stupid.

The executive producer of SBS World News, Andrew

Clark, recently advised his staff to avoid "turn off" stories about the Middle East, refugees, Indigenous Australians and Ebola.

He's looking for "quirky" stories. He added:

"Tonight it could be Katrina Yu's rent-a-partner story or Naomi's sex blackmail yarn."

Focus groups revealed that older audiences wanted stories about fish oil, not news about the Ukraine.

Quality newspapers are desperate to secure online readers, hence stories such as: "Stop! You've been peeling oranges all wrong."

The words "breasts" and "penis" appear more frequently in headlines of what we once understood to be quality papers and news sites.

* * *

But back to where we started. The anti-terror laws and their chilling impact.

The provisions about special intelligence operations means that journalism can be criminalised without the journalist or the publisher knowing they are committing a criminal offence.

Of itself that would have a self-censoring chilling effect.

The data retention laws do something else, even more serious.

The disproportionate overreach of the data retention regime goes beyond invasions of citizens' personal privacy and information. It alters the relationship between the state and its citizens.

Professor Roger Bradbury from the strategy and statecraft in cyberspace research program at the ANU's National Security College has talked about this.

The theory of the state is that it is there to protect citizens and apply taxation for the betterment of society. That requires a broad consensus.

But if the state undertakes mass surveillance of the citizens the connection between the governed and the government changes. We move from citizens of the state to subjects of the state.

And that is a chilling evolution

The problem could more properly be addressed by warrants given by judges, whether they gums things up or not, and properly funded review functions by the Privacy Commissioner and the Ombudsman.

Too easily governments roll over and give security agencies what they want. You can predict what might be next – bulk retention of web browsing history.

Even without draconian laws, the self-censorship of many of the galley-slaves who toil in the bilges of the media is self-evident. Great blocks of commentary and news seem to fit into an ordained formula, pirouetting to the tune of an absentee landlord.

As A.J. Liebling put it: "Freedom of the press is guaranteed only to those who own one."

Data retention and the end of Australians' digital privacy

On October 13, the new data retention laws came into force, signalling the end of your digital privacy. Nothing to worry about? Nothing to fear if you've got nothing to hide? **Quentin Dempster** argues that there's a lot more to it than that.

The digital privacy of Australians ended on Tuesday October 13. On that day, this country's entire communications industry was turned into a surveillance and monitoring arm of at least 21 agencies of executive government.

The electronically logged data of mobile, landline voice (including missed and failed) calls and text messages, all emails, download volumes and location information will be mandatorily retained by Australian telcos and ISPs. Intelligence and law enforcement agencies will have immediate, warrantless and accumulating access to all telephone and internet metadata required by law with a \$2 million penalty for telcos and ISPs that don't comply.

There is no sunset clause in the government's legislation, which was waved through parliament by Bill Shorten's Labor with only minor tweaks. The service providers are to keep a secret register of the agency seeking access to metadata and the identity of the persons being targeted. There is nothing in the Act to prevent investigative "fishing expeditions" or systemic abuse of power except for retrospective oversight by the Commonwealth Ombudsman. That's if you somehow found out about an agency looking into your metadata – which is unlikely, as there's a two-year jail sentence for anyone caught revealing information about instances of metadata access.

Over time, your metadata will expose your private email, SMS and fixed-line caller traffic, consumer, work and professional activities and habits, showing the patterns of all your communications, your commercial transactions and monetised subscriptions or downloads, exactly who you communicate with, and how often.

People are being asked by the Federal Parliament to accept that this regime of agency access is vitally necessary for national security at a time of geo-political tension, jihadi recruitment and

the war on terror. But in a country where the biggest terrorism threat comes from lone wolves and random acts of terror, it's a system that appears singularly ill-equipped to catch terrorists. What it does is render privacy a thing of Australia's past.

Security, intelligence and law enforcement access to metadata which overrides personal privacy is now in contention worldwide.

In the US the recently passed Freedom Act constrains security agencies' access to call records not considered essential for preventing terror attacks. In Israel, facing far more immediate security concerns than Australia, there is no mandatory metadata retention law as it is not seen as a proportionate response to the security threats the country faces.

Technology analyst Nick Abrahams of law firm Norton Rose Fulbright told Fairfax Media the European Union Court of Justice had declared an EU directive invalid last year causing member states including Britain into a review and reform scramble.

But in contrast, China is expanding its data retention laws. "[In China] there are wide powers [coming] for relevant government agencies to request information, including the right to request any encryption software used by the telcos," Abrahams said.

What is metadata good for?

It is not surprising that investigative agencies are clamouring for access to this rich new source of information. Metadata can be devastatingly effective in exposing criminality from outlaw motorcycle gangs, paedophile networks, illicit drug dealers, fraud and corruption. In NSW the Independent Commission Against Corruption used metadata to telling effect in its latest

» Continued from Page 35



Over time, your metadata will expose all your private communications, transactions, subscriptions and downloads. Photograph by Marina Noordegraaf used under Creative Commons Licence

round of Labor and Liberal party corruption investigations. But it had to justify its coercive targeting through demonstrable evidentiary leads.

In 2013-2014, there were more than 330,000 requests for access to metadata, which was not always available. A spokesperson for the Attorney General's Department told Fairfax Media metadata was a vital tool used in "virtually every counter-terrorism, organised crime, counter-espionage, cyber-security, child exploitation and serious crime investigation".

But not everyone is convinced that scooping up everyone's metadata is the way to catch terrorists. Former National Security Agency analyst Thomas Drake, who preceded Edward Snowden in blowing the whistle on unconstitutional surveillance in the US, last year told a Walkley Foundation seminar in Sydney that the NSA's massive data surveillance vacuum cleaner had not exposed or thwarted any terror plots.

In Australia, a policy launched in confusion – infamously catching out Attorney General George Brandis who was unable to explain exactly what metadata was – is still crammed with contradiction and obfuscation now it's written in law. Web browsing history – the record of actual sites visited – is excluded from the metadata to be stored: a strange omission, from a national security perspective.

Communications lawyer Patrick Fair from Baker & McKenzie told Fairfax Media: "If the government wants to catch terrorists surely it would be helpful to see what sites they have been viewing. In the context of national security excluding browsing history seems churlish".

Under the new law, the industry is not required to keep details

of users' web browsing history, so – if you browse pornography on the internet, for example, you may believe you can do so in lawful privacy (unless agencies obtain a warrant).

But it's not that simple. In trying to nail down the frequently asked consumer question – will my browsing history be accessible? – Fairfax Media technology editor Ben Grubb has discovered private communication from the AG's department to telcos saying that carriers will not be required to store "destination" IP addresses. However, "it does say that if 'a carrier wishes to retain those additional elements [it] is a decision for the carrier'."

A destination IP address reveals which web servers a user has accessed and is a form of web browsing history, although it cannot always show specifically what website on that server you were accessing.

"For many telcos, they will likely start storing destination IP addresses from October 13 because it will be difficult for them to remove [this data] in many cases, especially for mobile carriers due to the way their systems are designed," Grubb said.

So, the fact that you visited a porn site or infidelity site Ashley Madison or "jihadi" content sites, may in effect be discoverable without the need for a warrant.

What counts as metadata?

The collected data must be retained for two years by this country's 395 registered carriers, 230 of which are considered operationally active and hundreds of so called "carriage service providers". Compliance will apply to anyone who provides

access to the internet to third parties, the exact number, no one really knows.

Australian providers of email services will be required to keep records about each email sent and received by a subscriber, but popular overseas services like Gmail, Hotmail and Yahoo are exempt.

Call information, numbers dialled, rough location, dates and times of all SMS messages sent and received by a mobile phone subscriber must be retained.

Internet service providers supplying Wi-Fi to cafes, hotels, motels, restaurants, public and private transport will have an obligation to retain data emanating from those services.

Records of all unsuccessful or untariffed communications must be retained, including 1800 calls, missed or unanswered calls, emails or VoIP (voice over internet protocol like iiNet's Nodephone) sent to a non-existent or incomplete address.

Carriers must ensure through encryption and systems protection that none of your personal information is vulnerable to unauthorised access. But the new Act also says carriers may use the data collected for lawful commercial and "troubleshooting" purposes, something many of them already do.

Data retention obligations do not apply to internet and intranet services provided within corporate and university networks unless they provide internet connections to visitors "outside their immediate circle". This has the potential to create real issues for the university sector in particular.

What about privacy law?

Privacy advocates say a review of privacy issues associated with the new regime now is needed because the systematic storage of such a massive amount of identifying information leaves an individual's privacy exposed. Short of living without a phone or computer, you have no option but to leave a digital trail relating to the last two years of your life.

The Privacy Act allows a citizen to access and correct their metadata if he/she is interested so to do. However, you will not be informed if it has been viewed by ASIO or any other agency. There is a two-year prison sentence for disclosing any information about authorised access to your data. The information being kept may also be accessed for civil litigation but only if the Attorney General creates regulations to allow it. You are not given notice and consent options for the commercial use of your metadata as you are with personal information.

Baker & McKenzie's Fair told Fairfax Media a person's metadata can be reviewed at any time by agencies without that person's knowledge and it might be used for or against you in court.

"The issue here is not so much the weaknesses in the Privacy Act but the lack of real time supervision and accountability of law enforcement and national security agencies. Our supervisory regime is weak and unlikely to ensure proper use of the extensive data soon to be kept," Fair said.

The new law does not allow any agency at unauthorised will to tap your phone, read your texts or watch you in real time as you use email, do your online banking or browse the internet. While technology now being implemented by the industry

will have this invasive real-time capability, it is not lawful in Australia without a court-ordered warrant.

But if the digital footprint you are creating raises suspicion after an examination of your metadata, the retained evidence may be grounds for a digital surveillance or phone tap warrant to be issued. The Telecommunications Interception Act requires all communications providers to have a real time interception capability. So it is one small (lawful) step from metadata collection to interception and continuous surveillance. For obvious operational reasons surveillance warrants issued by the courts are top secret.

Look out for the 'surveillance tax'

The industry has been scrambling to comply with the new regime. There is a massive amount of preparatory and ongoing systems work to do, and the government has still to announce how many of the 230 telcos and ISPs affected will be compliant by October 13.

Communications Alliance CEO John Stanton told Fairfax Media the industry faces an uphill battle to meet the deadlines prescribed in the Act. "We are still debating with government the practical implications of some of the requirements. There is widespread concern, particularly among smaller providers, about exactly what is required of them and which elements of specific services constitute 'content' and therefore cannot be retained", he said.

And there is a confrontation coming between the government and the industry over the cost of compliance. While Treasurer Joe Hockey's May budget stumped up \$131 million to be shared by the industry to cover compliance, industry leaders say this will not cover the enormity of the task and that consumers will have to pay more for services. Inevitably consumers will call this a "surveillance tax".

"The government put a small amount of money in the budget for this and the next financial year to assist service providers with their start-up costs, but – inexplicably – still haven't provided any guidance on how that money will be apportioned and when it will be available ... So far as the compliance framework goes, it's not been a stellar performance from government," said Stanton.

The AG's spokesperson said a funding model was being developed "to ensure that a fair portion of the funding is made available to smaller providers that may not have sufficient capital budgets to build new systems".

Because of the complexity of compliance, a new "industry" is being created with many registered service providers seeking to outsource their compliance obligations to specialists approved by the CAC. This necessarily will broaden the entities with access to your metadata. Again Australian subscribers will be left to trust in the integrity of not just the government agencies but the outsourcers who will have access to their metadata.

This article, which appeared on August 29, 2015, republished courtesy of the Sydney Morning Herald.

International journalists killed at high rate in 2014: Middle East deadliest region



During a demonstration in Pakistan, journalists hold photos of Anja Niedringhaus, an Associated Press photographer who was killed in Afghanistan in April. (Reuters/Faisal Mahmood)

An unusually high proportion of journalists killed in relation to their work in 2014 were international journalists, correspondents who crossed borders to cover conflict and dangerous situations in the Middle East, Ukraine, and Afghanistan, the Committee to Protect Journalists found in its annual analysis.

Reflecting in part the increasingly volatile nature of conflict zones in which Westerners are often deliberately targeted, nearly one quarter of the journalists killed were members of the international press, about double the proportion CPJ has documented in recent years. Over time, according to CPJ research, about nine out of every 10 journalists killed are local people covering local stories.

In total, at least 60 journalists were killed globally in 2014 in relation to their work, compared with 70 who died in 2013.

The danger of working as an international correspondent gained renewed attention in April this year as Anja Niedringhaus, a German photographer for The Associated Press, was shot dead by a police officer in Afghanistan while covering elections. In August, U.S.

Syria is the world's deadliest country for journalists for the third year in a row. International journalists were killed at a higher rate in 2014 than in recent years. A special report by **Shazdeh Omari** for the Committee to Protect Journalists.

freelance journalist James Foley was executed by members of militant group Islamic State, which published an online video of the murder. Foley had been kidnapped in Syria in November 2012, but his whereabouts were unknown. Two weeks after his murder, Islamic State published another video showing the beheading of U.S.-Israeli freelance journalist Steven Sotloff, who had been abducted in August 2013.

Despite increased risks to Western journalists working in conflict zones, the overwhelming majority of journalists under threat for their work continue to be local. For example, of the approximately 20 journalists CPJ estimates to be currently missing in Syria – many of whom are believed to be held by Islamic State – most are local.

In total, the Syrian conflict led to the deaths of at least 17 journalists in 2014, bringing to 79 the overall number of journalists killed in the country since the conflict began in 2011. The growing death toll led Syria to replace the Philippines as the second deadliest place for journalists since CPJ began documenting journalist killings in 1992.

In Iraq, at least five journalists were killed this year, three of whom were covering clashes between the Iraqi government and its allies against the Islamic State-

led insurgency. One of them, Khalid Ali Hamada, a cameraman for Al-Ahad TV, was killed in June 2014 while covering clashes in Diyala province between Iraqi security forces and Islamic State gunmen, according to news reports.

At least four journalists and three media workers were killed while covering the 50 days of conflict in July and August in Israel and the Occupied Palestinian Territories, in which more than 2,100 Palestinians, most of them civilians, and 73 Israelis were killed. On July 9, a driver for the local agency Media 24 was killed when his car, marked 'Press,' was hit by an Israeli strike.

The deaths of at least five journalists and two media workers in Ukraine this year were the first journalism-related killings CPJ has confirmed in Ukraine since 2001. All but one of those killed were international journalists. CPJ documented frequent press freedom violations in the country in 2014, including attacks, the detention and abduction of journalists, and blocked broadcasts.

In Pakistan, which ranks among the most dangerous places for the press over time, three journalists were killed for their work, a decline from previous years. Yet violence against journalists continued. In April, Geo News senior anchor Hamid Mir was shot six times as he was leaving Karachi's main airport, but survived. In March, gunmen shot at the car of TV anchor Raza Rumi, who escaped serious injury. His driver was killed.

At least three journalists were killed in Paraguay in 2014, the first time since 2007 that CPJ confirmed a media-related death in the country. Two of the journalists were radio hosts. In the northern city of Concepción in June, Edgar Pantaleón Fernández Fleitas was shot dead after hosting a radio program in which he accused local judges, lawyers, and officials in the Attorney General's office of corruption.

Some journalists were caught on the frontlines of reporting on the outbreak of the deadly Ebola virus. In Guinea, the bodies of a radio journalist and two media workers were found dumped in a sewer in the village of Womé, where they had traveled to cover a delegation's public health awareness campaign.

Turkey saw its first media-related killing in many years. On October 14, Kadir Bağdu was on his bicycle delivering issues of the pro-Kurdish daily Azadiya Welat in the city of Adana when he was shot by two men on a motorcycle. An editor at the daily told CPJ that the publication frequently receives threats via phone and email. Authorities claim that the pro-Kurdish media are aligned with the banned Kurdistan Workers Party, or PKK, and the KCK, an umbrella group of pro-Kurdish organizations, according to CPJ research.

In Burma, the military said in October it had shot and killed a Burmese freelance reporter while holding him in custody in southeastern Mon state. The killing was the first journalism-related death CPJ has documented in Burma since 2007. Press freedom conditions in the country deteriorated in 2014, with at least 10 journalists imprisoned on anti-state charges.

Some other trends that emerged from CPJ's research:

- The total number of deaths in 2014 demonstrates

the sustained level of risk to journalists over the past decade. The past three years are the most deadly period CPJ has recorded.

- Almost half of the journalists killed in 2014 died in the Middle East. Around 38 per cent of the total died in combat or crossfire.

- CPJ documented its first-ever journalist killing in Central African Republic, where clashes between various rebel groups and government forces led to deadly violence.

- At least one journalist was killed in the Philippines, a country that now ranks third among the world's deadliest for the press. Another witness in the 2009 Maguindanao massacre, in which 32 journalists and media workers were killed, was shot dead in November, bringing to four the number of witnesses killed, according to CPJ research. Not one person has been convicted in the massacre.

- More than 40 percent of the journalists killed in 2014 were targeted for murder. About 31 per cent of journalists murdered reported receiving threats first.

- Eight of the countries that saw a journalist murdered during 2014 are listed on CPJ's 2014 Impunity Index, which spotlights countries where journalists are regularly murdered and the killers go free.

- The most common job held by journalists killed in 2014 was broadcast reporter, at 35 per cent, followed by photographer and camera operator, at 27 per cent.

- About 68 per cent of the journalists killed in 2014 covered politics, with the next deadliest beat for reporters being war, at 60 per cent, followed by human rights, at 55 per cent.

CPJ began compiling detailed records on all journalist deaths in 1992. CPJ staff members independently investigate and verify the circumstances behind each death. CPJ considers a case work-related only when its staff is reasonably certain that a journalist was killed in direct reprisal for his or her work; in combat-related crossfire; or while carrying out a dangerous assignment.

If the motives in a killing are unclear, but it is possible that a journalist died in relation to his or her work, CPJ classifies the case as "unconfirmed" and continues to investigate. CPJ's list does not include journalists who died of illness or were killed in car or plane accidents unless the crash was caused by hostile action. Other press organisations using different criteria cite higher numbers of deaths than CPJ.

CPJ's database of journalists killed for their work in 2014 includes capsule reports on each victim and a statistical analysis. CPJ also maintains a database of all journalists killed since 1992.

Shazdeh Omari is CPJ's news editor. She is the former copy chief of The Village Voice and has worked as a reporter and editor in the United States and Greece.

Privatising censorship in fight against extremism is risk to press freedom

By **Courtney C. Radsch**, Advocacy Director of the Committee to Protect Journalists

“We’re stepping up our efforts to discredit ISIL’s propaganda, especially online,” President Barack Obama told delegates at the Leaders’ Summit on Countering Violent Extremism in September. The social media counter-offensive comes amid U.N. reports of a 70 per cent increase in what it terms “foreign terrorist fighters” – citizens of U.N. member states who have left to join Islamic State and other militant groups.

Islamic State has embraced social media as a way to attract supporters around the world, in a move governments and companies have struggled to respond to. The idea of counter narratives and of removing content and closing down social media accounts believed to be linked to Islamic State has become a major international agenda item. But the focus on the group’s use of social networking has opened the door to a range of politicised efforts that appear less likely to diminish Islamic State’s reach than to enable countries to use countering violent extremism measures for their own domestic agenda.

Studies of Islamic State use of social media by the U.S. government in early 2015 and the Brookings Center for Middle East Policy between September and December 2014, estimate the militant group and its supporters produce between 46,000 and 90,000 posts a day. But, as a 2012 youth-focused workshop by the Organisation for Security and Co-operation in Europe (OSCE) concluded, censoring content is ineffective. Such measures are akin to Whack-A-Mole, with accounts replaced as quickly as they are deleted. Supporters of the militant group have also reacted to such efforts by turning to lesser-known video upload services, hijacking trending hashtags to amplify dissemination, and even taunting YouTube administrators about the futility of their efforts, according to reports.

Despite this, some governments are seeking to hold social media firms responsible for the monitoring and removal of content. A July meeting of the U.N. Security Council Counter-Terrorism Committee called for Internet platforms to be held liable for hosting or indexing extremist content. And with the so-called right to be forgotten ruling in the EU, Internet and telecommunications intermediaries are increasingly being called on to act as editors of the Web, as CPJ’s report ‘Balancing Act: Press Freedom at Risk as EU Struggles to Match Action with Values,’ found.

Intermediary liability threatens innovation and free expression

by placing the burden of monitoring content on neutral third party hosts, which is why CPJ supports reforms contained in the Manila Principles on Intermediary Liability, a set of recommended best practices prepared in coalition with leading press freedom and technology policy organisations and individuals.

Last month, rights groups helped defeat a draft provision in a U.S. Senate appropriations bill that would have obligated Internet companies and other electronic communication services to report undefined “terrorist activity,” a term that, by not being defined, risks overbroad compliance.

“[Islamic State] use of social media is unprecedented so [the Obama administration] is floundering around, flailing around trying to find an appropriate response,” Alberto Fernandez, vice president of the non-profit media monitoring group Middle East Media Research Institute and former coordinator of the U.S. Center for Strategic Counterterrorism Communications, told me.

But it’s not just the Obama administration. The glorification of terrorist acts and the online recruitment of followers has come under renewed focus since the Islamic State’s expansion in Syria and Iraq, and the attacks on satirical magazine *Charlie Hebdo* in France in January, which killed 12 people. In the past year, several governments have moved to restrict or monitor online use under the guise of counter-terrorism measures:

- In August 2014, China blocked popular messaging apps over claims that they could be used for terrorism, according to South Korean authorities.
- At a CVE working group meeting of the Global Counterterrorism Forum in Beijing in November 2014, Turkey’s remarks focused on the need to remove illegal content. (Turkey, as CPJ has previously documented, uses anti-terrorism measures to block access to networks such as Twitter and charge journalists over social media posts.)
- Balkan states agreed in March to joint efforts related to “monitoring and removing Internet content that promotes terrorism and violence... as fast as possible.”
- In May, the Council of Arab Information Ministers adopted a proposal by the UAE, a key partner in U.S. counter-propaganda efforts, to limit media coverage of “extremist religious rhetoric.”
- In July, Europol, the European Union’s law enforcement agency, launched its Internet Referral Unit “to combat terrorist propaganda and related violent extremist activities on the Internet.”



UN Secretary-General Ban Ki-moon and President Barack Obama at a summit on countering violent extremism in September. Proposed measures risk curtailing press freedom. (AFP/Jewel Samad)

Allowing ill-defined “extremist” content to be removed without judicial oversight or due process can too easily be used by states interested in limiting independent reporting and staving off public policy debates.

Removal of Twitter accounts, for instance, has been found to limit but not eliminate the scope of Islamic State social media activities, according to the Brookings study. But whether this has any impact on broader objectives, such as preventing recruitment or funding, is up for debate. The Brookings study found that removing an account makes it harder to access a group’s social network, but it also has an isolation effect that could “increase the speed and intensity of radicalisation for those who do manage to enter the network.”

Such moves also remove information that journalists and intelligence agencies alike rely on. The basic role of the media is to provide information and often the events depicted in content disseminated by groups such as Islamic State or Boko Haram is newsworthy. Vaguely worded counter-terrorism laws and measures can also be easily manipulated or encourage self-censorship among journalists who are uncertain of where to draw the line.

The Global Network Initiative, an alliance of tech firms and civil society groups of which CPJ is a founding member, has noted concerns over approaches including blocking material without a court order, requiring companies to proactively notify governments of potential “terrorist” content, and pressuring these companies to change their terms of service to guarantee removal of content or accounts.

“Terrorist activity is a notion that potentially covers a broad array of speech and conduct. It also puts the burden on communications providers, who are private actors, to define what is terrorist activity and what is not,” Judith Lichtenberg, the network’s executive director, told me. “It is both wrong in principal and difficult in practice for companies to be given this responsibility.”

Putting such subjective decisions in the hands of a corporate actor without giving them sufficient guidance, and without providing oversight or requiring transparency risks privatizing censorship and infringing on protected speech. Facebook, for example, has no clear definition of terrorism. Facebook’s head of public policy for Central and Eastern Europe Gabriella Cseh, says designation is based on whether a group includes violence as a way to achieve its mission. No one can support or praise a terrorist act or organizations or post graphic content, she told me. “If they say [Islamic State] members are heroes we will remove that content and that will trigger account removal.”

But would a universal definition of terrorism or another U.N. resolution really help? At an OSCE expert workshop on media freedom and anti-terrorism policies that I attended last week, the challenges of defining terrorism were heard from diplomats and members of civil society who overwhelmingly acknowledged the anti-terrorism agenda often had a deleterious effect on human rights and civil liberties.

More than half of the 221 imprisoned journalists in CPJ’s 2014 prison census were jailed on anti-state charges. Reporters who try to cover the activities of state-designated terrorist groups or interview their members are at risk of being accused of helping terrorist groups – three journalists working for VICE News were detained in Turkey in September over such accusations. One of them, Mohammed Ismael Rasool, is still being held. A quick click through the CPJ website shows the impact such laws have on journalists, from the persecution of the Zone 9 bloggers in Ethiopia, to restrictive laws in Egypt.

“The ‘war against terrorism’ waged over the past 15 years ... has shown that restricting human rights in order to combat terrorism is a serious mistake and an ineffective measure which can even help terrorists’ cause,” Council of Europe Human Rights Commissioner Nils Muiznieks noted. In remarks published on the council’s website in March, Muiznieks expressed concern at extra judicial website blocking in France and surveillance proposals in Europe.

Georgia Holmer, an expert on countering violent extremism at the U.S. Institute for Peace, told me she is concerned at the ramifications of such policies. She said, “What worries me is when we export some of these tools to countries that don’t have robust democracies or robust checks and balances or reform measures in place, is we are actually doing more harm than good. What type of blank check are you writing?”

CPJ Advocacy Director Courtney C. Radsch, PhD, is a journalist, researcher, and free expression advocate. She previously worked for UNESCO’s Section for Freedom of Expression and as senior program manager for the Global Freedom of Expression Campaign at Freedom House.

Back to old days of grace and favour, says ASA Chair

Federal budget cuts to arts funding have been greeted with dismay across the sector. For David Day, Chair of the Australian Society of Authors, the government's move attacks the principle of arms-length funding in favour of grants recommended by political appointees and ultimately decided by a politician.



David Day, chair of the Australian Society of Authors

Former Prime Minister Tony Abbott had a view of Australia that combined the 1950s nostalgia of his childhood with the anger and resentment of the American Tea Party movement. Part Menzies and part hard-right Republican, he wanted to re-shape Australia in ways that reflected his zealous and rather authoritarian view of the world. It was a view that brooked no opposition or sceptical questioning. Among many other groups and individuals, writers and the artistic community were in his sights.

A prime minister who thinks that the future is summed up by a coal mine is hardly likely to see the advantage for Australia of encouraging vibrant, edgy creative activities. While directing a torrent of taxpayer dollars towards coal miners, the government decided to cut back on the trickle that had been going to encourage the arts community. And where better to start than the Australia Council?

Both Labor and Liberal governments have a long tradition of supporting arts organisations as well as individual artists. Until the establishment of the Australia Council in 1975, this was usually done by official patronage of favoured artists and art forms, with all the problems that involved when some were denied funding for political reasons. The Australia Council was meant to change that by separating funding decisions from politicians, so that it wouldn't only be politically-approved artists and arts organisations that received funding. Instead, funding would be decided by artistic peers operating at 'arms-length' from politicians.

Of course, this can also have problems when peer groups become entrenched and exercise their own prejudices. Over the years, the Australia Council has honed its organisation and funding methods to prevent this happening. Instead of having peer review committees appointed for extended periods, the membership of the committees is rotated frequently so that there is little likelihood of applications being repeatedly

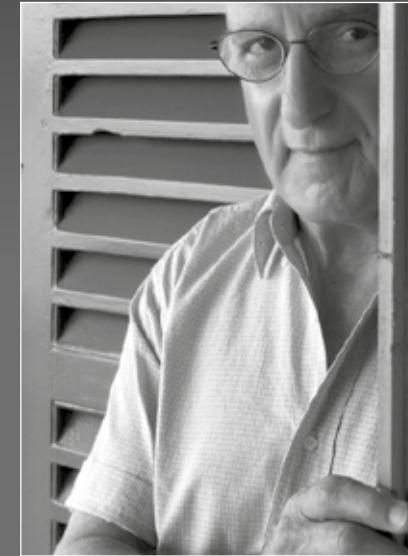
rejected for reasons of political or other prejudices. There are still many dissatisfied applicants, but that's because the amount of funding falls so far short of what is required for the Australia Council to properly fulfil its responsibility on behalf of the nation.

The Abbott government's 2015 budget not only cut back the budget of the Australia Council but also attacked the principle of arms-length, peer reviewed funding. Six million dollars over three years – money that could have gone to support authors' grants – was taken from the Australia Council to fund a Book Council that is meant to advise the Arts Minister on how to encourage reading and support the industry. The idea of an independent book council composed of peak organisations was transformed by the minister into an advisory group that was beholden to the government and the favour of the minister.

The greater attack came with the establishment of a so-called National Program for Excellence in the Arts, with the Arts minister taking \$104.7 million from the Australia Council over four years to make grants to organisations and art forms that have to be approved by the minister. It's back to the old grace and favour system, with more of the Australia Council's arms-length, peer reviewed funding being replaced by grants recommended by politically-appointed individuals and ultimately decided by a politician.

Individual writers and artists and small to middling organisations were going to be, and still might be, particularly hard-hit by the diversion of funding to politically favoured art forms. With a new Prime Minister and a new Arts Minister installed, writers and the arts community generally are hoping for a return to the well-developed system administered by the Australia Council. It's what a vibrant democracy demands, if the needs of its creative industries are to be properly addressed.

David Malouf, a member of Sydney PEN's Writer's Advisory Panel, explains why he supports PEN

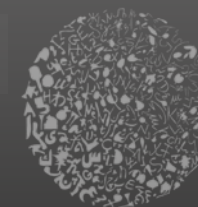


photographer Conrad de Vilar

“As a writer who has the freedom to write without fear or constraint, and for whom silence is a choice, I would feel ashamed if I did not speak up for a writer anywhere on whom silence is enforced with all the terrible machinery of the state”

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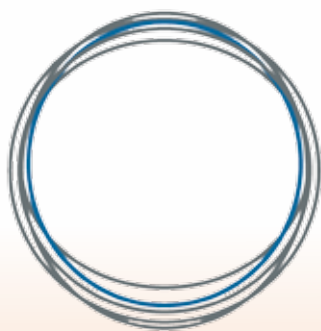
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