

PERSONAL INFORMATION, IDENTIFICATION INFORMATION, AND IDENTITY KNOWLEDGE

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This commentary responds to the primary article by Åste Corbridge in this volume entitled 'Responding to Doxing in Australia: Towards a Right to Informational Self-Determination?'. It discusses the way that concepts of 'personal information' and 'identification information' from the Privacy Act 1988 (Cth) correspond with the seven crucial types of identity knowledge identified by Gary T Marx and argues that these statutory definitions should be expanded to offer better protection to victims of doxing in Australia.

CONTENTS

I	Introduction	33
II	Seven Types of Identity Knowledge.....	34
III	Personal Information and Identification Information	36
IV	Protecting Identity Knowledge	37
V	Conclusion	38

I INTRODUCTION

Åste Corbridge's primary article presents a useful response to addressing the problem of doxing in Australian law.¹ Her recommendation of following the European Union's General Data Protection Regulation ('GDPR')² also has

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¹ Åste Corbridge, 'Responding to Doxing in Australia: Towards a Right to Informational Self-Determination?' (2017–2018) 3 *University of South Australia Student Law Review* 1.

² Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the Protection of Natural Persons with Regard to the Processing of Personal Data and on the Free Movement of Such Data, and Repealing Directive 95/46/EC (General Data Protection Regulation) [2016] OJ L 119/16 [85] ('GDPR').

the benefit of promoting compliance by overseas data providers. In my response, I will discuss the way that the concepts of ‘personal information’ and ‘identification information’ from the *Privacy Act*³ correspond with the types of identity knowledge identified by Gary T Marx.⁴ As I have described elsewhere, doxing is the public release of a type of identity knowledge about an individual that allows other forms of identity knowledge to be revealed about her.⁵ Examining the overlap between these different descriptions of personal and identifying information will highlight how well these concepts as defined in the Commonwealth *Privacy Act (1998)* cover the possibilities for doxing, and, if any omissions emerge, will reveal how these definitions might need to be expanded.

I begin with a brief account of the seven types of identity knowledge that Marx describes. I then explain how these types of identity knowledge are represented by the definitions of ‘personal information’ and ‘identification information’ in the *Privacy Act*.⁶ I find that the ‘pattern knowledge’ and ‘social categorisation’ types of identity knowledge in Marx’s list are either outside the definitions presented in the Act or are covered only in specific instances. I agree with Corbridge’s point that the meaning of ‘identified’ or ‘reasonably identifiable’ in the definition of ‘personal information’ needs to be clarified and suggest that Corbridge’s recommendation of adopting something like the GDPR would help not only to address the problems of information not currently covered by the existing definition of personal information, but also to respond to the problem of releasing personal information in a context that encourages targeting the identified individual.⁷

II SEVEN TYPES OF IDENTITY KNOWLEDGE

Marx lists seven types of identity knowledge: legal name, locatability, pseudonyms connected to name or location, pseudonyms not connected to

³ *Privacy Act 1988* (Cth) s 6(1).

⁴ Gary T Marx, ‘What’s in a Name? Some Reflections on the Sociology of Anonymity’ (1999) 15(2) *The Information Society* 99.

⁵ David M Douglas, ‘Doxing: A Conceptual Analysis’ (2016) 18(3) *Ethics and Information Technology* 199, 203.

⁶ *Privacy Act 1988* (Cth) s 6(1).

⁷ Corbridge, above n 1.

name or location, pattern knowledge, social categorisation, and symbols of eligibility or non-eligibility.⁸

The legal or full name of an individual is the name by which she is officially recorded. Locatability refers to information that allows others to communicate with an individual or to determine her physical location. This includes street addresses (which establish physical locatability), telephone numbers, and email addresses.

The pseudonym connected to an individual's name or location may be a code or number used to refer to her within a database or other record system. Two Australian examples are the Tax File Numbers (TFNs) and Medicare numbers. These codes should be unique to prevent confusion between different individuals, which can occur if just an individual's legal name or address is used for government record-keeping. This uniqueness, however, makes these numbers particularly important because they connect the individual they describe with a variety of sensitive government records.

Other pseudonyms or identifiers are not linked back to an individual's name or location, and so have the effect of concealing the individual's identity rather than providing a connection to it. Anonymised codes used in surveys to prevent an individual's responses being traced back to her are one example of this kind of pseudonym. Other examples are aliases adopted for fraud, or deception, or just to allow someone to obscure their identity in a situation where they are required to give a name.

Pattern knowledge can identify a particular individual due to a regular activity or routine that can be observed by others, or by a recognisable trait in an individual's work. Regular attendance by patrons at a coffee shop or regular travel on a particular bus or train are good examples of this form of identifying knowledge, as is someone's particular writing or drawing style.

Social categorisation is information about the wider social groups or categories that an individual can be classified as belonging to, such as gender, race, religion, age, language, employment status, and so on. Such categorisations often serve as the basis for prejudice and discrimination by others.

Finally, an individual may be distinguished from others by establishing that she possesses particular symbols of eligibility, such as: particular information

⁸ Marx, above n 4, 100–2.

(eg, a computer password or an individual's date of birth); a physical object (eg, ID cards and tickets); or skills (eg, riding a bicycle). These identifiers can be used to confirm someone's identity if they are the kind of information that only the identified individual would know or if a particular physical item can be confirmed as belonging to a specific individual.

III PERSONAL INFORMATION AND IDENTIFICATION INFORMATION

The *Privacy Act* defines personal information as 'information or an opinion about an identified individual, or an individual who is reasonably identifiable'.⁹ This definition applies regardless of 'whether the information or opinion is true or not' and 'whether the information or opinion is recorded in a material form or not'.¹⁰ The broad scope of this definition allows it to cover all of the types of identity knowledge Marx describes.¹¹ Corbridge rightly notes that the terms 'identified individual' and 'an individual who is reasonably identifiable' in the legislation are open to interpretation.¹² I will return to this point in the next section.

The definition of identification information in the Commonwealth *Privacy Act* contains several types of information that directly correspond with various types of identity knowledge identified by Marx. The Act lists seven items in the definition of 'identification information': an individual's full name, alias or previous name; date of birth; sex; current or last known address (as well as two previous addresses if there are any); current or last known employer; and licence number if they hold a driver's licence.¹³

Identification information is more limited in scope than personal information, and so does not cover all types of identity knowledge. It covers only an individual's legal name, locatability, pseudonyms, and some basic forms of social categorisation and eligibility symbols. An individual's full name, alias or previous names are either her official legal name or recognised pseudonyms she has adopted. An individual's sex may serve as a basic form of social categorisation.

⁹ *Privacy Act 1988* (Cth) s 6(1).

¹⁰ *Ibid.*

¹¹ Marx, above n 4, 100–2.

¹² Corbridge, above n 1, 20–1.

¹³ *Privacy Act 1988* (Cth) s 6(1).

An individual's address and her current known employer are both forms of locatability because they allow for her to be contacted. This information is particularly vulnerable to doxing as it allows for an individual to be targeted, either by the doxer or by others who are motivated to do so.

The date of birth and driver's licence number can both serve as symbols of eligibility: the date of birth as a straight-forward way of verifying someone's identity (since it is information few other people than the individual herself will know); and the driver's licence number, both as another way of verifying identity and as a symbol of recognising that the individual is legally entitled to drive a car. Pseudonyms that represent an individual within a record system (such as a Medicare number) also count as a symbol of eligibility.

Based on this account, pattern knowledge is outside the scope of 'identification information' in the *Privacy Act*. Furthermore, only if an individual's sex is considered as a form of social categorisation does any form of this type of identity knowledge fall within this scope.

IV PROTECTING IDENTITY KNOWLEDGE

One approach to addressing these differences in the descriptions of personal information is to expand the meaning of 'identified or reasonably identifiable' in the definition of personal information in the *Privacy Act*.¹⁴ As Corbridge notes, this is one of the recommendations presented by the Australian Law Reform Commission.¹⁵ Clarifying the meaning of 'reasonably identifiable' information may allow for sensitive types of social categorisation and pattern knowledge to fall within the definition of personal information.

However, clarifying this part of the definition will not resolve the problem of the context and presentation of personal information, which is significant in doxing. If a person's name and address are presented along with some other provocative material, that person is both removed from obscurity and linked with a motivation for targeting her. The importance of context is not captured in the definitions of personal and identification information. While this is to be expected in general definitions that are to be applied in numerous contexts, addressing this problem may require additional legislation that

¹⁴ *Privacy Act 1988* (Cth) s 6(1).

¹⁵ Australian Law Reform Commission, *For Your Information: Australian Privacy Law and Practice*, Report No 108 (2008), vol 1, 309 [6.63].

covers the publication or release of personal information in a context that encourages targeting. Another approach may be to introduce something resembling the EU's General Data Protection Regulation, as Corbridge recommends.¹⁶

V CONCLUSION

In this response, I have offered an additional approach to supporting Corbridge's recommendation of adopting the EU's GDPR by explaining how the current definitions of personal information and identification information do not exhaust the types of identity knowledge relevant to doxing. Any changes to Australian legislation will need to expand the definition of personal and identification information to ensure that it is effective in addressing doxing.

¹⁶ *General Data Protection Regulation* [2016] OJ L 119.