Australian Broadcasting Corporation  
Att: David Anderson, Managing Director

ABC Ultimo Centre  
700 Harris Street  
Ultimo NSW 2007

Dear Mr Anderson

# Re: Privacy risks associated with requiring users to log in to watch iView

I am writing to outline my concerns about the risks posed to ABC audiences if the ABC is to proceed with its stated intention to require iView viewers to create online accounts.

I believe the decision to gather viewing data from ABC viewers and force ABC viewers to log in to watch iView is ill-considered and should be reversed.

# Legal risks for the ABC

The ABC is bound by the 13 Australian Privacy Principles (APPs) in the *Privacy Act 1988* (Cth). In particular, I draw your attention to the following.

**APP 2 - Anonymity**

APP 2.1 provides that:

*Individuals must have the option of not identifying themselves, or of using a pseudonym, when dealing with an APP entity in relation to a particular matter.*

While you could argue that viewers could use fake names and create email addresses which reveal neither their name or workplace, in reality email addresses are highly identifying. They are not effective as pseudonyms, because of their ability to be linked with the use of the same email address across multiple accounts. Further, the proposal to share data with third parties will only exacerbate the re-identification risks for people attempting to remain pseudonymous.

The switch from anonymous viewing to identifiable viewing is a significant change in the ABC’s position as a data collector, and it will bring attendant risks of non-compliance with APP 2.

**APP 3 – Collection necessity**

APP 3 provides that the ABC:

*must not collect personal information (other than sensitive information) unless reasonably necessary for, or directly related to, one or more of the entity's functions or activities*.

Commercial operators need to make money; they require their viewers to pay for content, either directly (with money) or indirectly (with data). By contrast the ABC is publicly funded, and should not require the public to pay with our data for content we have already paid to create. This objection applies to all linked viewing data, whether linked through an ABC account, or via cookies, IP address, etc.

I submit that the ABC does not need to know the identity of its viewers, or the linked-up viewing habits of its viewers, in order to continue to provide its publicly-funded services.

More significantly, if the personal information is ‘sensitive information’ – such as if, from a person’s email address and/or their viewing history you can infer such matters as sexuality, religion, political opinions or ethnicity – the ABC’s collection will be subject to an even tougher standard: you also need the individual’s *consent*. This is difficult to achieve unless the entire program is voluntary.

I suggest that the ABC faces significant risk in terms of non-compliance with APP 3.

**APP 8 – Cross-border disclosures**

I understand that “There is an opt out if a person doesn't want some data shared with third parties — like Facebook and Google”.[[1]](#footnote-2)

However the Office of the Australian Information Commissioner (OAIC) has repeatedly pointed out that an ‘opt out’ mechanism is not consent.

Under APP 8.2, disclosure of personal information to an overseas organisation like Facebook, in jurisdictions such as the USA which does not have privacy protections equivalent to ours, requires the *consent* of the individual *after they have been expressly informed* that their personal information will be sent to a jurisdiction without privacy protections.

I suggest that the sharing of personal information with third parties such as Facebook - in the absence of *express consent after the viewer has been informed of the risks* – poses a risk of non-compliance with APP 8 for the ABC. (None of the exemptions to APP 8 are relevant here.)

I repeat that consent cannot be achieved unless the entire program is voluntary.

In addition to facing the risk of complaints about breaches of APP 8, the ABC will remain liable under s.16C of the Privacy Act for any harms which befall ABC viewers as a result of misuse by third party data recipients such as Facebook.

# Risks posed to viewers

Requiring users to ‘log in’ could have significant negative impacts for particular viewers.

**Introducing a technology barrier**

The need to log in is a barrier to access that might exclude small children, the elderly, or others who have less familiarity with technology.

Logging in may seem simple for a young, literate adult, but is much less so for many Australians. The ABC's free and open content was a fantastic resource for everyone during the pandemic. Putting a login-wall in front of it would significantly lower the number of small children who could easily access it without parental help. (I imagine the same is true for the elderly or others who struggle with sophisticated technology.) This would not keep the children safer – it would simply push them onto lower-quality platforms without a login.

**Creating risks of harms for viewers**

The data sharing that comes with online accounts is potentially harmful, and has not been transparently explained.

You do not seem to have considered how sensitive a person’s ABC viewing or listening habits may be, or how much harm could be done when they are shared. Many Australians go to the ABC as a trusted source of information on controversial issues. A student from an authoritarian country who likes to watch shows about democracy, or a teenager from a conservative family who takes an interest in gender fluidity or religious skepticism, may suffer significant harm if these preferences are exposed.

For example, if an Australian has watched Foreign Correspondent's episode on the crackdown in Xinjiang, this could be used by Facebook or Google to inform an attribute such as “interested in human rights abuses in China”, which could then be used by the Chinese government to target propaganda directly to those viewers via paid advertising on those platforms. This has implications for societal political manipulation. The data is likely to be very easily identifiable by Google, Facebook, the Chinese Communist Party, or other sophisticated data gatherers with whom it might (directly or indirectly) be shared.

The ABC does not have (and is unlikely to be able to gain) consent for data collection or sharing. To date the informal public statements about data collection are incomplete, because they give the impression that only some demographic information will be collected (such as postcode and year of birth). Many do not even mention gathering viewing data,[[2]](#footnote-3) though of course the ‘personalised experiences’ and ‘recommendations’ algorithms must be fuelled with extensive data on viewing habits uploaded from a very large number of users.

The ABC’s *Privacy Collection Statement*[[3]](#footnote-4) mentions that some data is uploaded at registration, and refers briefly to the sharing of “data we collect about your use of our digital services, including behavioural and location data,” but does not make clear that viewing data will continue to be uploaded while the logged-in person watches. (I acknowledge that the Privacy Policy is more explicit about both collection and sharing of this data. I also acknowledge that there is an opt-out for on-sharing of data, though this is only for account holders and does not allow opting out of collection.)

# Reputational risks to the ABC and inconsistency with the ABC’s charter

Finally, I believe the role of a public broadcaster is to support a shared conversation among all Australians, even those of very different backgrounds and views – ‘personalised experiences’ are the opposite of this core goal.

Indeed, the ABC’s Charter states that the ABC’s functions include:

*broadcasting programs that contribute to a sense of national identity and inform and entertain, and reflect the cultural diversity of, the Australian community*.

I question whether ‘personalised experiences’ are a desirable goal at all. We are currently witnessing a profound fracturing of societies and communities, due to the effects of social media’s hyper-personalisation of content consumed in the digital environment. ‘Personalised experiences’ can mean echo chambers and filter bubbles, in which political divides become entrenched, hatred builds and misinformation about everything from vaccines to elections thrive.

The recent disputes over the 2020 US Presidential election demonstrates what happens to a democracy whose citizens lack a shared perception of events. The ABC provides Australians with a shared, common, set of facts. We don’t have to agree on everything – it is healthy in a democracy to have a variety of differing views - but we have to inhabit the same reality within which the disagreement can take place. For example, the ABC’s trusted and trustworthy election coverage is a crucial part of Australian democracy. We might disagree about who should win, but we end an election with a shared belief in who did win, which forms the basis of a peaceful transfer of power.

The ABC's content often provides an equivalent, well-researched, balanced shared set of facts around complex and challenging issues of all kinds. For example recent documentaries have included a history of Australia's feminist movement that raised serious questions about the role of ASIO, and the examination by Sam Neil of how an Anglo-New Zealander could try to understand the impact of Cook’s voyage on the people who were already here. It only strengthens our community to be challenged to watch something that teaches us something we did not know about our own country; ‘personalised experiences’ are likely to result in recommendations which are only ‘preaching to the converted’, rather than offering experience which “reflect the cultural diversity of, the Australian community”.

‘Personalised experiences’ as experienced by social media users and commercial TV viewers can result in isolating bubbles of reflected prejudice. This is exactly the opposite of what the ABC does now, and should do in future, for Australians.

If ABC viewers want their viewing habits tracked in order to be offered more personalised recommendations, let them opt in to a fully transparent service.

I urge you to reconsider your decision to gather viewing data without any option to refuse, to share it without opt-in consent, and to prevent people viewing ABC iView content without logging in.

1. <https://www.abc.net.au/news/backstory/2021-05-10/backstory-abc-iview-asking-for-info-to-be-more-personalised/100129590> Last accessed May 23 2021 [↑](#footnote-ref-2)
2. <https://www.abc.net.au/news/backstory/2021-05-10/backstory-abc-iview-asking-for-info-to-be-more-personalised/100129590> Last accessed May 23 2021 [↑](#footnote-ref-3)
3. <https://help.abc.net.au/hc/en-us/articles/360001511015-ABC-Privacy-Collection-Statement-> Last accessed May 23 2021 [↑](#footnote-ref-4)