EFA 2016 Annual Report

Introduction

I am once again pleased to present the annual report for Electronic Frontiers Australia.

In the digital rights arena, every year is a busy year, and 2016 has been no exception. Increasingly digital issues are part of many public policy areas, and the need for informed policy responses from organisations like EFA that have deep experience with these issues, and a strong commitment to civil rights and human rights, is essential.

And add to that the extra campaigning required in an election year, and the huge issues surrounding the problems with the disastrous federal census, and its been a busy one.

It has also been an important year for EFA as far as internal changes. It has become obvious that EFA needs to change in many ways to keep being effective - it needs a broader and more involved membership, it needs a broader and more diverse fundraising base, it needs to have more presence at physical events. We've continued work towards some of those goals this year, and will continue to do so.

Organisational Changes

We have continued to work on improving our web site, and improving our use of CRM technology (we use the open source civiCRM system) to maintain contact with members and allies.

EFA had been relying on Google services for internal email, and services such as document sharing, for several years. While EFA continues to have a productive working relationship with Google, we felt it was time for EFA to demonstrate our commitment to open source and the open internet for our own tools. We have migrated away from Google based email services.

We are continuing to expand our range of merchandise such as t-shirts and stickers.

Membership

Maintaining our membership is an ongoing process (as every member needs to renew every year, and contacting members and encouraging renewal can be a significant effort, and I am sad to say we saw a mild drop in membership this year. Total memberships at the end of FY1516 was 4.5% lower than at the end of FY1415, though this was offset, in revenue terms, by a number of Contributing memberships at $199 per year. There were no new Life memberships in FY1516, presumably due to the decision to increase the Life membership price to $1,500. That has changed since. This follows a number of years when membership increased, and we are aware of the need to refocus our membership strategy.

It can easily be seen that life members make up the majority of our membership, and many of our life members paid some years ago. The majority of legacy life members are largely non-revenue generating. It should be noted however that there are a number of Life members who do make regular contributions. Clearly, EFA needs to increase the number of members who are financially contributing if it is to be financially sustainable.

Increasing our membership, particularly our financially contributing membership, will be a priority for EFA.

Membership by type – end FY1516
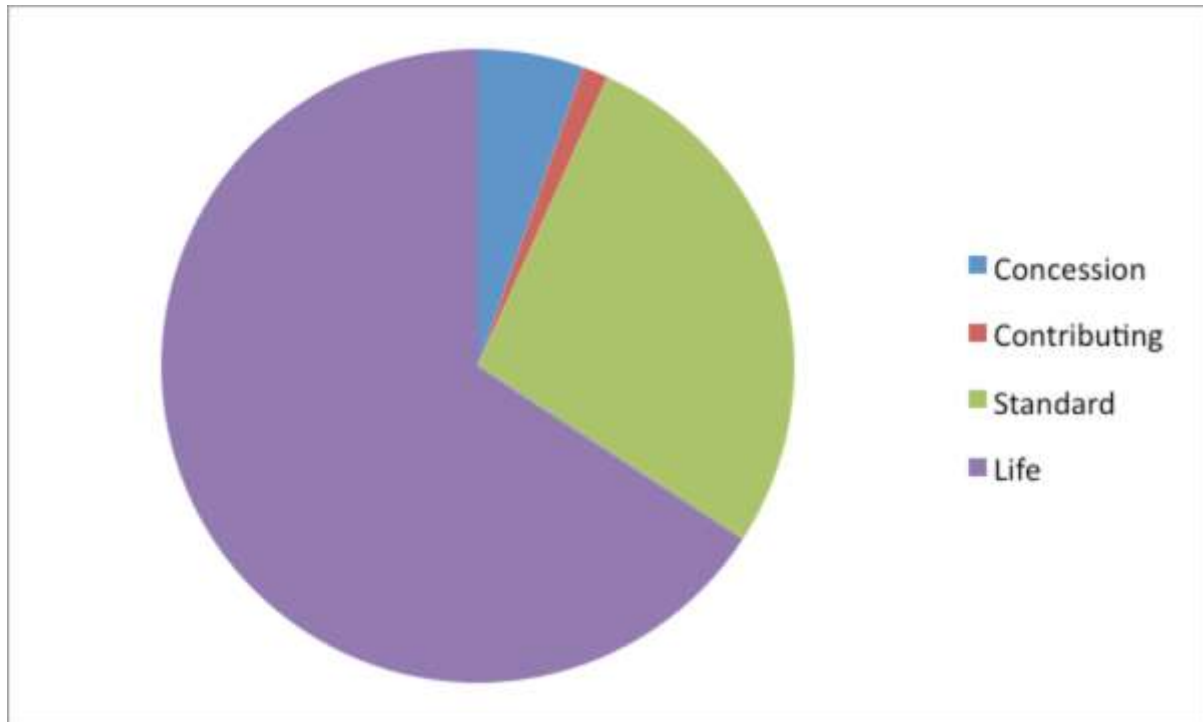
Finances

This was again a difficult year for EFA financially. There were a number of reasons why fundraising was difficult, including some staff issues, and paying some taxation debts incurred in previous years. We have refocussed on our financial planning, and believe we now have a strong plan that will see the organisation increase its financial resilience.

However the board does not feel that funding from membership and individual donations alone is likely to provide the financial resources EFA needs in the medium term, and corporate donations are necessary.

Notably we received an offer of significant financial support from Google Australia, and we chose to accept that support. We are confident that this reflects natural shared policy interests, and will not alter EFAs policy positions. EFA will continue to be critical of Google when necessary. Efforts to expand our donor base to be less reliant on individual donations continue, and the EFA board continues to be careful to ensure donations do not compromise our policy independence.

A significant and unexpected financial risk this year was service charges from our payment provider arising from repeated attempts at fraudulent transactions. We have put in place Captcha systems and other safeguards, and avoided a potential several thousand dollar penalty.

Media

EFA continues to actively promote discussion of digital rights issues in the media, and provide commentary in response to media inquiries. EFA representatives appeared in print, on radio, on television, in many online fora, and in person.

The number of EFA media appearances is too large to discuss in detail within the annual report, but all media appearances are recorded on our web site

-
-

Local Branches

The formation of local branches was a major board initiative in 2015, and has seen significant activity in 2016.

The plan to create active local branches of EFA in all states has had mixed results, with some states successful and others somewhat stalled, and will continue to be an ongoing project into the future. We acknowledge that this is an area where more effort will be needed in the future, while appreciating that we have had some valuable successes in some states.

Local branch events have included discussion events with invited speakers, pub meet ups, 'crypto party' style personal security training events, and fundraising film screenings of the film Citizen Four in Sydney and Melbourne (hopefully other states soon). EFA is committed to more local events and building active local branches in the future.

The Sydney and Melbourne chapters have both benefited greatly from the establishment of ongoing relationships with excellent venues. EFA is very appreciative of the support that we have been given by Fishburners in Sydney and Electron Workshop in Melbourne.

We would like to encourage all our members to get involved in their local chapter, or to assist in the creation of new chapters, particularly if they are able to help identify venues, such as co-working spaces, that are willing to support EFA's activities on an ongoing basis.

Policy

EFA continues to be an active participant in Australian policy debate. We encourage any member interested in becoming part of our Policy and Research team to let us know.

Influencing government policy is a team sport, especially for small NGOs like EFA. We need to use our resources carefully, and collaborate when we can. We continue to work with NGO partners such as ACCAN, Internet Australia, Australian Privacy Foundation, and Choice Australia.

EFA was a founding member of the Australian Open Government Partnership Network,

In addition to direct lobbying work and media, we have been working on improving basis policy information available on our web site. Having such information available both informs and educates the public, and enables EFA to more quickly respond to policy issues that involve complex issues, as we already have established public policy positions. We have a new summary of the Telecommunications (Interception and Access) which will be published shortly.

Election

Of course a federal election is a busy time for any lobbying organisation. EFA hired a communications intern for the election campaign period, and maintained a very active social media and lobbying campaign during the election period.

EFA campaigned to highlight digital rights issues during the campaign. This included open letters to the major parties highlighting significant digital rights issues. These included:

- An [open letter on Copyright reform](#) and
- An [open letter on encryption and privacy](#)

EFA produced [an election scorecard](#) on a range of digital rights issues, as we have in previous elections. We canvassed all major and the majority of minor parties, and got a good range of responses. The two major parties did very poorly compared to all the other parties that made it onto the scorecard, which was very disappointing, but the Greens received full marks, as did the Pirate Party, Science Party, and the Liberal Democrats. If you are interested to read about the criteria we used, please read our blog post about the scorecard.

Census
Changes to the census this year are now widely understood to be disastrous, as web site outages prevented many from completing it, and there were widespread privacy concerns. EFA was one of the strong critics of the privacy implications of census changes, and ran an active campaign against those changes that we feel made a significant difference to response by both the government and the Australian people. We saw a strong campaign of active civil disobedience, such as census forms filled out in a manner to remove individual identifying information, that we feel will not only reduce the privacy impact of data matching plans, but serve as a strong rebuke to future attempts to ignore the privacy impact of the census.

The EFA campaign included a sustained social media campaign, a letter writing to MPs campaign, and media appearances. Besides criticising the ABS position, we also widely promoted our advice on what to do if you did not wish to full out the census fully with your personally identifying data due to privacy concerns. This was a campaign that struck a chord with the public, and kept us very busy through the census period responding to the public, who often seemed to think we had a direct connection to the ABS! We feel that by providing this advice we helped thousands of Australians protect their privacy, as well as highlighting the poor decisions in census planning.

In our criticisms of the census process we concentrated on highlighting the privacy implications of the ABS decision to retain some un-anonymised data, a change to longstanding policy that we felt strongly put the privacy of Australians at risk. We noted that the ABS had discussed this possibility previously, and not done so due to adverse external privacy impact assessment — and this time simply had no external privacy impact assessment. EFAs concerns were shared by many privacy advocates including the Australian Privacy Foundation. The inadequate privacy response by the ABS put Australians privacy at risk, reduced confidence in the census, and exacerbated the inadequacy of technical preparation. We also have security concerns, and also concerns over the lack of other basic privacy protections such as mandatory notification of data breaches.

In response to the Census controversy, there was a Senate Inquiry, and EFA [wrote a submission to it](#).

EFA will continue to be involved in discussion of the census, and will strongly advocate for any future census data handling changes to be subject to an external privacy impact assessment by a reputable privacy professional.

Digital Rights 2016 campaign
The Digital Rights 2016 campaign was an additional campaign EFA ran in the lead up to the federal election. It was a non-partisan campaign, focussed on raising awareness of basic digital rights issue,

such as privacy, access, and censorship. It was designed as a collaborative campaign that could involve other civil society organisations interested in the digital rights concept. It was run separately to the main EFA social media campaign, with its own social media feeds.

Data Retention

With the unfortunate passing of data retention legislation in 2015, we have moved into implementation. EFA continues to monitor the data retention issue, but implementation discussion is largely in the hands of ISPs.

We will continue to advise on mechanisms by which individuals can maintain the privacy of their communications under a data retention regime.

Copyright

It has been an interesting year for debate around changes to copyright law, with multiple major changes to the policy landscape. And EFA has been strongly advocating for improvements to copyright for several years, particularly in our involvement in multi-stakeholder frameworks.

On 29th September 2016, the Marrakesh Treaty to Facilitate Access to Published Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled came into force, in 22 countries including Australia. This is both a directly significant advancement for the rights of those directly impinged by visual or print disability (removing legal barriers such as protection for digital rights management schemes that interfere with screen readers, and related problems) but is also a very encouraging sign that users rights are being seen as a valid reason to return increasingly extreme intellectual property laws to balance. The legislation to make the legal changes in Australia has not yet been introduced, but draft legislation has appeared and the government promises it is a legislative priority (one that we hope is unlikely to meet any significant opposition).

We also saw a lot of public debate around the Productivity Commissions inquiry into Intellectual Property Arrangements. The [draft report](#) was released in late April (the final report is completed but not yet publicly tabled), and immediately we saw a significant scare campaign against its recommendations. Some aspects of its reasoning challenged the economic rationale for long copyright terms, and were greeted with panic by some creative industries — even though the report itself made it clear that international obligations made it clear that Australia was unlikely to reduce its copyright term, and very unlikely to find any rationale to reduce it below Berne convention (the e.g. Pre-2005 status quo) levels. But these misleading arguments against the report were mixed in with lobbying against its much more reasonable recommendations, such as moving to a more flexible system of copyright exemptions similar to the US fair use system, rather than the current Australian fair dealing system (the same recommendation as the Law Reform Commission recommended in its recent inquiry).

EFA agrees with the Productivity Commission and the Law Reform Commission that a move to a fair use based system similar to US law would be a significant improvement to Australian Copyright law. The US has flourishing creative industries and technological innovation under that law, and while it is natural that incumbents would argue for stronger copyright protection for their existing business, that does not mean that it strengthens the potential future of those sectors (for example strong arguments have been made that restrictive Australian copyright law has prevented innovative industries that depend on a more flexible approach, such as search engines, from being established

here). It is inconsistent for a government and industries that continually speak of the need for digital innovation to keep protecting a copyright system that stands in the way of innovation. We also agree with the productivity commission recommendation that a policy goal should be making it easier for Australian consumers to access legitimate content, and that legal protection for system such as geoblocking is harmful to the interests of Australian consumers.

These developments and others made it inevitable that some form of long awaited copyright law would be coming, and indeed it is. A draft of a new copyright bill was released nearly a year ago, in Dec 2015, and we expect a bill roughly based on that to be released in weeks, heading towards some significant change in copyright in the new year. It will likely include some positive changes to copyright (unlike last year, which saw only a bill to facilitate site blocking for copyright infringement). We are expecting expansion of copyright safe harbour, addressing the issue of copyright of unpublished works, allowing archivists to digitise work more easily, and support format shifting (which will not only support the Marrakesh treaty we mentioned above, but also improve the legality of format shifting generally). So all in all, we are positive about all the contents of the copyright changes that we are likely to see in this draft, but think it unlikely it will go anywhere near far enough.

We do not anticipate we will see significant movement towards a fair use system despite two separate major inquiries recently recommending it, and so the changes are likely to staunch the major pain points in our current copyright system while kicking major reform and innovation down the road for a future government, and so our response to the legislation is likely to be similar to our response to the draft legislation. So the EFA position on copyright changes is that we welcome the changes, but do not feel they go far enough, and we will continue to lobby (along with other organisations in the area, such as Australian Digital Alliance) for more changes.

Trans-Pacific Partnership Agreement
EFA has been tracking the TPPA for some years now, has actively campaigned against it for much of the seven year negotiating process, and remains strongly opposed to it. The TPPA contains several problematic sections covering copyright and intellectual property enforcement and Internet governance (and numerous other sections that we are sceptical about and have contributed to widespread protest, but we consider less directly relevant to EFAs mission).

We made a submission to the Joint Standing Committee on Treaties regarding the TPP outline our strong objections to the treaty.

We particularly oppose provisions that amount to enforcing many of the worst aspects of United States copyright law (such as criminalising bypassing Digital Rights Management, even for reasons that would otherwise be legal due to fair use etc), significantly extending copyright length, increasing criminal liability on internet intermediaries like ISPs (EFA is a signatory to the Manila Principles that stress the importance of strong intermediary protection for a healthy internet see: www.manilaprinciples.org), and reduce fair use of copyrighted material. We also oppose sections that would impose Internet rules on country code domains like .au, in some ways in total misunderstanding of how these rules are created and reviewed, and reducing the rights of nations to run these domains in ways appropriate to their national circumstances.

The process of the TPPA was as great a concern as its contents. The TPPA claims to be a free trade agreement, but many sections are closer to an agreement for nations to put in place the same restrictions on trade. Negotiated in secret with business lobbyists invited to see drafts that even members of parliament were not permitted to see (let alone civil society groups such as EFA), the TPPA process was the trade lobby system at its worst, often acting as what we refer to as a 'policy laundry', a system where policy that has been soundly rejected via open debate in domestic legislatures is reintroduced as a new clean policy fait accompli via a trip through the secretive and closed international trade lobbying process.

EFA lobbied against this, as we have for years, by various means, including attending DFAT engagement sessions, attending negotiation events in person to protect and coordinate opposition, speaking at public protests, lobbying of members of parliament, media appearances, and social media.

The bad news is the TPPA process negotiating process concluded around a year ago, and it is unlikely to significantly change at this point, but the much better news is that it appears to have failed to attract support for ratification. We have been confident that it was unlikely to attract support for ratification, and so would be effectively dead, for some months now, and events in the US Presidential elections have seen it almost certainly dead at this point. If the US withdraws entirely, as it seems likely to do, we can effectively declare the TPPA dead.

Future Trade Agreements

The question then becomes how will we respond to future trade treaties that negotiate in such a non-transparent manner? Some such treaties are already under negotiation, such as the Trade In Services Agreement which would potentially undermine data protection laws. We do not oppose trade treaties in general, and some aspects of the TPPA are hard to oppose (if not directly relevant to EFAs mission, such as anti-corruption rules), but the lack of transparency in negotiation makes it impractical to oppose only part of a treaty, or even lobby against specific provisions of a draft agreement that not even your members of parliament are supposed to know about. The treaty negotiation system is inappropriate for the modern globalised world where NGOs have a vital role in global governance, and the system needs to change.

A global campaign has begun, with former EFA board member Jeremy Malcolm at our older sibling organisation EFF as one major proponent, to lobby for better, open and transparent, trade negotiation processes that include civil society. EFA supports this campaign, and EFA Executive Officer Jon Lawrence spoke about our experience with trade negotiations at a panel organised by Jeremy at the Asia Pacific Regional Internet Governance Forum.

Privacy

EFA has lobbied the government on a number of privacy related issues.

The government committed to the introduction of mandatory data breach notification legislation. EFA is following this process with keen interest.

The government has proposed to make re-identification of some anonymised government data an offence, and the proposed bill has been referred to a senate inquiry to report in 2017. We find the current bill has some huge problems (it can amount to criminalising making public government

failure to properly anonymise data in the first place), EFA plan to make a submission regarding this bill.

Freedom of Speech Inquiry

The Parliamentary Joint Committee on Human Rights, at the direction of the Attorney General, has begun what is called an inquiry into Freedom of Speech, but is actually narrowly limited to address only two issues, section 18C and 18D of the Racial Discrimination Act, and the complaints handling procedures of the Human Rights Commission. While free speech in general is a high priority issue for EFA, we do not believe that the narrow focus of this inquiry will significant address issues around free speech in Australia, and the inquiry has a narrow political agenda and is named inappropriately. There are far greater issues around free speech in Australia (around issues such as defamation law, restrictions on reporting, our censorship system, etc) that we would welcome an inquiry into. This inquiry is not it.

Open Government Partnership Network

EFA is a founding member of the Australian Open Government Partnership Network. This network includes partners such as Transparency International Australia, Open Knowledge Foundation Australia, and the Open Australia Foundation. The OGPN brings together these groups to jointly and effectively lobby for whistleblower protection, improvements to freedom of information processes and access, release of government data, confidence in our electoral systems, more regular voluntary release of government data, and other improvements to government handling of information. EFA Executive Officer Jon Lawrence is on the steering committee.

The OGPN has submitted comments on the governments Open Government National Action Plan.

International Outreach

The EFA Executive Officer Jon Lawrence was able to attend the Asia Pacific Internet Governance Forum thanks to a grant from Google. The APIGF represents a valuable opportunity for outreach to other groups active in Internet policy in the region, particularly civil society groups similar to EFA.

International Internet Governance

EFA Chair David Cake completed his fourth year as a member of the ICANN Generic Names Supporting Organisation Council, the body that oversees global domain name policy (other than country code domains), two of those years as Vice Chair of the Council. He has now left the Council due to term limits. EFA continues to be involved in global policy efforts. David remains involved in ICANN policy as Vice-Chair of the Next Generation Registration Data Service Working Group, an effort that will hopefully replace the aging WHOIS system that maintains a simple database of anyone who registers a domain, and replace it with a modern system that is designed to fully take into account current data protection law and the privacy challenges of an internet environment full of potential for harassment and privacy violation.

The IANA Transition

2016 was a very significant year for Internet governance, as IANA, a service provided by ICANN that serves as a central point for the Internet providing information on domain names, IP numbers, protocol information and other vital operating information, was formally removed from United States control and oversight, a process known as the IANA Transition. This was a very important step

in seeing the Internet remain independent of government control, and EFA was involved in discussion and negotiation (via the GNSO Council and our membership of the ICANN Non-Commercial Stakeholder Group and Non-Commercial Users Constituency). We welcomed the transition, but pushed strongly for vital improvements in ICANNs accountability and transparency to compensate for the lack of US government oversight and safeguard ICANNs independence. We have an explanatory article for this issue.

Digital Identity

EFA has been monitoring efforts by the Federal Governments Digital Transformation Agency (formerly the Digital Transformation Office) to create a Trusted Digital Identity Framework, to allow for an organised system for proving your identity to the Federal government using digital means. Indications so far are positive, as the government seems fully aware of the privacy implications, and privacy considerations are central to the current draft design (EFA strongly agrees that privacy should be a core design principle for government services). We will continue to follow this issue closely.

On a less positive note, the current MyGov system has experienced major data breaches, highlighting the need for data breach notification legislation, and the deficiencies of systems that do not properly address privacy concerns.

Web Site Blocking

Legal action seeking to force ISPs to block copyright infringing web sites are before the Federal court. Attempts by large copyright owning organisations (notably Village Roadshow) to force ISPs to filter web sites have been ongoing for some years, and the governments web site blocking legislation of 2015 was specifically designed to enable censorship of web sites that media owners felt enabled copyright infringement. EFA strongly objected to the legislation on principle, in line with our long term stance against web site censorship via blocking as a poor policy for any reason, but this was also problematic as the legislation left many issues unsettled, leading to the current legislation. Current disagreements centre on cost, as ISPs see the proposed funding model as an attempt to move the costs of copyright enforcement away from copyright owners and towards ISPs, who are then expected to pass it on to consumers.

This has become a matter of complex civil litigation due to the failure to find any agreement, despite government attempts to broker one in the past — we believe that efforts to find agreement were always likely to fail, as the proposed model is a fundamentally misguided approach. The ability of EFA to make a difference to civil litigation is limited, we will continue to monitory the situation and respond if we see a useful way to do so.

Meanwhile, the maturing market for digital streaming services in the last year has seen copyright infringement rates fall significantly with the availability of reliable, easy to use, reasonably priced services. EFA continues to advocate for a strong, accessible, fair market, free of attempts at predatory pricing via domestic exclusivity arrangements, as the best way to reduce copyright infringement.

Encryption

EFA was, of course, concerned about discussion be some foreign governments (including some close allies of Australia) that proposed legislation that would force a weakening of encryption in consumer

products (such as the widely discussed iPhone encryption), Rather than a direct weakening of available encryption standards as occurred during the 1990s (a policy mistake that is still causing problems with Internet security today), such proposals would mandate a move away from a truly secure 'end to end' architecture and demand back door keys for law enforcement and similar schemes.

EFA expressed our concerns, along with along with the Australian Privacy Foundation, Australian Lawyers for Human Rights, BluePrint for Free Speech and FutureWise, to the Australian government via a letter to the department of Premier and Cabinet in January 2016, and we are pleased to report that we received a reply from the Cyber Policy and Intelligence Division of the Department of Premier and Cabinet on behalf of the Prime Minister that reiterated that the Australian government supports the use of encryption technology to protect personal and sensitive information, and believes that the use of strong encryption supports freedom of expression and freedom of association.

We will continue to monitor the situation, and will work to hold the government to this commitment, but the response is encouraging, and we have seen no signs of efforts to restrict access to strong encryption in Australia.

ACCAN
EFA is a member of the Australian Communications Consumer Action Network, Australia's peak communications consumer organisation. EFA has made a submission to the review of ACCAN, and has recommended that it retain its funding so it can continue to be an effective voice on consumer issues, and continue to be a source for grants for other projects in this area. We do not believe that disbursing the funding among multiple groups would lead to a strong voice for consumers, and we believe funding for consumer voices in communications is vital.

Bytes and Rights Conference
EFA will be running a two day conference called Bytes and Rights next year, in association with the World Wide Web Conference to be held in Perth in April. The World Wide Web Conference is a major academic conference for computer scientists and other academics focussed on the use of world wide web. The Bytes and Rights conference will be one of a number of side conferences, and will focus on the discussion of policy, politics and technology.

There will be more news about this event forthcoming soon. Members who are interested in being part of the planning of this event are encouraged to contact the board. We hope that this event can be a major event for people interested in discussing digital policy issues in Australia.

Conclusion
Every year, once I try to summarise the activity for the year, it brings home the wide range of issues that EFA deals with, and the amount of activity required to keep a voice for digital rights in all the places it is required. We have great volunteers who produce a lot of terrific advocacy and policy contributions. We thank all of you for your hard work. We also benefit from good working relationships with many other civil society organisations, and productive partnerships are essential to cover all the areas we deal with - we are lucky to work with organisations like ACCAN, Australian Digital Alliance, Australian Privacy Foundation, the other members of the OGPN, and many others.

We also continue to struggle to financially support the work we need to do, and we need to keep improving our ability to fundraise and expand our fundraising base so we are not dependent on any single source. Plans to change our structure to improve our fundraising position have moved slower than expected, and we hope to report further on this next year. An integral part of any change to EFA and how we work must be broadening and expanding our membership, and the ways we interact with and involve our them in our work, we have begun that process, we will continue to work at it. Hope to see more of you next year.

It seems every year is a busy year for EFA, this one has been no exception. More and more policy issues with a digital rights focus appear, many of them complex ones requiring a complex policy response, demanding more of EFA. We thank every one of our members for their support of our work.

David Cake, EFA Chair. November 2016.