# Take on Board

Transcript – Lizzie O’Shea

Helga Svendsen 0:00

Today on the Take on Board Podcast, I'm speaking with Lizzie O'Shea about ethical uses of data and other digital tools. First, let me tell you about Lizzie. Lizzie is on the boards of Digital Rights Watch, Alliance for Gambling Reform, Blueprint for Free Speech, and she was previously on the board of the National Justice Project. She's a lawyer, writer and broadcaster. Her commentary is featured regularly on national television programs and radio usually talking about law, digital technology, corporate responsibility or human rights. This his writing has appeared in The New York Times, The Guardian, The Sydney Morning Herald and others. Lizzie is also the author of Future Histories, a book released by Verso in 2019. Welcome to the Take on Board Podcast, Lizzie.

Lizzie O'Shea 0:45

Thank you so much for having me on.

Helga Svendsen 0:46

It's awesome to have you here. So look, before we talk about ethical uses of data and digital tools, of course, I would love to dig a little bit deeper about you. Tell me what was young Lizzie like? And when did you get your first inkling that you might end up as well, either a lawyer or a board director?

Lizzie O'Shea 1:06

Well, I am the youngest of three girls. And we always had very lively dinnertime conversations with my parents about everything from pets to politics. And we always joked that we had a kids union that used to negotiate with the parental oligarchy for various rights in the home. And I was always trying to make my voice heard among the three of us and two very boisterous older sisters. So I was often accused of being bossy, which was a badge of pride for me. So that gives you a bit of an idea of what I was like as a child. And it's probably continued into my later life, someone who's tries to be very assertive, is accustomed to having to do what you need to do to get your way in a room full of opinionated people. But it's actually a very useful tool, because it's made me into an advocate. I think it certainly guided me down that path towards becoming one. And I like to think one who does advocate fiercely for causes and for her clients as the case may be.

Helga Svendsen 2:05

I love that they get the kids union and the parental oligarchy that is just that is doesn't still exist?

Lizzie O'Shea 2:11

It does. And that's why we were always really good at the kids table, and still are, because that's what we do our best organizing and our best agitating. So it's definitely still exists, because we're still always seated at the worst end of the table, or the access to the worst foods at Christmas time or the secondary cuts of meat. But we're still doing our best to agitate for better rights during Christmas dinners, that's for sure.

Helga Svendsen 2:34

I'm wondering about when the next generation comes along. In fact, any of your siblings have kids yet?

Lizzie O'Shea 2:39

They do. Yes. And I'm always very encouraging for my sister's children's advocate for their rights as well against their own parents. It's something I hope to pass on to the future generation for sure.

Helga Svendsen 2:50

Oh, come from their own kids union to become their own parental oligarchy. I love it. Well, then, it's no surprise, I guess that you became an advocate. So today, I want to talk about ethical use of data and data generally, and what directors should be thinking about for their organisations. I mean, organisations are increasingly Well, not increasingly using digital tools. But all organisations have some form of data, whether it's a post it note with somebody's address on it, or whether it's a spreadsheet, or whether it's a fairly complex database of things. So for directors, what should they be thinking about when thinking about their data? And in particular, thinking about the ethical use of data?

Lizzie O'Shea 3:32

Yeah, I think it's a really interesting question, and it's starting to become clearer, with more and more tech scandals that happen things like Cambridge Analytica, for example, shows you how people engage with particular platforms in a specific way and don't necessarily anticipate that their data might be used for another purpose entirely. The other one comes to mind is Clearview AI, which is a facial recognition tool that was developed by scraping people's photos off social media platforms that then formed the database to build the tool. So clearly, people have shared data for one purpose, and they didn't anticipate it would be used for other purposes. And I think this also applies to civil society organisations that we need to start thinking about what responsibility we owe to our stakeholders, given that we are both collecting information about them, but also campaigning to them often on spaces that we do not control. I mean, the obvious one here is social media like Facebook and, and Twitter and similar. What's our responsibility to our stakeholders if we're using those platforms? And then there's the more kind of obvious questions How do we maintain our digital security? What kind of steps are we taking to make sure we're looking after the information that people have given us? And so it can be a really daunting topic and I completely understand why people involved in civil society organisations are keen to get in their teeth into it because often it can feel like a burden. But with digital rights, we're trying to model good behavior in this respect and trying to also develop tools That might assist boards and organisations coming to these questions for the first time to both shape how you might wish to ask them, and also figure out how to get a process for developing a policy that's considered that thoughtful, rather than just blindly stumbling into these kinds of situations, which you might not be therefore considering the responsibility that you have to take. So that's part of it to try and start asking these questions and hopefully give people enough information and tools to be able to shape the answers that are specific for them.

Helga Svendsen 3:32

Okay, there's a couple of things I want to pick up on there. But before I get there, what occurs to me that for some organisations, they won't even be sure what sort of data they hold. So can you talk us through what they should even be thinking about in terms of data? Some of it will be obvious, and I'm, I'm guessing some of it is less obvious. Yeah. What should they be thinking about even makes up their data?

Yeah, absolutely. I mean, we do have privacy regulation in Australia, we've obviously got the Privacy Act, which governs how you can make use of personal information. And there's a hierarchy there. So it depends what kind of personal information you're collecting. And then you've got certain privacy principles that you're required to comply with. And if you don't, then somebody who you've interviewed with their privacy, they can make a complaint about you. So it's a regulatory regime that we all need to be on top of, if you're dealing with health information, of course, and other kinds of sensitive data, then it's specific regimes that you need to be mindful of as well. But as a general proposition, if you're collecting personal information about people, you ought to be thinking about what you have in place to protect that information, and also who you're disclosing it to, and whether you've got consent to do that. The regulation is the baseline, of course, I think, as civil society organisations, we also need to aspire to ethical uses of data. And I think there's lots of interesting ideas that are coming out to the fore as we as we move further and further into this digital age, including things like data minimization, like maybe you should only be collecting what you absolutely need to collect. And other kinds of data you shouldn't be collecting, because you don't want to necessarily take on that responsibility. Or Also, you want to give people your stakeholders the option of not giving you that information in order to engage and participate with your organisation. So that's one particular way in which you could think about it. The other is to put consent at the center of your relationship with your stakeholders so that people know exactly what's going to happen with their data. And of course, that can be bamboozling and difficult. And people often take yes to Terms and Conditions without thinking them through. But you want to cultivate a relationship of informed consent of trust between you and your particular stakeholders. And that's really the heart of it, you can legally away out of these obligations, you can have clever documents and allow you to do things. But really, if we're in the business of advocating for good causes, I think we should be modeling good behavior towards our stakeholders. And that involves cultivating a relationship where those people are empowered, and have a knowledge and understanding of how their data might be stored and used over the long term.

Helga Svendsen 7:54

I'd certainly agree that civil society organisations need to think about this but even corporate Australia, government organisations which have different levels of regulation around it, sure, but I think any organisation that gathers data, which is any organisation, needs to think about what they're collecting how and why.

Helga Svendsen 8:15

Yeah, I couldn't agree with you more, actually, I think there's lots of businesses that could also lead in this respect, that could be good corporate citizens, much in the same way that they might do an audit of their supply chains for more than slavery, or they might be looking at ways to minimize their carbon footprint. I think this is something similar, you can model good and better, worse behavior, in how you use manage, collect data. And if you want to be a good corporate citizen, then there's definitely things you can do to lead on that front. And of course, data is valuable. So you may be foregoing opportunities there to make money. But you might also cultivate a set of customers and stakeholders that trust you and want to do business with you. And you might be seen as a leader in the field. And that's also invaluable. And I think it's a field in which we should see more companies doing this modeling this kind of behavior. And I hope to in the near future, not least to avoid scandals associated with misuse of data, but also to create a positive culture around how data might be used and managed.

Helga Svendsen 9:15

So you talked earlier about, you know, where they've been some of those scandals, Cambridge Analyticia and others. Is there any from corporate Australia or the corporate world generally, that you can tell us about that are doing it? Well?

Helga Svendsen 9:27

Oh, that's a really good question. So I thought you were gonna ask me whether I can tell you about people doing badly. And I would just point out that there is a mandatory data breach notification scheme now in place. So if you're a company of a particular size, you do have to notify the Privacy Commissioner if there's been a data breach, and it is alarming how many companies fall into this camp. And I don't think there are enough consequences for companies who have repeated misconduct and breaches in this field. So even though we do have laws that regulate the space, I think they could be better. So that one thing I was is a stick there. So if you're behaving badly over time, I think that will come to haunt you.

Helga Svendsen 10:05

Just on that, can I take control public find out those that have had data breaches? Is it a Public Register?

Unknown Speaker 10:11

The Office of the Information Commissioner does publish some information. It's not always granular. But also if you've had a data breach, it affects you, you should be notified of it. So if you're a customer, but as a general proposition, the commissioner provides information about the kinds of data breaches that occur, and how many each year in an effort to kind of cultivate a better corporate sense of responsibility around these issues. So there's some information released, I think more could be, but often they come out through the media and through customers knowing about them as well. I think it's a general proposition, are they are there companies that do it? Well, I think there's probably a lot of smaller startups that do it. Well, I know a couple of companies are trying to move into this space and be more honest about it. There are organisations that are engaging with these topics that we know of through digital rights, which, for example, the obvious ones that come to mind are things like unions, something like Guardian Australia, which does try to talk about how your data will be used as try to engage with subscribers, but in a particular way. So there are some leaders in this field. But I wouldn't describe there being a major company that's really stood out at the forefront of this. And we're looking for that maybe, maybe this is the time for a company to really make that kind of commitment. But perhaps the absence of them does illustrate just how sophisticated this market is, I think a lot of Australians would be really surprised about how their data is traded in yeas behind the scenes. And the example that comes to mind for me, which is kind of this crossover between gambling, which is obviously the other board that I'm on in my interest is when 730 did a report on sports benefit has half a billion dollar advertising campaign for digital marketing. And they were obtaining data from a secondary provider, who was collecting data itself from the National Australia Bank. And when 730 made this connection, that a bank was selling data to a secondary provider who was on selling it to a gambler, the NAB immediately ended that relationship. And you can see how vulnerable and fragile these things are like, the more we start to know even a little bit about how this market works, the more alarmed I think the public and customers will be. So now's the time to get your house in order before one of those scandals hits you and you have to respond on the fly. That would be my advice to people in the situation.

Helga Svendsen 12:22

Yeah, and to really think down the line, he did not know that that's how the data that they were selling was being used?

Helga Svendsen 12:28

They maintained it wasn't. And this is one of the weaknesses of our privacy laws. If you do identify data, you can share it with others without obtaining consent. The problem with that, in my view, is that the identification is often a very difficult process to do well. And that, in fact, it can be quite fragile re identification quite easy. I mean, there's another associated problem, which is gambling companies don't necessarily care what your name and address is, but they want to know who their demographic is, who's the market that they want to speak to and advertise to. So it may not matter if you're de identified from your data, the insights that again, from that data, very useful to these companies that are quite predatory. And that's something I think we ought to be worried about that we should be concerned about predatory companies exploiting vulnerable people collecting data, even if it's done legally, because it's de identified, that's not really going to cut it, we need to have better policies in place and to stop this kind of behavior from happening. And one of the most influential ways I think, is to expose it. So NAB says, Oh, we didn't know that we're on selling it. But they were selling this data to a secondary data provider analytics company. And so maybe they ought to take a bit more responsibility. It's like, as I said before, like climate change, or or modern day slavery, I don't think ignorance of this stuff is sufficient to get away with it.

Helga Svendsen 13:42

And you talked about those policies earlier. If an organisation is thinking about putting in place a policy around the use of data, what are the sorts of things they should be looking at?

Helga Svendsen 13:52

Well, I think the first step is to understand why you're collecting the data and what you need it for, do you actually need to collect all this data from your stakeholders for a particular reason? Because you may be able to minimize it. And you may be able to, to explain to people why and why that's a good step to be minimizing the data that you collect. But then, of course, you need to think about holding it securely. And you know, it's always difficult to give advice about this in in the abstract, because every organisation is slightly different. And of course, you can't protect against totally unforeseen risks. But I think you've got a responsibility to think through what kind of risks are available, where you're storing data long term, what kinds of products you're using, to make sure you're making an effort to keep things secure. And that will depend on analyzing your surface attack area, look what kind of risks you're you're presented and exposed to, and having a nuanced understanding of that. I mean, I think then there's other kinds of ethical issues and questions that you want to ask around social media platforms that we were talking about before, which is a slightly different category, but I think those are the starting points. Do you have to click the Start out? Okay, well, let's click the minimum necessary. And then let's think about how we're holding and storing it. Can we delete it when we no longer need it. And can we tell our stakeholders that that's what we're doing? These are the kinds of things I think you want to think about it that the data is often talked about as a precious commodity. But it's also, we're sitting in a session of Ruin in progress. Peter Lewis describes it as like, almost like uranium, like, it's also quite dangerous, you've got to make sure you care for it and look after it. And make sure that when you're finished with it, you've got a place to store it or delete it or get rid of it. So you're not exposing yourself to the risk that you could lose it, or it gets into the wrong hands.

Helga Svendsen 15:28

Interesting thinking about deleting data, because my guess would be that organisations don't do that very often, they don't clear out the files, like in the, in the olden days, with paper files, there would be regular clean outs, because it got too big, but data files, you can't see the filing cabinet. So do organisations clean out very often? And do they need to?

Helga Svendsen 15:48

Yeah, I don't think that many do, I must say. And I think it's quite risky, because leaving stuff lying around is the perfect way in which you might lose control of these things. And just because it doesn't take up as much room where you can't see it doesn't mean you don't have to deal with it. But you don't have to think kind of conscientiously about how you're going to manage this over the long term. So I completely agree with you, it's much easier to kind of forget about it when it's not a hardcopy filing cabinet that's taking up space in your office. But that doesn't make it any less of an obligation, a burden to think through quite carefully. And disposal is a big part of that.

Helga Svendsen 16:24

So in your book, Lizzie in Future Histories, you argue that we need to look backwards rather than forwards to determine our digital future. So what are some of the lessons from history that are relevant for us to think about here in thinking about these sorts of issues?

Helga Svendsen 16:39

Yeah so the premise of the book is that we've got a lot to learn from the past that lots of the questions that are presented as being quite novel in the digital age actually have a long history, and their questions about democracy, about individual autonomy about how money influences politics, and culture, and how we might be able to organize and change that. And so a big part of my thesis is that people getting together, organizing and agitating can have an enormous impact on how technology develops, and that there's no natural or inevitable way in which technology will develop over time. Probably one of the examples I use that might be relevant is I talk about how we can regulate the development of certain kinds of algorithms to remove bias, which is obviously a big problem in lots of different kinds of technology. But you know, like predictive policing, technology's a good example, where it's often a huge amount of racial bias, bias from the data that influences how predictive policing technology then eased in on people in the real world. And one of my arguments is to look at how the regulation of the automotive industry in the United States was affected and organized and agitated for by lawyers, by civil society advocates by people who had experienced harm because of poorly designed automobiles, and in their mid century. Last is the 20th century, there wasn't a serious idea that the design of automobiles might be influential into how people experience that whether they're safe, they're safe products. But now it seems so normal that we'd have airbags, that we've been designing cars on the interior exterior in particular ways to protect people inside. But that was something that people had to organize and fight for. And so that's the kind of analogy or metaphor I use for also about technology, that we need to organize and fight for technology that's actually safer, that protects people's rights that thinks about the most vulnerable user instead of just the average say, and that that's something that we can achieve that we can make regulation of the Internet of digital technology, something that is positive that is about rights and their respect, rather than just cultivating an environment that allows large tech companies to be very profitable, which I think is what a lot of people currently say technology is thinking about.

Helga Svendsen 18:52

Lizzie, what should I have asked you that I haven't?

Lizzie O'Shea 18:54

Well, I think the other thing that often creeps up I find when I'm talking to civil society organisations is what do you do about the big gorillas in the world of engagement? So Facebook and the like? How do you deal with the fact that you maybe don't like those companies, but that's where you engage with your audience, your stakeholders, your communities. And I think we do need to start talking about how we can take power away from those platforms, but also protect our own communities and make sure they're resilient. They're not beholden to some bros in Silicon Valley who are designing the engagement platform for a social media company. Often people think of Facebook as a public space, but it's not. It's a curated space, and you don't control it. So you don't control who's there and who isn't there. But you also don't control who gets to see what you post there. So my advice for people contending with this issue is to think carefully about how you can make sure you build up your digital resources that pull people away from these platforms that pull them into your own community, which is one that you can control and build and have engagement with your stakeholders in and to find ways to reduce your dependence on them. As platforms, it's very easy to be dependent on the social media platforms for a small civil society organisation that might be under resourced. But it's critical. I think that we learn how to live without them. And we learn how to minimize their influence on how we do things, and build communities outside of them using our own digital resources. And I think we can start to do that more and more. And that's certainly something we think of digital rights, which civil society should be thinking about.

Helga Svendsen 20:27

Great point, I'm another podcaster that I listen to has a Facebook group or had, I should say, a Facebook group for people who are interested in what she was podcasting about, much like I confess I do, I have a take on board Facebook group as well. And she closed it down because she didn't agree with what Facebook was doing. And moved her network, she moved over to mighty networks, I think, which she had a very large Facebook group was incredibly courageous. I think I haven't had that carried yet. I bet you've planted a seed for me to think about that.

Lizzie O'Shea 20:59

Yeah, I completely understand why it's daunting. But the other way to think about it is when Facebook changed its algorithm a couple of years ago to prioritize different kinds of content, large media organisations really suffered, they saw huge drops in their traffic. And this is big organisations like mentioned mastheads. In the United States, for example, because they were ill prepared for a change in the algorithm that they had no control over, that would affect the flow of traffic to their website. So it's also about risk management, about avoiding somebody else getting to determine who accesses and uses your content. And like I don't think anyone's perfect, I mean, digital rights, which we still have a Facebook page, I mean, lots of organisations who are interested in in digital rights do. So it's not even necessarily about saying that you must not use these kinds of platforms, it's about using them thoughtfully, and not relying on them in ways that can be detrimental to the health of your organisation. Long term.

Helga Svendsen 21:54

Yeah, that makes sense. Um, are you on Facebook?

Lizzie O'Shea 21:58

I am.

Helga Svendsen 22:02

Likewise, just that I check?

Lizzie O'Shea 22:05

No, no, I'm certainly not trying to throw stones your own glass house. I don't I'm I completely understand why people use it. And it's very difficult to access audiences. Without it. I mean, ultimately, I think we should rethink these platforms entirely. I think they should be publicly owned, to be honest, because that's what people treat them as public spaces, huge amounts of public participation happens on these kinds of private platforms. So let's fix that. But in the interim, let's also think how we can build resilient communities that aren't totally dependent on them. Because I don't always share the same interests as Mark Zuckerberg, and I wouldn't want to be dependent on him for much. And I think lots of civil society organisations are in the same spot.

Helga Svendsen 22:44

Absolutely. Oh, Lizzie. We've covered so many interesting things, I think, for directors to think about in organisations, what are the main points you want people to take away from the conversation we've had today?

Lizzie O'Shea 22:56

Well, don't be too hard on yourself is the first thing because lots of organisations are starting to tackle the issue of their responsibility for information provided to them by their stakeholders and communities. So think about it. But don't beat yourself up about it. Because we're all trying to work towards getting it right, I would say, take stock and figure out what you're doing and figure out where you might need to build a policy. And there are plenty of resources online that can assist you to work out how to do this mindfully and thoughtfully, instead of mindlessly and putting your organisation at risk. Think carefully about what your community needs, how you can predict them, how you can empower them. And I think if you build an organisation like that, your users and your community members will respect you for making that effort. So start, stop by asking the questions and and move towards developing robust policies and thinking about how you can adapt to this digital environment

Helga Svendsen 23:51

thoughtfully. Fantastic. Great advice. And is there a resource that you would like to share with the take on board community?

Lizzie O'Shea 23:58

Yeah, so digital rights work has a privacy pledge on its website, it's also got links to other kinds of resources that deal with this topic. This is certainly something we plan to do more work on, because it's quite clear that lots of organisations are starting to grapple with it and a keen to do the right thing by their people. And so I think we'll be developing more resources along this line to address these kinds of questions. But you can start by taking a look at our privacy pledge, which is on our website under publications.

Helga Svendsen 24:26

Fantastic. And I'll make sure there's a link to that in the show notes. Lizzie, thank you so much for being here today and sharing your wisdom about these issues and just, you know, planting some seeds for well, for me and for others to think about in terms of how we deal with data. It's been enormously useful. So thank you for joining us at Take on Board today.

Lizzie O'Shea 24:46

Thank you so much for having you. It's a real treat.