



Submission of Dr James Martin
To the Parliamentary Joint Committee on Law Enforcement Act 2010
Inquiry into the Impact of New and Emerging Information and Communications
Technology on Australian Law Enforcement Agencies
January 2017

My qualifications and expertise

I am a senior lecturer in Criminology at the Department of Security Studies and Criminology at Macquarie University. I have a PhD in Criminology and am the lead chief investigator on an *Australian Institute of Criminology* funded project examining the activities and motivations of drug dealers who operate on the darknet, and second chief investigator on a *National Health and Medical Research Council* funded project examining the public health impacts associated with darknet drug trading.

I am an international research leader in the field of cybercrime, specifically in the study of anonymous darknet marketplaces or 'cryptomarkets'. My reputation in this field has been developed through the publication of original theoretical, empirical and multi-disciplinary research in prestigious international scholarly journals, including *Addiction*, *Criminology & Criminal Justice* and the *International Journal of Drug Policy*. In 2014, I published *Drugs on the Dark Net: How Cryptomarkets Are Transforming the Global Trade in Illicit Drugs*, which was the first scholarly book in the world on this topic, and was influential in identifying the harm reduction benefits associated with online drug distribution.

My research was cited by the legal defence team in the trial of the world's most prolific online drug trader, Ross Ulbricht, the administrator of the infamous cryptomarket *Silk Road*. In May 2015, the New York district judge presiding over the trial ordered the court to provide her with my research monograph and other cryptomarket research for review prior to sentencing.

My engagement with government includes providing seminars and undertaking specialist consultation to a variety of law enforcement agencies located both in Australia and overseas. This has involved presenting to high-ranking policing professionals the various risks and opportunities associated with cyber-policing and the growth in online drug trading.

Agencies which have invited me to present this research include: the *Australian Federal Police*, *Australian Criminal Intelligence Commission*, *New South Wales Crime Commission*, *New South Wales Police Force State Crime Command*, *New South Wales Police Cyber Unit*, *Victoria Police Intelligence and Covert Support Command*, *Australian Institute of Professional Intelligence Officers* and the *Indonesian National Police*.

I have also been invited to present research at harm-reduction and practitioner-focused drug forums at the *Victorian Alcohol and Drug Association*, *Municipal Councils of Victoria*, *Geelong City Council*, *Turning Point Alcohol and Drug Centre*, and the *2015 Drug Policy Alliance* annual conference in Washington D.C.



This Inquiry

This submission addresses the terms of reference of the *Inquiry into the Impact of New and Emerging Information and Communications Technology on Australian Law Enforcement Agencies*. The terms of reference are to report on:

1. The challenges facing Australian law enforcement agencies arising from new and emerging ICT;
2. The ICT capabilities of Australian law enforcement agencies;
3. Engagement by Australian law enforcement agencies in our region;
4. The role and use of the dark web;
5. The role and use of encryption, encryption services and encrypted devices; and
6. Other relevant matters.

Summary

This submission contains several recommendations related to the growing practice of illicit drug trading practiced on the darknet (also known as ‘dark web’). In summary, these recommendations are to:

1. Deprioritise the investigation of darknet drug trading in comparison to conventional, street/inter-personal based drug trading;
2. Ensure sentences for darknet drug dealing do not exceed those imposed for conventional dealing offences of a similar scale;
3. Prioritise demand and harm reduction drug strategies over supply-side intervention strategies.

Cryptomarkets and illicit drug trading on the darknet

One of the most prominent, recent crime trends precipitated by new and emerging ICT is the proliferation of cryptomarkets. Cryptomarkets are e-bay style trading websites hosted on the darknet which use advanced encryption to protect the identities of users.¹ These anonymous trading sites have grown rapidly in popularity since they emerged seven years ago, and are increasingly being used by Australians to buy and sell illicit drugs.²³

At first glance, it may seem logical to respond to the emergence of darknet drug trading facilitated by cryptomarkets with enhanced police resources and powers. A growing portfolio of domestic and international research, however, indicates that such a response would be costly, ineffective and likely to amplify, rather than reduce, a range of drug-related harms.

¹ Martin J. Drugs on the dark net: How cryptomarkets are transforming the global trade in illicit drugs. Springer; 2014.

² Barratt, M. J., Ferris, J. A., & Winstock, A. R. (2014). Use of Silk Road, the online drug marketplace, in the United Kingdom, Australia and the United States. *Addiction*, 109(5), 774-783.

³ Van Buskirk, J., Naicker, S., Roxburgh, A., Bruno, R., & Burns, L. (2016). Who sells what? Country specific differences in substance availability on the Agora cryptomarket. *International Journal of Drug Policy*, 35, 16-23.



This is because, as this submission will make clear, the unique characteristics of cryptomarket drug trading make it a preferable alternative to conventional, offline dealing that takes place either via closed interpersonal networks or openly at drug dealing ‘hotspots’ (e.g. nightclubs, music festivals).

The recommendations contained in this submission are based on an acknowledgement that despite several decades of law enforcement-led supply interventions, illicit drug use continues to be popular across the country. The overwhelming majority of this use is non-problematic, however, and only a small percentage of illicit drug users are associated with elevated levels of offending.⁴ Most of the crimes associated with illicit drugs are systemic in nature and are associated with their production, distribution and retail. It is this aspect of the illicit drugs trade that darknet drug trading has the greatest potential to transform and reduce a range of serious, drug-related harms.

Recognising that the continued existence of illicit drug markets is an unalterable reality, this submission argues that Australian drug policy should aim to reduce drug related harms by ensuring that illicit drug markets function as safely as possible. This general approach, and the proposals specified below, are therefore consistent with the federal government’s existing National Drug Strategy that emphasises reducing drug-related harms.⁵

Recommendations

Recommendation 1: Deprioritise the investigation of darknet drug trading in comparison to conventional, street/inter-personal based drug trading

A de-prioritised approach to the investigation of darknet drug trading is an appropriate policy response because:

a) Darknet drug trading is a safer, less harmful alternative for drug users

Drug users report feeling safer and less exposed to violence when accessing drugs via a cryptomarket rather than they do when acquiring them through conventional means.⁶⁷ One of the main reasons for this is that online dealers and users never meet in person during an exchange. Instead, drugs purchased via the darknet are delivered anonymously to users by post, thereby substituting street dealing and limiting the problems with which it is sometimes associated, such as violence, threats and robbery.⁸⁹

⁴ UNODC, *World Drug Report 2017*, United Nations Office on Drugs and Crime, Vienna

⁵ *National Drug Strategy 2010-2015*. Canberra: Commonwealth of Australia.

⁶ Barratt M. J., Ferris J. A., Winstock A. R. Safer scoring? Cryptomarkets, social supply and drug market violence. *International Journal of Drug Policy* 2016; 35: 24–31.

⁷ Aldridge J., Stevens A., Barratt M. J. Will growth in cryptomarket drug buying increase the harms of illicit drugs? *Addiction* 2017.

⁸ Martin J. Lost on the silk road: Online drug distribution and the ‘cryptomarket’. *Criminology & Criminal Justice* 2014; 14: 351–67.

⁹ Morselli C., Décary-Héty D., Paquet-Clouston M., Aldridge J. Conflict Management in Illicit Drug Cryptomarkets. *International Criminal Justice Review* 2017



The widespread use of escrow systems on cryptomarkets – in which payment is withheld from dealers until delivery is complete – help to further protect users by making them less vulnerable to fraudulent dealers. Protecting users from frauds and scams reduces another avenue whereby potentially violent conflict between dealers and users may emerge.¹⁰

- b) Drugs sourced via the darknet tend to be better quality and less adulterated than drugs available via conventional means*

Forensic testing of drugs purchased via the darknet indicate that they are typically better quality and less adulterated than drugs purchased from conventional dealers.¹¹ This is likely the case because cryptomarkets are highly competitive, meaning that those dealers who sell higher quality products are rewarded with increased patronage.

Drugs purchased online, particularly when the purchase is from a vendor located closer to a source of drug production (e.g. ecstasy from a dealer located in the Netherlands), also have a shorter supply chain, meaning that there are fewer opportunities to adulterate the drug before it reaches an end consumer.¹²

- c) Customers have better access to information regarding the drugs they consume, as well more knowledge regarding safer usage practices than they would if purchased via conventional means*

People who purchase drugs from a conventional dealer typically have no knowledge of the strength or composition of the drugs they consume (this is particularly the case here in Australia given the widespread lack of drug-testing services). This is one of the major reasons consuming illicit drugs can be dangerous – in the absence of knowledge regarding the composition and strength of drugs, consumers are unable to make informed decisions about their drug use.

Cryptomarkets help to reduce this problem as online dealers often provide information regarding the strength and composition of the drugs they sell.¹³ The widespread use of customer feedback systems – similar to those used by legitimate online enterprises such as Uber and Airbnb – provide a further, semi-independent source of information that allow online consumers to make more informed decisions regarding the drugs they are purchasing. While this system is far from perfect, it is preferable to the complete lack of knowledge consumers typically have when purchasing drugs via conventional means.

An additional benefit associated with purchasing drugs via a cryptomarket is access to harm-reduction discussion forums. All of the major cryptomarkets presently in operation host discussion forums whereby users share information regarding safer usage practices. This

¹⁰ Tzanetakis M., Kamphausen G., Werse B., von Laufenberg R. 60 The transparency paradox. Building trust, resolving disputes and optimising logistics on conventional and online drugs 61 markets. *Int J Drug Policy* 2016; 35: 58–68.

¹¹ Caudevilla, F., Ventura, M., Fornís, I., Barratt, M. J., Vidal, C., Quintana, P. & Calzada, N. (2016). Results of an international drug testing service for cryptomarket users. *International Journal of Drug Policy*, 35, 38–41.

¹² Martin J. Lost on the silk road: Online drug distribution and the ‘cryptomarket’. *Criminology & Criminal Justice* 2014b; 14: 351–67.

¹³ Martin, J 2014, *Drugs on the Dark Net: How Cryptomarkets are Transforming the Global Trade in Illicit Drugs*, Basingstoke, Palgrave Macmillan



knowledge helps users make better informed decisions regarding safer ways to consume drugs that they have purchased online.¹⁴¹⁵

d) Darknet drug trading is a less dangerous alternative for drug dealers

While law-makers may be disinclined to consider the safety of online drug dealers, there are important reasons why this is beneficial to the public at large. One of the major risks for conventional dealers is exposure to violence at the hands of customers, competitors and other predatory criminals. By contrast, online dealers are protected by physical separation and encryption and the anonymity it provides, meaning that they are less exposed to predatory criminal violence and therefore have less incentive to arm themselves against these threats.¹⁶

The physical separation and anonymity characteristic of online dealing provides fewer opportunities for both rival drug dealers to use violence to deter or eliminate their competition, and for predatory criminals to profit from the use of violence to extort, rob or otherwise victimise drug dealers. This carries important benefits in reducing systemic drug crime, reducing incentive for dealers to develop capacities for violence as a deterrent against external threats, and reducing opportunities whereby violent conflict may emerge between dealers and other offenders.¹⁷

Recommendation 2: Ensure sentences for darknet drug dealing do not exceed those imposed for conventional dealing offences of a similar scale

In 2017, two South Australian dealers were convicted of selling drugs via the darknet and were sentenced to 17 years imprisonment. On appeal to the Supreme Court, these sentences were judged excessive and were reduced by several years. Despite the Supreme Court Justices acknowledging the absence of weapons or violence associated with these offences, they concluded that harsher sentences for online drug dealing may be appropriate. This was justified on the basis that “the use of the internet as a safe and reliable way to sell and buy drugs obviously carries the risk of a proliferation of that business model”, and that “the use of the internet as a safe and reliable way to sell and buy drugs obviously carries the risk of a proliferation of that business model”.¹⁸

While deterrence remains an important aspect of sentencing, imposing harsher sentences on darknet drug dealers because they make the work of law enforcement more difficult, rather than considering the less harmful social impact associated with online rather than offline dealing, is highly problematic. Harsher sentences for online dealing provide a perverse incentive for dealers to engage in conventional, offline dealing that is associated with increased harms to the public. Sentences should reflect the relatively reduced harms to the public

¹⁴ Bancroft, A., & Reid, P. S. (2016). Concepts of illicit drug quality among darknet market users: Purity, embodied experience, craft and chemical knowledge. *International Journal of Drug Policy*, 35, 42-49.

¹⁵ Bancroft, A. (2017). Responsible use to responsible harm: illicit drug use and peer harm reduction in a darknet cryptomarket. *Health, Risk & Society*, 1-15.

¹⁶ Tzanetakis, M., Kamphausen, G., Werse, B., & von Laufenberg, R. (2016). The transparency paradox. Building trust, resolving disputes and optimising logistics on conventional and online drugs markets. *International Journal of Drug Policy*, 35, 58-68.

¹⁷ Martin, J 2014, *Drugs on the Dark Net: How Cryptomarkets are Transforming the Global Trade in Illicit Drugs*, Basingstoke, Palgrave Macmillan.

¹⁸ Dowdell, A. (2017) Recent South Australian case reveals dilemma authorities are facing fighting the darknet, *The Advertiser*, South Australia



associated with online as opposed to offline dealing, and should therefore not exceed those for similar drug offences carried out via conventional means.

Recommendation 3: Prioritise demand and harm reduction drug strategies over supply-side intervention strategies

Australia's National Drug Strategy is ostensibly based on 'three pillars': harm reduction, demand reduction and supply reduction.¹⁹ In practice, however, the vast majority of taxpayer dollars are spent on supply reduction initiatives, such as drug interdiction at the border, prosecution of drug dealers and users, and associated carceral expenses. This is despite clear evidence that harm and demand reduction initiatives are significantly cheaper and more effective, and result in fewer problematic, unintended consequences than supply reduction.²⁰²¹

Unfortunately, responses from government to date regarding the growth of darknet drug dealing also appear to favour the ineffective and unbalanced supply-side interventions used to combat conventional, offline drug distribution. A notable example of this was the federal government's decision in 2014 to increase scanning facilities (at the cost of \$88 million AUD) in an attempt to intercept drugs ordered online from overseas from entering the country.²²

Our research has found that scanning at the border has practically no deterrent effect on online dealers, with the vast majority still prepared to send illicit drugs into the country.²³ This is because online dealers respond to changes in postal screening practices by innovating sophisticated 'stealth' practices that camouflage individual drug consignments and render them increasingly difficult to detect.²⁴ Further increasing postal interdiction is therefore unlikely to deter online dealers from utilising postal systems to send drugs to consumers.

While border interdiction is likely to have a deterrent effect on consumers considering purchasing drugs from overseas sources, in the absence of effective demand reduction, these users are likely to simply preference a domestic online or street dealer as an alternative source. Perversely, enhanced mail screening therefore protects the profits of local dealers and the organised crime groups who supply them, who are able to capitalise on the reduced foreign competition inadvertently afforded to them by Australian border protection agencies.

A more effective approach would be to re-distribute government resources away from supply side interventions, such as postal interdiction, to demand and harm reduction initiatives. This would assist in reducing the unintended and sometimes counter-productive consequences of supply side interventions; assist users with problematic, criminogenic drug use to better manage their drug use; reduce the profits available to Australian crime groups involved in illicit

¹⁹ *National Drug Strategy 2010-2015*. Canberra: Commonwealth of Australia.

²⁰ Ritter, A., Ritter, A., Cameron, J., Ritter, A., & Cameron, J. (2006). A review of the efficacy and effectiveness of harm reduction strategies for alcohol, tobacco and illicit drugs. *Drug and alcohol review*, 25(6), 611-624.

²¹ Wilson, D. P., Donald, B., Shattock, A. J., Wilson, D., & Fraser-Hurt, N. (2015). The cost-effectiveness of harm reduction. *International Journal of Drug Policy*, 26, S5-S11.

²² Australian National Audit Office (2015). Screening of International Mail. Retrieved from: https://www.anao.gov.au/sites/g/files/net616/f/AuditReport_2013-2014_42.pdf

²³ Cunliffe, J., Martin, J., Décarry-Héty, D., & Aldridge, J. (2017). An island apart? Risks and prices in the Australian cryptomarket drug trade. *International Journal of Drug Policy*, 50, 64-73.

²⁴ Aldridge, J., & Askew, R. (2017). Delivery dilemmas: How drug cryptomarket users identify and seek to reduce their risk of detection by law enforcement. *International Journal of Drug Policy*, 41, 101-109.



drug supply; and help ensure that the majority of non-problematic users who continue to purchase and consume illicit drugs to do so in as safe a manner as possible.

Conclusion

I thank the Committee for inviting me to make this submission and for their time and consideration. I would be happy to appear before the Committee to answer any questions or to elaborate on my submission should this be of use.

Yours sincerely,

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