

data retention is no solution

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What the Hack, 28 July 2005

Main issues today

- European plans for data retention
- Campaigning against data retention
- What can you do?





- www.bof.nl
- Founded in 2000
- NGO, funded by private parties
- Themes: privacy, freedom of speech, spam, e-voting, copyright, RFID
- Bi-weekly newsletter
- Big Brother Awards - 3d edition 24 October 2004
- EDRI - European Digital Rights



- www.edri.org
- Founded in 2002
- Brussels not-for-profit association
- Currently 17 members from 11 European countries
- Bi-weekly newsletter EDRI-gram

European data retention plan

- Various, competing proposals
- Obligation for providers of public communication services and networks
- Retention periods between 6 months and 4 years
- Telephone and internet
- 450 million people in the EU
- List of data to retain is not fixed

Some history

G8 meeting, Tokyo, May 2001

- Before 11 September
- "Balanced approach"
- Very greedy list

**G8 GOVERNMENT-PRIVATE SECTOR HIGH-LEVEL MEETING ON HIGH-TECH
CRIME**

TOKYO, MAY, 22-24, 2001

Report for Workshop 1: Data Retention

**Potential Consequences for Data Retention of Various Business Models
Characterizing Internet Service Providers**

G8, May 2001

- A balanced approach to data retention taking into account privacy, data protection, industry and law enforcement needs
- A consistent, clear and transparent process
- Continue consultations with data protection authorities, privacy, industry, law enforcement agencies, users and others
- Legitimate purposes in line with privacy principles

G8, May 2001

HTTP (HyperText Transfer Protocol) log

- Date and time of connection of client to server
- IP source address
- Operation (i.e., GET command)
- Path of the operation (to retrieve html page or image file)
- "Last visited page"
- Response codes

E-privacy directive 2002

- Obligation to destroy or anonymise traffic data after use
- A back-door allows mandatory data retention
- Trade-off with spam

“a necessary, appropriate and proportionate measure within a democratic society to safeguard national security (i.e. State security), defence, public security, and the prevention, investigation, detection and prosecution of criminal offences”

Draft framework decision 2004

- Madrid attacks, 11 March 2004
- Proposal initiated by UK, Spain, France and Sweden
- Draft framework decision in the Council
- Third pillar, Justice and Home Affairs ministers
- Requires unanimity between member states
- Advisory role for European Parliament

Draft framework decision 2004

- Retention period of 1 to 4 years
- More than just data that is already stored for business purposes
- First telephone data, internet later

No legal basis

- Three legal opinions from
 - Council legal service
 - Commission legal service
 - EU Parliament legal commission
- Concluded that the Council can't introduce mandatory data retention
- Council ignores these opinions

PI / EDRI response to consultation

**Invasive, Illusory, Illegal, and Illegitimate:
Privacy International and EDRI Response to
the Consultation on a Framework Decision on Data Retention**



September 15, 2004

PI / EDRI response to consultation

15 September 2004

Signed by 90 civil rights organisations
and same number of IT companies

- Invasive: interferes with the private lives of everyone
- Illegal: Article 8 of the European Convention on Human Rights, as it is disproportionate
- Illusory: traffic data points at machines, not at people
- Illegitimate: EU members states failed to pass this policy nationally, now they try Europe

Alvaro report

7 June 2005

European Parliament adopts Alvaro report

- Rejects Council proposal
- Disproportionate
- Lack of necessity and effectiveness
- High costs for industry

Rotterdam University report



Wie wat bewaart die heeft wat

*Onderzoek naar nut en noodzaak van een
bewaarverplichting voor
historische verkeersgegevens van telecommunicatieverkeer*

Rotterdam University report

22 June 2005

- Research into the use of traffic data by the Dutch police
- Ordered by Dutch minister of Justice
- Response to questions in Dutch parliament about usefulness and necessity
- First and only public research in Europe of its kind

Rotterdam University conclusions

- Empirical:
 - 65 police investigations
 - 'In virtually all cases' police got the traffic data they wanted
- Round table:
 - Discussion with police about traffic data needs
 - Extended wish-list presented
- Report recommends one-year data retention period

Reactions in Dutch parliament

- Empirical study: no evidence for the necessity
- Wish-list is irrelevant
- Dutch parliament already blocked minister from agreeing with Council decision

New EU Commission proposal

July 2005 internal draft

- EU Commission: directive on data retention
- Competes with Council proposal
- Fixes lacking legal basis
- Co-decision for European Parliament (agree and change)

Commission proposal

- Telephony traffic data: one year
- Internet: 6 months
- No room for member states to extend retention period
- Commission will collect statistics
- Evaluation is three years
- Cost reimbursement
- No research into usefulness and necessity

Retention list

- Internet
 - IP-address
 - MAC address
 - Username
 - E-mail addresses
 - Logs of e-mail sent and received
- Telephone
 - Logs of calls and messaging made and received
 - Telephone number, IMSI, IMEI
 - Location data
- Retention list is not static!

Road ahead

- Council might drop its proposal
- Commission proposal goes to the European Parliament
- Long period for lobbying
- 8 September: Justice ministers meeting in Newcastle
- UK Presidency might choose the fastest solution

What can you do?

- Write to members of Parliament
- Give more than an opinion: give facts
 - Costs
 - Effectiveness
 - Technical feasibility
 - Usefulness and necessity
- Explain how much data is involved: make it visible

What can you do?

- Facts for the media
- Educate users (what will the effect be on them?)
- Don't do it alone! Search for coalitions
 - Telecommunication and IT companies
 - Civil rights organisations
 - Consumer groups
- Support a civil liberty organisation in your country

What can you do right now?

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www.dataretentionisnosolution.com

- European Digital Rights and XS4ALL launch petition
- Aimed at European Commission and European Parliament
- Goal to mobilise telecommunication users all over Europe

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www.dataretentionisnosolution.com

We need your help:

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Use the banner

Sign the petition!