

Data retention – current state of UK and EU legislation

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UK legislation

- Anti-Terrorism, Crime and Security Act 2001 gives powers for government to require data retention
- Government has yet to pass secondary legislation mandating retention, but is concluding voluntary agreements with Communications Service Providers

European Union

- EU currently debating two proposals: directive from Commission and Framework Decision from certain Council members (including UK)
- Proposal drafts have converged over last few months
- Commission legal services claim that Council decision would be illegal under EU treaties

Data to be retained

- The Internet Protocol (IP) address, whether dynamic or static, allocated by the Internet access provider to a communication;
- The User ID of the source of a communication;
- The Connection Label or telephone number allocated to any communication entering the public telephone network;
- Name and address of the subscriber or registered user to whom the IP address, Connection Label or User ID was allocated at the time of the communication.
- Data necessary to trace and identify the destination of a communication:
- The Connection Label or User ID of the intended recipient(s) of a communication;
- Name(s) and address(es) of the subscriber(s) or registered user(s) who are the intended recipient(s) of the communication.
- The date and time of the log-in and log-off of the Internet sessions based on a certain time zone.
- The calling telephone number for dial-up access;
- The digital subscriber line (DSL) or other end point identifier of the originator of the communication;
- The media access control (MAC) address or other machine identifier of the originator of the communication.

Updating Annex

- Would be done by a committee of Member State representatives chaired by the Commission
- No involvement of Data Protection Commissioners, as had previously been suggested

European Data Protection Supervisor opinion

- "22. The EDPS recognises the changes of circumstances, but is as yet not convinced of the necessity of the retention of traffic and location data for law enforcement purposes, as established in the proposal."
- "34... The EDPS points out the need of an effective control on the access and further use, preferably by judicial authorities in the Member States."
- "40... the rules on the access, the use and the exchange of the data are inseparable from the obligation itself to retain the data."

Data retention survey – volume

- What data do ISPs already retain, and for how long? How much data is currently retained? What is the cost of retaining that data?
- How much extra data would the new data retention legislation force ISPs to retain per month/year?
- What would the expected growth rate be? How will this scale?
- How searchable would this data really be?

Data retention survey – costs

- How much would it cost ISPs to implement data retention, and how much to run the new systems per year? How much for storage? How much for providing access? How much for maintaining security?
- If the government were to not provide subsidies or support for ISPs to implement data retention, by how much would the average internet connection bill rise for the end customer?
- How many ISPs are vulnerable, and may be adversely affected or even put out of business by the cost of implementing data retention?

Data retention survey – other impact

- What other ramifications of this legislation do you see damaging ISPs and small businesses? What would be the economic impact? Impact on the marketplace as a whole, competitiveness with non-European ISPs, etc.
- What would be the implications for the governments public sector infrastructure projects?

More information

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