

# **Security by random data storage ?**

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**Statement at the ISPA Internet Summit  
Vienna, 20 September 2006**

# Outline

- **The original purpose of networks**
- **Fundamental change after 9/11**
- **Example A: The WHOIS database**
- **Example B: Data retention**
- **Summary**

# The original purpose of networks

- **Networks (telecommunications networks, Internet) were built to enable communications between absent people using a trusted technical infrastructure**
- **Precondition of trust:  
Telecommunications secrecy**
- **Secrecy applies to content *and* metadata because metadata (circumstantial information, Randdaten) can be just as sensitive/telling as the content**

# Fundamental Change after 9/11

- **Personal data are collected not because there *is* a suspicion (or a suspect) but in order *to generate suspicion* (or suspects)**
- **US Government intensifies data mining in existing databases in the public and private sector (JetBlue)**
- **Private Companies sell business data collected by US Customs (*Piers, Die Presse 13.9.06*)**
- **No matter what the original purpose was – now it is combined with fighting terrorism**
- **„Function creep“ leads to other purposes (fighting crime, copyright violations etc.)**

# Example A:

## The WHOIS database (1)

- **The (original) purpose of the WHOIS database was and is the maintenance of the Internet (points of technical and administrative contact)**
- **To this end certain basic communications data (names and addresses) are published online**
- **Nowadays public and private law enforcement have an increasing interest in these and more data**

# Example A: The WHOIS database (2)

- **Difference between registering domain names for companies or legal persons and for individuals (particularly – but not only - .name)**
- **Identity and contact information should be known to the provider but no forced publication globally**
- **Tiered access as practised in the UK and France**

# Example B: Data retention (1)

- **Traffic data (meta data, Randdaten) used to be collected only for establishing connections and for billing purposes**
- **Law enforcement agencies seized these data for current criminal investigations (after a crime was committed)**

# Example B: Data retention (2)

- **At first the period for voluntary retention by providers was extended**
- **The next step was the EU-Directive 2006/24/EC providing for mandatory retention (6 months – 2 years) for preventive purposes**
- **Fast freeze – quick thaw (common in the US) was provided for in the Cybercrime-Convention but never seriously tested**

# Example B: Data retention (3)

- **„Pressing social need“ (Art. 8 ECHR) rather than convenience ?**
- **Transformation into national law faces constitutional problems**
- **Legal challenge before the European Court of Justice (Ireland, Slovak R.)**
- **Cost problems (separate storage)**
- **Next step: Retention of content ?**

# Berlin Group and Art.29 Working Party

- **International Working Group on Data Protection in Telecommunications („Berlin Group“) - since 1983**
- **Art. 29 Working Party of European Data Protection Authorities - since 1995**

# Summary

- **The constant increase in the processing and use of personal data is meant to increase security**
- **In fact it may achieve the opposite: increase insecurity and mistrust**
- **Communications networks should not turn into infrastructures for unchecked surveillance**
- **Security is no justification for random and preventive storage of personal data**

# Benjamin Franklin (?)

**„Those who would give up essential liberty to purchase a little *temporary* safety deserve neither liberty nor safety.“**

# Contact details

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