

LAW AND DIGITAL TECHNOLOGIES
ELECTRONIC COMMUNICATIONS

ePrivacy

Prof. Gerrit-Jan Zwenne
February 27th, 2015



LAW AND DIGITAL TECHNOLOGIES
ELECTRONIC COMMUNICATIONS

ePrivacy

Prof. Gerrit-Jan Zwenne
February 27th, 2015





electronic communications and privacy

- security and security breach notification
- cookies (and the like)
- traffic data (incl. data retention)



re-cap

Art. 4 ePD

appropriate technical and organisational measures to safeguard security of the [electronic communication] services, if necessary in conjunction with the provider of the public communications network with respect to network security

what are public electronic communication networks and services? →

having regard to the state of the art and the cost of their implementation, these measures shall ensure a level of security appropriate to the risk presented.



electronic communications network:

- transmission systems (incl. switching or routing equipment) and other resources
- which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems,
- to the extent that they are used for the purpose of transmitting signals, [and]
- networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed

Art. 2(a) Directive 2002/21/EC



Art. 2(c) Directive 2002/21/EC

electronic communications service:

- service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks
- incl. telecommunications services and transmission services in networks used for broadcasting,
- it does not include information society services, which do not consist wholly or mainly in the conveyance of signals on electronic communication networks;

excluding services providing, or exercising editorial control over, content transmitted



electronic communications and privacy

- security and security breach notification
- cookies (and the like)
- traffic data (incl. data retention)



re-cap

Art. 4 ePD

appropriate technical and organisational measures to safeguard security of the [electronic communication] services, if necessary in conjunction with the provider of the public communications network with respect to network security

what are public electronic communication networks and services? →

having regard to the state of the art and the cost of their implementation, these measures shall ensure a level of security appropriate to the risk presented.



electronic communications network:

- transmission systems (incl. switching or routing equipment) and other resources
- which permit the conveyance of signals by wire, by radio, by optical or by other electromagnetic means, including satellite networks, fixed (circuit- and packet-switched, including Internet) and mobile terrestrial networks, electricity cable systems,
- to the extent that they are used for the purpose of transmitting signals, [and]
- networks used for radio and television broadcasting, and cable television networks, irrespective of the type of information conveyed

Art. 2(a) Directive 2002/21/EC



Art. 2(c) Directive 2002/21/EC

electronic communications service:

- service normally provided for remuneration which consists wholly or mainly in the conveyance of signals on electronic communications networks
- incl. telecommunications services and transmission services in networks used for broadcasting,
- it does not include information society services, which do not consist wholly or mainly in the conveyance of signals on electronic communication networks;

excluding services providing, or exercising editorial control over, content transmitted



electronic communications and privacy

1. confidentiality of communication
 - *security obligations (incl. breach notification)*
 - *no tapping, monitoring (eg deep packet inspection)*
 - *requirements re traffic data*
 2. communication without identification
 - *directory services ('secret telephone number'), no reversed search*
 3. unsolicited commercial communications
 - *calling line identification*
 - *not-itemized billing*
-
- *spam (e-mail, sms, social networks)*
 - *telemarketing*



electronic communications and privacy

1. confidentiality of communication
 - *security obligations (incl. breach notification)*
 - *no tapping, monitoring (eg deep packet inspection)*
 - *requirements re traffic data*
 2. communication without identification
 - *directory services ('secret telephone number'), no reversed search*
 3. unsolicited commercial communications
 - *calling line identification*
 - *not-itemized billing*
-
- *spam (e-mail, sms, social networks)*
 - *telemarketing*



confidentiality of communication



confidentiality of communication



Art. 4(1) ePD

security obligation

appropriate technical and organisational measures to safeguard **security** of the [electronic communication] services, if necessary in conjunction with the provider of the public communications network with respect to network security

what are public electronic communication networks and services..?

having regard to the state of the art and the cost of their implementation, these measures shall ensure a level of security appropriate to the risk presented.



Art. 4(1) ePD

security obligation

appropriate technical and organisational measures to safeguard **security** of the [electronic communication] services, if necessary in conjunction with the provider of the public communications network with respect to network security

what are public electronic communication networks and services..?

having regard to the state of the art and the cost of their implementation, these measures shall ensure a level of security appropriate to the risk presented.



Art. 4(3) ePD

breach notification

- notify the personal data breach to the competent national authority
- likely to adversely affect the personal data or privacy of a subscriber or individual, also notify the subscriber or individual of the breach without undue delay

24 hours? 72 hours? what's the startingpoint?



Art. 4(3) ePD

breach notification

- notify the personal data breach to the competent national authority
- likely to adversely affect the personal data or privacy of a subscriber or individual, also notify the subscriber or individual of the breach without undue delay

24 hours? 72 hours? what's the startingpoint?



Art. 5(1) ePD

confidentiality of communications and traffic data

deep packet inspection (“dpi”)

no listening, tapping, storage or other kinds of interception or surveillance of communications and the related traffic data by persons other than users, without the consent of the users concerned

net neutrality debat...



Art. 5(1) ePD

confidentiality of communications and traffic data

deep packet inspection (“dpi”)

no listening, tapping, storage or other kinds of interception or surveillance of communications and the related traffic data by persons other than users, without the consent of the users concerned

net neutrality debat...



Art. 6 ePD

*Data Retention Directive 2006/24/EC annulled by
CJEU 8 April 2014 C-293/12 and C-594/12*

traffic data relating to subscribers and users must be erased or made anonymous when it is no longer needed for the purpose of the transmission of a communication

with user' or subscriber' consent data may be used for the purpose of

- *marketing electronic communications services or*
- *the provision of value added services*



Art. 6 ePD

*Data Retention Directive 2006/24/EC annulled by
CJEU 8 April 2014 C-293/12 and C-594/12*

traffic data relating to subscribers and users must be erased or made anonymous when it is no longer needed for the purpose of the transmission of a communication

with user' or subscriber' consent data may be used for the purpose of

- *marketing electronic communications services or*
- *the provision of value added services*



communication without identification



communication without identification



subscriber has the right to have invoice without details

Art. 7, 8 and 12 ePD

non-itemized billing

calling line identification

directory services

- *subscriber must be informed about inclusion in directories (incl purposes), and*
- *provided a choice (opt-in or opt-out)*

user has the right to

- *block cli-presentation of his/her own calls*
- *reject cli-blocked calls from others*
- *block cli-presentation of calls from others*



subscriber has the right to have invoice without details

Art. 7, 8 and 12 ePD

non-itemized billing

calling line identification

directory services

- *subscriber must be informed about inclusion in directories (incl purposes), and*
- *provided a choice (opt-in or opt-out)*

user has the right to

- *block cli-presentation of his/her own calls*
- *reject cli-blocked calls from others*
- *block cli-presentation of calls from others*



unsolicited commercial communication



unsolicited commercial communication



exemption for own similar products and services

Art. 13 ePD

opt-in for

- **automated calling (communication) devices**
- **commercial fax and e-mail**

who is (are) sender(s) in the context of affiliates networks?

what is commercial?

opt-out for

- **telemarketing**

exemption for own similar products and services

do-not-call register

outbound and inbound?



exemption for own similar products and services

Art. 13 ePD

opt-in for

- **automated calling (communication) devices**
- **commercial fax and e-mail**

who is (are) sender(s) in the context of affiliates networks?

what is commercial?

opt-out for

- **telemarketing**

exemption for own similar products and services

do-not-call register

outbound and inbound?



CLI DPI

CDR NSA



CLI DPI

CDR NSA



questions?

g.j.zwenne@law.leidenuniv.nl



questions?

g.j.zwenne@law.leidenuniv.nl

