

I keep six honest serving-men
(They taught me all I knew);
Their names are What and Why and When
And How and Where and Who.

Rudyard Kipling



Dr Richard Clayton
ISPA Legal Forum
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What ?

- Internet access records
 - governments have static dialup model ☹️
- Email records
 - terms in the directive are very vague ☹️
- Internet telephony
 - touching belief in gateways and rendezvous services which may not exist in practice
- 😊 😊 Not web caches, or Netflow 😊 😊

Why ?

- Directive contains technical nonsense
... together with the IP address, whether dynamic or static, allocated by the Internet Access Service provider to a communication
- So all the detail will be in the transposition
 - hardly likely to lead to a level playing field

When ?

- *The date and time of the log-in and log-off of the Internet Access service based on a certain time zone*
 - presumably not EST (-0500 and +1000)
- *The date and time of the log-in and log-off of the Internet e-mail service*
 - every 5 minutes (or once a month ?)
 - what use is this intended to be ?

How ?

- *the retained data shall be of the same quality and shall be subject to the same security and protection as those data on the network;*
 - Internet is “best efforts”...
 - I have an entire thesis on how traceability info is more suitable for “intelligence” than for “evidence”. Will this be taken on board?

Where ?

- Commission concluded that Directive was necessary to fix single market issues
 - (and to get round legality of 3rd pillar action!)
- So whose law applies to a multi-national ISP (kit in New York, Amsterdam and London) ?
 - retention periods permitted between 6 months and 24 months. Another far from flat field!

Who?

- Usual suspects are expecting to be covered
 - BT, Claranet, Demon, West Dorset Internet
- What about multi-nationals ?
 - Tiscali, Wanadoo, AOL
- What about service providers ?
 - Gradwell (also a VoIP telco!)
- What about the rest ?
 - University of Cambridge, GNER, Hilton Hotels

More Kipling...

But different folk have different views;

I know a person small-

She keeps ten million serving-men,

Who get no rest at all!

She sends'em abroad on her own affairs,

From the second she opens her eyes-

One million Hows, two million Wheres,

And seven million Whys!

One Million Hows

- How will we know what must be kept ?
 - Directive says *to the extent that those data are generated or processed*
 - can we expect a list of record types in the SI ?
 - Does this mean we only keep logs if we generate them, or that there is an obligation to turn on logging ? What if we cannot do that ?
 - or will it all just be another British muddle?

Two Million Wheres

- Does “email” include instant messaging ?
- Does “email” include multi-user games ?
- Does “email” include web chat ?
- Does “Internet Telephony” include logging accesses to Google Video ?
 - reading the Directive it sounds more like a “multi-media” service and that’s POTS

Seven Million Whys

- Actually a WHO
 - who will pay ? Taxpayers or Customers ?
- Actually a WHEN
 - three year timescale. Would we rather drip effort on it month after month, or agree to have a big negotiation kick-off party Xmas 2007?
- A real WHY...
 - after all the industry's efforts at education, why is it quite such an awful mess ?

<http://www.cl.cam.ac.uk/~rnc1/>



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I keep six honest serving-men
(They taught me all I knew);
Their names are What and Why and When
And How and Where and Who.
I send them over land and sea,
I send them east and west;
But after they have worked for me,
I give them all a rest.
I let them rest from nine till five,
For I am busy then,
As well as breakfast, lunch, and tea,
For they are hungry men.
But different folk have different views;
I know a person small-
She keeps ten million serving-men,
Who get no rest at all!
She sends'em abroad on her own affairs,
From the second she opens her eyes-
One million Hows, two million Wheres,
And seven million Whys!