

Privacy issues in online business: lawyer's view

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Privacy in on-line business: where the problems are (can be)

- Identification of domain names administrators/ web-sites owners
- Identification of IP addresses users
- Personal data protection (consumers of digital services)
- Network activity [excessive] tracking, data retention
- Wrongful misrepresentation (phishing etc.)
- Identity theft
- Trans-border transfer of the personal data, compliance with the national legislation
- Protection of the confidentiality (secrecy) of telecommunications
- (?) ☹️



Legislative framework

- Usually -> no direct provisions on on-line issues in domestic laws on personal data in most CEE/post-USSR countries
- EU: Privacy Directives (1995, 2002, 2006) + Council of Europe Convention on Personal Data (1981)
- ICANN: decision of gtld WHOIS (2008) etc.
- Russian Federation: Federal Law on Personal Data (2006)
 - Mostly compliant with European regulation
 - No specific provisions on on-line business (general regulation applicable)



Anonymity

- Anonymity = natural, integral feature of today's Internet
 - Can be treated both as advantage and disadvantage ☹
- Anonymity can be only 'relative'
 - 'absolute' anonymity can be sponsored only by criminals
- Anonymity can be 'active' and 'passive'
 - 'passive': anonymous until the identity is explicitly asked
 - 'active': anonymous even if the identity is requested
- Use of anonymity cannot harm the interests of other people



Cross-Border Transfer of Data

- Critical for law enforcement
- Easy and 'natural' when Internet technologies are used
- Special forms of consent (=in written form) can be required
 - Data centers located in foreign countries
- Concept of 'safe harbors'
- International cooperation (both on governmental and non-governmental levels) is essential



WHOIS

- Privacy vs. security: accurate information required for law enforcement and/or for protection of the lawful rights of the third parties
- False registrations: impossibility to identify/locate real owner/administrator + obligation of the registrar to verify the information provided by the registrant
- Obsolescence and history: regular update required
- Spam: harvesting of the addresses of WHOIS requests
- International: lack of centralized lists of WHOIS servers; lack of standards/formats -> internationalized domain names



Some conclusions

1. Privacy issues will be every year more important for the online businesses
2. We shouldn't expect that all questions will be answered in the local legislations -> both international cooperation and inter-corporate (ICANN-based) interaction should develop
3. Balance between anonymity (privacy) and security should be found and sustained
4. WHOIS system should be adapted for IDNs
5. Not only domain names generate privacy issues in on-line issues: we should be prepared for wider range of the emerging issues

Thank you
for your attention!

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