

Recent developments in legal issues

Some new thoughts and experiences

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Agenda

- Legal issues in ICT:
 - Data transport
 - Data protection
 - Third Parties
- Tilburg Heuristic

Recent Legal Developments / Data Transport

- Laws on telecommunication:
 - Defines “open” vs. “closed” networks
 - States the MUSTs, MAYs and CANNOTs for (network) service providers
- Interception paragraph:
 - Who pays for equipment?
 - Who determines which equipment must be used?
 - Who maintains equipment?
 - Under what circumstances can interception take place?
 - Flow data / sampled?
 - Contents inspection?

Recent Legal Developments / Data Protection

- Legislation on the protection of privacy sensitive data (NL specific)
 - Defining what *privacy sensitive* data constitutes
 - The law fundamentally acknowledges that sensitivity is generally derived from the context
 - AAA with third parties is generally allowed
 - Distinguishes between the roles of those who are responsible and those who have (modifying) access to the data
 - Defends the right of the registree (the person the data are pertaining to)
 - Sets guidelines for relevancy of stored data

Recent Legal Developments / Third Parties' Claims

- Court case Pessers vs. Lycos (11 Sept 2003)
- Pessers acts in his capacity of ordinary citizen
- Lycos hosting provider in "members.lycos.nl"
- Anonymous customer ("Anon.") maintains hate website against Pessers (Anon. accuses Pessers of *flessentrekkerij* (financial fraudulent behaviour))
- Short summary of the previous:
 - Pessers is a hobby stamp trader on eBAY
 - Pessers also is a trained lawyer
 - Anon. feels (s)he was ripped off
 - Anon. notifies the community through a website
 - Anon.'s Website hosted by Lycos

Recent Legal Developments Third Parties' Claims (cont.)

- Chain of events:
 - 30 Jul: Pessers is notified of the hate-site against him
 - 1 Aug: Pessers sends an e-mail to the (anonimised) address of the (sub)webmaster
 - 1 Aug: Pessers sends an urgent letter to Lycos Nederland b.v. and demands them to take down the (sub)site of Anon., and to transfer Name, Address, and Birth Date of the maintainer of the (sub)site; presumably Lycos' customer or user, *to be able to engage this person into a legal court case*
 - 4 Aug: Lycos Nederland rejects all claims in a *well-motivated* answer (with referral to their various policies)

Recent Legal Developments Third Parties' Claims (cont.)

- Court Ruling:
 - Case is admissible (despite Lycos' defence that the website is in fact hosted (and housed) by Lycos Europe GmbH)
 - Claim for immediate take down:
 - rejected – the website has already been taken down by the owner
 - Claim for transfer of name and address:
 - sustained – claiming party has a reasonable interest to be pointed to the correct legally responsible person
 - Claim for the transfer of the birth date:
 - rejected – this claim is deemed irrelevant

Recent Legal Developments Third Parties' Claims (cont.)

- Sustained claims have to be fulfilled by Lycos Nederland bv per the date of the court case with a default fine of EUR 5,000 per day, to a maximum of EUR 100,000 (with claiming party as the beneficiary)
- This is a generally accepted mechanism in NL to force convicted parties in private law cases

Tilburg Heuristic

- Tilburg University expertise training on legal ICT issues:
 - Combines criminal and private law dealing with ICT issues, data transport, data storage, etc.
 - Stipulates what you **MUST** do and what you **ARE NOT ALLOWED** to do
 - First directive: know your position
 - Second directive: act accordingly
 - Third directive: face dilemmas with professional common sense

Tilburg Heuristic (cont.)

all possible
decisions

legally mandatory
decisions

legally forbidden
decisions

professionally preferable
decisions

MUST

DILEMMA

CANNOT

Tilburg Heuristic (cont.)

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Tilburg Heuristic (cont.)

Safe approach if faced with a request/order:

1. Make the requester state their identity and capacity
2. Ask whether co-operation is mandatory or voluntary
3. Ask according which legal directive this claim is made
4. Determine your own capacity in this particular case
5. Comply (possibly under protest) with the request or order --or-- point the requester to a more appropriate person

In all cases: log your actions (date, identity of the requester, witnesses, other relevant circumstances)

Tilburg Heuristic (cont.)

Important things to remember:

- | *your* actions are governed by *your* jurisdiction (especially in international cases) *but* –
 - | territorial legislation is gradually being replaced by universal legislation
 - | (e.g. well respected politicians in one country may be wanted war criminals under another jurisdiction)
- | information once transferred cannot be 'undone'

Questions and Discussion?