



Internet Service Providers Association of Ireland

Mr Dermot Ahern, T.D.,  
Minister for Justice, Equality and Law Reform  
94 St. Stephen's Green  
Dublin 2

20<sup>th</sup> May 2008

Dear Minister Ahern,

Re. Industry concerns about the implementation of the proposed transposition of the Data Retention Directive 2006/24/EC and its impact on the Internet services industry.

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The Internet Service Providers Association of Ireland (ISPai) is the industry body representing providers of Internet access, email and hosting services. The ISPai coordinates industry self-regulation which is governed by our Codes of Practice and Ethics. It also operates the Hotline.ie service, a key component in the fight against illegal use of the Internet. Our membership of Irish and International companies providing Internet services from within the State includes well know names such as eircom, Irish Broadband, Google, Vodafone, Clearwire, BT, HEAnet, O<sub>2</sub>, NTL-Chorus and Verizon.

I am writing to inform you that ISPai members are very concerned that if the statutory instrument to transpose Directive 2006/24/EC (Communications Data Retention) is signed in to law as currently drafted, it leaves industry uncertain as to many aspects of the proposed obligations. There is also uncertainty about data protection and privacy requirements as implied under this S.I. versus existing legislation. Unfortunately terminology used in legislation can not be used to program equipment that only uses terse instructions to capture and retain the precise data required. We therefore request your Department to recognise the need to agree in advance a schedule of the precise data that will be retained in the current technological environment. We propose that such a schedule could be revised as technologies evolve. We have made our concerns known to officials in the Department of Justice from the outset of the Directive.

The Minister should be aware that there are considerable costs associated with implementation of data retention systems. These retention obligations have no commercial purpose. The State must therefore recognise that the extent to which the allowable scope within Directive 2006/24/EC is applied in national law can have a very considerable impact on associated costs. These costs are (a) initial equipment investment and set-up labour for retention of Internet data (unlike telephony data much to be retained is not required for business purposes); (b) secure storage costs for the duration of the retention period and, (c) the labour intensive task of servicing data retrieval requests from An Garda Síochána. Points (b) and (c) are variable, the State should be mindful to minimise these in any legislative obligations on industry.

Implementing the necessary retention systems to capture traffic but not content data is not an easy task in the Internet environment. We therefore request that an agreed implementation period of twelve months after signing into effect of the S.I. be included to allow for proper change management projects to be undertaken by industry.

The ISPai wishes to be constructive in assisting to define the means whereby industry can meet retention obligations. I enclose the document "European Communities (Retention of Data) Regulations 2008 – Comments by ISPai on Draft S.I.". This describes the difficulties ISPai members have identified and outlines proposed alternatives. We believe these meet the transposition requirements of the Directive without detracting from the objectives of legislation which we accept as necessary for state security and the investigation of serious crime.

ISPai offers the opportunity to you for your officials to visit a representative ISP and see at first hand what is entailed in implementing retention measures which may assist in revising the S.I. We ask that your Department carefully considers the proportionality of the S.I., to balance the needs of crime investigation and security with the necessity of ensuring an environment conducive to the future competitiveness and development of the ICT sector and the employment it provides within the Irish economy.

Yours sincerely

Paul M. Durrant  
General Manager

cc. Minister for Communications, Energy  
and Natural Resources

cc. Minister For Enterprise, Trade  
and Employment

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