



Unabhängiges Landeszentrum für Datenschutz Schleswig-Holstein

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P R E S S E R E L A S E

AN.ON still guarantees anonymity

The AN.ON service allows users to surf the web anonymously by use of a system in which the communication is lead via anonymising intermediate computers, so-called mixes. The new version of the mix software includes a function by use of which the access to a particular web server can be recorded. Many people felt irritated about this. Due to the vast number of queries to the collaborators of the research project at Dresden University of Technology and Free University Berlin and to the Independent Centre for Privacy Protection Schleswig-Holstein, Germany, (ICPP) in this context, the ICPP gives the following statement on the background of the implementation of this function:

Within the context of **concrete preliminary criminal proceedings** by the German Federal Office of Criminal Investigation (BKA) – not against the ICPP, as wrongly reported –, the ICPP received a judicial instruction by the Local Court (Amtsgericht) Frankfurt / Main, Germany, by which the collaborators of the research project AN.ON were bound to record all access to a particular IP address (which was probably connected with the release of criminal contents) and to provide information on the stored data.

Since it is not permissive to release information about **current proceedings** according to German law, the project partners did not inform the public at first. Based on the fact that the developed software has been released in the source code since the beginning of the **Open Source Project**, also the implemented recording function was of course released. The project partners underestimated the problems caused by the dilemma between the **observance of secrecy** within the context of **concrete preliminary proceedings** and their own **claim for transparency**. They did not want to be accused of aiding and abetting or penalty thwarting to prevent AN.ON from being criminalised. Since this was the first judicial instruction of this kind, they did not have any experience in this context. Because of many AN.ON users' uncertainty , the project partners feel bound to make a public statement on this case.

As far as the ICPP is concerned, there is **no legal ground** for the judicial instruction in the quoted legal instructions of the code of criminal procedure. The legal view by the ICPP is supported by the prevailing commentary literature as well as by the Official Explanation by the legislator in the legislation process of the corresponding legal instructions. According to the legal instructions of the §§ 100g and h of the Code of Criminal Procedure (Strafprozessordnung, StPO) which have become effective on Jan. 1, 2002 as successors to § 12 of the Law on Telecommunication Facilities (Fernmeldeanlagen-gesetz, FAG) and on which the lower district court and the federal bureau of criminal investigations based their claim, such a **claim for information** by the criminal prosecution officials may only refer to those data that are collected and stored by the service providers in a permissive manner on the

basis of given regulations. However, as the name says, the anonymisation service will not collect and store any data referring to the user. According to the Teleservices Data Protection Act (Teledienstedatenschutzgesetz, TDDSG), this would not be permissive anyway. The **order for a data recording** is not supported by the legal regulations the Local Court's instruction is based on, i.e., the instruction is obviously unlawful.

According to the Code of Criminal Procedure, the order for a data recording is exclusively permissive in **very restricted cases**., i.e., there has to be the suspect of a criminal offence which is explicitly recorded in the § 100a of the Code of Criminal Procedure. A decision based on this paragraph has not been ordered by the police, probably because the requirements are not met.

The ICPP has immediately made use of the formal measure of **appeal** from the decision. Since this appeal has **no postpone effect**, i.e. the content of the decision has to be realised until another court decision in spite of the appeal, the AN.ON developers have programmed such a function and implemented it in the current version of the mix software.

By use of this function, it is possible with the co-operation of the mixes to record the access to a particular given IP address for the future only. The IP address of the requesting user, the request, date and time will be recorded. All other web pages and all other users of the AN.ON service will not be affected, though! The JAP software as such which has to be installed by all users of the AN.ON service does not include a recording function. The current, obligatory, update of the client software JAP has nothing to do with this function.

The ICPP points out explicitly that **only** the access to the **IP address** mentioned in the judicial instruction will be recorded. The AN.ON operators guarantee that also in the future, no access will be recorded without a judicial instruction. The AN.ON service is operated in every respect in accordance to the valid laws, i.e., a collection and storage of user data would be unlawful and will therefore not be carried out. On the other hand, the commitment to law and order means that a judicial instruction cannot be simply ignored.

Therefore, making the monitoring of access to a particular IP address related to criminal contents possible does not mean that all users of the service are monitored. Only in single cases and if all legal requirements are met, i.e. if there is a **binding judicial instruction**, the AN.ON service will record the access to a particular IP address which has been precisely defined by the judge.

Except for the case mentioned above, the protection of the users' anonymity is and will remain the central warranty of AN.ON. The AN.ON operators warn against the generalisation of this single case and the general jeopardising of the whole service. Anonymity in the internet makes still sense when the access to a single website with illegal content is recorded for a limited time period due to a court decision.

From the beginning, AN.ON has been the target of suspicion and scepticism by many security officials at home and abroad. This had the result that AN.ON has not only been attacked in police publications but that single collaborators of Dresden University of

Technology have even been summoned by the police for interrogation. The operators did not submit to the police pressure but they have to keep to a judicial instruction just like everybody else. Certain security circles would probably be very happy if the AN.ON operator would give up now and drop the guarantee for the anonymous internet access. But the AN.ON operators do not want to give them this favour. Therefore, **AN.ON will be continued.**

Those who are really concerned about the anonymity in the internet should deal with the police procedure in a critical way and support AN.ON instead of regarding AN.ON operators as the "main enemy". It is not AN.ON that endangers anonymity but legally dubious police interference in the operation of AN.ON. Another thing to be questioned is why a decision about the ICPP appeal has still not been made after more than six weeks.

We are convinced that the **right for anonymity** is secured by the **constitutional law**. Further on, it results explicitly from the Teleservices Data Protection Act. All those who want to defend this right like the ICPP should support AN.ON and the ICPP. We actually know about our responsibility for the AN.ON users.

Information on the work of the ICPP:

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