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Article 29 Data Protection Working Party

**Opinion 5/2000 on
The Use of Public Directories for Reverse or Multi-criteria Searching Services
(Reverse Directories)**

Adopted on 13th July 2000

The Working Party has been established by Article 29 of Directive 95/46/EC. It is the independent EU Advisory Body on Data Protection and Privacy. Its tasks are laid down in Article 30 of Directive 95/46/EC and in Article 14 of Directive 97/66/EC. The Secretariat is provided by:

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Opinion on
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(Reverse directories)

1. INTRODUCTION

In the framework of the liberalisation process of the European telecommunications sector, new companies are offering services that previously were only furnished by the traditional telecommunication operators. Therefore, more and more frequently, new products are being made available, including telephone directories in electronic format. These directories contain the names, addresses and telephone numbers of millions of European citizens of different Member States. These directories are put on the market in different European countries and incorporate information both on citizens of the country in which the service or company is located and from other EU countries. The most widely used formats for delivering these products are CD-ROM and Internet websites.

One of the main innovations provided by the electronic publication is the possibility of providing, conveniently and at a low cost, extended capabilities for the processing of the information included in the telephone directories. This capabilities refer, basically, to the possibility of making use of expanded search criteria for revealing information present in the directory.

In fact, these products usually offer **reverse or multi-criteria searching services**, that is, apart from the traditional search methods of a telephone directory for finding out the phone number of a specific subscriber from his or her name, they implement other new services which go beyond traditional search methods, providing multiple methods for accessing the personal data of a given person or even of a group of people whose personal data match the searching criteria.

As an example of the capabilities of these novel types of search, it is worthy to mention that they can include revealing the name and address of a telephone subscriber by indicating his or her telephone number or an address-based searching, whereby the name and telephone number of subscribers can be found by entering address details. Indeed, it may be technically possible to obtain the names and telephone numbers of all the persons living in a given area (e.g. a street).

This new functionality could involve a significant change in the citizens' privacy expectations relating to the personal data held in the public directories. Actually, before the existence of these new products, when a person communicated his or her telephone

number to a third party it did not mean, in normal circumstances, the possibility of gathering any other additional information from that data, but now, existing these products in the marketplace, the situation has radically changed: the mere disclosure, intentionally or by chance, of a telephone number could be the key to accessing as much information as that usually appearing in a business card, including the full name and address, and, in some cases, profession and occupation.

Moreover, the simple knowledge of a citizen's itemised billing, in which only called telephone numbers appear, would allow to get a list of the names and addresses of all the people called by him or her during a specific period of time.

In addition, the existence of another category of products that contains Geographical Information such as city maps and data bases with the photographs of all the dwellings of a city, should be taken into account. This information can easily be associated to the address that appears in a telephone directory that allows multi-criteria searching. This, not to mention the enormous possibilities arising from combining this information with that coming from other sources, as publicly available registers. Thus, the amount of information obtainable from the simple fact of having a telephone number could be far beyond the reasonable expectations of the average citizen.¹

2. LEGAL ANALYSIS

Directive 97/66/EC concerning the processing of personal data and the protection of privacy in the telecommunications sector² establishes in Recital 21 that “(...)directories are widely distributed and publicly available; whereas the right to privacy of natural persons and the legitimate interest of legal persons require that subscribers are able to determine the extent to which their personal data are published in a directory; whereas Member States may limit this possibility to subscribers who are natural persons”. Besides, Article 11 states the principle that personal data collected in telephone directories should be limited “(...) to what is necessary to identify a particular subscriber, unless the subscriber has given his unambiguous consent to the publication of additional personal data”.

¹ The representatives of the Austrian, Danish, and Portuguese Data Protection Authorities expressed their view that in their countries the practices of reverse searches have not led to specific problems so far. The Danish representative abstained from voting.

² Directive 97/66/EC of the European Parliament and the Council of 15 December 1997 concerning the processing of personal data and the protection of privacy in the telecommunications sector;

OJ L 24, 30 January 1998, p. 1.

Available at: <http://158.169.50.95:10080/legal/en/dataprot/protection.html>

Apart from that, Article 11 also sets up that the subscriber “(...) shall be entitled, free of charge, to be omitted from a printed or electronic directory at his or her request, to indicate that his or her personal data may not be used for the purpose of direct marketing, to have his or her address omitted in part and not to have a reference revealing his or her sex, where this is applicable linguistically”.

Furthermore, Directive 95/46/EC on the protection of individuals with regard to the processing of personal data³, in Article 6.1 b), establishes that personal data must be “collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes”.

In that sense, the purpose of conventional telephone directories is the disclosure of a subscriber’s telephone number starting from the knowledge of a subscriber’s name (the address is only necessary in cases of homonyms). And the use of these personal data is limited to that specific purpose. Therefore, using those directories to find out personal data pertaining to a natural person from a certain telephone number whose subscriber is unknown or the names and telephone numbers of the persons living in a particular area, is another use, completely different from what a consumer can possibly expect when included in the directory. It is thus a new purpose which is not compatible with the initial one (see Article 6 b of Directive 95/46/EC)⁴.

Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

OJ L 281 of 23 November 1995, p. 31.

Available at: http://www.europa.eu.int/comm/internal_market/en/media/dataprot/law/index.htm

⁴ In the same line of thinking, the International Working Group on Data Protection in Telecommunications (Berlin Group) adopted at its 23rd meeting a Common Position on Reverse Directories⁴, which states that “*the existence of reverse directories, without specific rules of protection, can give rise to serious threats to privacy*”. In addition, the Common Position points out that the purpose of a reverse directory “(...) is not the same as the purpose of a phone directory; a phone directory allows to obtain the phone number of a known person, from his name and a geographic criterium, whereas the purpose of a reverse directory is the search of the identity and address of subscribers where only their phone number is known”. Likewise, the Berlin Group affirms that implementing reverse searching in a telephone directory without the data subject’s consent “(...) constitutes an unfair collection of information”.

An even more detailed opinion in the same sense has been adopted by the Belgian Data Protection Commission in June 1999 (Commission de la protection de la vie privée, recommandation N° 01/1999 du 23 juin 1999, available at : <http://www.privacy.fgov.be>).

However, reverse searches can prove useful and should not be prohibited as such. With a view to making such processing fair and lawful, the conditions of the Directives have to be complied with:

Since the use of personal data in public directories for reverse or multi-criteria searching services is a new purpose, the data controllers have to inform the data subjects about it (Articles 10 and 11 of Directive 95/46/EC).

Furthermore, this processing must fulfil one of the criteria laid down in Article 7 of Directive 95/46/EC to make it legitimate. According to Article 7 f), it could be legitimate if the processing is necessary for the purposes of the legitimate interests pursued by the controller or third parties and that these interests are not overridden by the interests of the individual for protecting his fundamental right.

In order to establish the balance of interests, the interests and risks to privacy at stake have to be identified and evaluated. In this respect, Directive 97/66/EC gives helpful indications: as long as the minimum information necessary to identify a subscriber is at stake, this information can be included in conventional public directories unless the subscriber objects. However, as soon as additional information or complementary functions of the public directory are concerned, the consent of the individual is required. Regarding the use of public directories for reverse or multi-criteria searches, the situation is comparable and furthermore, such processing could constitute a non expected intrusion into privacy. It has to be considered that the interests of the individual in being protected override the interests of controller or third parties. Consequently, such processing is only legitimate if the individual has given his/her informed consent prior to any inclusion of his/her personal data in public directories for reverse or multi-criteria searches (Articles 7 a) and 2 h) of Directive 95/46/EC).

This means in practice:

- *Specific and informed consent* of the subscriber must be obtained prior to the inclusion of his personal data into all kinds of public directories (traditional telephony, mobile telephony, electronic mail, electronic signatures etc.) used for reverse or multi-criteria searches.
- The controller has to inform the subscriber *in particular about*
 - the use of personal data in alphabetical directories,
 - whether his personal data are planned to be used in reverse or multi-criteria searching services and to what extent (what kind of multi-criteria search is allowed),

- his right to modify, at every moment and free of charge, his decision to allow each specific data processing.

- The data controller also has to implement *technical and organisational measures* which are appropriate to the risks represented by the processing and the nature of the data protected (see Article 17 Directive 95/46/EC). This means for example that the data base should be designed in a way that prevents to the extent possible fraudulent uses, such as unlawful modifications of search criteria or the possibility to copy or access the whole data base for further processing. For example search criteria need to be sufficiently precise in order to allow only the presentation of a limited number of results per page. The result should be that the purpose to which the subscriber has consented to, is guaranteed also by technical means.

These conditions do not apply only to telecommunication operators, but also to other actors such as editors, thus to *all* who wish to use personal data for the provision of directories or multi-criteria searching services⁵.

CONCLUSIONS

Having regard to the previous considerations and taking into account the legal framework devised by Directive 97/66/EC and Directive 95/46/EC, the Working Party on the Protection of Individuals with regard to the Processing of Personal Data takes the position that processing of personal data in reverse directories or multi-criteria searching services without unambiguous and informed consent by the subscriber is unfair and unlawful. The conditions set out above need to be met to make such processing legal.

The Working Party welcomes and fully supports the European Commission's proposal for a draft directive concerning the processing of personal data and the protection of privacy in the electronic communications sector⁶ which takes into account the various usage possibilities of, in particular, electronic public directories (such as reverse search functions). The draft directive requires that the subscriber gives his/her informed consent as to whether his/her personal data be included into a public directory, for what specified purpose and to what extent. The Commission's proposal thus adapts the rules to reality given the fact that for new electronic communications services such as GSM and e-mail, most subscribers do not want to make public their mobile telephone numbers and e-mail addresses and most service providers have in practice respected the wishes of their subscribers for good commercial reasons.

The Working Party will further contribute to the discussion on all issues concerning this draft directive⁷.

⁵ See definition of controller in Article 2 d) of Directive 95/46/EC.

⁶ See COM xxx (adopted on 12th July 2000).

⁷ See Opinion xxx on review of directive 97/66/EC, adopted on xxx).

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For the Working Party

The Chairman

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