

Data privacy: What is that?

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1 Introduction

This document gives a short definition on what data privacy is. It does contain a couple of references to laws and treaties as they are necessary, but law is not the primary focus. The focus is more on the question if metadata¹ is currently considered as private data and if it should be.

In Section 2 we are going to give a definition of data privacy and will then go on to find out if metadata is currently considered as private data in Section 3.1. Before adding some additional remarks in Section 4 we will shortly discuss if it should be considered as private data.

2 What is data privacy?

Data privacy is the interest of a person to keep personal data save and secure. It is part of the Universal Declaration of Human Rights, Article 12, which states:

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.[1]

In Europe the term private data is defined as

¹metadata=data about data, like people with whom you communicated by phone or email

[...]any information relating to an identified or identifiable natural person ('data subject'); an identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to his physical, physiological, mental, economic, cultural or social identity;[3]

This is a very vague and legal description of private data, so a more precise one would be data that one would not like to be publicly available like

- financial records
- criminal records
- health records

With the advance of the digital age the importance of these definitions decreases as people are beginning to share more private information through social sites like Facebook or Google which they would not have shared previously and the importance of metadata is increasing.

3 Metadata

3.1 Is metadata private data?

Government agencies claim that metadata can not be classified as private data as it does not contain actual content. Bruce Schneier disagrees as he says that metadata might not give you the content of a conversation, but it tells you everything about a persons life, putting this person under complete surveillance². The European Court of Justice agrees with Bruce Schneier, stating that:

Those data, taken as a whole, may allow very precise conclusions to be drawn concerning the private lives of the persons whose data has been retained, such as the habits of everyday life, permanent or temporary places of residence, daily or other movements, the activities carried out, the social relationships of those persons and the social environments frequented by them.[2]

²https://www.schneier.com/blog/archives/2013/09/metadata_equals.html[08.05.214]

Based on this statement the European Court of Justice ruled that mass surveillance is no longer mandatory in the European Union and also made clear, although it is not said directly, that metadata can actually be part of private data.

It is understandable that governments want those kind of data as it is their duty to protect the citizens from possible terrorist attacks and access to the communication gives them a big advantage. But a big disadvantage is that they want to save the data for a long time, which will give future governments access. This would not be a problem if we can be certain that this future government does not abuse the data to suppress citizens, but we simply don't know that.

This topic, amongst others, received worldwide attention with the releases made by The Guardian and The Washington Post (after receiving information from whistleblower Edward Snowden), who informed the public about mass surveillance by the NSA³ and GCHQ⁴ who claim that they only analyze metadata to detect possible terrorist attacks.⁵ They insist that they were able to stop many possible terrorist attacks based on these analysis, one could conclude that the information they gain from the data is very expressive.

3.2 Should metadata be private data?

This is a very important point. We already saw in Section 3.1 what Bruce Schneier, the European Court of Justice and government agencies think about this topic. But an additional study⁶ conducted by two Stanford doctoral students, Jonathan Mayer and Patrick Mutchler, give scientific proof that metadata should be considered as private data. The two students collected data from volunteers phones and over the course of a few months they analyzed it to find out what metadata reveals about a person. They say that the results were astonishing, as for a persons religion they had a success rate of detecting the correct one of 73%. Considering the numbers and governments interest in collecting it one must come to the conclusion that metadata has to be considered private data.

³National Security Agency, a U.S intelligence agency

⁴Government Communications Headquarters, a British intelligence Agency

⁵For more information about the spy-affair see: <https://www.eff.org/nsa-spying/timeline>[08.05.2014]

⁶<http://webpolicy.org/2014/03/12/metaphone-the-sensitivity-of-telephone-metadata/>[09.05.2014]

4 Conclusion

This document gives a short overview over the problem we are facing concerning metadata and that an exact definition of private data is needed. It is important to mention that the European Union is already working on a new draft for the data privacy directive, but a final draft is far away because they can not reach an agreement as every nation wants different things.

References

- [1] UN General Assembly. *Universal Declaration of Human Rights*. 10 December 1948. URL: http://www.ohchr.org/EN/UDHR/Documents/UDHR_Translations/eng.pdf.
- [2] JUDGMENT OF THE COURT (Grand Chamber). *Electronic communications - Directive 2006/24/EC - Publicly available electronic communications services or public communications networks services - Retention of data generated or processed in connection with the provision of such services - Validity - Articles 7, 8 and 11 of the Charter of Fundamental Rights of the European Union*. 8.04.2014. URL: <http://curia.europa.eu/juris/document/document.jsf?jsessionId=9ea7d2dc30d529bb9a44415f4c08af66c4fdfba1d237.e34KaxiLc3qMb40Rch0SaxuNbh90?text=&docid=150642&pageIndex=0&doclang=EN&mode=req&dir=&occ=first&part=1&cid=439968>.
- [3] European Union. *Directive 95/46/EC of the European Parliament and of the Council on the Protection of Individuals with Regard to the Processing of Personal Data and on the Free Movement of Such Data*. 24.10.1995. URL: <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:31995L0046&from=EN>.